



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



January 29, 2018

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Joseph Faro
OMJ Realty LLC
63 Main Street
Salem, NH 03079

RE: NHDES Wetlands Bureau File 2016-03374, 79 Rockingham Park Boulevard, Salem

Dear Mr. Faro

Attached please find amended Wetlands Permit 2016-03374 to impact a total of 62,773 square feet (SF) palustrine wetlands to include 62,273 SF of permanent impact and 500 SF of temporary impact along 228 liner feet (LF) of Policy Brook, a Tier 3 stream, for the mixed-use redevelopment of the Rockingham Park Racetrack. Work includes the day-lighting of 15,153 LF of Policy Brook as habitat improvement including the construction of 134,912 SF of palustrine emergent and scrub-shrub wetlands adjacent to the Brook.

The decision to approve this application was based on the following findings:

1. This is a major impact project per Administrative Rules Env-Wt 303.02(c) Projects that involve alteration of nontidal wetlands, nontidal surface waters, and banks adjacent to nontidal surface waters in excess of 20,000 square feet in the aggregate, Env-Wt 303.02(f), projects located in or adjacent to designated prime wetlands under RSA 482-A:15, and Env-Wt 303.02(p) Any project that includes a new or replacement stream crossing which meets the criteria for a tier 3 stream crossing as specified in Env-Wt 904.04(a).
2. The impacts are necessary to develop the site and day-light Policy Brook; therefore, the need for the proposed impacts has been demonstrated by the applicant per Env-Wt 302.01.
3. The project provides an opportunity to address flooding issues associated with under-sized drainage structures; therefore, the applicant has provided evidence which demonstrates that this proposal is the alternative with the least adverse impact to areas and environments under the department's jurisdiction per Env-Wt 302.03.
4. The stream and wetland construction area provides flood storage compensation as a part of the overall project primarily upstream of the prime wetland area.
5. The applicant has demonstrated by plan and example that each factor listed in Env-Wt 302.04(a), Requirements for Application Evaluation, has been considered in the design of the project.
6. Policy Brook is a Tier 3 stream pursuant to Env-Wt 904.04. The crossings have been designed in accordance with Env-Wt 904.09.
7. In accordance with Env-Wt 803.09, NHDES finds there is added value to the functions and values of surface waters on the site through reconfiguring the network of existing culverts and exposing the flow via an open channel system. The work is considered habitat improvement for Policy Brook with an associated benefit of a vegetated wetland buffer area adjacent to the brook.
8. According to the design engineer and submittal to FEMA, the 100-year flood flow is recognized to be able to flow onto a portion of Route 28 near the I-93 Exit 1 ramp junction.
9. A boundary versus critical shear stress calculation of both the bed and the constructed vane structures at a range of flows was submitted to demonstrate that the constructed stream bed and bank are stable and as such, the likelihood of failure through bed material mobilization has been addressed.

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10. According to the applicant's project engineer, meander wavelength, spacing and belt width concerns are addressed as the system is low-gradient and the risks should not be a problem pursuant to the New Hampshire Hydraulic Geometry Curve equations.

11. NHDES has raised the concern relative to the elevation of the wetlands downstream of the Rockingham Boulevard culvert which are approximately 118 feet, while the thalweg elevation of the excavated, constructed channel just upstream of the culvert is 115.96 feet. The project engineer represents that the design as proposed will not cause erosion of the embankments adjacent to the culvert. NHDES has addressed this concern by requiring the applicant to monitor the culvert conditions.

12. In accordance with Env-Wt 807.03, if the stream and wetland habitat improvement project does not achieve its objectives, after review by NHDES and the ACOE on an annual basis, the permittee shall be required to submit an in lieu payment to mitigate for the portions of the project that fail to meet the performance standards. The payment amount will be determined by NHDES, ACOE and EPA.

13. The application included NH Natural Heritage Bureau (NHB) Datacheck Results Letter NHB 16-3339 identifying one (1) vertebrate species in the vicinity of the project, Spotted Turtle (*Clemmys guttata*).

14. In response to the NHB letter, NH Fish and Game, Nongame and Endangered Species Program (NHFG), stated via email, in summary, "we [NHFG] do not feel that the daylighting of approximately 3,000 feet of Policy Brook will provide any meaningful benefit to aquatic life including spotted turtle."

15. NH Division of Historical Resources found "No Historic Properties Affected."

16. On November 6, 2017, NHDES received a request to amend the Wetlands and Non-Site Specific Permit issued by NHDES on August 8, 2017. The amendment request, in summary, was for the reconfiguration of the irrigation pond also known as Tuscan Pond. The redesign is a result of traffic circulation and safety concerns and the reduction in size of the proposed hotel and adjacent patio. The new design also includes a pedestrian boardwalk over portions of Tuscan Pond.

17. The new design of Tuscan Pond includes 35,000 square feet of buffer around most of the pond to include transitional wetland buffers from the pond to the surrounding upland structures.

18. In accordance with RSA 482-A:8, DES finds that the requirements for a public hearing do not apply as the permitted project is not of substantial public interest, and will not have a significant impact on or adversely affect the values of the palustrine and riverine resources, as identified under RSA 482-A:1.

Any person aggrieved by this decision may appeal to the New Hampshire Wetlands Council (the Council) by filing an appeal that meets the requirements specified in RSA 482-A:10, RSA 21-O:14, and the rules adopted by the Council, Env-WtC 100-200. The appeal must be filed **directly with the Council within 30 days** of the date of this decision and must set forth fully **every ground** upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the notice of appeal can be considered by the Council.

Information about the Council, including a link to the Council's rules, is available at <http://nhec.nh.gov/> (or more directly at <http://nhec.nh.gov/wetlands/index.htm>.) Copies of the rules also are available from the New Hampshire Department of Environmental Services (NHDES) Public Information Center at (603) 271-2975.

Your permit must be signed, and a copy must be posted in a prominent location on site during construction.

If you have any questions, please contact our office at (603) 271-2147.

Sincerely,



Eben M. Lewis
Wetlands Bureau
Southeast Region Supervisor
NHDES Wetlands Bureau

cc: Jim Gove, Gove Environmental Services, Inc.
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