

Wetlands Bureau Decision Report

Decisions Taken
01/07/2008 to 01/13/2008

DISCLAIMER:

This document is published for information purposes only and does not constitute an authorization to conduct work. Work in jurisdiction may not commence until the applicant has received a posting permit.

Decisions are subject to appeal, and are reviewed by the federal agencies for compliance with Section 404 of the Federal Clean Water Act.

APPEAL:

I. Any affected party may ask for reconsideration of a permit decision in accordance with RSA 482-A:10,II within 20 days of the Department's issuance of a decision. Requests for reconsideration should:

- 1) describe in detail each ground for complaint. Only grounds set forth in the request for reconsideration can be considered at subsequent levels of appeal;
- 2) provide new evidence or information to support the requested action;
- 3) Parties other than the applicant, the town, or contiguous abutters must explain why they believe they are affected; and
- 4) Be mailed to the DES Wetlands Bureau, PO Box 95, Concord, NH 03302-0095.

II. An appeal of a decision of the department after reconsideration may be filed with the Wetlands Council in accordance with RSA 482-A:10, IV within 30 days of the department's decision. Filing of the appeal must:

- 1) be made by certified mail to Lawrence E. Morse, Chairperson, Wetlands Council, PO Box 95, Concord, NH 03302-0095 (a copy should also be sent to the DES Wetlands Bureau);
- 2) contain a detailed description of the land involved in the department's decision; and
- 3) set forth every ground upon which it is claimed that the department's decision is unlawful or unreasonable.

MAJOR IMPACT PROJECT

**2003-00096 ALTON SCHOOL DISTRICT, ATTEN: DON PARKS, SUP
ALTON Unnamed Wetland**

Requested Action:

Request to waive Env Wt 502.01 which states "issued permits and completed permit by notifications shall have a duration of 5 years..."

Conservation Commission/Staff Comments:

The conservation commission has no objections to the proposed application and is interested in holding the proposed conservation easement on this property.

Inspection Date: 01/09/2003 by Jocelyn S Degler

APPROVE TIME EXTENSION:

Extend permit to September 1, 2008. This should be the only time extension for this project. Dredge and fill 37,536 square feet within forested wetlands for roadway construction, and expansion of Route 28 to access the proposed high school and for construction of associated athletic fields. Mitigation for permanent jurisdictional impacts shall include: Preservation via conservation easement approximately 22.04 acres on site, including 13.9 acres of wetlands and 8.1 acres of contiguous upland buffer; Restoration of 4324 square feet of forested shrub/scrub wetland; And the construction of 3,800 square feet of forested scrub shrub wetland.

With Conditions:

1. All work shall be in accordance with plans by Appledore Engineering dated January 6, 2003, and revised through January 7, 2004 as received by the Department on January 14, 2004.
2. There shall be no further alteration of wetlands for lot development, driveways, culverts, or for septic setback.
3. This permit shall not be effective until it has been recorded with the county Registry of Deeds office by the Permittee. A copy of the registered permit shall be submitted to the DES Wetlands Bureau prior to construction.
4. This permit is contingent on approval by the DES Site Specific Program.
5. This permit is contingent on approval by the DES Subsurface Systems Bureau.
6. Work within the jurisdiction of DES Wetlands Bureau shall be done during low flow.
7. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
8. The permittee shall notify DES and the local conservation commission in writing of their intention to commence construction no less than five business days prior to construction.
9. A meeting with all of the principles involved in wetland creation and restoration areas shall be conducted prior to the commencement of any construction on this site.
10. This permit is contingent upon the creation, and restoration of 8124 sq. ft. of wetlands in accordance with plans received January 17, 2003.
11. The schedule for construction of the mitigation area shall coincide with site development unless otherwise considered and authorized by the Wetlands Bureau to occur subsequent to site construction.
12. The mitigation area shall be properly constructed, monitored, and managed in accordance with approved final mitigation plans, and the entire mitigation area shall be preserved from future development.
13. The permittee shall designate a qualified professional who will have the responsibility to assure that the mitigation area is constructed in accordance with the mitigation plan, that monitoring is accomplished in a timely fashion, and remedial measures are taken if necessary. The Wetlands Bureau shall be notified of the designated professional prior to the start of work and if there is a change of status during the project.
14. The permittee shall conduct a follow-up inspection after the first growing season, to review the success of the mitigation area and schedule remedial actions if necessary. A report, including photo documentation, outlining these follow-up measures and a schedule for completing the remedial work shall be submitted to the department by December 1 of that year. Similar inspections,

reports and remedial actions shall be undertaken in at least the second and third years following the initial completion of each mitigation site.

15. After at least five full growing seasons, the permittee shall delineate the wetlands within the mitigation site and document the delineation with data forms and depict the delineation as an overlay of the final as-built plans.

16. The permittee shall attempt to control invasive, weedy species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*) by measures agreed upon by the Wetlands Bureau if the species is found in the mitigation areas during construction and during the early stages of vegetative establishment.

17. This permit is contingent upon the execution of a conservation easement on 22.04 acres as depicted on plans received January 17, 2003.

18. The conservation easements to be placed on the preservation areas shall be written to run with the land, and both existing and future property owners shall be subject to this easement.

19. The plan noting the conservation easement with a copy of the final easement language shall be recorded with the Registry of Deeds Office for each appropriate lot. A copy of the recording from the County Registry of Deeds Office shall be submitted to the DES Wetlands Bureau prior to the start of construction.

20. The conservation easement area shall be surveyed by a licensed surveyor, and marked by monuments [stakes] prior to construction.

21. Signs to indicate the location of and restrictions on the area shall be posted every 150 feet along the boundary of the conservation area prior to construction.

22. There shall be no removal of the existing vegetative undergrowth within the easement area and the placement of fill, construction of structures, and storage of vehicles or hazardous materials is prohibited.

23. Activities in contravention of the conservation easement shall be construed as a violation of RSA 482-A, and those activities shall be subject to the enforcement powers of the Department of Environmental Services (including remediation and fines).

24. Proper headwalls shall be constructed within seven days of culvert installation.

25. Dredged material shall be placed out of any area that is within the jurisdiction of the DES Wetlands Bureau

26. Within three days of final grading in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.

27. Where construction activities have been temporarily suspended within the growing season, all exposed soil areas shall be stabilized within 14 days by seeding and mulching.

28. Where construction activities have been temporarily suspended outside the growing season, all exposed areas shall be stabilized within 14 days by mulching and tack. Slopes steeper than 3:1 shall be stabilized by matting and pinning.

29. Silt fencing must be removed once the area is stabilized.

30. The contractor responsible for completion of the work shall utilize techniques described in the DES Best Management Practices for Urban Stormwater Runoff Manual (January, 1996) and the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire (August, 1992).

With Findings:

1. Env Wt 204.01 provides that waiver to rules are to accommodate those situations where strict adherence to the rules would not be in the best interest of the public or the environment.

2. On December 18, 2007 DES received a request for a waiver pursuant to Env Wt 204.03.

3. Env Wt 204.04(a) provides that a request for a waiver shall be granted if:

(1) Granting the request will not result in:

- a. An adverse effect to the environment or natural resources of the state, public health, or public safety; or
- b. An impact on abutting properties that is more significant than that which would result from complying with the rule; and

(2) One or more of the following conditions is satisfied:

- a. Granting the request is consistent with the intent and purpose of the rule being waived;
- b. Strict compliance with the rule will provide no benefit to the public and will cause an operational or economic hardship to the applicant; ...

(b) No waiver shall be granted if the effect of the waiver would be to waive or modify a statutory requirement.

4. Permit 2003-96 has an expiration date of March 27, 2008.

5. Compliance with the rule in this case would represent a large burden and economic hardship to the Alton School District. To complete the project, the Town of Alton needs to pass a Warrant Article for the funds. The Warrant article will be voted on in March, as the current permit date is expiring.
6. The school District is seeking to start the construction of the soccer field at the end of June, after the school year ends. This will maximize safety for students, as the only access area to the field site requires large trucks to run back and forth immediately adjacent to the high school building.
7. The Alton School District is requesting that the permit be extended to September 2008.

MINOR IMPACT PROJECT

2006-01600 NOYES TRUST, JOHN
LACONIA Unnamed Wetland

Requested Action:

Amendment request to change the temporary impact areas, the number of units and remove a lot and correct the acreage of the lot.

APPROVE AMENDMENT:

Dredge and fill a total of 4860 square feet (of which 1595 are temporary) along 169 linear feet of intermittent and perennial stream bank and forested wetland for access to 341 proposed condominium units on 83.57 acres.

With Conditions:

1. All work shall be in accordance with plans by Holden Engineering and Surveying dated April 27, 2006, and revised through October 12, 2007, as received by the Department on October 22, 2007.
2. This permit is contingent on approval by the DES Alteration of Terrain.
3. Any construction imitated after April 1, 2008, will require an additional permit from the Department in accordance with RSA 483-B:5-a.
4. There shall be no further alteration of wetlands for lot development, driveways, culverts, or for septic setback.
5. The deed which accompanies the sales transaction for each of the lots in this subdivision shall contain condition #4 of this approval.
6. This permit shall not be effective until it has been recorded with the Registry of Deeds Office by the Permittee. A copy of the recorded permit shall be submitted to the DES Wetlands Bureau.
7. At least 48 hours prior to the start of construction, a pre-construction meeting shall be held with NHDES Land Resources Management Program staff at the project site or at the DES Office in Concord, NH to review the conditions of this wetlands permit and the NHDES Site Specific Permit. It shall be the responsibility of the permittee to schedule the pre-construction meeting, and the meeting shall be attended by the permittee, his/her professional engineer(s), wetlands scientist(s), and the contractor(s) responsible for performing the work.
8. Work within the bank of the perennial stream shall be done during low flow.
9. No riprap shall be placed below the high water line on the perennial stream.
10. Work within the intermittent stream shall be done during periods of non-flow.
11. Appropriate siltation/erosion controls shall be in place prior to construction, shall be maintained during construction, and remain until the area is stabilized.
12. All dredged or excavated material and construction related debris shall be placed outside of the jurisdiction of the DES Wetlands Bureau.
13. Proper headwalls shall be constructed within seven days of culvert installation.
14. Area of temporary impact shall be regraded to original contours following completion of work.

15. Where construction activities have been temporarily suspended within the growing season, all exposed soil areas shall be stabilized within 14 days by seeding and mulching.
16. Where construction activities have been temporarily suspended outside the growing season, all exposed areas shall be stabilized within 14 days by mulching and tack. Slopes steeper than 3:1 shall be stabilized by matting and pinning.
17. Silt fencing must be removed once the area is stabilized.
18. The contractor responsible for completion of the work shall utilize techniques described in the DES Best Management Practices for Urban Stormwater Runoff Manual (January, 1996) and the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire (August, 1992).
19. All activity shall be in accordance with the Comprehensive Shoreland Protection Act, RSA 483-B (see attached fact sheet).

