

Robert R. Scott, Commissioner



WETLANDS AND NON-SITE SPECIFIC PERMIT 2020-00956

NOTE CONDITIONS

PERMITTEE:	HILLWOOD ENTERPRISES LP 5050 W TILGHMAN ST STE 435 ALLENTOWN PA 18104	
PROJECT LOCATION	43 STEELE RD, HUDSON TAX MAP #234, LOT #5	
WATERBODY:	UNNAMED WETLANDS/MERRIMACK RIVER	
APPROVAL DATE:	MAY 05, 2021	EXPIRATION DATE: MAY 05, 2026

Based upon review of permit application 2020-00956 in accordance with RSA 482-A and RSA 485-A:17, the New Hampshire Department of Environmental Services (NHDES) hereby issues this Wetlands and Non-Site Specific Permit. To validate this Permit, signatures of the Permittee and the Principal Contractor are required.

PERMIT DESCRIPTION:

Dredge and fill 55,525 square feet (1.27 acres) of palustrine forested, scrub shrub and emergent wetlands, which includes an unnamed perennial stream roadway crossing (Tier 1, impact 270 linear feet within the bed and banks); and dredge and fill 42,096 square feet (0.97 acres) within two existing man-made ponds to redevelop an existing golf course and construct a commercial warehouse and distribution facility consisting of three buildings and associated roadways and parking for a total impact of 2.24 acres of wetlands impact. Mitigate impacts for the state permit by making a one-time payment into the Aquatic Resource Mitigation ("ARM") Fund of \$626,609.02 into the Merrimack River watershed account.

Additional compensatory measures to be completed at the request of the town include: (1)Preserving approximately 120 acres of land consisting of the 250-foot Shoreland Water Quality Protection Act zone ("Protected Shoreland") along the Merrimack River and a majority of the land east of the development, including Limit Brook and its associated wetlands and buffers; (2) Native plantings and seed to naturalize areas within the proposed preservation land currently maintained as golf course; and (3) Preservation and restoration along the Merrimack River with native plantings and removal of paved surfaces.

THIS PERMIT IS SUBJECT TO THE FOLLOWING PROJECT-SPECIFIC CONDITIONS:

- 1. All work shall be done in accordance with the revised plans dated December 30, 2021 by Langan Engineering & Environmental Services, Inc., as received by the NH Department of Environmental Services ("NHDES") on January 15, 2021, in accordance with Env-Wt 307.16.
- 2. In accordance with Env-Wt 307.03(a), no activity shall be conducted in such a way as to cause or contribute to any violation of surface water quality standards specified in RSA 485-A:8 or Env-Wq 1700; ambient groundwater quality standards established under RSA 485-C; limitations on activities in a sanitary protective area established under Env-Dw 302.10 or Env-Dw 305.10; or any provision of RSA 485-A, Env-Wq 1000, RSA 483-B, or Env-Wq 1400 that protects water quality.

