



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

December 12, 2016

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

REQUESTED ACTION

Approve Hopgood Bixby Shore Family Trust's request to perform the following work on Lake Winnepesaukee, in Tuftonboro. File # 2011-01677. This project will not have significant impact on or adversely affect the values of Lake Winnepesaukee.

Remove a 4 ft. x 32 ft. seasonal pier, a 4 ft. x 42 ft. seasonal pier with a 4 ft. x 8 ft. "L", and a 4 ft. x 5 ft. concrete landing in the bank. Repair an 8 ft. x 46 ft. wharf and extend it 2 ft. to replace the concrete landing to be removed. Construct a 6 ft. x 38 ft. pier supported by three 6 ft. x 6 ft. cribs interconnected by timbers to form a 29 ft. wave attenuation system leaving a 9 ft. gap at the shore. Construct a second 6 ft. x 38 ft. crib supported pier parallel to the first.

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

1. All work shall be in accordance with plans by Watermark Marine Construction as revised September 18, 2013 and received by the Department on September 30, 2013 and wave attenuator cross sections by Watermark Marine Construction dated April 23, 2012 as received by the Department on May 10, 2012.
2. This permit shall not be effective until it has been recorded with the Carroll County Registry of Deeds by the Permittee. A copy of the recorded permit shall be submitted to the DES Wetlands Bureau prior to construction.
3. Appropriate siltation and erosion controls shall be in place prior to construction, shall be maintained during construction, and shall remain in place until the area is stabilized.
4. Work authorized shall be carried out such that discharges in spawning or nursery areas during spawning seasons shall be avoided, and impacts to such areas shall be avoided or minimized to the maximum extent practicable during all times of the year.
5. These shall be the only structures on this water frontage and all portions of the structures shall be at least 20 ft. from the abutting property lines or the imaginary extension of those lines into the water.
6. 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 in place until suspended particles have settled and the water at the work site has returned to normal clarity.

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3501 • Fax: (603) 271-6683 • TDD Access: Relay NH 1-800-735-2964

7. No portion of the wave attenuator as measured at normal full lake shall extend more than 41 ft. from the normal full lake shoreline.
8. 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.
9. The owner understands and accepts the risk that if this facility requires dredging to maintain a minimum slip depth of 3 ft., more frequently than once every 6 years, or is shown to have an adverse impact on abutting frontages, it shall be subject to removal.
10. The wave attenuator shall have an irregular face to dissipate wave energy.
11. The maximum size of cribs shall not exceed 6 ft. long by 6 ft. wide and of such height as necessary to support the docking structure above the water level.
12. Crib material shall be timber, concrete, or other material approved by DES, and of such size and spacing as necessary to completely contain the ballast.
13. The minimum spacing between cribs shall be 12 ft.
14. No portion of the wave attenuation system shall be installed within 9 ft. of the shoreline at normal high water.
15. All activities shall be in accordance with the Shoreland Water Quality Protection Act, RSA 483-B. The owner is responsible for obtaining any Shoreland Permit that may be required per RSA 483-B, for construction, excavation or fill that will occur within the Protected Shoreland.

EXPLANATION

The DES Wetlands Bureau approved this project on February 05, 2014. DES supported its decision with the following findings:

Standards for Approval

1. Pursuant to RSA 482-A:3, XIII, all boat docking facilities shall be at least 20 ft. from an abutting property line in non-tidal waters.
2. In accordance with RSA 482-A:11, II, "[n]o permit to dredge or fill shall be granted if it shall infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners."
3. Pursuant to RSA 482-A:10, Appeals, VI, on appeal, the council may affirm the decision of the department or may remand to the department with a determination that the decision complained of is unlawful or unreasonable. The council shall specify the factual and legal basis for its determination and shall identify the evidence in the record created before the council that supports its decision.
4. Pursuant to RSA 482-A:10, Appeals, IX, [i]n the case of a remand to the department by the council, the department may accept the council's determination and reissue a decision or order, imposing such conditions as are necessary and consistent with the purposes of this chapter, or may appeal as provided in paragraphs VII and VIII.