With Findings:

The Department reaffirms findings 1-18 of the original approval:

1. This is a minor impact project per Administrative Rule Env-Wt 303.03(h), projects involving less than 20,000 square feet of alteration in the aggregate in nontidal wetlands, nontidal surface waters, or banks adjacent to nontidal surface waters which exceed the criteria of Env-Wt 303.04(f) and Env-Wt 303.03(l), projects that alter the course of or disturb less than 200 linear feet of an intermittent or perennial nontidal stream or river channel or its banks and do not meet the criteria for minimum impact under Env-Wt 303.04(n).
2. The proposed impact areas are for access to the buildable upland areas and connector roads for public safety as required by the City of Laconia.
3. The need for the proposed impacts has been demonstrated by the applicant per Env-Wt 302.01. 4. The applicant has provided open bottom box culverts over the intermittent stream.
5. The applicant has provided a timber bridge structure over the large forested wetland crossing.
6. 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.
7. The applicant has provided a 35 foot no cut buffer in accordance with the City of Laconia's provisions.
8. The applicant has provided 52.22 acres of conservation open space with the largest highest quality wetland system within it.
9. 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.
10. DES Staff conducted a field inspection of the proposed project on May 24, 2007. Field inspection determined the bank of Langley Brook is lined by an historic retaining wall in the location of the proposed impact. In addition the area of the proposed velocity reduction structure is currently a gravel parking area.
11. No rip rap is proposed below the normal high water line.
12. The applicant has provided a waiver request per Env-Wq 1410.04, to waive Rule Env-Wq 1405.03(b), for the construction of a velocity reduction structure.
13. The waiver is granted in accordance with Env-Wq 1410.04(2), as strict compliance with the rule will provide no benefit to the public and will cause an operational or economic hardship to the applicant.
14. There will be no adverse effect to the environment or natural resources of the state, public health, or public safety; or on abutting properties that is more significant than that which would result from complying with the Rule Env-Wq 1405.03(b).
15. The proposed structure location is required to have a positive outlet gravity flow of treated stormwater into Langley Brook. Relocating the structure outside of the setback would result in an outlet elevation lower than the adjacent elevation of the brook.
16. The proposed structure will protect the resources by reducing the velocity of the treated stormwater prior to discharge into Langley Brook.
17. The proposed structure will be planted with sod and small shrubs which is an improvement over the existing gravel parking area that currently exists.
18. There will be no adverse effect to the environment or natural resources of the state, public health, or public safety; or on abutting properties that is more significant than that which would result from complying with the Rule Env-Wq 1405.03(b).

And makes the following additional finding:

19. Condition 3 of the amended approval is in response to changes in RSA 483-B, The Comprehensive Shoreland Protection Act passed June of 2007, and effective April 1, 2008.

Requested Action:

Approve name change to: GFM Development LLC, 317 South River Rd., Bedford NH 03110 per request received 1/11/2008.

Previous owner: Greenfield Farms LLC.

Conservation Commission/Staff Comments:

The Conservation Commission did not submit comments to DES.

APPROVE NAME CHANGE:

Dredge and fill approximately 1,200 sq. ft. of forested wetlands to construct an access roadway to a proposed 24-lot cluster subdivision ("Greenfield Farms Phase XII"). Impacts consist of one wetland crossing consisting of installation of an approximately 15 in. x 50 ft. RCP, associated grading, outlet protection and headwalls.

With Conditions:

1. All work shall be in accordance with plans by True Engineering Inc., plan sheets 3, 7 and 8 of 25, revision dated September 12, 2006, as received by the Department on September 26, 2006.
2. This permit is contingent on approval by the DES Site Specific Program.
3. There shall be no further alteration of wetlands for lot development, driveways, culverts, or for septic setback.
4. The deed which accompanies the sales transaction for each of the lots in this subdivision shall contain condition #3 of this approval.
5. This permit shall not be effective until it has been recorded with the Registry of Deeds Office by the Permittee. A copy of the registered permit shall be submitted to the DES Wetlands Bureau.
6. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain in place until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
7. Orange construction fencing shall be placed at the limits of construction adjacent to wetlands and surface waters to prevent accidental encroachment.
8. Discharge from dewatering of work areas shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as far as possible from wetlands and surface waters, in all cases with a minimum of 20 feet of undisturbed vegetated buffer.
9. Dredged material shall be placed outside of the jurisdiction of the DES Wetlands Bureau.
10. Proper headwalls shall be constructed within seven days of culvert installation.
11. The contractor responsible for completion of the work shall utilize techniques described in the DES Best Management Practices for Urban Stormwater Runoff Manual (January, 1996) and the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire (August, 1992).
12. Culvert outlets shall be protected in accordance with the DES Best Management Practices for Urban Stormwater Runoff Manual (January 1996) and the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire (August 1992).
13. Within three days of final grading in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.
14. Where construction activities have been temporarily suspended within the growing season, all exposed soil areas shall be stabilized within 14 days by seeding and mulching.
15. Where construction activities have been temporarily suspended outside the growing season, all exposed areas shall be stabilized within 14 days by mulching and tack. Slopes steeper than 3:1 shall be stabilized by matting and pinning.
16. Construction equipment shall be inspected daily for leaking fuel, oil and hydraulic fluid. Faulty equipment shall be repaired immediately
17. The contractor shall have appropriate oil spill kits on site and readily accessible at all times during construction and each operator shall be trained in its use.

With Findings:

1. This permit transfer is issued in accordance with NH Administrative Rule Env-Wt 502.02.

2006-02465 **CANDIA, TOWN OF**
CANDIA Unnamed Stream Wetlands

Requested Action:

Dredge and fill a total of 4,164 sq. ft. of palustrine forested/ scrub-shrub wetlands, including a perennial stream crossing, utilizing a standard 4 ft. x 6 ft. box culvert, for roadway access and site work associated with the construction of a new municipal transfer station/ recycling center.

Conservation Commission/Staff Comments:

No report or comments received from the Candia Conservation Commission.

Inspection Date: 07/13/2006 by Frank D Richardson

APPROVE AMENDMENT:

Dredge and fill a total of 4,164 sq. ft. of palustrine forested/ scrub-shrub wetlands, including a perennial stream crossing, utilizing a standard 4 ft. x 6 ft. box culvert, for roadway access and site work associated with the construction of a new municipal transfer station/ recycling center.

With Conditions:

1. All work shall be in accordance with plans by Stantec Consulting Services, Inc. dated September 2006, as received by the Department on September 18, 2006.
 - 1a. Permit Amendment calls for installation of a standard 4 ft. x 6 ft. box culvert in place of the bottomless box originally proposed. This results in a reduced wetlands impact from 6,411 sq. ft. to 4,164 sq. ft. in accordance with revised plans by Stantec Consulting Services, Inc. dated September 2007 as received by the DES Wetlands Bureau on October 06, 2007.
 - 1b. Approval of this amendment requires the complete removal of the existing at-grade crossing through the stream (ford) and restoration of this area which lies upstream of the approved stream crossing/ box culvert location.
2. Any further alteration of areas on this property that are within the jurisdiction of the DES Wetlands Bureau will require a new application and further permitting by the Bureau.
3. This permit is contingent on approval by the DES Subsurface Systems Bureau.
4. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain in place until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
5. Dredged material shall be placed outside of the jurisdiction of the DES Wetlands Bureau.
6. Proper headwalls shall be constructed within seven days of culvert installation.
7. Culvert outlets shall be properly rip rapped.

With Findings:

1. This is a minor impact project per Administrative Rule Env-Wt 303.03(h).
2. The need for the proposed impacts has been demonstrated by the applicant per Env-Wt 302.01.
3. 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 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.
5. DES Staff conducted a field inspection of the proposed project on July 13, 2006.
6. NH Fish & Game Department staff Kim A. Tuttle acknowledged that the proposed change in box culvert design is adequate at this location.

2006-02685 **TEDESCHI FOOD SHOPS INC**
MERRIMACK Unnamed Wetland

Requested Action:

Approve name change to: Tedeschi Food Shops, Inc., 14 Howard St., Rockland Ma 02370 per request received 1/10/2008.
Previous owner: One Line Realty Dev., LLC.

Inspection Date: 01/03/2007 by William A Thomas, Cws

APPROVE NAME CHANGE:

Dredge and fill 9,850 sq. ft. of palustrine emergent and scrub-shrub wetlands for two access/exit roads, stormwater management area and associated landscaping for construction of commercial building containing a convenience store, coffee shop and gas station.

With Conditions:

1. All work shall be in accordance with plans by TFMoran Inc., dated September 29, 2006, as received by the Department on October 12, 2006.
2. This permit is contingent on approval by the DES Subsurface Systems Bureau.
3. This permit is contingent on approval by the DES Waste Management, Underground Storage Tank Program.
4. This permit is contingent on approval by the New Hampshire Department of Transportation.
5. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain in place until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
6. The proposed stormwater management area shall be replanted with native wetland plant species as proposed in narratives prepared by TFMoran Inc., dated October 5, 2006, as received by the Department on October 12, 2006.
7. Any future work on this property that is within the jurisdiction of the DES Wetlands Bureau as specified in RSA 482-A will require a new application and approval by the Bureau.
8. Discharge from dewatering of work areas shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as far as possible from wetlands and surface waters, in all cases with a minimum of 20 feet of undisturbed vegetated buffer.
9. Dredged material shall be placed outside of the jurisdiction of the DES Wetlands Bureau.
10. Proper headwalls shall be constructed within seven days of culvert installation.
11. Within three days of final grading in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.
12. Where construction activities have been temporarily suspended within the growing season, all exposed soil areas shall be stabilized within 14 days by seeding and mulching.
13. Where construction activities have been temporarily suspended outside the growing season, all exposed areas shall be stabilized within 14 days by mulching and tack. Slopes steeper than 3:1 shall be stabilized by matting and pinning.
14. The contractor responsible for completion of the work shall utilize techniques described in the DES Best Management Practices for Urban Stormwater Runoff Manual (January, 1996) and the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire (August, 1992).

With Findings:

1. This permit transfer is issued in accordance with NH Administrative Rule Env-Wt 502.02.

**2006-03231 HALVORSEN HOLDINGS, LLC, JOHN HALVORSEN
LEBANON Unnamed Wetland Mascoma Lake**

Requested Action:

Deny permit to dredge and fill 7,866 square feet of palustrine forested and wet meadow wetlands for access to and construction of a 69-unit residential housing development.

DENY PERMIT:

Deny permit to dredge and fill 7,866 square feet of palustrine forested and wet meadow wetlands for access to and construction of a 69-unit residential housing development.

With Findings:

1. This is a minor impact project per Administrative Rule Env-Wt 303.03(h), projects involving less than 20,000 square feet of alteration in the aggregate in nontidal wetlands, nontidal surface waters, or banks adjacent to nontidal surface waters which exceed the criteria of Env-Wt 303.04(f).
2. Approvals must be consistent with the findings of public purpose set forth by RSA 482-A:1.
3. The need for the proposed impacts shall be demonstrated by the applicant prior to department approval of any alteration of nontidal wetlands per Rule Env-Wt 302.01.
4. The applicant must provide evidence which demonstrates that his/her proposal is the alternative with the least adverse impact to areas and environments under the department's jurisdiction per Rule Env-Wt 302.03.
5. The applicant must demonstrate by plan and example that each factor listed in Rule Env-Wt 302.04(a), Requirements for Application Evaluation, has been considered in the design of the project.
6. Pursuant to Rule Env-Wt 302.04(d), the department shall not grant a permit if the applicant fails to document that the proposed alternative is the one with the least adverse impact to areas and environments under the department's jurisdiction, if the applicant proposes unnecessary destruction of wetlands, or if the project would cause or contribute to significant degradation of waters of the state.
7. RSA 482-A:3,XIV(b), requires that additional information be submitted to the Department within 120 days of the request for additional information or the application will be denied.

