

**Robert R. Scott, Commissioner**

August 28, 2017

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

RE: NH DES Wetlands Bureau File 2016-03374, 79 Rockingham Park Blvd., Salem

Dear Mr. Faro:

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

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

1. This is a major impact project per Administrative Rules Env-Wt 303.02(c) Projects that involve alteration of nontidal wetlands, nontidal surface waters, and banks adjacent to nontidal surface waters in excess of 20,000 square feet in the aggregate, Env-Wt 303.02(f), projects located in or adjacent to designated prime wetlands under RSA 482-A:15, and Env-Wt 303.02(p) Any project that includes a new or replacement stream crossing which meets the criteria for a tier 3 stream crossing as specified in Env-Wt 904.04(a).
2. The impacts are necessary to develop the site and day-light Policy Brook; therefore, the need for the proposed impacts has been demonstrated by the applicant per Env-Wt 302.01.
3. The project provides an opportunity to address flooding issues associated with under-sized drainage structures; therefore, the applicant has provided evidence which demonstrates that this proposal is the alternative with the least adverse impact to areas and environments under the department's jurisdiction per Env-Wt 302.03.
4. The stream and wetland construction area provides flood storage compensation as a part of the overall project primarily upstream of the prime wetland area.
5. The applicant has demonstrated by plan and example that each factor listed in Env-Wt 302.04(a), Requirements for Application Evaluation, has been considered in the design of the project.
6. Policy Brook is a Tier 3 stream pursuant to Env-Wt 904.04. The crossings have been designed in accordance with Env-Wt 904.09.
7. In accordance with Env-Wt 803.09, NHDES finds there is added value to the functions and values of surface waters on the site through reconfiguring the network of existing culverts and exposing the flow via an open channel system. The work is considered habitat improvement for Policy Brook with an associated benefit of a vegetated wetland buffer area adjacent to the brook.
8. According to the design engineer and submittal to FEMA, the 100-year flood flow is recognized to be able to flow onto a portion of Route 28 near the I-93 Exit 1 ramp junction.
9. A boundary versus critical shear stress calculation of both the bed and the constructed vane structures at a range of flows was submitted to demonstrate that the constructed stream bed and bank are stable and as such, the likelihood of failure through bed material mobilization has been addressed.
10. According to the applicant's project engineer, meander wavelength, spacing and belt width concerns are addressed as the system is low-gradient and the risks should not be a problem pursuant to the New Hampshire Hydraulic Geometry Curve equations.

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

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

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

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

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

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

Any person aggrieved by this decision may appeal to the New Hampshire Wetlands Council (the Council) by filing an appeal that meets the requirements specified in RSA 482-A:10, RSA 21-O:14, and the rules adopted by the Council, Env-WtC 100-200. The appeal must be filed **directly with the Council within 30 days** of the date of this decision and must set forth fully **every ground** upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the notice of appeal can be considered by the Council. Information about the Council, including a link to the Council's rules, is available at <http://nhec.nh.gov/> (or more directly at <http://nhec.nh.gov/wetlands/index.htm>.) Copies of the rules also are available from the New Hampshire Department of Environmental Services (NHDES) Public Information Center at (603) 271-2975.

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

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

Sincerely,



Collis G. Adams, CWS, CPESC
NH Department of Environmental Services
Land Resources Management
Wetlands Bureau Administrator

enclosures

cc: Jim Gove, President/ Senior Soil and Wetland Scientist, Gove Environmental Services, Inc.
Brendan Quigley, Wetland Scientist/GIS Specialist, Gove Environmental Services, Inc.
Mark S. Gross, P.E., MHF Design Consultants, Inc.
Joseph M. Persechino, P.E., Tighe & Bond
Eben M. Lewis, Wetlands Inspector, NH DES Wetlands Bureau
Lori Sommer, Wetland Mitigation Coordinator, NH DES Wetlands Bureau
Melinda Bubier, Wetland Mitigation Program Specialist, NH DES Wetlands Bureau
Frank J. DelGuidice, Chief, Permits & Enforcement Branch, ACOE
Mark Kern, USEPA
Salem Conservation Commission



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



**NOTICE TO RECIPIENTS OF
MAJOR IMPACT NH WETLANDS PERMITS**

Your permit was approved by the New Hampshire Wetlands Bureau as a major impact project, and your project will be reviewed by the US Army Corps of Engineers for possible approval under the Army Corps New Hampshire State Programmatic General Permit – SPGP. The Army Corps will notify you within thirty (30) days as to whether you qualify.

