



Thomas S. Burack, Commissioner

February 13, 2015

Her Excellency, Governor Margaret Wood Hassan
and The Honorable Council
State House
Concord, NH 03301

REQUESTED ACTION

Approve Nancy Hall's request to perform the following work on the Piscataqua River Back Channel, in New Castle. File # 2012-01896. This project will not have significant impact on or adversely affect the values of the Piscataqua River Back Channel.

Recommend approval of the Petitioner's request for Grant in Right for fill placed in public waters forming 2,368 sq. ft. of land contiguous to the Petitioner's frontage along Little Harbor, on the Piscataqua River, in New Castle.

The Department imposed the following conditions as part of this approval:

1. The Petitioner shall maintain the property acquired in a manner that meets the standards and requirements of RSA 483-B.
2. The Petitioner shall obtain appropriate permits under RSA 482-A for any work in the bank where the acquired land meets Little Harbor, on the Piscataqua River.

EXPLANATION

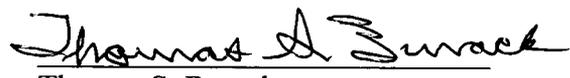
The DES Wetlands Bureau approved this project on February 06, 2015. DES supported its decision with the following findings:

1. The Petitioner owns property, identified as Lot 12 on New Castle Tax Map 11, which has frontage along Little Harbor, on the Piscataqua River.
2. Immediately contiguous to the Petitioner's frontage is an existing 2,368 sq. ft. area of fill of sufficient height to exceed the normal high water line and to create land within Little Harbor, on the Piscataqua River.
3. The fill was placed prior to the Petitioner's purchase of the property.
4. The exact date of the placement of fill has not been determined. However, the Petitioner has submitted evidence showing that the fill was placed prior to 1976.
5. For over 35 years, the area of fill has been used exclusively by the owners of the property identified as Lot 12 on New Castle Tax Map 11.

6. The fill is not having an adverse environmental effect on the Piscataqua River.
7. The fill is not having an adverse effect on abutting shorelines.
8. There would be no environmental gain associated with the removal of the existing fill.
9. A public hearing was held at the NH Department of Environmental Services offices located at 222 International Drive, Suite 175, Portsmouth, NH, on May 13, 2013, in accordance with RSA 482-A:17. In summary, the abutters voiced concerns concerning the removal of the fill in question within State property. They believed the conveyance of the filled area to Nancy Hall would prohibit public usage of the existing right-of-way for water access. The Town of New Castle seeks, "an equitable result that will benefit Nancy Hall, the public and the environment. The Town's proposal, which permits the deeding of certain public land to Ms. Hall and for the reopening and protection of the public Right of Way to Little Harbor, accomplishes all of these goals."
10. DES Staff conducted a field inspection of the proposed project on July 19, 2013. The field inspection determined that the areas of salt marsh vegetation identified on the plans and the location of the proposed docking structures are both accurate.
11. In response to the concerns raised during the hearing, by abutters and the Town of New Castle, DES finds the following: removal of the fill will be deleterious to adjacent jurisdictional areas and; the fill has been in place since approximately 1974. On August 24, 1976, the State of New Hampshire Special Board (predecessor to the NHDES Wetlands Bureau) permitted the fill, and, as stated in numerous correspondence received by DES from abutters, public access to the water via the right-of-way exists presently. Therefore, this decision will not deter access to the water via the right-of-way as no further work will occur to impact access to the water via the right-of-way.

Application file documents are being forwarded to the Governor and Executive Council in connection with their consideration of this matter pursuant to RSA 482-A:3,II.(a) as it is a major project in public waters of the state.

We respectfully submit this request for your consideration.


Thomas S. Burack
Commissioner

STATE OF NEW HAMPSHIRE

Her Excellency the Governor of New Hampshire and The Honorable Council

Respectfully represents your Petitioner, Edward H. Benway, Trustee of the Edward H. Benway Revocable Trust residing in the Town of New Castle, County of Rockingham, and State of New Hampshire.

Said Petitioner desires to retain fill placed in "Mill Pond" , part of the Piscataqua River, in New Castle, New Hampshire, adjoining properties now owned by William McCarron and Town of New Castle to an extent as follows: fill placed in public waters forming up to 2,368 square feet of land contiguous to the Petitioner's frontage. For the purpose of recreation and preservation of existing conditions as per plans and specifications attached hereto.

Said Petitioner believes that the retention of this fill will not be contrary to the public interest.

WHEREFORE, your Petitioner prays that permission be given to retain the fill in the above area

Steven Solomon,
Attorney for Petitioner,
Respectfully submitted.

Referred to the N.H. Department of Environmental Services for investigation and recommendations.

Governor

Dated:

Return to:
Steven Solomon
D'Amante, Couser Pellerin
PO Box 2650
Concord, NH 03301-2650

QUITCLAIM DEED

The State of New Hampshire, for consideration paid, grants to Edward H. Benway, Trustee of the Edward H. Benway Revocable Trust, PO Box 823 New Castle, NH 03854 the following real property in New Castle, Rockingham County, New Hampshire, bounded and described as follows:

Beginning at the northwest corner of the premises at the southeast corner of land now or formerly of McCarron and the southwest corner of land of Hall; thence Southerly 93 feet more or less by a retaining wall along Mill Pond, thence turning and running North $88^{\circ} 44' 09''$ East a distance of 41.11 feet to an iron rod; thence turning and running N $13^{\circ} 14' 22''$ E 16.64 feet along land of Hall; thence turning and running N $35^{\circ} 23' 39''$ W 80.27 feet by said Hall land to the point of beginning.

For Reference see Plan titled "Boundary Line of Agreement & Grant of Right, 18 Ritson Street", dated August 2013 (Revision 3 - 7/18/14) to be recorded in the Rockingham County Registry of Deeds.

EXECUTED this day of , 2015

The State of New Hampshire

By _____
Margaret Wood Hassan,
Governor

State of New Hampshire
County of Merrimack

On this the day of 2015, before me, the undersigned officer, personally appeared the above-named Margaret Wood Hassan, who acknowledged herself to be the Governor of the State of New Hampshire, and as such is duly authorized to execute the foregoing instrument for the purposes therein contained by signing his/her name on behalf of the State of New Hampshire.

Justice of the Peace/Notary Public
My Commission Expires _____
Print Name _____