FINDINGS OF FACT:

8. On December 26, 2006, the NH Department of Environmental Services ("DES") received an application to dredge and fill 9,058 square feet of jurisdictional wetlands for the construction of and access to a 71-unit residential housing development.
9. The application was deemed Administratively Complete on January 03, 2007.
10. In correspondence dated December 28, 2006, the Lebanon Conservation Commission notified the DES of its intent to intervene.
11. In correspondence dated January 18, 2007, the Environmental Protection Agency (EPA), requested vernal pool survey results.
12. In correspondence dated February 23, 2007, the Lebanon Conservation Commission recommended not approving the proposed project, for the following reasons: 1) The Commission feels the site of the development on the sloped hillside with the resulting impermeable surface is too great for the site; 2) The site has significant drainage problems already; 3) The drainage off the site will be piped into Mascoma Lake which is the drinking water supply for the City of Lebanon; 4) There is significant evidence of wildlife activity on the site; 5) The site is also contiguous to the Shaker Mountain Conservation District of Enfield. The Lebanon Conservation Commission also suggested a hydrological study be done on the site to determine the exact runoff and contribution of water to Mascoma Lake and that mitigation and treatment of the runoff be considered at the base of the site, without emptying into Mascoma Lake.
13. On March 19, 2007, DES issued a Request for More information, addressed to the Applicant and copied to the Agent's of record, clearly identified changes made to RSA 482-A:3 in 2003, requiring the Applicant to submit additional information to DES within 120 days of the request.
14. The March 19, 2007, letter requested the Applicant submit a vernal pool survey as requested by the EPA; address the Lebanon Conservation Commission February 23, 2007, concerns; clarify the status of on-site construction; provide the total square feet of altered terrain and indicated DES Alteration of Terrain Program approval may be required; provide details for abutter notification clarification; submit a legible subdivision plan in accordance with Rule Env-Wt 304.09 and DES stated the illegible scale prohibited review of the least impacting alternative; submit additional details regarding the cut-slope origin of onsite wetlands, including existing logging road locations and additional photographs; address the statement that submitted plans appear to indicate wetland impacts were not avoided to the greatest extent possible and DES offered alternative/revision possibilities to eliminate impact areas; address the concern that construction appeared to redirect jurisdictional flows, which is not approvable; submit plans that include culvert details and proposed erosion and siltation controls; provide details for any streams on the property; submit a wetland delineation in accordance with Rule Env-Wt 301.01; submit a construction sequence; and submit plans for conceptual development upslope.
15. On March 23, 2007, after review of revised project materials, the Lebanon Conservation Commission reiterated their February 23, 2007, comments and included clarification of a hydrologic study.
16. On July 17, 2007, DES received a response to some of the items requested in the March 19, 2007, letter.
17. On August 15, 2007, DES issued a letter requesting outstanding items of the March 19, 2007, letter and additional items determined necessary after review of legible plans for the portion of the property proposed for development, including that the vernal pool response be submitted directly to the EPA for review and comment; continued coordination with the Lebanon Conservation Commission to address their ongoing project concerns; submittal of a DES Alteration of Terrain Bureau application to allow for review required to address drainage and stormwater management concerns; legible plans in accordance with Rules

Env-Wt 304.09 and 301.01; confirmation hydrology will be maintained in areas where wetland impacts cannot be avoided; culvert details and methods of erosion and siltation controls; legible plans in accordance with Rule Env-Wt 301.01; shoreland setbacks on plans and required materials in accordance with Rule Env-Wq 1409.03; details for wells in jurisdiction; and details for an unidentified structure in jurisdiction.

18. In email correspondence dated August 15, 2007, the Lebanon Conservation Commission stated (after review of revised project materials) that their original comments and concerns stand.

19. In correspondence received by the DES Wetlands Bureau on September 09, 2007, the Mascoma Lake Association submitted a letter of opposition to the proposed project, which included concerns regarding water quality impacts to Mascoma Lake, a Lebanon drinking water supply, and aesthetic and traffic concerns.

20. On December 12, 2007, DES received a response to some of the items requested in the August 16, 2007, letter.

21. The information received on December 12, 2007, did not provide structures at each crossing or sufficient details for proposed structures to allow DES to confirm wetland hydrology will be maintained and stormwater will not be detained or treated in jurisdictional wetlands.

22. The information received on December 12, 2007, did not provide adequate erosion and sediment control details.

23. The information received on December 12, 2007, did not provide supporting evidence that the applicant will continue to coordinate with the Lebanon Conservation Commission.

Findings in Support of Denial:

24. The application is denied as the proposed project does not meet the public purpose as defined in RSA 482-A.

25. The applicant has not addressed Env-Wt 302.01(b), and therefore is denied in accordance with Env-Wt 302.04(d)(3) as the project causes unnecessary destruction of wetlands.

26. The applicant failed to address Env-Wt 302.03 and Env-Wt 302.04(a)(2), and therefore is denied in accordance with Env-Wt 302.04(e)(2) as there may be lesser impacting alternatives.

27. The applicant has failed to address Env-Wt 302.04(a), and therefore the application is denied in accordance with Env-Wt 302.04(d)(2) as the project would cause or contribute to significant degradation of waters of the state.

28. Pursuant to RSA 482-A:3,XIV(b), if the requested additional information is not received by DES within 120 days of the request, DES shall deny the application.

29. DES did not receive a complete response by December 14, 2007, the denial date identified in the August 16, 2007, Request for More Information, and therefore the application has been denied.

2007-00227 BENSON, DONNA
WEARE Horace Lake

Requested Action:

Applicant requests reconsideration of the department's December 4, 2007 decision to deny the request for a 3-slip docking facility on 77 ft of frontage on Horace Lake.

Conservation Commission/Staff Comments:

No comments from Con Com by 04/11/07

APPROVE RECONSIDERATION:

Reconsider and issue after the fact approval to: Retain two 4 ft x 30 ft seasonal docks connected by a 4 ft x 10 ft walkway in a "U" shaped configuration on 77 ft of frontage on Horace Lake, in Weare.

With Conditions:

1. The docking facility shall be maintained as shown on plans received by the department on January 31, 2007.
2. Any further alteration of areas on this property that are within the jurisdiction of the DES Wetlands Bureau will require a new application and further permitting by the Bureau.
3. This permit shall not be effective until it has been recorded with the Hillsborough County Registry of Deeds office by the Permittee. A copy of the recorded permit shall be submitted to the DES Wetlands Bureau by certified mail, return receipt requested, prior to construction.

4. Seasonal piers shall be removed for the non-boating season.
5. All activity shall be in accordance with the Comprehensive Shoreland Protection Act, RSA 483-B (see attached fact sheet).

With Findings:

1. This docking facility fails to conform to the requirements of Chapter Env-Wt 400.
2. The department failed to take action on the application within 75 days of the issuance of the Administrative Completeness Letter and, therefore, the application is deemed approved in accordance with RSA 482-A:3 XIV(d).

2007-00287 PORTSMOUTH COUNTRY CLUB
GREENLAND Great Bay

Requested Action:

Install 700 sq. ft. of stone rip-rap, underlain with geotextile fabric, along 70 linear feet of shoreline to stabilize and armor this section of highly eroded embankment.

Conservation Commission/Staff Comments:

No comments were received from the Greenland Conservation Commission on this application.

Inspection Date: 03/24/2006 by Frank D Richardson

APPROVE PERMIT:

Install 700 sq. ft. of stone rip-rap, underlain with geotextile fabric, along 70 linear feet of shoreline to stabilize and armor this section of highly eroded embankment.

With Conditions:

1. All work shall be in accordance with plans by Port Engineering Associates, Inc. dated 01/19/07, as received by DES on February 08, 2007.
2. Any further alteration of areas on this property that are within the jurisdiction of the DES Wetlands Bureau will require a new application and/or further permitting by the Bureau.
3. NH DES Wetlands Bureau Southeast Region staff shall be notified in writing prior to commencement of work and upon its completion.
4. All activity shall be in accordance with the Comprehensive Shoreland Protection Act, RSA 483-B (see attached fact sheet).
5. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain in place until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
6. Construction equipment shall be inspected daily for leaking fuel, oil and hydraulic fluid prior to work adjacent to tidal wetlands.
7. Faulty equipment shall be repaired prior to entering jurisdictional areas.
8. The contractor shall have appropriate oil spill kits on site and readily accessible at all times during construction and each operator shall be trained in its use.
9. All refueling of equipment shall occur outside of the 100 ft. tidal buffer zone during construction.

With Findings:

1. This is a minor impact project per Administrative Rule Env-Wt 303.03(a)&(b), for work within the 100 foot tidal buffer zone and within 50 feet of a salt marsh.
2. The need for the proposed impacts has been demonstrated by the applicant per Env-Wt 302.01. 3. 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 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.
5. DES Staff conducted a field inspection of the proposed project on March 24, 2006. Field inspection determined Rip-rap shoreline stabilization w/ geotextile underlayment needed here. Preexisting toe of slope defined by row on larger stones in place.

2007-00405 CONTINENTAL PAVING COMPANY
HUDSON Chase Brook

Requested Action:

Dredge and fill 8,617 sq. ft. of palustrine forested/scrub-shrub/emergent wetlands to construct a 24 ft. wide roadway, including the installation of two (2) 10 ft. x 4 ft. Con-Span bridges and retaining walls, to provide access to industrially zoned uplands on this 36.67 acre parcel of land.

Conservation Commission/Staff Comments:

No report or comments were received from the Hudson Conservation Commission on this application.

APPROVE PERMIT:

Dredge and fill 8,617 sq. ft. of palustrine forested/scrub-shrub/emergent wetlands to construct a 24 ft. wide roadway, including the installation of two (2) 10 ft. x 4 ft. Con-Span bridges and retaining walls, to provide access to industrially zoned uplands on this 36.67 acre parcel of land.

With Conditions:

1. All work shall be in accordance with plans by Keach-Nordstrom Associates, Inc., dated Sept. 2006 & 02/05/07, as received by DES on February 23, 2007.
2. Any further alteration of areas on this property that are within the jurisdiction of the DES Wetlands Bureau will require a new application and/or further permitting by the Bureau.
3. This permit is contingent on approval by the DES Subsurface Systems Bureau.
4. Orange construction fencing shall be placed at the limits of construction to prevent accidental encroachment on wetlands.
5. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain in place until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
6. Dredged material shall be placed outside of the jurisdiction of the DES Wetlands Bureau.
7. Culvert outlets shall be protected in accordance with the DES Best Management Practices for Urban Stormwater Runoff Manual (January 1996) and the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire (August 1992).
8. Within three days of final grading or temporary suspension of work in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.
9. Work shall be done during low flow.
10. NH DES Wetlands Bureau Southeast Region staff shall be notified in writing prior to commencement of work and upon its completion.

With Findings:

1. This is a minor impact project per Administrative Rule Env-Wt 303.03(h).
2. The need for the proposed impacts has been demonstrated by the applicant per Env-Wt 302.01. 3. 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 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.
5. Regarding a vernal pool survey for this project; a report dated October 23, 2006 by Wetland Consulting Services, received by the Wetlands Bureau on December 04, 2007 states: "No vernal pools exist in or around the impact area, ..."