5. Pursuant to Rule Env-Wt 101.12, "Breakwater" means a structure extending generally perpendicular from the shore into surface waters of the state that is designed to protect sections of shoreline, docks, wharves or anchorage areas from erosion or damage from waves or currents.
6. In accordance with Rule Env-Wt 101.56, "major docking system" means a large and complex docking facility that requires utilization of more than 100 feet of waterfront or provides a total of 5 or more boat slips, including those previously existing and proposed.
7. Pursuant to Rule Env-Wt 204.04, Criteria, a request for a waiver shall be granted if it will not result in an adverse effect to the environment or natural resources of the state, public health, or public safety nor result in an impact to abutting properties more significant than that which would result from complying with the rule; and either granting the request is consistent with the intent and purpose of the rule being waived or strict compliance with the rule will provide no benefit to the public and will cause an operational or economic hardship to the applicant.
8. Pursuant to Rule Env-Wt 302.04, Requirements for Application Evaluation (a), (1), the applicant shall demonstrate the need for the proposed impact by plan and example
9. Pursuant to Rule Env-Wt 302.04, Requirements for Application Evaluation (a), (2), the applicant shall demonstrate by plan and example that the alternative proposed by the applicant is the one with the least impact to wetlands or surface waters on site.
10. In accordance with Rule Env-Wt 402.01, Configuration, approvable configurations for all docks located on lakes and ponds, shall include a standard configuration that is narrow, rectangular, and erected perpendicular to the shoreline, and nonstandard configurations including those shaped like the letter U, when the applicant establishes through documentation that the standard configuration would cause a safety hazard due to wind or other weather conditions, the nonstandard configuration chosen for the dock provides the least environmental impact on shoreline and water body, and the nonstandard configuration does not interfere with boat traffic safety.
11. Pursuant to Rule Env-Wt 402.06, Permanent Docks (e), All applications for permanent installations shall indicate that reasonable investigations have been undertaken to determine the impossibility of driving pilings before alternate construction methods shall be approved.
12. Pursuant to Rule Env-Wt 402.06, Permanent Docks (f), investigations to determine if piling can be driven may include trial driving by commercial equipment, probing's, and experience in construction of adjacent wharves or docks.
13. Pursuant to Rule Env-Wt 402.06, Permanent Docks (h), After an applicant has demonstrated that pilings cannot be driven and that a seasonal structure cannot be maintained on the frontage, a crib dock shall be approved.
14. Pursuant to Rule Env-Wt 402.06, Permanent Docks (i), The maximum size of cribs for water depths of up to 6 feet shall not exceed 6 feet long by 6 feet wide and of such height as is necessary to support the wharf above the water level.
15. Pursuant to Rule Env-Wt 402.07, Breakwaters (c), (1), when an applicant attempts to prove need for a breakwater at a site that does not meet the fetch requirement the applicant shall document the occurrence of 2 foot high waves as measured from trough to crest in water at least 3 feet deep, at the location of the proposed breakwater on at least 4 separate occasions, lasting 4 hours each, between the dates of May 15 and October 15.

16. In accordance with Rule Env-Wt 402.07, Breakwaters (c), (2), the documentation shall include either dated photographs and a summary of the wave heights measured, the dates measured, and the frequency of measurement during the 4 hour periods; or written site measurements completed during the relevant period and verified as accurate by department staff.
17. Pursuant to Rule Env-Wt 402.07, Breakwaters (c), (3), the documentation shall include a frequency of wave height measurements that shall be high enough to show, in conjunction with the pictures, that the wave activity is essentially continuous throughout the 4 hour periods.
18. Pursuant to Rule Env-Wt 402.07, Breakwaters (d), "Construction shall be of stone, concrete, wood, or other inert materials consistent with the individual conditions of each site."
19. Rule Env-Wt 402.13, Frontage Over 75' limits the number of boat slips allowed to one 2-slip structure on the first 75 ft. of frontage and requires an additional 75 ft. of shoreline frontage for each additional slip or securing location on a structure for non-commercial use.