*****NO WORK SHOULD BE DONE IN WETLANDS
UNTIL YOU RECEIVE THAT NOTICE*****

If you do not hear from the Army Corps within thirty (30) days, you should call them at 1-800-343-4789 (ME, NH, VT, CT, RI); 1-800-362-4367 (MA).

cc: US Army Corps of Engineers

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • Fax: 271-2867 • TDD Access: Relay NH 1-800-735-2964



Robert R. Scott, Commissioner

WETLANDS AND NON-SITE SPECIFIC PERMIT 2016-03374 PAGE 1 OF 4

Permittee: OMJ REALTY LLC **NOTE CONDITIONS**
63 MAIN ST
SALEM NH 03079

Project Location: 79 ROCKINGHAM PARK BOULEVARD, SALEM
TAX MAP 98 LOTS 7887, 4080, 12502, 12507 & 12543 / TAX MAP 151 LOT 12213

Waterbody: POLICY BROOK

APPROVAL DATE AUGUST 28, 2017 **EXPIRATION DATE:** AUGUST 28, 2022

Based upon review of the above referenced application, in accordance with RSA 482-A and RSA 485-A:17, a Wetlands Permit and Non-Site Specific Permit was issued. This permit shall not be considered valid unless signed as specified below.

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

THIS APPROVAL IS SUBJECT TO THE FOLLOWING PROJECT SPECIFIC CONDITIONS:

1. All work shall be in accordance with plans by Tighe & Bond dated November 28, 2016 and revised through 7/26/2017 as received by the NH Department of Environmental Services Land Resources Management Program (NHDES) on August 7, 2017. Any changes shall be submitted to NHDES in writing and approved by NHDES prior to implementation.
2. This permit is not valid until it has been recorded with the Rockingham County Registry of Deeds by the applicant. Prior to starting work under this permit, the permittee shall submit a copy of the recorded permit to NHDES by certified mail, return receipt requested.
3. The permittee shall schedule a pre-construction meeting with NHDES staff to occur at least 48 hours prior to the start of any work authorized by this permit to review the conditions of this wetlands permit and the Alteration of Terrain permit. The meeting will be held at the NHDES offices in Concord and shall be attended by the permittee, his/her professional engineer(s), wetlands scientist(s), and the contractor(s) responsible for performing the work.
4. This permit is contingent on receiving written authorization from the NH Department of Transportation for the impacts on Salem Tax Map 151 Lot 12213 and Salem Tax Map 117 Lot 7885.
5. This approval for in-stream work is not valid unless the US Department of Homeland Security's Federal Emergency Management Agency (FEMA) issues a conditional revision to the Flood Insurance Rate Map (FIRM) for Rockingham County, New Hampshire, All Jurisdictions.
6. This permit is not valid unless an Alteration of Terrain permit is issued in accordance with RSA 485-A:17 and Env-Wq 1500 .
7. This permit is contingent on review and approval, by the NHDES, of final stream and pond diversion/erosion control plans. Those plans shall detail the timing and method of stream flow and pond diversion during construction, and show temporary siltation/erosion/turbidity control and other stabilization measures and water quality controls to be implemented.
8. The permittee shall submit an existing conditions report and monitoring reports for the Rockingham Boulevard culvert for signs of erosion of the embankments adjacent to the culvert. These reports shall be included in the post construction monitoring report of the stream system for each year the post-construction monitoring reports are submitted.