2007-00926 MARINO, JOSEPH & ROSE
PITTSBURG Back Lake

Requested Action:

Deny request for reconsideration

DENY RECONSIDERATION:

Deny request for reconsideration

With Findings:

A. Grounds for Reconsideration

The request for reconsideration asserts the following as the basis for the request:

1. The Marinos have met the requirements of RSA 482-A.
2. There is no statutory authority for the Bureau's conditions 7-9 or for the Bureau to otherwise condition the issuance of a Minor Impact Wetlands Permit on the reduction of the size of the Marino's house. In fact, the house is not within the jurisdictional wetlands. See Cayten v. New Hampshire Dept. of Environmental Services, -- N.H. - (July 13, 2007)(regarding wetlands jurisdiction); Greenland Conservation Com'n v. New Hampshire Wetlands Council, 154 N.H. 529 (2006) (same).
3. The purpose of RSA 482-A is to regulate dredging and filling in jurisdictional wetlands and to regulate the effect on the environment by requiring permits to be issued for construction of structures within jurisdictional wetlands. See RSA 482-A:3. See also Greenland Conservation Com'n v. New Hampshire Wetlands Council, 154 N.H. 529 (2006) (same).
4. The Department is without authority to impose a condition to demolish all or a portion of the Marinos' house. In fact, the demolition of the Marinos' house is not the appropriate way to meet the serve [sic] no environmental purposes under the Wetlands Act, RSA 482-A, or the Shoreland Protection Act, for that matter.
5. Moreover, the possible imposition of serious penalties requires that permit conditions be spelled out clearly to those who might suffer the consequences of permit violations. A permit condition such as the Department argues here, in the context of the issuance of a Minor Impact Wetlands Permit, should be ruled to be void for vagueness and in violation of constitutional provisions and due process. N.H. Const. Part I, Article 15; U.S. Constitution Amend. 5, 14.
6. The permit fails to explain why the conditions should be imposed to protect wetlands or meet the intent of the Shoreland Protection Act. A permit condition that is not clear will not be enforced by a court, because courts will not guess at the intent of the permitting agency, but will review a permit on its face.
7. To deny the Marinos' right to make reasonable use of their property, and especially in light of RSA 483-B:10, I, amounts to an unconstitutional taking by inverse condemnation because the Department's action substantially interferes with or deprives the Marinos of the use of their property. See Sundell v. Town of New London, 119 N.H. 839 (1979); U.S. Constitution. Amend. 5; N.H. Const. Part I, art.s 2, 12.
8. The Bureau's application and interpretation of RSA 483-B:10, I, deprives the Marinos their property rights in violation of the New Hampshire and United States Constitutions. U.S. Constitution. Amend. 5; N.H. Const. Part I, art.s 2, 12.
9. There is no authority for the Bureau to incorporate the findings of the Coos County Superior Court, when granting a wetlands permit. Rather, the Bureau must review the pending application and impose any proper conditions that are statutorily authorized.
10. For the Bureau to apply conditions that are not statutorily authorized in connection with the issuance of a Minor Impact Wetlands Permit, it is a violation [sic] and abuse of the powers of the Bureau under RSA 482-A. N.H. Const. Part I, art.s 37, 15; N.H. Const. Part II, Art. 2; U.S. Constitution.
11. Moreover, the Bureau's condition number 9, requiring the potential removal of the Marino's home, would be a violation of the Coos County Superior Court's Order, which only required the removal of the Marinos home for failure to obtain septic approval. The Marinos have complied with all applicable statutes and regulations to obtain a septic approval, and consequently, the Marino's house may not be removed.

12. Assuming for the sake of argument that RSA 483-B is applicable in connection with the issuance of a Minor Impact Wetlands Permit, the Bureau may only impose conditions on the Marinos under RSA 483-B:10, I, "which more nearly meet the intent of [RSA 483-B], while still accommodating the applicant's rights." RSA 483-B:10, I. The Bureau has not considered the applicant's rights, and assuming for the sake of argument that it has, it has not properly balanced them with the intent of RSA 483-B because otherwise, it would consider the means employed in other cases routinely to address any environmental impact resulting from the existing structure and the potential harm to the environment from removing it.

13. There are far lesser [sic] intrusive methods of protecting water quality and the shore of Back Lake than demolishing a portion of the Marinos' house which would also be more consistent with the Bureau's application of RSA 483-B:10. Even though the Coos County Superior Court has already rejected it, the Bureau continues to seek the most drastic remedy of demolishing a portion of the Marinos' house and rendering it useless, and that is an arbitrary, capricious, and unreasonable exercise of the Bureau's authority.

14. RSA 483-B, which requires State and local permits for work within shorelands to be "consistent with the policies" of RSA 483-B, does not require a reduction of the Marinos' home. To the contrary, RSA 483-B:10, I requires the Bureau to consider the rights of the Marinos, while considering imposing conditions that "more nearly meet the intent of this chapter." RSA 483-B:10, I. There is no provision in RSA 483-B that requires an "alternatives analysis", nor does RSA 483-B:10, I require minimization of the project or to reduce the house to the maximum extent possible. See RSA 483-B:10, I. In conditions 7-9, the Bureau is arbitrarily and capriciously applying an incorrect standard that unreasonably and unnecessarily requires the Marinos to destroy their existing house, without considering or identifying any impact on water quality.

15. The Bureau's directives are too restrictive and unnecessary and contrary to the rights of the applicants under RSA 483-B:10, I. There are no provisions in RSA chapter 483-B that regulate the size of a house. While the Shoreland Protection Act sets a standard set back of fifty feet from the shore, that does not apply to a non-conforming lot like this. RSA 483-B:10, I. The Marinos have located their house as far back on their lot as possible. There are far better standard methods of meeting the intent of the Act than a lateral reduction that may destroy the entire house.

16. The conditions to reduce the size of the Marinos' home, where the State has granted Wetlands Approvals for existing structures similarly situated as the Marinos, is a violation of their rights to due process and equal protection under the United States and New Hampshire constitutions. U.S. Constitution, Amend. 5, 14; N.H. Const, Part I, arts. I, 2, 14, 15. The Bureau is inconsistently and arbitrarily applying the Wetlands and Shoreland acts to impose merely punitive conditions on the Marinos that fail to meet "more nearly" the intent and policies of those acts. RSA 483-B:10, I.

17. The claims of the State have already been litigated, including the request to remove 28% of the Marinos house. Consequently, the Bureau is collaterally estopped from requiring the same reduction in the Marinos' house where they have already submitted all materials necessary for septic approval. The Bureau's conditions are similarly barred by res judicata.

18. Moreover, the Marinos have paid the fines ordered by the Coos County Superior Court and complied with the Court's order to submit applications for approvals. Consequently, the Bureau's conditions would subject the Marinos to double jeopardy in violation of the New Hampshire and United States constitutions. U.S. Constitution, Amend. 5; N.H. Const. Part I, Art. 16. In addition, the demolition of their home would be an unconstitutionally excessive punishment. U.S. Constitution, Amend. 5, 8; N.H. Const. Part I, Art. 18.

19. No additional areas of jurisdiction will be protected from despoliation by removal of any portion of the house.

20. The Bureau has unnecessarily delayed and failed to act upon the Marinos' requests for approval in a timely manner and as statutorily required.

21. In fact, retaining the existing house, would be more protective of the environment than demolishing it. This is especially true given that the Marinos could address any potential negative impacts to the environment relating to their existing home, but to date, the State has fail [sic] to identify any, despite repeated requests to find less intrusive and environmental [sic] harmful means to address any requirements of the Shoreland Protection Act.

B. Standards and Process for Review

1. RSA 482-A:10, II requires a request for reconsideration to describe in detail each ground for complaint. No ground not set forth in the request for reconsideration can be considered by the Wetlands Council or the Superior Court (if further appeal is taken), except as provided in paragraph VIII of that section.
2. RSA 482-A:10, III provides that on reconsideration, the Department will receive and consider any new and additional evidence presented, and make findings of fact and rulings of law in support of its decision after reconsideration.
3. RSA 482-A:10, V provides that the burden of proof is on the party seeking to set aside the Department's decision to show that the decision is unlawful or unreasonable.
4. If the Department is persuaded by a request for reconsideration of specific permit conditions, the Department will amend the permit to strike or modify those conditions.

C. Findings of Fact and Rulings of Law

1. RSA 483-B:9, II, (b) prohibits construction of primary structures within fifty feet of the reference line.
2. A single-family residence is a primary structure. RSA 483-B:4, XIV.
3. RSA 483-B:10 allows the Commissioner to provide relief from the other provisions of RSA chapter 483-B, the Comprehensive Shoreland Protection Act ("CSPA"). However, the Commissioner may impose conditions "which, in the opinion of the commissioner, more nearly meet the intent of this chapter, while still accommodating the applicant's rights." RSA 483-B:10, I. In the case of *State v. Joseph and Rose Marino*, Docket No. 04-E-145, the Coos County Superior Court interpreted this standard to mean that the Commissioner may impose conditions that meet the requirements of the CSPA "as much as possible." See *Coos County Superior Court's Order on the Merits* issued on September 11, 2006, page 10. See also *N.H. Dept. of Env'tl. Services v. Marino*, __ N.H. __, decided July 18, 2007.
4. On September 28, 2006 DES received a request to retain structures pursuant to RSA 483-B:10, I from the Marinos.
5. On November 17, 2006 DES requested more information of 8 items. To date DES has not received a response to request for items 6 and item 8.
6. On November 26, 2007, the Department issued Wetlands and Non-site specific Permit No. 2007-00926 to the applicants.
7. Conditions seven through nine of that permit were imposed to meet "as much as possible" the prohibition on the construction of primary structures as stated in RSA 483-B:9, II(b).
8. Pursuant to RSA 483-B:10, the conditions provided relief from the strict provisions of RSA 483-B:9, II(b), but included limitations on the size of the structure in order to meet the intent of CSPA while still accommodating the applicants' rights.
9. The applicants have appealed the Department's inclusion of conditions seven through nine. The findings and rulings below respond to each of the stated grounds for reconsideration stated above in section A.
10. Response to paragraph A.1: The conditions being appealed have been imposed to meet the requirements of RSA chapter 483-B, not RSA chapter 482-A.
- 11: Response to paragraph A.2: Both of the cases cited in paragraph A.2 dealt with the extent of the Department's wetlands jurisdiction under RSA chapter 482-A, the Fill and Dredge in Wetlands Act ("Wetlands Act"). As stated above, conditions seven through nine have been imposed to meet the requirements of the CSPA. It is undisputed that the structure in question falls within the jurisdiction of the CSPA. RSA chapter 483-B:10 allows the Department to impose conditions that meet the intent of the CSPA as much as possible. The issue of whether the Department can impose such conditions has already been litigated by the applicants in the Coos County Superior Court. On January 6, 2006, the Coos County Superior Court issued an order in favor of the Department entitled "Order on Petitioner's Motion for Partial Summary Judgment and Respondents' Cross-Motion for Partial

Summary Judgment." On page 10 of the order, the court stated:

The plain language of [RSA 483-B:10] gives the DES Commissioner authority to review proposed development projects and impose conditions so that the project will adhere to the requirements of the CSPA as much as possible. The "triggering mechanism" for imposition of conditions by the Commissioner would be, in this case, submission of an application for an approved septic system design, or an application for dredging and filling the bank of Back Lake. Because these applications automatically trigger review for consistency with the CSPA, the Commission would then have the opportunity to review the development project and impose appropriate conditions, carefully balancing the intent of the CSPA with the Marinos' rights.

The New Hampshire Supreme Court affirmed the trial court's Summary Judgment Order on July 18, 2007. See N.H. Dept. of Env'tl. Services. v. Marino, __ N.H. __, decided July 18, 2007.