Findings of Fact

1. On December 8, 1987, the Wetlands Board approved construction of a 30 linear ft. stone breakwater on the above-referenced property.
2. This approval was allowed to expire and none of the approved construction was completed.
3. A second application submitted in 2006, identified as File # 2006-01505, also requested a stone breakwater.
4. Evidence, including photographs of wave conditions and related wind speed data submitted by the Applicant to Application File #2006-01505, after the timeframe for response to the Request for More Information, supported the need for the construction of a breakwater to provide safe docking at the requested location.
5. Nevertheless, File #2006-01505 was denied on April 06, 2007 on the grounds that the Applicant had failed to respond to a Request for More Information within the timeframe allowed under RSA 482-A:3, XIV(b).
6. On July 14, 2011, the Wetlands Bureau received a third application for this property; namely, a Standard Dredge and Fill application to construct a 3-slip permanent docking system with a wave attenuation system to be constructed underneath the northernmost pier, on an average of 150 ft. of shoreline frontage.
7. The wave attenuation system to be constructed under the northernmost pier is designed to dissipate wave action and protect sections of the shoreline, the wharf, and the other proposed pier from waves and currents. The wave attenuation system is, therefore, a breakwater as defined per Rule Env-Wt 101.12.
8. This project is classified as a major project per Rule Env-Wt 303.02, Major Projects, (d), construction or modification of a major docking system adjacent or attached to a breakwater.
9. The Applicant referenced information related to the previous File 2006-01505, regarding wave activity, but also requested a waiver of Rule Env-Wt 402.07.
10. On May 18, 2012, the Department approved File #2011-01677 and cited the documentation submitted by the Applicant as part of the prior application, File #2006-01505, as evidence of need for the proposed breakwater.

11. The Department also reasoned that, because the documentation in the prior file supported the need for a breakwater, no waiver was needed. The Department, therefore, viewed the request for a waiver as moot.
12. On June 15, 2012 the Department received a Request for Reconsideration from William and Elizabeth Frago, abutters (the "Abutters") to the Property.
13. The Abutters alleged: (a) that the Applicant had failed to provide evidence of wave activity in the specific form and format required and, (b) that some of the days for which data was provided were after the cut-off date of October 15th listed in Rule Env-Wt 402.07.
14. On September 18, 2012 the Department reconsidered and reaffirmed its decision to approve the project with additional findings.
15. On October 17, 2012, the Abutters filed an appeal of the Department's decision to approve the project with the Wetlands Council.
16. On June 24, 2013 the Wetlands Council found in favor of the Abutters, granting their Motion for Summary Judgment on the grounds that the Applicant had failed to provide evidence of wave activity in the specific form and format required in Rule Env-Wt 402.07.
17. The Wetlands Council cannot deny a permit request; pursuant to RSA 482-A:10, VI, it may only remand the decision back to the Department.
18. Upon remand, the Department must act in a manner consistent with the Council's decision.
19. The Department treated the remanded application as "pending" and, pursuant to the Council's decision, treated the existing wave information as insufficient to meet the existing rules absent a waiver.
20. The Abutters argued that the application must be denied per se.
21. Again, the Council cannot deny an application. The Department also notes that treating the application as "denied" would have resulted in a requirement that the Applicant resubmit an application and fee; however, although more costly to the Applicant, it would not have provided the Abutters with greater process or input. In fact, both the department and the Applicant have kept the abutters informed of any submittals and the department has provided the Abutters ample opportunity to provide its own responsive information.
22. The Abutters have taken full advantage of this opportunity.
23. On September 26, 2013, the Applicant submitted additional information to the Department with respect to its application in order to cure any deficiencies cited by the Council and to address other concerns raised by the Abutters.
24. The amended proposal requested authorization to construct a 3 slip permanent docking system with a 29 linear ft. wave attenuation system to be constructed underneath the northernmost pier.
25. The September 26, 2013, submittal included, among other things, requests for waivers of Rules Env-Wt 402.01, Env-Wt 402.03, Env-Wt 402.06, (a) - (e), Env-Wt 402.07, (a) - (e).
26. On November 4, 2014, the Abutters submitted correspondence to the file. Through this correspondence the Abutters objected to the Department's consideration of the Applicant's amended proposal and maintained that the Applicant's only recourse following the Wetlands Council's remand of the Department's decision was to file an appeal of the Council's decision with the Council pursuant to RSA 541:3.
27. Through the November 4, 2013 correspondence the Abutters also objected to the Applicant's failure to properly format the requests for the rule waivers.