9. No person undertaking any activity shall cause or contribute to, or allow the activity to cause or contribute to, any violations of the surface water quality standards in RSA 485-A and Env-Wq 1700.
10. Any further alteration of areas on this property that are subject to RSA 482-A jurisdiction will require further permitting.
11. Construction equipment shall be inspected daily for leaking fuel, oil, and hydraulic fluid prior to entering surface waters or wetlands or operating in an area where such fluids could reach groundwater, surface waters, or wetlands.
12. The permittee's contractor shall maintain appropriate oil/diesel fuel spill kits on site that are readily accessible at all times during construction, and shall train each operator in the use of the kits.
13. All refueling of equipment shall occur outside of surface waters or wetlands during construction. Machinery shall be staged and refueled in upland areas only.
14. Faulty equipment shall be repaired immediately prior to entering areas that are subject to RSA 482-A jurisdiction.
15. The contractor responsible for completion of the work shall use techniques described in the New Hampshire Stormwater Manual, Volume 3, Erosion and Sediment Controls During Construction (December 2008).
16. The project engineer shall oversee installation of erosion controls and periodically verify that the controls are properly maintained during construction.
17. 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. Temporary controls shall be removed once the area has been stabilized.
18. Appropriate turbidity controls shall be installed prior to construction, shall be maintained during construction such that no turbidity escapes the immediate work site and shall remain until suspended particles have settled and water at the work site has returned to normal clarity.
19. Work shall be conducted in a manner so as to minimize turbidity and sedimentation to surface waters and wetlands.
20. No work shall occur adjacent to the Osprey nest until after the Osprey have migrated south for the winter. The Osprey nest relocation shall be supervised by a certified wildlife biologist (CWB) and the permittee shall provide the name and contact information for the CWB to NHDES prior to nest relocation.
21. Written confirmation and photographs of the nest relocation shall be submitted to NHDES and the US Army Corps of Engineers (ACOE) within 30 days of completion of the relocation work.
22. All dredged and excavated material and construction-related debris shall be placed outside of areas subject to RSA 482-A.
23. No excavation shall be done in flowing water and no construction equipment shall be operated in flowing water.
24. Prior to commencing work located within Policy Brook the permittee or permittee's contractors shall construct a cofferdam to isolate the work area from Policy Brook.
25. Cofferdams shall not be installed during periods of high flow, whether due to seasonal runoff or precipitation. Once the cofferdam is fully effective, confined work can proceed without restriction.
26. Work within Policy Brook, inclusive of work associated with installation of a cofferdam, shall be done during periods of low flow only. The permittee shall monitor local weather forecasts to avoid working during events until low flow conditions have returned.
27. 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, with a preferred undisturbed vegetated buffer of at least 50 feet and a minimum undisturbed vegetative buffer of 20 feet.
28. Any work performed to 'Tuscan Pond' shall be done only under drawn down conditions. Any fish and/or amphibian species relocated from the pond shall be documented, including but not limited to, species and size. NHDES shall be provided the list of relocated species within 7-days following the completion of draw down. The relocation shall be supervised by a CWB.
29. Dredged materials, whether to be stockpiled or disposed of, shall be dewatered in sedimentation basins lined with siltation and erosion controls, and located outside of areas subject to RSA 482-A jurisdiction.
30. The temporary cofferdam shall be entirely removed within 2 days after work within the cofferdam is completed and water has returned to normal clarity.
31. Proper headwalls shall be constructed over the ends of the upgraded culverts within seven days of culvert installation.
32. Any fill used shall be clean sand, gravel, rock, or other suitable material.
33. Precautions shall be taken to prevent the import or transport of soil or seed stock containing nuisance, invasive plant species such as Purple Loosestrife (*Lythrum salicaria*), Knotweed (*Fallopia japonica*), or common reed (*Phragmites australis*). The contractor responsible for work shall appropriately address invasive species in accordance with the NHDOT Best Management Practices for Roadside Invasive Plants (2008).