12: Response to paragraph A.3: This ground for reconsideration presents no independent question.

13: Response to paragraph A.4: As stated above, the conditions at issue have been imposed to meet the requirements of the CSPA, not the Wetlands Act. The question regarding the Department's authority to impose conditions to meet the intent of the CSPA has already been litigated and has been addressed by both the Coos County Superior Court and the New Hampshire Supreme Court. Please review the response to paragraph A.2 above. These specific conditions have been imposed to achieve, "as much as possible," the CSPA's prohibition on the construction of primary structures within fifty feet of the reference line. Although, RSA 483-B:9, II prohibits the construction of any primary structure within fifty feet of the reference line, the Department has allowed the applicant to construct a single-family residence entirely within the fifty foot setback provided that the size and location of the structure minimize intrusion into the setback as much as possible. There is nothing to indicate that the structure approved by the Department, one with 936 square feet of first floor living space and with a built-in basement and garage of equal size, cannot reasonably serve as a single-family residence. With respect to the applicant's statement regarding demolition of the existing structure, please keep in mind that this structure was constructed in violation of the CSPA, the Wetlands Act, and RSA Chapter 485-A, the Water Pollution Control Act and that the applicants were aware that it was in violation at the time of construction. See Coos County Superior Court's Order on the Merits issued on September 11, 2006, page 8 (stating that defendants showed a "callous disregard for the rule of law"). By rule, applications that are processed "after-the-fact" are subject to the same procedures as all other applications. N.H. Admin. Rule Env-Wt 302.05.

14: Response to paragraph A.5: The conditions at issue require the applicant to submit a restoration plan depicting an alternative structure. The conditions provide specific dimensional requirements for the alternative structure. The Department has allowed the Applicant to participate in the design process in order to provide them with the opportunity to submit a design that meets this requirement while retaining as much of the unauthorized structure as possible. However, the requirement to provide a restoration plan that meets the dimensional requirements is clear.

15: Response to paragraph A.6: As stated several times above, the conditions at issue have been imposed to meet the requirements of the CSPA, not the Wetlands Act. The rationale for the requirement limiting the size of the structure is found in condition seven of the permit stating that the applicant is to minimize intrusion into the 50-foot setback to the maximum extent possible. The conditions have been imposed in order to fulfill the intent of the CSPA to prohibit intrusion into the 50-foot setback as much as possible.

16: Response to paragraph A.7: The applicants have already raised the issue of "regulatory taking" before the Coos County Superior Court by way of a counterclaim against the State and as a defense to the State's petition. The court dismissed the applicants' counterclaim and ruled that restricting the size of the applicant's structure does not constitute a taking. See the Coos County Superior Court's Order on State's Motion to Dismiss Defendants' Counterclaim, dated August 2, 2005. In addition, the permit provides for adequate use of the applicants' property and, therefore, does not constitute a taking.

17: Response to paragraph A.8: This ground for reconsideration is unclear but appears to simply restate the "takings" claim first stated above in paragraph A.7. Please see the response to paragraph A.7 above.

18: Response to paragraph A.9: The application filed in this matter comes as a result of nearly three years of litigation against the applicants by the State. The applicants have applied for authorization because they were required to do so by the Coos County Superior Court. The applicants also repeatedly refer to this litigation in this request for reconsideration. The findings and file

material related to that action are, therefore, relevant to the permit file in this case. There is no reason for the Department to ignore the related enforcement action. The information has, therefore, been properly referenced. Please be aware that the conditions at issue, however, were imposed based upon a review of the proposed project.

19: Response to paragraph A.10: The applicants have already raised this issue before the Coos County Superior Court by way of a counterclaim against the State and as a defense to the State's petition. The applicants have also raised this issue in their brief to the New Hampshire Supreme Court. The courts have consistently ruled that the Department may impose conditions on the applicant that meet the intent of the CSPA "as much as possible." See Coos County Superior Court's Order on the Merits issued on September 11, 2006, page 10. See also N.H. Dept. of Env'tl. Services. v. Marino, __ N.H. __, decided July 18, 2007.

20: Response to paragraph A.11: Contrary to the applicants' assertion, the Coos County Superior Court ruled in favor of the Department on all matters. In its Order on the Merits, dated September 11, 2006, the court specifically provides relief for the applicants' violations of the CSPA, stating:

Within thirty days of the date of this order, respondents shall submit to a review by DES as to the appropriate size of the structure to be located on the property in order to comply with a structure [sic] the provisions of the CSPA.

21: Response to paragraph A.12: The Department has balanced the rights of the applicants against the intent of the CSPA and has determined that the approved structure is a reasonably-sized, fully-functional single-family residence. This balancing has resulted in the Department issuing permission for a single-family residence located entirely within the fifty-foot setback even though RSA 483-B:9, II prohibits the construction of any single-family residence in this location. This is consistent with, although more permissive than, the Department's actions in other cases.

22: Response to paragraph A.13: The Coos County Superior Court did not reject the Department's position; it specifically adopted it. See the answer to paragraph A.11 above. See Coos County Superior Court's Order on the Merits issued on September 11, 2006, page 10.

23: Response to paragraph A.14: See response to A:13 above.

24: Response to paragraph A.15: This argument has already been made by the applicants to the Coos County Superior Court and to the New Hampshire Supreme Court. Both courts ruled in favor of the Department. See Coos County Superior Court's Order on the Merits issued on September 11, 2006.

25: Response to paragraph A.16: The conditions are consistent with, although slightly more permissive than, the Department's evaluation of similar projects. Therefore, the Department's decision does not violate either the due process clause or the equal protection clause of the United States and New Hampshire constitutions.

26: Response to paragraph A.17: The Department agrees that each of these issues has already been litigated. However, the Department has prevailed on every issue. Please make sure to become familiar with the Coos County Superior Court's Order on the Merits issued on September 11, 2006, the Coos County Superior Court's Order on Petitioner's Motion for Partial Summary Judgment and Respondents' Cross-Motion for Partial Summary Judgment, and N.H. Dept. of Env'tl. Services. v. Marino, __ N.H. __, decided July 18, 2007.

27: Response to paragraph A.18: See the answer to paragraph A.17 above.

28: Response to paragraph A.19: Removal of the house will increase the permeable surface area on the applicants' lot. Failure to require that applicants minimize intrusion into the fifty-foot setback would be contrary to the intent of the CSPA to prevent primary structures from being constructed within fifty feet of the reference line. Because the Department must treat all applicants equally, the significant relaxation of this standard urged by the applicants would have to be permitted for all applicants. The cumulative effect of this relaxed standard would undermine the express provisions of the CSPA.

29: Response to paragraph A.20: DES rendered its decision on the more information received in a timely manner. The Permit decision was signed off by the Wetlands Bureau staff on November 20, 2007.

30: Response to paragraph A.21: This appears to be a continuation of the ground for reconsideration stated in paragraph A.19.

This ground is unclear but to the extent it relates to the requirement to decrease the house size, this issue has been addressed above in the response to paragraph A.19.

31. For these reasons, the applicants have not met their burden of proving that the Department's decision was unlawful or unreasonable.

D. Decision

Based on the foregoing, the Department affirms the decision to issue the subject permit, file number 2007-00926, subject to the conditions specified.

2007-01359 DAURIA, LOUIS
MEREDITH Unnamed Wetland Lake Winnepesaukee

Requested Action:

Dredge and fill a total of 2315 square feet including installation of a 15 foot x 11.2 foot wide open box culvert and a 15-foot x 18-inch round culvert for access to a proposed leach field to service existing structures on a waterfront lot.

APPROVE PERMIT:

Dredge and fill a total of 2315 square feet including installation of a 15 foot x 11.2 foot wide open box culvert and a 15-foot x 18-inch round culvert for access to a proposed leach field to service existing structures on a waterfront lot.

With Conditions:

1. All work shall be in accordance with plans by Ames Associates dated May 2007, and revised through December 2007 as received by the Department on December 12, 2007.
2. This permit is contingent on approval by the DES Subsurface Systems Bureau.
3. All activity shall be in accordance with the Comprehensive Shoreland Protection Act, RSA 483-B.
4. There shall be no further alteration of wetlands for lot development, driveways, culverts, or for septic setback.
5. The deed which accompanies the sales transaction for each of the lots in this subdivision shall contain condition #4 of this approval.
6. This permit is contingent on review and approval, by the DES Wetlands Bureau, of final stream diversion/erosion control plans. Those plans shall detail the timing and method of stream flow diversion during construction, and show temporary siltation/erosion/turbidity control measures to be implemented.
7. Orange construction fencing shall be placed at the limits of construction to prevent accidental encroachment on wetlands.
8. Work shall be done during low flow.
9. Appropriate siltation/erosion controls shall be in place prior to construction, shall be maintained during construction, and remain until the area is stabilized.
10. Appropriate turbidity controls shall be installed prior to construction, shall be maintained during construction such that no turbidity escapes the immediate dredge area, and shall remain until suspended particles have settled and the water at the work site has returned to normal clarity.
11. Prior to commencing work on a substructure located within or adjacent to surface waters, a cofferdam shall be constructed to isolate the substructure work area from the surface waters.
12. Discharge from dewatering of work areas shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as far as possible from wetlands and surface waters, in all cases with a minimum of 20 feet of undisturbed vegetated buffer.
13. Work within the stream, inclusive of work associated with installation of a cofferdam, shall be done during periods of low flow. High flows can be caused by seasonal runoff or precipitation; the permittee shall monitor local forecasts to review weather conditions.
14. No work within the confined area shall proceed until the cofferdam is fully effective, and water flow is controlled.

15. Temporary cofferdams shall be entirely removed immediately following construction.
16. Dredged material shall be placed outside of the jurisdiction of the DES Wetlands Bureau.
17. Native material removed from the streambed during bridge installation, shall be stockpiled separately and reused to emulate the natural channel bottom and shall not include angular rip-rap.
18. Proper headwalls shall be constructed within seven days of culvert installation.
19. Area of temporary impact shall be regraded to original contours following completion of work.
20. Within three days of final grading in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.
21. Where construction activities have been temporarily suspended within the growing season, all exposed soil areas shall be stabilized within 14 days by seeding and mulching.
22. Where construction activities have been temporarily suspended outside the growing season, all exposed areas shall be stabilized within 14 days by mulching and tack. Slopes steeper than 3:1 shall be stabilized by matting and pinning.
23. Siltation and erosion controls must be removed once the area is stabilized.
24. A post-construction report documenting the status of the perennial stream crossing, including photographs shall be submitted to the Wetlands Bureau within 30 days of the completion of construction.

With Findings:

1. This is a minor impact project per Administrative Rule Env-Wt 303.03(l); Projects that alter the course of or disturb less than 200 linear feet of an intermittent or perennial nontidal stream or river channel or its banks and do not meet the criteria for minimum impact under Env-Wt 303.04(n).
2. The project is to construct an access way for a proposed leach field to service the existing structures on lot 10.
3. The need for the proposed impacts has been demonstrated by the applicant per Env-Wt 302.01. 4. The applicant is unable to meet the setbacks as described in Env-Ws 1000 without crossing the wetland.
5. 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.
6. 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.
7. The applicant is required to apply for a state subdivision approval in accordance with RSA 485-A:2,XIII.