28. On November 8, 2013, the Department issued a Request for More Information Letter to the Applicant requesting the waiver requests be submitted in the proper format as outlined in Part Env-Wt 204, Waivers.
29. On December 5, 2013 the Department received the properly formatted waiver requests in response to the Department's November 8, 2013 letter.
30. The Applicant has an average of 150 ft. of shoreline frontage along Lake Winnepesaukee.
31. A maximum of 3 slips may be permitted on this frontage per Rule Env-Wt 402.13, Frontage Over 75'.
32. The proposed docking facility will provide 3 slips as defined per RSA 482-A:2, VIII and, therefore, meets Rule Env-Wt 402.13.
33. The Abutters have submitted written concerns about this application regarding the need for the proposed breakwater (wave attenuation system) and the possible impacts to their frontage from boats accessing the docking facility should it be angled to the south as shown in the proposal previously approved on May 18, 2012. The Abutters maintained that the boaters approaching the facility will travel in close proximity to their shoreline and thus will have an adverse impact on their ability to safely enjoy Lake Winnepesaukee.
34. The amended proposal would orient the piers perpendicular to shore in accordance with Rule Env-Wt 402.01 and should address the Abutters concerns related to boat traffic in close proximity to their shoreline.
35. The project as proposed is confined to the Applicant's property and areas of public waters immediately fronting the Applicant's property.
36. The Abutters maintain that the project will result in environmental changes which will adversely impact their ability to enjoy Lake Winnepesaukee.
37. Field inspection of the Property on August 31, 2011 by Department staff found no evidence of significant sand migration along this section of the shoreline.
38. Review of aerial photography from 1998 and 2006 finds no evidence of significant migration along this section of the shoreline.
39. The docking structure located approximately 400 ft. to the northwest at 52 Bixby Shores Road, on property identified as Lot # 2-2 on Tuftonboro Tax Map 39, is an existing 8 ft. x 52 ft. permanent dock supported by an 8 ft. x 20 ft. crib and an 8 ft. x 29 ft. crib with only 3 ft. of opening through which water may pass freely. This repair of this facility was most recently approved under File # 2007-02151 on January 29, 2008.
40. Review of File # 2007-02151 has found no evidence that the 49 linear ft. of crib supporting this 52 ft. dock has caused unreasonable sediment accumulation, the growth of aquatic weeds, or otherwise adversely impacted the surrounding shoreline.
41. The Abutter maintains that the Applicant has failed to justify need for the construction of a Breakwater and associated crib pier as required per Rules Env-Wt 302.04 (a), Env-Wt 402.06, and Env-Wt 402.07 (c).
42. Photographs and data submitted to the file show a sufficient level of wave activity to present a hazard to watercraft secured at the site. The Department finds this hazard is sufficient to justify breakwater construction.