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- 3. In accordance with Env-Wt 307.03(b), all work, including management of soil stockpiles, shall be conducted so as to minimize erosion, minimize sediment transfer to surface waters or wetlands, and minimize turbidity in surface waters and wetlands using the techniques described in Env-Wq 1505.02, Env-Wq 1505.04, Env-Wq 1506, and Env-Wq 1508; the applicable BMP manual; or a combination thereof, if the BMP manual provides less protection to jurisdictional areas than the provisions of Env-Wq 1500.
- 4. In accordance with Env-Wt 307.03(c)(1), water quality control measures shall be selected and implemented based on the size and nature of the project and the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to jurisdictional areas.
- 5. In accordance with Env-Wt 307.03(c)(2), water quality control measures shall be comprised of wildlife-friendly erosion control materials if erosion control blankets are utilized; a protected species or habitat has been documented; the proposed work is in or adjacent to a priority resource area (PRA); if specifically requested by Natural Heritage Bureau of the NH DNCR (NHB) or NH Fish and Game Department ("NHF&G"); or any if combination of the above conditions apply.
- 6. Per NHF&G recommendations dated March 25, 2021, erosion control materials such as welded plastic or "biodegradable plastic" netting or thread (e.g. polypropylene) shall not be used. The use of erosion control berm, white Filtrexx Degradable Woven Silt Sock or woven organic materials (e.g. coco or jute matting such as North American Green SC150BN) shall be used. Plans incorporate the use of S150BN or SC150BN see sheet CE502.
- 7. Per NHF&G recommendations dated March 25, 2021, Eastern box turtles, a state-endangered species, may be found within the project area. If this turtle is encountered, it should be reported to NHFG immediately: Melissa Doperalski at (603) 479-1129 or (603) 271-1738, Josh Megyesy at (978) 578-0802, or the Wildlife Administrator at (603) 271-2461. For species identification and NHF&G contact information see sheet CE501.
- 8. Per NHF&G recommendations dated March 25, 2021, all observations of threatened or endangered species shall be reported immediately to NHF&G via email to RAARP@wildlife.nh.gov and Melissa.doperalski@wildlife.nh.gov. Email subject line: "project name and NHB number" Photographs shall be provided for verification as feasible.
- 9. Per NHF&G recommendations dated March 25, 2021, if any threatened or endangered species are observed within the disturbance area and are in harm's way, if it is safe to do so, move to the closest location in the direction they were heading and immediately contact NHF&G at 603-271-2461 or NHFG Wildlife Biologist Melissa Doperalski text or phone at 603-479-1129. Include photograph if feasible.
- 10. Per NHF&G recommendations dated March 25, 2021, NHF&G shall have access to the property during the term of the permit.
- 11. In accordance with Env-Wt 307.03(c)(3), water quality control measures shall be installed prior to start of work and in accordance with the manufacturer's recommended specifications or, if none, the applicable requirements of Env-Wq 1506 or Env-Wq 1508.
- 12. In accordance with Env-Wt 307.03(c)(4), water quality control measures shall be capable of minimizing erosion; collecting sediment and suspended and floating materials; and filtering fine sediment.
- 13. In accordance with Env-Wt 307.03(c)(5), water quality control measures shall be maintained so as to ensure continued effectiveness in minimizing erosion and retaining sediment on-site during and after construction.
- 14. In accordance with Env-Wt 307.03(c)(6), water quality control measures shall remain in place until all disturbed surfaces are stabilized to a condition in which soils on the site will not experience accelerated or unnatural erosion by achieving and maintaining a minimum of 85% vegetative cover using an erosion control seed mix, whether applied in a blanket or otherwise, that is certified by its manufacturer as not containing any invasive species; or placing and maintaining a minimum of 3 inches of non-erosive material such as stone.

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- 15. Per NHB recommendations dated March 19, 2021, all seed mix and plantings shall meet the NHB requirements and recommendations, and shall not contain non-native or invasive species. A revised planting plan shall be submitted to NHDES that incorporates NHB's recommendations regarding plant substitutions prior to beginning construction at the property.
- 16. In accordance with Env-Wt 307.03(c)(7), temporary water quality control methods shall be removed upon completion of work when compliance with Env-Wt 307.03(c)(6) is achieved.
- 17. In accordance with Env-Wt 307.03(d), any sediment collected by water quality control measures shall be removed with sufficient frequency to prevent the discharge of sediment; and placed in an upland location in a manner that prevents its erosion into a surface water or wetland.
- 18. In accordance with Env-Wt 307.03(e), all exposed soils and other fills shall be permanently stabilized within 3 days following final grading.
- 19. In accordance with Env-Wt 307.03(g)(1), the person in charge of construction equipment shall inspect such equipment for leaking fuel, oil, and hydraulic fluid each day prior to entering surface waters or wetlands or operating in an area where such fluids could reach groundwater, surface waters, or wetlands.
- 20. In accordance with Env-Wt 307.03(g)(2), the person in charge of construction equipment shall repair any leaks prior to using the equipment in an area where such fluids could reach groundwater, surface waters, or wetlands.
- 21. In accordance with Env-Wt 307.03(g)(3) and (4), the person in charge of construction equipment shall maintain oil spill kits and diesel fuel spill kits, as applicable to the type(s) and amount(s) of oil and diesel fuel used, on site so as to be readily accessible at all times during construction; and train each equipment operator in the use of the spill kits.
- 22. In accordance with Env-Wt 307.03(h), equipment shall be staged and refueled outside of jurisdictional areas (unless allowed) and in accordance with Env-Wt 307.15.
- 23. In accordance with Env-Wt 307.04(a), activities that produce suspended sediment in jurisdictional areas that provide value as bird migratory areas or fish and shellfish spawning or nursery areas, shall be done so as to avoid and minimize discharges of dredged material or placement of fill material during spawning or breeding seasons by using water quality protection techniques as specified in Env-Wt 307 and timing of project as specified in Env-Wt 307.10(g) or (h), as applicable.
- 24. In accordance with Env-Wt 307.05(b), equipment to be used in surface waters shall be completely free of all aquatic and terrestrial invasive plants, seeds, and other propagules, and all exotic aquatic species of wildlife as defined in RSA 487:16, I-a.
- 25. In accordance with Env-Wt 307.05(e), to prevent the use of soil or seed stock containing nuisance or invasive species, the contractor responsible for work shall follow Best Management Practices for the Control of Invasive and Noxious Plant Species (Invasive Plant BMP's) in accordance with Condition # 15.
- 26. In accordance with Env-Wt 307.07, all development activities associated with any project shall be conducted in compliance with applicable requirements of RSA 483-B and Env-Wq 1400 during and after construction.
- 27. In accordance with Env-Wt 307.11(a), fill shall be clean sand, gravel, rock, or other material that meets the project's specifications for its use; and does not contain any material that could contaminate surface or groundwater or otherwise adversely affect the ecosystem in which it is used.
- 28. In accordance with Env-Wt 307.11(b), limits of fill shall be clearly identified prior to commencement of work and controlled in accordance with Env-Wt 307.03 to ensure that fill does not spill over or erode into any area where filling is not authorized.
- 29. In accordance with Env-Wt 307.11(c), slopes shall be immediately stabilized by a method specified in Env-Wq 1506 or Env-Wq 1508, as applicable, to prevent erosion into adjacent wetlands or surface waters.
- 30. In accordance with Env-Wt 307.11(d), no fill shall be allowed to achieve setbacks to septic systems specified in Env-Wq 1000.
- 31. In accordance with Env-Wt 307.11(e), fill shall be not placed so as to direct flows onto adjacent or down-current property.