2007-01362 PERRY, WILLIAM
PETERBOROUGH Unnamed Wetland

Requested Action:

Dredge and fill 9,220 sq. ft. of palustrine emergent and scrub-shrub wetlands within the NHDOT Route 101 (Dublin Rd.) right-of-way for access to a proposed commercial development on ± 7.21 acres and dredge and fill 10 sq. ft. and temporarily impact 3,440 sq. ft. of emergent wetlands for utility pole relocation onsite and within a PSNH easement.

APPROVE PERMIT:

Dredge and fill 9,220 sq. ft. of palustrine emergent and scrub-shrub wetlands within the NHDOT Route 101 (Dublin Rd.) right-of-way for access to a proposed commercial development on ± 7.21 acres and dredge and fill 10 sq. ft. and temporarily impact 3,440 sq. ft. of emergent wetlands for utility pole relocation onsite and within a PSNH easement.

With Conditions:

1. All work shall be in accordance with plans by TFM dated June 08, 2007, and revised through December 11, 2007, as received by the Department on December 13, 2007.
2. This permit is contingent on approval by the DES Alteration of Terrain Program.
3. Work shall be done during low flow of or frozen conditions.
4. Work shall be conducted in a manner so as to minimize turbidity and sedimentation to surface waters and wetlands.
5. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain until the area is stabilized. Silt fence(s) must be removed once the area is

stabilized.

6. Orange construction fencing shall be placed at the limits of construction within or directly adjacent to wetlands or surface waters to prevent accidental encroachment on wetlands.
7. Dredged material shall be placed outside of the jurisdiction of the DES Wetlands Bureau.
8. Proper headwalls shall be constructed within seven days of culvert installation.
9. Culverts shall be properly rippapped.
10. The contractor responsible for completion of the work shall utilize techniques described in the DES Best Management Practices for Urban Stormwater Runoff Manual (January, 1996) and the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire (August, 1992).
11. Within three days of final grading or temporary suspension of work in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.

TEMPORARY IMPACT:

12. This permit is contingent upon the restoration of 3,440 square feet of wetlands in accordance with plans received December 13, 2007, and to the satisfaction of the DES Wetlands Bureau within 30 days of completion of construction.
13. Equipment used shall be designed to have low ground contact pressure or placed on temporary swamp mats so as to minimize rutting of the soils. Swamp mats shall be removed immediately upon completion of work in a particular area so as not to result in permanent impacts.
14. Prior to installation, new wood-pole structures; and upon removal, old wood-pole structures and appurtenances shall be placed outside of the jurisdiction of the DES Wetlands Bureau.
15. The contractor shall remove the stumps of the old wood-pole structures in wetlands. If removal of the stump(s) will result in increased wetlands impacts, due to increased soil disturbance, the pole(s) shall be cut off at ground level.
16. Construction shall be inspected by a qualified wetland scientist, erosion control specialist, or professional engineer to ensure that appropriate protective measures are properly implemented, including those outlined in the plans and documents supporting this permit application and the conditions of this authorization.
17. Discharge from dewatering of work areas shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as far as possible from wetlands and surface waters, in all cases with a minimum of 20 feet of undisturbed vegetated buffer.
18. Dredged material shall be placed outside of the jurisdiction of the DES Wetlands Bureau.
19. Filter fabric shall be installed under the temporary fill areas to isolate fill from the natural hydric soils.
20. All temporary impacts to wetlands shall be restored to natural grade, stabilized, and replanted with native vegetation where necessary.
21. Wetlands shall be restored to their pre-construction conditions within the right-of-way, including restoration of original grades, within 5 days of backfill.
22. Any clearing required in utility line rights-of-way shall be in accordance with the "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire." Timber, slash and/or chips shall be removed from wetland areas and shall not be buried in wetlands.
23. Wetland topsoil shall be stripped and segregated from subsoil and stockpiled separately from subsoil during construction. Soils shall be properly backfilled and restored to pre-existing grades.
24. Mulch within the restoration areas shall be straw or seedless hay.
25. Seed mix within the restoration areas shall be a wetland seed mix appropriate to the area and shall be applied in accordance with manufacturer's specifications.
26. Construction equipment shall be inspected daily for leaking fuel, oil and hydraulic fluid prior to entering wetlands.
27. Faulty equipment shall be repaired prior to entering wetlands.
28. The contractor shall have appropriate oil spill kits on site and readily accessible at all times during construction and each operator shall be trained in its use.
29. All refueling of equipment shall occur 100 feet away from surface waters or wetlands during construction.
30. Wetland restoration of temporary impact areas shall have at least 75% successful establishment of wetlands vegetation after two (2) growing seasons, or they shall be replanted and re-established until a functional wetland is replicated in a manner satisfactory to the DES Wetlands Bureau.
31. A post-construction report documenting the status of the restored jurisdictional area, including photographs shall be submitted to the Wetlands DES within sixty (60) days of the completion of construction.

With Findings:

1. This is a minor impact project per Administrative Rule Env-Wt 303.03 9(h), projects involving less than 20,000 square feet of alteration in the aggregate in nontidal wetlands, nontidal surface waters, or banks adjacent to nontidal surface waters which exceed the criteria of Env-Wt 303.04(f).
2. The applicant has provided a letter from Public Service of New Hampshire (PSNH) dated April 14, 2006, in which PSNH indicated the proposed relocation of PSNH's existing right-of-way (ROW) is acceptable, subject to several conditions outlined in the letter.
3. The Environmental Protection Agency (EPA) in correspondence dated July 19, 2007, requested the applicant look carefully at water quality, green development, bio-retention and gravel wetlands. The University of New Hampshire Stormwater Center was mentioned as having innovative options.
4. In a letter to the Army Corps of Engineers (ACOE) and copied to the EPA dated November 15, 2007, the agent outlined the proposed development: will decrease the impermeable surface on the already developed site; treat stormwater runoff with subsurface detention systems with pre-treatment water quality units and two bio-retention basins.
5. This permit is contingent on approval by the DES Alteration of Terrain Bureau.
6. This permit is contingent upon the restoration of 3,440 square feet of wetlands.
7. The need for the proposed impacts has been demonstrated by the applicant per Env-Wt 302.01.
8. 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.
9. 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.

**2007-01604 SCHWAGER, ROBERT & MARY
MEREDITH Lake Winnepesaukee**

Requested Action:

Applicant requests reconsideration of denial issued on December 5, 2007, based upon revised plans submitted on December 21, 2007.

Conservation Commission/Staff Comments:

Con Com has no concerns but stated their comments are the same as previously submitted in file 2005-2120.

APPROVE RECONSIDERATION:

Reconsider and approve applicant's request to: Excavate 16 cubic yards from 366 sq ft of lake bed and excavate 900 sq ft of bank to construct a 28 ft x 32 ft dug in boathouse providing two slips on an average of 662 ft of frontage on Lake Winnepesaukee, Meredith.

With Conditions:

1. . All work shall be in accordance with plans by Thomas Selling dated June 11, 2007, revision date December 18, 2007, as received by DES on December 21, 2007.
2. This permit shall not be effective until it has been recorded with the County Registry of Deeds office by the Permittee. A copy of the recorded permit shall be submitted to the DES Wetlands Bureau by certified mail, return receipt requested, prior to construction.
3. The owner shall file a restrictive covenant in the appropriate registry of deeds limiting the use of the boathouse to the storage of boats and boating-related accessories. A copy of the recorded covenant permit shall be submitted to the DES Wetlands Bureau prior to construction.
4. Any further alteration of areas on this property that are within the jurisdiction of the DES Wetlands Bureau will require a new application and further permitting by the Bureau.
5. The boathouse shall be a single-story structure; ridgeline not to exceed 20 ft in height (Elev. 524.32) above normal high water (Elev. 504.32).
6. Dewatering of work areas and dredged materials shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as far as possible from wetlands and surface waters, in all cases with a minimum of 20 feet of undisturbed vegetated buffer.
7. All dredged and excavated material and construction related debris shall be placed outside of the areas under the jurisdiction of

the DES Wetlands Bureau.

8. Appropriate siltation and erosion controls shall be in place prior to construction, shall be maintained during construction, and shall remain until the area is stabilized.
9. Appropriate turbidity controls shall be installed prior to construction, shall be maintained during construction such that no turbidity escapes the immediate dredge area and shall remain until suspended particles have settled and water at the work site has returned to normal clarity.
10. Within three days of final grading or temporary suspension of work in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.
11. This facility is permitted with the condition that future maintenance dredging, if needed, shall not be permitted more frequently than once every 6 years, and that a new permit shall be required for each dredge activity.
12. The owner understands and accepts the risk that if this facility requires dredging to maintain a minimum slip depth of 2 feet, more frequently than once every 6 years, or is shown to have an adverse impact on abutting frontages, it shall be subject to removal.
13. Work shall be done during drawdown or low water conditions.
14. Work shall be conducted in a manner so as to minimize turbidity and sedimentation to surface waters and wetlands.
15. Work shall be conducted in a manner that avoids excessive discharges of sediments to fish spawning areas.
16. Rip-rap shall be located landward of the shoreline at the normal high water, where practical, and shall not extend more than 2 feet lakeward of that line at any point.
17. All activity shall be in accordance with the Comprehensive Shoreland Protection Act, RSA 483-B (see attached fact sheet).

With Findings:

1. This is a minor impact project per Administrative Rule Env-Wt 303.03(d), construction or modification of any docking system that provides for 4 boat slips including previously existing boat slips.
2. The need for the proposed impacts has been demonstrated by the applicant per Env-Wt 302.01. 3. 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 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.
5. The applicant has an average of 663 feet of shoreline frontage along Lake Winnepesaukee.
6. A maximum of 9 slips may be permitted on this frontage per Rule Env-Wt 402.12, Frontage Over 75'.
7. The proposed docking facility will provide 4 slips as defined per RSA 482-A:2, VIII and therefore meets Rule Env-Wt 402.12.
8. The revised plan submitted with the reconsideration request did not include the perched beach which had previously been proposed in excessively steep slopes.

2007-02417 CAREY, CHARLES & WENDY
NEW LONDON Lake Sunapee

Requested Action:

Remove an existing 6 ft x 40 ft seasonal pier and construct two 6 ft x 30 ft piling piers connected by a 6 ft x 12 ft walkway drive 8 pilings to support 2 permanent boatlifts, drive 4 fender pilings and two 3 piling ice clusters, install a 30 ft x 30 ft seasonal canopy, and two seasonal personal watercraft lifts on an average of 187 ft of frontage on Lake Sunapee, in New London.

DENY PERMIT:

Remove an existing 6 ft x 40 ft seasonal pier and construct two 6 ft x 30 ft piling piers connected by a 6 ft x 12 ft walkway drive 8 pilings to support 2 permanent boatlifts, drive 4 fender pilings and two 3 piling ice clusters, install a 30 ft x 30 ft seasonal canopy, and two seasonal personal watercraft lifts on an average of 187 ft of frontage on Lake Sunapee, in New London.

With Findings:

Standards for Approval

1. In accordance with RSA 482-A:3 XIV(b)"Any request for additional information shall specify that the applicant submit such information as soon as practicable and shall notify the applicant that if the requested information is not received within 120 days of

the request, the department shall deny the application."