43. The Applicant has requested that the Department waive the strict evidentiary requirements of Rule Env-Wt 402.07, (a) - (e) and accept an alternative form of evidence in accordance with Part Env-Wt 204.
44. Within Rule Env-Wt 402.07, only paragraph (c) pertains to the form and substance of evidence submitted to justify the need for a breakwater. Because the Applicant specified in the header of their Waiver Request, "Two Foot Wave Evidentiary Rules" the Department has only considered waiving paragraph (c).
45. The intent of Rule Env-Wt 402.07 (c) is to provide applicants an alternative means of providing evidence of hazardous conditions and the occurrence of those conditions on multiple occasions throughout the boating season.
46. The form in which evidence is received does not alter the impact of any project on the environment.
47. The data submitted by the Applicant indicate that wind events on May 23, 2008, June 12, 2008, August 19, 2008, and August 31, 2008 would have produced levels and durations of wave activity that would meet the need for a breakwater under Rule Env-Wt 402.07.
48. The site is exposed to an average fetch of 1.45 miles between compass headings 285 and 315 and thus meets the fetch requirements for a permanent pier. The request to waive the requirements of Env-Wt 402.06, (a) - (e) is, therefore, moot.
49. An agent for the Applicant states in the application that probings were conducted which showed that piling could not be driven and thus the applicant has met the requirements of Rule Env-Wt 402.06 (e) and (f) for the construction of cribs.
50. All cribs which were proposed solely for the purpose of supporting the pier adjacent to the breakwater meet the requirements for crib construction outlined in Rule 402.06, Permanent Docks.
51. The Applicant has requested that the Department waive the 30 ft. limit on the length of permanent structures established in Rule Env-Wt 402.03, and allow a 38 ft. long crib pier in accordance with Part Env-Wt 204.
52. The construction of the 38 ft. crib pier designed to match the length of the adjacent 38 ft. pier and wave attenuation system will have no greater impact on the environment or natural resources of the state, public health, or public safety nor result in an impact to abutting properties more significant than that which would result from the construction of a 30 ft. pier.
53. Strict compliance with the 30 ft. length limitation, where the immediately adjacent structure will be 38 ft. in length will provide no benefit to the public and will cause an operational or economic hardship to the applicant.
54. The Abutters maintain that the Applicant has failed to provide evidence that the project is the least impacting alternative as required per Rule Env-Wt 302.04 (a).
55. Rule Env-Wt 402.07 (d), allows for alternative methods of breakwater construction utilizing wood and other inert material.
56. The structure supporting the northernmost pier meets the design requirements of Rule Env-Wt 402.07.

57. The method of breakwater construction proposed by the Applicant minimizes the amount of fill required and the area impacted by utilizing the construction of cribs and cross beams underneath the pier rather than constructing a separate rock structure adjacent to the pier as had previously been approved on December 8, 1987.
58. The Abutters maintain that the Applicant has failed to provide evidence supporting the construction of a non-standard "U" shaped docking facility as required per Rule Env-Wt 402.01.
59. The Applicant has requested that the Department waive Rule Env-Wt 402.01, inasmuch as it considers a "U" configuration to be a non-standard dock configuration, in accordance with Part Env-Wt 204.
60. The "U" configuration is the standard design for docking facilities providing 3 slips as it simply incorporates two standard configured piers placed parallel to each other at such a distance that only one slip is provided between them. The walkway connecting the piers forming the "U" simply serves to provide safe access between them in a manner which is less impacting to the shoreline than what would result from repeated foot traffic over the bank.
61. The least impacting dock configuration to provide 3 boat slips is a U shaped configuration such as that proposed by the Applicant.
62. The proposed dock design meets the requirements of Rule Env-Wt 402.01. The request to waive the requirements of Rule Env-Wt 402.01, is therefore, moot.
63. As stated above, the Abutters maintain that the Wetlands Council's decision to remand the file to the Department constitutes an action that would have an effect similar to that of a denial in that the failure to appeal the decision in a timely manner would render the application closed and require the filing of a new application. Further the Abutters argue that the consideration of this amended proposal impinges upon his rights to procedural fairness and due process.
64. Public hearing is waived based on field inspection, by NH DES staff, on August 31, 2011, with the finding that the project impacts will not significantly impair the resources of Lake Winnepesaukee.
65. The Abutters have argued that the Department should not grant waivers of any requirements in its review of this application.

Rulings in Support of the Decision

1. The Applicant has addressed the Abutters' concerns related to the possible impacts to their frontage from boats accessing the docking facility by returning to a design proposal that incorporates the standard pier orientation which is perpendicular to the shoreline. All portions of the proposed docking facility will be at least 20 ft. from the abutting property lines and the imaginary extensions of those lines over the water as required per RSA 482-A:3, XIII. The proposed docking facility configuration will not have an unreasonable impact on the use and enjoyment of the abutting property.