- 32. In accordance with Env-Wt 307.11(j), temporary impacts to wetlands and surface waters shall be restored to pre-impact conditions and elevation as specified in Env-Wt 307.12(i).
- 33. In accordance with Env-Wt 307.12(a), within 3 days of final grading or temporary suspension of work in an area that is in or adjacent to surface waters, all exposed soil areas shall be stabilized by seeding and mulching, if during the growing season; or mulching with tackifiers on slopes less than 3:1 or netting and pinning on slopes steeper than 3:1 if not within the growing season.
- 34. In accordance with Env-Wt 307.12(c), any seed mix used shall not contain plant species that are exotic aquatic weeds.
- 35. In accordance with Env-Wt 307.12(d), mulch used within an area being restored shall be natural straw or equivalent non-toxic, non-seed-bearing organic material.
- 36. In accordance with Env-Wt 307.12(e), wetland soils from areas vegetated with purple loosestrife or other statelisted invasive plant species shall not be used in the area being restored.
- 37. In accordance with Env-Wt 307.12(f), if any temporary impact area that is stabilized with seeding or plantings does not have at least 75% successful establishment of wetlands vegetation after 2 growing seasons, the area shall be replanted or reseeded, as applicable.
- 38. In accordance with Env-Wt 307.12(g), a temporary impact area restored by seeding or plantings shall not be deemed successful if the area is invaded by nuisance species such as common reed or purple loosestrife during the first full growing season following the completion of construction; and a remediation plan shall be submitted to the department that proposes measures to be taken to eradicate nuisance species during this same period.
- 39. In accordance with Env-Wt 307.12(h), any trees cut in an area of authorized temporary impacts shall be cut at ground level with the shrub and tree roots left intact, to prevent disruption to the wetland soil structure and to allow stump sprouts to revegetate the work area.
- 40. In accordance with Env-Wt 307.12(i), wetland areas where permanent impacts are not authorized shall be restored to their pre-impact conditions and elevation by replacing the removed soil and vegetation in their pre-construction location and elevation such that post-construction soil layering and vegetation schemes are as close as practicable to pre-construction conditions.
- 41. In accordance with Env-Wt 307.15(a), heavy equipment shall not be operated in any jurisdictional area unless specifically authorized by this permit.
- 42. In accordance with Env-Wt 307.15(b), mobile heavy equipment working in wetlands shall not be stored, maintained, or repaired in wetlands, except that repairing or refueling in a wetland is allowed if equipment cannot practicably be removed and secondary containment is provided.
- 43. In accordance with Env-Wt 307.15(c), where construction requires the operation of heavy equipment in wetlands, the equipment shall either have low ground pressure, namely less than 4 psi, or not be located directly on wetland soils and vegetation; or be placed on timber or swamp mats that are adequate to support the equipment in such a way as to minimize disturbance of wetland soil and vegetation.
- 44. In accordance with Env-Wt 307.15(e)(2) and (3), swamp mats shall be installed, used, and removed so as to minimize impacts to wetland areas, and be installed with adequate erosion and sediment controls at approaches to the mats to promote a smooth transition to, and minimize sediment tracking onto, the mats.
- 45. In accordance with Env-Wt 307.18(a), project monitoring reports to document completion of local mitigation measures shall be submitted to the department in accordance with Env-Wt 803.04. The report shall note the status or recordation of a conservation easement on the 120 acres of land planned for preservation in perpetuity.
- 46. In accordance with Env-Wt 307.18(b), a construction monitoring plan with inspection reports, water quality reports, and a wetland planting plan prepared by a certified professional erosion and sediment control specialist (CPESC) or certified wetland scientist shall be submitted to the department.
- 47. In accordance with Env-Wt 307.18(c), a report that describes the monitoring conducted and date(s) of inspections, and includes photos showing the extent of jurisdictional impacts, areas of restoration, and progress of any plantings shall be submitted to the department.