2. In accordance with RSA 482-A:2 VII "boat slip" means on water bodies of 10,000 acres or less, a volume of water 20 ft long, 6 ft wide, and 3 ft deep.
3. Pursuant to Rule Env-Wt 302.03, Avoidance, Minimization, and Mitigation, the applicant shall provide evidence that demonstrates that impacts have been avoided to the maximum extent practicable and that any unavoidable impacts have been minimized.
4. In accordance with Rule Env-Wt 501.02, Additional Data, the applicant shall provide drawings which are to scale or completely dimensioned showing all existing and proposed structures and all other relevant features necessary to clearly define the project.

Findings of Fact

5. On October 12, 2007 the Department issued a Notice of Administrative Completeness for a Standard Dredge and Fill Application to remove an existing seasonal pier and construct a permanent "U" shaped piling facility drive pilings to support 2 permanent boatlifts, drive 4 fender pilings and two 3 piling ice clusters, install a seasonal canopy, and two seasonal personal watercraft lifts on property more particularly identified as New London Tax Map 91, lot 10.
6. This project is classified as a minor impact project per Rule Env-Wt 303.03(d), construction of a permanent docking facility providing 3 slips.
7. Pursuant to RSA 482-A:2, VII, a boat slip on Lake Sunapee is defined as a volume of water 6 feet wide in which a boat may be secured.
8. In recognition of the fact that boats tied within a slip must have room to move on their lines due to wind and wave action, the department routinely allows up to 2 ft of "navigational space" between the define slip and other objects such as docks and other boats.
9. The Applicant is proposing permanent lifts in 2 slips. Boats secured within lifts raised out of the water are held in a fixed position and not subject to movement cause by wind and wave action.
10. The Applicant is requesting additional space between the proposed piers to accommodate the lift support pilings, above and beyond the navigational space normally allowed by the Department.
11. Cross sections submitted with the application are not completely dimensioned, nor are they drawn to scale.
12. On December 14, 2007 the Department issued a Request for More Information to the Agent listed in the application, with a copy sent to applicant, stating that in order to meet the requirements of Rule Env-Wt 302.03 and minimize the footprint of the facility, the proposal should be revised to recess the pilings into the decking surfaces. The Request also stated that cross sections that were either drawn to scale or completely dimensioned were required per Rule Env-Wt 501.02 and were necessary to complete the application.
13. On December 21, 2007, the Applicant submitted a response to the Department's December 14, 2007 Request for More Information.
14. The Response did not include a revised proposal to minimize the footprint as requested. The Agent states in the response that the pilings cannot be recessed into the dock as requested, however the Agent also states in a later paragraph that when constructing these types of lift systems they typically "let in" the pilings such they do not intrude completely into the boat slip. This "letting in" of the pilings is what the Department had requested of the Applicant in the December 14, 2007 request, which the Agent refused revise the plans to reflect.
15. The Agent cited multiple cases to support the position that they should not be required to reduce the footprint of the structure. These cases fail to support his argument as several do not involve the space allowed between the piers comprising a "U" shape docking facility, those that do were issued permits with language that allows a specific distance between the piers that does not include extra space for pilings to support a lift system, and some of the projects involve piling recessed in the manner requested by the Department.
16. The Applicant refused to submit cross sections that were either completely dimensioned or drawn to scale as required per Rule Env-Wt 501.02 and requested on December 14, 2007.

Rulings in Support of the Decision

17. The Applicant is requesting a slip width that exceeds that which is defined in RSA 482-A. 18. The use of a lift system reduces the need to allow extra space between the piers as the watercraft will be raised above the water surface and not subject to the same wind and wave forces as a watercraft secured in the water by lines or whips.
19. The Agent states in the Response that the pilings can be "let in" to the pier as requested by the Department on December 14, 2007, therefore, there is no need established for the excessive distance proposed between the piers.

20. The Applicant has failed to provide evidence that demonstrates that impacts have been avoided to the maximum extent practicable and that any unavoidable impacts have been minimized as required per Rule Env-Wt 302.03.

21. The Applicant has failed to provide the information requested on December 14, 2007 and, therefore, the application is denied in accordance with RSA 482-A:3 XIV (b).

2007-02463 GORTON, LINDA
DANVILLE Unnamed Wetland

Requested Action:

Dredge and fill 3,208 square feet of forested wetland to create an access driveway to buildable uplands.

Conservation Commission/Staff Comments:

No comments were received from the Danville Conservation Commission.

APPROVE PERMIT:

Dredge and fill 3,208 square feet of forested wetland to create an access driveway to buildable uplands.

With Conditions:

1. All work shall be in accordance with plans by Keach-Nordstrom Associates, Inc. dated August 24, 2007, as received by DES on Oct 11, 2007.
2. Any further alteration of areas on this property that are within the jurisdiction of the DES Wetlands Bureau will require a new application and further permitting by the Bureau.
3. DES staff shall be notified in writing prior to commencement of work and upon its completion.
4. Work shall be done during seasonal low flow conditions.
5. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain in place until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
6. Within three days of final grading or temporary suspension of work in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.

With Findings:

1. This is a minor impact project per Administrative Rule Env-Wt 303.03(h) Projects involving less than 20,000 square feet of alteration in the aggregate in nontidal wetlands, nontidal surface waters, or banks adjacent to nontidal surface waters which exceed the criteria of Env-Wt 303.04(f);
2. The applicant requests to impact jurisdictional wetland for access to buildable upland and will cross the wetland at the narrowest portion, therefore the need for the proposed impacts has been demonstrated by the applicant per Env-Wt 302.01.
3. The agent provided an alternatives analysis in which confirmed that 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 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.

MINIMUM IMPACT PROJECT

2007-00398 LAU, BILLY
PLYMOUTH Unnamed Stream

Requested Action:

Deny reconsideration

DENY RECONSIDERATION:

Deny reconsideration

With Findings:

A. Grounds for Reconsideration

The request for reconsideration asserts the following as the basis for the request:

1. The applicants were unaware of the deadline requirements.
2. At no point did they believe that the 120 day clock was running.
3. While we do believe we missed the date, as the November 19, 2007 letter indicates, we do not believe we missed it by more than a couple of days.

B. Standards and Process for Review

1. RSA 482-A:10, II requires a request for reconsideration to describe in detail each ground for complaint. No ground not set forth in the request for reconsideration can be considered by the Wetlands Council or the Superior Court (if further appeal is taken), except as provided in paragraph VIII of that section.
2. RSA 482-A:10, III provides that on reconsideration, DES will receive and consider any new and additional evidence presented, and make findings of fact and rulings of law in support of its decision after reconsideration.
3. RSA 482-A:10, V provides that the burden of proof is on the party seeking to set aside DES's decision to show that the decision is unlawful or unreasonable.
4. If DES is persuaded by a request for reconsideration of a permit denial was erroneous, the result is that the permit originally requested would be granted.

C. Findings of Fact and Rulings of Law

1. RSA 482-A:3, XIV establishes the process that DES must follow when processing applications and establishes deadlines by which decisions must be made.
2. The subject application was received January 19, 2007 and was determined to be administratively complete on April 3, 2007.
3. By letter dated June 22, 2007, DES requested more information pursuant to RSA 482-A:3, XIV(b) ("RFMI"). Specifically, DES requested the applicant to address the following:
 - a. Unfortunately, it is unclear from the submitted application materials what is actually going to be constructed and where it will be constructed on the property. It appears from the narratives that the culvert may go in the adjacent perennial stream, however, the plan sketch and photographs depict a culvert in a wooded area that may not be jurisdictional.
 - b. DES Administrative Rules require that the applicant submit a wetlands delineation plan with their application. Please provide the required plan to DES. The plan must include all applicable items listed under Administrative Rule Env-Wt 501.02(a)(2) and (3). Additionally, the wetland delineation must be conducted in accordance with Administrative Rules Env-Wt 301.01(a) through (f). A copy of the Administrative Rules can be found on our website at: <<http://des.nh.gov/wetlands/rule-law.htm>>
 - c. Do [sic]to the conflicting application and plan information DES will need to review the requested information before it can

assess if additional items are needed (i.e., demonstration that the project is needed, least impacting alternative to wetlands and surface waters, project type classification and associated submittal requirements). Please note that if you are proposing to place a culvert in a perennial stream, DES will require the installation of an open bottom structure or embedded culvert that is 1.2x bank full width.

d. Please clarify if there is an additional lot at the corner of your lot and lots 2-9-1 and 2-9-8. It appears from the information DES received that the tax map was cut off or there is another lot owner. Please clarify the owner of this area and if they were notified of the project.

4. THE DES letter dated June 22, 2007 set the 120 day review deadline as October 20, 2007.

5. DES did not receive a response to the RFMI.

6. Based on RSA 482-A:3, XIV(c) DES denied the application because the issues raised in the RFMI were not addressed.

6. The request for reconsideration does not assert that DES's decision was erroneous, but rather appears to concur with the decision by stating that the filing that was made was late.

7. The requestor has not met his/her burden of proving that the DES's decision was unlawful or unreasonable.

2007-01116 LYMAN BREWER PROPERTIES LLC
GILFORD Unnamed Stream

Requested Action:

Request permit amendment to provide an additional culvert at the request of the conservation commission and correct the number of lots on the wetland permit from 3 to 4.

Conservation Commission/Staff Comments:

Letter from Gilford Con Comm rec'd 9/28/07

APPROVE AMENDMENT:

Dredge and fill 2800 square feet including installation of two 18-inch x 35 foot culverts along 37 feet of intermittent stream for a common driveway in the subdivision of 28.68 acres into 4 single family residential lots.

With Conditions:

1. All work shall be in accordance with plans by Brian L Bailey and Associates sheet 5 of 10 dated May 2007 and revised through October 9, 2007 and W1 dated September 2007, and revised through October 9, 2007, as received by the Department on October 16, 2007 and Subdivision Plan sheets 8, 9, and 10 dated January 2007, and revised through July 2007 as received by the Department on September 20, 2007.
2. This permit is contingent on approval by the DES Subsurface Systems Bureau.
3. There shall be no further alteration of wetlands for lot development, driveways, culverts, or for septic setback.
4. The deed which accompanies the sales transaction for each of the lots in this subdivision shall contain condition #3 of this approval.
5. This permit shall not be effective until it has been recorded with the Registry of Deeds Office by the Permittee. A copy of the recorded permit shall be submitted to the DES Wetlands Bureau.
6. Work shall be done during periods of non-flow.
7. Appropriate siltation/erosion controls shall be in place prior to construction, shall be maintained during construction, and remain until the area is stabilized.
8. Discharge from dewatering of work areas shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as far as possible from wetlands and surface waters, in all cases with a minimum of 20 feet of undisturbed vegetated buffer.
9. Dredged material shall be placed outside of the jurisdiction of the DES Wetlands Bureau.
10. Proper headwalls shall be constructed within seven days of culvert installation.

11. Within three days of final grading in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.
12. Where construction activities have been temporarily suspended within the growing season, all exposed soil areas shall be stabilized within 14 days by seeding and mulching.
13. Where construction activities have been temporarily suspended outside the growing season, all exposed areas shall be stabilized within 14 days by mulching and tack. Slopes steeper than 3:1 shall be stabilized by matting and pinning.
14. Silt fencing must be removed once the area is stabilized.
15. The contractor responsible for completion of the work shall utilize techniques described in the DES Best Management Practices for Urban Stormwater Runoff Manual (January, 1996) and the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire (August, 1992).