2. Review of the materials submitted with respect to this application, by both the Applicant and the Abutters, in combination with aerial photographs, and the impacts of the larger, more restrictive pier to the northwest of the proposed location has found no evidence that this docking facility will have an adverse impact on either the natural movement of sediment or the stability of the shoreline. The Department finds that the project will not result in environmental changes which will have an unreasonable impact on the Abutter's ability to enjoy his property.
3. Rule Env-Wt 402.07 (c), provides applicants an alternative means to the standard fetch requirement for demonstrating the need for a breakwater. The Department finds that in cases where properties do not automatically qualify for breakwaters, an alternative means of demonstrating that hazardous wave conditions exist at the property, such as the submittal of wind speed data sufficient to support wave generation, is consistent with the intent and purpose of Rule Env-Wt 402.07 (c). The Department further finds that the submittal of wind speed data to help demonstrate the need for a breakwater will neither result in an adverse effect to the environment or natural resources of the state, public health, or public safety nor result in an impact to abutting properties more significant than that which would result from complying with the rule.
5. The Department finds that the Applicant provided photographic evidence for four separate occurrences lasting for at least four hours between May 15th and October 15th and that the photographic documentation of wind propagated wave activity at this site coupled with the wind speed data is sufficient to demonstrate hazardous conditions at the property and the Applicant's request for a waiver of Rule Env-Wt 402.07 (c) meets the standards of Rule Env-Wt 204.04 and, therefore, a waiver of Rule Env-Wt 402.07 (c) is granted.
6. The Department finds that the additional 8 ft. of requested pier length will result in no greater impact on the environment or natural resources of the state, public health, or public safety, nor will it result in an impact to abutting properties more significant than that which would result from the construction of a standard length pier. The Department further finds that strict compliance with the Rule Env-Wt 402.03 will provide no benefit to the public and will cause an operational or economic hardship to the applicant. The Applicant's request for a waiver of Rule Env-Wt 402.03, meets the standards of Rule Env-Wt 204.04 and, therefore, a waiver of Rule Env-Wt 402.03, is granted.
7. The proposed wave attenuation system will provide the functionality of a breakwater but will not require the cubic yards of fill and square ft. of impact associated with standard breakwater construction methods. The wave attenuation system will allow better flow of water and passage for aquatic organisms than standard breakwater construction methods. The alternative design is in keeping with the purpose of the Rules within Chapter Env-Wt 400 as stated in Rule Env-Wt 401.01. The proposed timber and stone breakwater designed to fit beneath the northernmost pier is the least impacting method of constructing the breakwater necessary to provide protection for boats secured to the docking facility on the frontage.

8. The Applicant is using the most commonly used and least impacting design for a docking facility which will provide three boat slips. The proposed "U" configuration is comprised of two piers which meet all of the standard design criteria of Rule Env-Wt 402.01, which will be connected by a walkway to provide safe access and reduce impact to the bank of the surface water. The Department finds the proposed utilization of a "U" configuration to be appropriate.
9. RSA 482-A:11, II, does not prohibit projects which have an impact on an abutting property owner. All projects have some level of impact on the abutters. RSA 482-A:11, II, prohibits only those projects which either infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners. The Department finds that the project as proposed will neither infringe upon the property rights of the abutters nor unreasonably affect the value or enjoyment of their properties.
10. The authority granted to the Wetlands Council under RSA 482-A:10, Appeals, paragraphs VI and IX, is limited to issuing determinations and findings with regard to actions taken by the Department and does not include the ability to evaluate, approve, or deny the individual application on which the Department's action was taken. The Wetlands Council does not have the authority to approve or deny an application. The Wetlands Council does have the authority to determine that an action taken by the Department should be vacated. The Abutters' position that the Applicant's file is closed because the Applicant did not appeal the Council's remand fails to consider that the Department and Applicant may, under RSA 482-A:10, IX "accept the council's determination and reissue a decision or order, imposing such conditions as are necessary and consistent with the purposes of this chapter." In this case the Applicant has chosen to accept the Wetlands Council's remand of the earlier decision and has filed an amended proposal so that the Department may evaluate it and issue "a decision or order, imposing such conditions as are necessary and consistent with the purposes of this chapter." The Department finds that the procedure followed has met the intent and purpose of RSA 482-A:10, Appeals, and provided due process to both the Abutter and the Applicant.
11. The Department has given consideration to the Abutters' concerns relative to the structures proposed by the Applicant. The Applicant has been required to reasonably address the Abutters' concerns. As such the Department believes the Abutters have been provided due process in this matter. Issues of process having been addressed, the authority to evaluate need for proposed impact rests solely with the Department. The Department finds that the Applicant has shown sufficient need for the proposed structures and put forward a design which meets that need with the least possible impact and complies with all applicable rules within the Wetlands Program Code of Administrative Rules. Therefore, the Department approves the project as proposed in the amended plans submitted September 26, 2013.

