



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

Robert R. Scott, Commissioner



August 16, 2022

FIVE C'S FAMILY TRUST II  
176 STEVENS HILL RD  
NOTTINGHAM NH 03290

**Re: Denied Non-Compliant After-the-Fact Standard Dredge and Fill Wetlands Permit Application (RSA 482-A)  
NHDES File Number: 2022-01827  
Subject Property: 176 Stevens Hill Rd, Nottingham, Tax Map #49, Lot #41**

Dear Applicant:

The New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau completed technical review of the above-referenced After-the-Fact Standard Dredge and Fill Wetlands Permit Application (After-the-Fact Application). Pursuant to RSA 482-A and Env-Wt 313.01, the NHDES Wetlands Bureau determined the After-the-Fact Application to retain 2,250 square feet of fill in wet meadow wetland to construct a driveway for a residential dwelling does not meet the criteria for approval. Therefore, the After-the-Fact Application is denied. This decision is based on the following findings:

Standards for Approval:

1. Pursuant to RSA 482-A:3 Excavating and Dredging Permit; Certain Exemptions, I, (a) "no person shall... construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from the department."
2. This is classified as a major impact project per Rule Env-Wt 407.02(a), a project that impacts a Priority Resource Area (PRA) and that does not qualify for a project-type exception (PTE) under Env-Wt 407.04 shall be classified as a major project regardless of the size of the impact.
3. According to Rule Env-Wt 311.07(a), the applicant shall submit with the application a written narrative that explains how all impacts to functions and values of all jurisdictional areas have been avoided and minimized to the maximum extent practicable, as required by Rule Env-Wt 313.03.
4. According to Rule Env-Wt 313.03(a), the department shall not approve any alteration of any jurisdictional area unless the applicant demonstrates that the potential impacts to jurisdictional areas have been avoided to the maximum extent practicable and that any unavoidable impacts have been minimized.
5. The applicant must demonstrate by plan and example that each factor listed in Rule Env-Wt 302.04(b) Requirements for Application Evaluation, has been considered in the design of the project.
6. According to Rule Env-Wt 311.01(b)(1), if the NH Natural Heritage Bureau (NHB) DataCheck identifies any areas of concern relative to protected species or habitat, determine how to avoid and minimize project-related impacts on the resource by coordinating with the NH Fish and Game Department (NHF&G) for rare or protected animal species and habitat.
7. According to Rule Env-Wt 103.66(a), "Priority resource area (PRA)" means a jurisdictional area that has documented occurrences of protected species or habitat.

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

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8. According to Rule Env-Wt 311.01(c)(2), if the proposed activity impacts a PRA, then the applicant the applicant shall propose compensatory mitigation in accordance with Env.Wt 800.
9. According to Rule Env-Wt 311.12(b), applications received after work is completed shall be subjected to the same technical review and criteria as any other standard application.
10. According to Rule Env-Wt 311.12(c), the department's acceptance of an after-the-fact application shall not in any way preclude or limit the exercise of any enforcement authority conferred by law on the department, the attorney general, or any other federal, state, or local authority.
11. According to Rule Env-Wt 311.12(d) and subject to Rule Env-Wt 311.12(e), the department shall process an after-the-fact application in accordance with Rule Env-Wt 312 within 50 days of receiving an administratively complete after-the-fact application, including necessary attachments, for a project having less than one acre of impact and within 75 days for larger projects.
12. According to Rule Env-Wt 311.12(e), time limits described in Rule Env-Wt 311.12(d), shall not apply if the project is the subject of an ongoing enforcement investigation, enforcement action, or department of justice case, in which case the timeframe of the ongoing action shall take precedence.

Findings of Fact:

13. On September 4, 2020, NHDES received a complaint alleging wetlands were dredged and filled to construct a driveway without a permit or proper authorization from NHDES on property located at 176 Stevens Hill Road, Nottingham Tax Map 49/Lot 4 owned by Robin Comeau/Five C's Family Trust II (the "Property").
14. On September 21, 2020, NHDES issued a letter to the owner of the Property notifying them of the complaint requesting they provide their comments within 20 days of the date of the NHDES letter including submitting a copy of any permits, plans, or other information related to the matter.
15. On October 15, 2020, NHDES conducted an inspection of the Property and observed and documented that a driveway was constructed through a freshwater wetland, the fill area within the wetland is approximately 1,444 square feet and observed blue survey flagging in what appeared to be a wetland delineation and later confirmed by the owner's agent, Blaisdell Survey, LLC.
16. On October 22, 2020, NHDES received a preliminary plan from Blaisdell Survey, LLC with correspondence stating the owner would like to file an after-the-fact application to retain the fill in wetlands. The preliminary plan submitted showed the existing driveway with the unauthorized wetland fill and an "Alternative Route" driveway that avoided wetland impacts completely.
17. On October 29, 2020, NHDES issued a letter to the owner of the Property outlining the observations of the inspection of the Property conducted on October 15, 2020. The letter also noted that based on NHDES review of the preliminary plan received by Blaisdell Survey, LLC on October 22, 2020 it appears that a driveway could be constructed on the Property with no direct wetland impact. NHDES requested certain actions be taken to correct the wetland violation including retaining a NH certified wetland scientist (CWS) to prepare and submit a wetland restoration plan.
18. On January 14, 2021, NHDES received a wetland restoration plan prepared by Blaisdell Survey, LLC (Roscoe Blaisdell, CWS #164) to restore 1,444 square feet of fill in wetlands on the Property.
19. On January 22, 2021, NHDES issued a wetland restoration plan approval to restore 1,444 square feet of fill in wetlands with conditions to the owners of the Property. Conditions of the approval included, but not limited to, completing wetland restoration by July 1, 2021 and submitting follow up monitoring reports prepared by a CWS by August 2, 2021, September 1, 2022, and September 1, 2023.

20. On January 27, 2021, NHDES received correspondence from Blaisdell Survey, LLC indicating that the owner of the Property would like to prepare a after-the-fact application to retain the fill in wetlands on the Property and asked if this would be acceptable to NHDES.
21. On February 1, 2021, NHDES responded to the January 27, 2021 correspondence by Blaisdell Survey, LLC indicating that the proposal to retain the wetland fill on the Property would not likely be approvable. It was explained that there are alternatives that avoid and minimize wetland impacts on the Property in accordance with Rule Env-Wt 311.07.
22. On May 19, 2022, NHDES issued a letter to the owner of the Property explaining that a review of the file determined an outstanding request remains (wetland restoration) and included a copy of the NHDES wetland restoration plan approval dated January 22, 2021. NHDES requested a status of the wetland restoration by June 20, 2022.
23. On June 24, 2022, a Standard Dredge and Fill application was received by NHDES that proposed to retain 2,250 square feet of fill in wet meadow wetlands for a driveway for a single-family residence on the Property.
24. On June 27, 2022, NHDES issued a letter to the owner of the Property stating the application was received and determined to be administratively complete in accordance with RSA 482-A:3, XIV. Further, the application was added to the technical review queue for compliance review.
25. In a letter dated July 26, 2022, the Nottingham Conservation Commission stated they reject approval of the application, and strongly recommends wetland disturbance be restored as indicated in the January 22, 2021 Restoration Plan Approval issued by NHDES. The Commission also recommends a new driveway be located along the northerly property line.

Findings in Support of Denial:

26. The applicant failed to demonstrate how all impacts to functions and values of all jurisdictional areas have been avoided and minimized to the maximum extent practicable, as required by Rule Env-Wt 313.03. The plan submitted with the application provided an alternative (Option #2) to construct the driveway through uplands to access the proposed residential building site with no wetland impacts, and therefore the application is denied per Rule Env-Wt 311.07(a).
27. The applicant failed to provide evidence which demonstrates that the proposal's impacts to jurisdictional areas have been avoided to the maximum extent practicable and that any unavoidable impacts have been minimized. The plan submitted with the application provided an alternative (Option #2) to construct the driveway through uplands to access the proposed residential building site with no wetland impacts, and therefore the application is denied per Rule Env-Wt 313.03(a).
28. NHB has record of protected species or habitat within the vicinity of the proposed project. The applicant failed to demonstrate how to avoid and minimize project-related impacts on these protected species or habitat, a PRA, and failed to coordinate with NHF&G, and therefore the application is denied per Rule Env-Wt 311.01(b)(1).

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) or a Preliminary Notice of Appeal (PNA) and an offer to enter into settlement discussions within 30 days of the decision date, August 16, 2022.** When filing an appeal, 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://www.nhec.nh.gov/wetlands-council/about>. For appeal related issues, contact the Council Appeals Clerk at (603) 271-6072. A PNA and offer to enter into settlement discussions, shall be filed in accordance with

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the instructions found at <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/prelim-noa-instrctns.pdf>  
using the form found at <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/prelim-not-of-app.pdf>.

If you have any questions, please contact me at David.Price@des.nh.gov or (603) 559-1514.

Sincerely,



David Price  
East Region Supervisor, Wetlands Bureau  
Land Resources Management, Water Division

ec: NH Fish and Game Department  
NH Natural Heritage Bureau

cc: Nottingham Municipal Clerk  
Nottingham Conservation Commission  
Nottingham Planning Board  
Nottingham Code Enforcement  
Keyland Enterprises, LLC  
Blaisdell Survey, LLC