34. At least 133,993 square feet of palustrine emergent and scrub shrub wetlands along 15,153 linear feet of Policy Brook shall be constructed, monitored and managed in accordance with the plans and details as approved by NHDES in accordance with condition 1 above.
35. The permit is contingent on permittee providing start dates for NHDES to review and approve for the stream and wetland construction project to commence, dates for completion of plantings and dates for the site to be finalized.
36. The permit is contingent on the permittee providing dates for NHDES to review and approve for submittal of post construction monitoring report.
37. The permit is contingent on NHDES and ACOE approval of a permittee developed monitoring plan that establishes performance standards for the stream and wetland construction project.
38. All construction activities, including the stream construction, shall be carried out and supervised by qualified professionals. More specifically, the stream construction activities shall be performed by an individual(s) with a combination of education and experience, such as a fluvial geomorphologist or hydrologist, who has knowledge sufficient to enable the individual to evaluate stream systems. The permittee shall notify NHDES of the name and contact information of the qualified professional(s) and shall re-notify NHDES of any changes of qualified professional(s).
39. A qualified professional(s) shall supervise the construction activities to ensure that the work is accomplished pursuant to this approval.
40. Siltation, erosion, and turbidity control management measures, practices and devices shall be in place prior to construction, shall be maintained during construction so as to reduce erosion and retain sediment on-site during and after construction and ensure continued effectiveness and remain in place until all disturbed surfaces are stabilized
41. All steps shall be taken during the stream and wetland habitat improvement work that are necessary to ensure that no water quality violations occur.
42. Within three days following the last activity in the stream and wetland area or where activities are suspended for more than three days, all soils exposed by construction activities shall be stabilized by seeding and mulching, or through erosion control blankets as necessary, with review and approval by NHDES.
43. Wetland soils from areas vegetated with the invasive plant species identified in Condition 34 shall not be used in the wetland construction site.
44. The invasive plant species shall be controlled by measures approved by NHDES if the species is found in the construction areas during construction and during the early stages of vegetative establishment.
45. The habitat improvement shall not be considered successful if sites are newly invaded by invasive plant species during the first full growing season following the completion of construction. The applicant shall work with NHDES to attempt to eradicate nuisance species found in the restoration area during this same period.
46. Materials used to emulate a natural channel bottom must be consistent with the streambed materials identified in the reference reach, and shall not include angular riprap or gravel unless specifically identified on the approved plans.
47. There shall be no substitutions made for the plant species specified on the approved plan for replanting purposes without prior written approval from NHDES. Woody material may be incorporated into the stream system as recommended by the qualified professional to improve habitat conditions of the stream.
48. The qualified professional(s) shall inspect the construction areas and submit a monitoring report to NHDES after a rain event of 1/2 inch or greater within a 24 hour period during restoration activities. The monitoring reports shall include, but not be limited to, documentation of erosion control deployment, construction sequencing, construction activities and status of construction at time of initial monitoring report. Photographs should depict all stages of construction sequencing.
49. Stream banks and wetland areas shall have at least 75% successful establishment of hydrophytic vegetation after two (2) growing seasons, or shall be replanted and re-established until a functional wetland is established to the satisfaction of NHDES and ACOE.
50. For construction and monitoring purposes of the stream and wetland construction areas, a minimum of ten cross section station locations shall be identified on the plans for review and approval by NHDES and the ACOE.
51. A post-construction report, prepared by a Certified Wetland Scientist and the Qualified stream Professional, as applicable, documenting status of the stream and wetland construction areas, including photographs of all stages of construction from designated photo stations and an as-built plan, a longitudinal profile with water depth within the creation areas, shall be submitted to the NHDES within 60 days of the completion of construction. The post construction report shall note the area of the wetland construction areas.

52. Subsequent monitoring reports, prepared by a qualified professional, shall be submitted to NHDES by June 1, 2018, June 1, 2019, June 1, 2020, June 1, 2021, and June 1, 2022 to document the success of the construction and outline a schedule for remedial actions if necessary. Such reports shall be submitted to NHDES, the ACOE, and Salem Conservation Commission with narrative description, photographs, from predetermined photo stations and the cross-sections, demonstrating the conditions on the site, a summary on vegetative success, any necessary remedial actions to improve plant establishment, flood storage capacity, and a schedule for completing the remedial actions and conducting follow up inspections.
53. Remedial actions may include, but are not limited to replanting, relocation of plantings, removal of invasive species, altering the soil composition or depths, deconsolidation of soils due to compaction, altering the elevation of the wetland surface, changing the stream geometric contours, or hydraulic regime.
54. Upon being notified by the qualified professional who is monitoring the project that the stream or wetland area have not met the performance standards after the second growing season, the permittee shall submit to NHDES an in lieu mitigation payment to compensate for the portions of the project that failed to meet the performance standards. The payment shall be determined by NHDES, ACOE and the US Environmental Protection Agency.

GENERAL CONDITIONS THAT APPLY TO ALL NHDES WETLANDS PERMITS:

1. A copy of this permit shall be posted on site during construction in a prominent location visible to inspecting personnel;
2. This permit does not convey a property right, nor authorize any injury to property of others, nor invasion of rights of others;
3. The Wetlands Bureau shall be notified upon completion of work;
4. This permit does not relieve the applicant from the obligation to obtain other local, state or federal permits, and/or consult with other agencies as may be required (including US EPA, US Army Corps of Engineers, NH Department of Transportation, NH Division of Historical Resources (NH Department of Cultural Resources), NHDES-Alteration of Terrain, etc.);
5. Transfer of this permit to a new owner shall require notification to and approval by NHDES;
6. This project has been screened for potential impacts to known occurrences of protected species and exemplary natural communities in the immediate area. Since many areas have never been surveyed, or have only received cursory inventories, 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.
7. Review enclosed sheet for status of the US Army Corps of Engineers' federal wetlands permit.

APPROVED:

CG Adams
Collis G. Adams
NHDES Wetlands Bureau

BY SIGNING BELOW I HEREBY CERTIFY THAT I HAVE FULLY READ THIS PERMIT AND AGREE TO ABIDE BY ALL PERMIT CONDITIONS.

OWNER'S SIGNATURE (required)

CONTRACTOR'S SIGNATURE (required)