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- 48. In accordance with Env-Wt 307.18(e), a schedule and description of measures to be taken during construction and after completion of the project shall be submitted to the department.
- 49. In accordance with Env-Wt 524.05(a), residential, commercial, or industrial development projects in non-tidal wetlands shall submit a construction notice with the department at least 48 hours prior to commencing work.
- 50. In accordance with Env-Wt 524.05(b), all work for residential, commercial, or industrial development projects in non-tidal wetlands shall be conducted in accordance with the approved plan.

MITIGATION CONDITIONS:

- 51. The permit is contingent on submittal of a check in the amount of \$626,609.02 to the ARM Fund by the applicant as calculated per Env-Wt 803.07 and RSA 482-A:30.
- 52. In accordance with Env-Wt 807.01(b), the payment into the ARM fund shall be received by NHDES within 120 days from the approval decision or NHDES will deny the application.
- 53. In accordance with Env-Wt 803.04(b)(1), project monitoring shall span no fewer than 5 growing seasons for any project that includes plantings. At the end of each yearly growing season, a wetland scientist shall submit a report to the local conservation commission documenting the species survival rate and management of invasive species in each of the approved planting areas and shall be prepared in accordance with condition # 47.
- 54. In accordance with Env-Wt 803.08c), as the project may require federal mitigation from the US Army Corps of Engineers (USACE) under section 404 of the Clean Water Act, the applicant shall consult with the US ACE relative to whether additional mitigation will be required in order to satisfy federal mitigation requirements.
- 55. In accordance with Env-Wt 807.04(b), the permittee shall submit a final monitoring report to NHDES noting completion of all local mitigation measures including providing a copy of the recorded conservation deed(s) and in accordance with condition #45.

THIS PERMIT IS SUBJECT TO THE FOLLOWING GENERAL CONDITIONS:

- 1. Pursuant to RSA 482-A:12, a copy of this permit shall be posted in a secure manner in a prominent place at the site of the approved project.
- 2. In accordance with Env-Wt 313.01(a)(5), and as required by RSA 482-A:11, II, work shall not infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.
- 3. In accordance with Env-Wt 314.01, a standard permit shall be signed by the permittee, and the principal contractor who will build or install the project prior to start of construction, and will not be valid until signed.
- 4. In accordance with Env-Wt 314.03(a), the permittee shall notify the department in writing at least one week prior to commencing any work under this permit.
- 5. In accordance with Env-Wt 314.08(a), the permittee shall file a completed notice of completion of work and certificate of compliance with the department within 10 working days of completing the work authorized by this permit.
- 6. In accordance with Env-Wt 314.06, transfer of this permit to a new owner shall require notification to, and approval of, the NHDES.
- 7. The permit holder shall ensure that work is done in a way that protects water quality per Env-Wt 307.03; protects fisheries and breeding areas per Env-Wt 307.04; protects against invasive species per Env-Wt 307.05; meets dredging activity conditions in Env-Wt 307.10; and meets filling activity conditions in Env-Wt 307.11.
- 8. This project has been screened for potential impact to known occurrences of protected species and exemplary natural communities in the immediate area. Since many areas have never been surveyed, or only cursory surveys have been performed, unidentified sensitive species or communities may be present. This permit does not absolve the permittee from due diligence in regard to state, local or federal laws regarding such communities or species. This permit does not authorize in any way the take of threatened or endangered species, as defined by RSA 212-A:2, or of any protected species or exemplary natural communities, as defined in RSA 217-A:3.
- 9. In accordance with Env-Wt 307.06(a) through (c), no activity shall jeopardize the continued existence of a threatened or endangered species, a species proposed for listing as threatened or endangered, or a designated or proposed critical habitat under the Federal Endangered Species Act, 16 U.S.C. §1531 et seq.; State Endangered Species Conservation Act, RSA 212-A; or New Hampshire Native Plant Protection Act, RSA 217-A.

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10. In accordance with Env-Wt 307.02, and in accordance with federal requirements, all work in areas under the jurisdiction of the U.S. Army Corps of Engineers (USACE) shall comply with all conditions of the applicable state general permit.

APPROVED:

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

THE SIGNATURES BELOW ARE REQUIRED TO VALIDATE THIS PERMIT (Env-Wt 314.01).

PERMITTEE SIGNATURE (required)

PRINCIPAL CONTRACTOR SIGNATURE (required)