With Findings:

The Department reaffirms conditions 1-6 of the approval:

1. This is a minimum impact project per Administrative Rule Env-Wt 303.04(n), projects that alter the course of or disturb less than 50 linear feet, measured along the thread of the channel, of an intermittent nontidal stream channel or its banks provided construction is performed during periods of non-flow.
2. The need for the proposed impacts has been demonstrated by the applicant per Env-Wt 302.01. 3. 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 applicant has demonstrated by plan and example that each factor listed in Env-Wt 302.04(b) Requirements for Application Evaluation, has been considered in the design of the project.
5. The conservation commission recommends two 18-inch culverts but the drainage report provided by the applicant indicates only a single 18-inch culvert is necessary in this location.
6. Public Service of New Hampshire owns a Right of Way over this lot and will not allow the driveway to be constructed within their Right of Way due to space concerns beyond the first 100 feet of driveway.

And makes the following additional finding:

7. The additional culvert was at the request of the conservation commission and the applicant agreed to provide it.

**2007-01746 MEREDITH PUBLIC WORKS DEPT, TOWN OF
MEREDITH Unnamed Stream**

Requested Action:

Confirm Emergency Authorization to conduct emergency repairs as needed to reopen public roadways that were washed out as a result of flooding rains.

CONFIRM EMERGENCY AUTHORIZATION:

Confirm Emergency Authorization to conduct emergency repairs as needed to reopen public roadways that were washed out as a result of flooding rains.

With Findings:

1. This project is classified as a minimum impact project per Rule Env-Wt 303.04(x); Maintenance, repair, or replacement of a nondocking structure such as a culvert, headwall, bridge, dam, residential utility line, or rip-rap slope of less than 50 linear feet.
2. The project was necessary to reopen public roadways that were washed out as a result of flooding.
3. Emergency authorization for this work was issued by DES Wetlands Bureau Staff on August 2, 2007.
4. Review of the report submitted pursuant the emergency authorization indicates that work has been completed in accordance with the emergency authorization.

**2007-02866 AUBURN, TOWN OF
AUBURN Hook Brook**

Requested Action:

Impact a total of 740 sq. ft. within the embankments and flow channel of Hook Brook for work associated with the repair and reconstruction of the existing flood damaged stone masonry/cast-in-place concrete bridge which carries the Chester Turnpike over Hook Brook.

Conservation Commission/Staff Comments:

The Auburn Conservation Commission requested an expedited review of this application due to the critical nature of the repairs needed to the bridge to insure public safety.

APPROVE PERMIT:

Impact a total of 740 sq. ft. within the embankments and flow channel of Hook Brook for work associated with the repair and reconstruction of the existing flood damaged stone masonry/cast-in-place concrete bridge which carries the Chester Turnpike over Hook Brook.

With Conditions:

1. All work shall be in accordance with plans by Stantec Consulting Services, Inc. dated December 2007, as received by DES on December 06, 2007.
2. Any further alteration of areas on this property that are within the jurisdiction of the DES Wetlands Bureau will require a new application and/or further permitting by the Bureau.
3. NH DES Wetlands Bureau Southeast Region staff shall be notified in writing prior to commencement of work and upon its completion.
4. Unconfined work within the river, exclusive of work associated with installation of a cofferdam, shall be done during periods of low flow.
5. Cofferdams shall not be installed during periods of high flow, whether due to seasonal runoff or precipitation. Once a cofferdam is fully effective, confined work can proceed without restriction.
6. Prior to commencing work on a substructure located within surface waters, a cofferdam shall be constructed to isolate the substructure work area from the surface waters.
7. Temporary cofferdams shall be entirely removed immediately following construction.
8. Discharge from dewatering of work areas shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as far as possible from wetlands and surface waters, in all cases with a minimum of 20 feet of undisturbed vegetated buffer.
9. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain in place until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
10. Work shall be done during low flow unless emergency conditions prevail and then requires prior notification to DES Wetlands Bureau Southeast Region staff.

FORESTRY NOTIFICATION

2007-03016 HUCKINS, VIRGINIA
FARMINGTON Unnamed Stream

COMPLETE NOTIFICATION:
Farmington Tax Map R16, Lot# 7

2008-00008 BUNKER, ELVYN
NORTHWOOD Unnamed Stream

COMPLETE NOTIFICATION:

Forestry

**2008-00009 KING, VICTOR
SANDWICH Unnamed Stream**

COMPLETE NOTIFICATION:

Sandwich Tax Map R11, Lot# 45

**2008-00012 ANDREWS, CHRISTINE
SWANZEY Unnamed Stream**

COMPLETE NOTIFICATION:

Swanzey Tax Map 9, Lot# 11-3

**2008-00016 TILNEY, SHELDON & GAIL HARRITY
HOLDERNESS Unnamed Stream**

COMPLETE NOTIFICATION:

Holderness Tax Map 231, Lot# 12-1

**2008-00017 HILL, TIMOTHY
FITZWILLIAM Unnamed Stream**

COMPLETE NOTIFICATION:

Fitzwilliam Tax Map 12, Lot# 43

**2008-00021 HENDERSON, JAMES
KEENE Unnamed Stream**

COMPLETE NOTIFICATION:

Keene Tax map 924, Lot# 11-8

**2008-00022 BEAUDOIN, HEATH
ROCHESTER Unnamed Stream**

COMPLETE NOTIFICATION:

Rochester Tax Map 240, Lot# 49

**2008-00023 BANCROFT, CHRISTOPHER & NANCY
WAKEFIELD Unnamed Stream**

COMPLETE NOTIFICATION:

Wakefield Tax Map 130, Lot# 2

2008-00024 SPNHF
GILMANTON Unnamed Stream

COMPLETE NOTIFICATION:
Gilmanton Tax Map 4, Lot# 2

2008-00025 KIKLIS, LOUIS
LEMPSTER Unnamed Stream

COMPLETE NOTIFICATION:
Lempster Tax Map 10, Lot# 296,304

2008-00040 SPNHF
ROXBURY Unnamed Stream

COMPLETE NOTIFICATION:
Roxbury Tax Map 1, Lot# 130

2008-00041 HAYES JR, ROBERT
FARMINGTON Unnamed Stream

COMPLETE NOTIFICATION:
Farmington Tax Map R62, Lot# 7

EXPEDITED MINIMUM

2006-02996 NELSON, JOHN & TAMMIE
WEARE Unnamed Stream Wetland

Requested Action:
Dredge and fill 2,658 square feet of forested wetlands associated with an intermittent stream for culvert extension installation for upgrade of a class IV town road for access to a 21-lot subdivision and upgrades to an existing driveway crossing on ± 82.68 acres.

Conservation Commission/Staff Comments:
Permit all set, need to add finding when get permission from town.

APPROVE PERMIT:
Dredge and fill 2,658 square feet of forested wetlands associated with an intermittent stream for culvert extension installation for upgrade of a class IV town road for access to a 21-lot subdivision and upgrades to an existing driveway crossing on ± 82.68 acres.

With Conditions:
1. All work shall be in accordance with plans by Arthur F. Siciliano, Jr. dated September 2005, as received by the Department on September 14, 2007 and roadway plans prepared by George G. Rook: Sheet C-2 dated 05/09/06, received by the Department on September 14, 2007 and sheets C-1 and C-3 dated 01/04/08, received by the Department on January 8, 2008.
2. This permit is contingent on approval by the DES Subsurface Systems Bureau.

3. This permit is contingent on approval by the DES Alteration of Terrain Program.
4. There shall be no further alteration of wetlands for lot development, driveways, culverts, or for septic setback.
5. The deed which accompanies the sales transaction for each of the lots in this subdivision shall contain condition # 4 of this approval.
6. This permit shall not be effective until it has been recorded with the Registry of Deeds Office by the Permittee. A copy of the registered permit shall be submitted to the DES Wetlands Bureau.
7. Work shall be done during low flow conditions.
8. Work shall be conducted in a manner so as to minimize turbidity and sedimentation to surface waters and wetlands.
9. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
10. Orange construction fencing shall be placed at the limits of construction within or directly adjacent to wetlands or surface waters to prevent accidental encroachment on wetlands.
11. Dredged material shall be placed outside of the jurisdiction of the DES Wetlands Bureau.
12. Proper headwalls shall be constructed within seven days of culvert installation.
13. Culverts shall be laid at original grade.
14. The contractor responsible for completion of the work shall utilize techniques described in the DES Best Management Practices for Urban Stormwater Runoff Manual (January, 1996) and the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire (August, 1992).
15. Within three days of final grading or temporary suspension of work in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.

With Findings:

1. This is a minimum impact project per Administrative Rule Env-Wt 303.04(f), alteration of less than 3,000 square feet of wetlands; and Env-Wt 303.04(n), alteration of less than 50 linear feet of an intermittent stream channel or its banks.
2. Wetlands impacts are associated with a town road upgrade to allow for access to a 21-lot subdivision of tax map/lot 406/65.
3. The Town of Weare, Public Works Department in a letter dated October 19, 2007, granted permission for the upgrades to Huntington Hill Road in Weare, NH.
4. The Weare Conservation Commission signed the application.
5. NHFG requests pertained to perennial streams and vernal pools.
6. The applicant's NH certified wetland scientist has confirmed the stream proposed for impact is intermittent and that no vernal pools on the site.
7. No comments were submitted from the Natural Heritage Bureau.
8. The need for the proposed impacts has been demonstrated by the applicant per Env-Wt 302.01.
9. 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.
10. The applicant has demonstrated by plan and example that each factor listed in Env-Wt 302.04(b) Requirements for Application Evaluation, has been considered in the design of the project.

2007-02888 SEDORIC, THOMAS & BARBARA
RYE Sagamore Creek

Requested Action:

Excavate, regrade and/or otherwise alter terrain within 8,194 sq. ft. of previously developed upland tidal buffer zone for work associated with the removal of the existing structure and septic system and the construction of a new residence and associated landscaping.

Conservation Commission/Staff Comments:

Rye Conservation Commission signed the Minimum Impact Expedited application.

APPROVE PERMIT:

Excavate, regrade and/or otherwise alter terrain within 8,194 sq. ft. of previously developed upland tidal buffer zone for work

associated with the removal of the existing structure and septic system and the construction of a new residence and associated landscaping.

With Conditions:

1. All work shall be in accordance with plans by Ambit Engineering, Inc. dated October 2007 (last revised 11/6/07), as received by DES on December 12, 2007.
2. Any further alteration of areas on this property that are within the jurisdiction of the DES Wetlands Bureau will require a new application and/or further permitting by the Bureau.
3. This permit is contingent on approval by the DES Subsurface Systems Bureau.
4. NH DES Wetlands Bureau Southeast Region staff shall be notified in writing prior to commencement of work and upon its completion.
5. All activity shall be in accordance with the Comprehensive Shoreland Protection Act, RSA 483-B (see attached fact sheet).
6. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain in place until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.

GOLD DREDGE

2008-00030 DUPREY, JOSEPH
(ALL TOWNS) Unnamed Stream

Conservation Commission/Staff Comments:
cc: Bath Con Comm

TRAILS NOTIFICATION

2007-02308 WHITE MOUNTAIN NATIONAL FOREST, PEMIGEWASSET DISTR
SANDWICH Unnamed Stream

COMPLETE NOTIFICATION:
Sandwich Guinea Pond Trail

2008-00010 DRED
PITTSBURG Unnamed Stream

COMPLETE NOTIFICATION:
Pittsburg Tax Map B4, Lot# 30A

2008-00011 DRED
CLARKSVILLE Unnamed Stream

COMPLETE NOTIFICATION:
Clarksville Tax MAP WRB, Lot# 2