Her Excellency, Governor Margaret Wood Hassan
and The Honorable Council
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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.


for Thomas S. Burack
Commissioner

TSB/CGA/emk

WETLANDS COPY

ORIG PHOTOS ATTACHED

COMPLETE

JUL 14 2011



DEPARTMENT OF ENVIRONMENTAL SERVICES

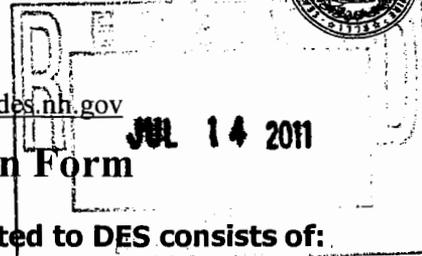
WETLANDS BUREAU

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Concord, NH 03302-0095

Phone: (603) 271-2147 Fax: (603) 271-6588

Website: www.des.nh.gov/wetlands Email: wetmail@des.nh.gov



Standard Dredge and Fill Application Form

The Standard Dredge and Fill application package to be submitted to DES consists of:

1. Application form (this document).
2. Checklist(s) with required information attached. ("Checklist for Submission of your Standard Dredge and Fill Application," and if appropriate, "Compensatory Mitigation Information and Checklist").

Type or print clearly -- missing information may result in your application review being delayed if it is considered administratively incomplete. If you are completing this as a Word version on your computer, use your **tab** key to move through the document to enter data in the appropriate areas.

If you have questions about any terms used, check the Definitions section of the Instructions.

1.	Name of Landowner* (last, first, middle initial)	Contact	Owner phone number	Owner email
	Hopgood Bixby Shore Family Trust	%: Richard Hopgood	[REDACTED]	
* If there are multiple landowners, please attach a separate page with the names of all landowners, and documentation as to the one person who represents the interests of the entire group.				
	Landowner (permanent) mailing address or PO Box	Town/City (owner mailing address)	State	Zip code
	[REDACTED]	Andover	MA	01810
2.	Name of Applicant, if not the landowner	Applicant phone number	Applicant fax number	Applicant email
		()	()	
	Applicant street address	Applicant town/city	State	Zip code
3.	Company and Name of Agent	Agent phone number	Agent fax number	Agent email
	Watermark Marine Construction	(603) 293-4000		pwg@docksource.com
	Agent Street mailing address or PO Box	Town/City (agent mailing address)	State	Zip code
	29 Gilford East Drive	Gilford	NH	03249
4.	Location(s) of the proposed work (fill in below)			
	Street address(es) or nearest intersection(s)	48 Bixby Shore		
	Town/City	Tax map	Block	Lot number(s)
	Tuftonboro	39		4
5.	For projects classified as minor or major impact, are there any vernal pools located on the subject property? If "Yes," identify and label the location(s) of vernal pool(s) on the project plans.			Circle one: NO

6.	<p>Based on information obtained from the Natural Heritage Bureau (NHB), are there any state or federal threatened or endangered species or exemplary natural communities on the subject property?</p> <p>Provide the NHB file number: <input type="text" value="NHB11-0176"/> and attach the documentation (letter/memo & map)</p> <p>Natural Heritage information can be obtained at www.nhnaturalheritage.org. Click on "Services" for links to: 1) the DataCheck web tool, or 2) a hard copy form to obtain the required letter and map from NHB. If you do not have Internet access, you may contact NHB directly at (603) 271-2215 x 323 for information about obtaining the required documentation.</p>	<p>Circle one: NO</p>	
7.	<p>If there are any state or federal threatened or endangered species or exemplary natural communities located on the subject property, please provide a letter from NHB stating that the applicant has consulted with NHB. The letter should indicate either there is no impact, or include NHB guidelines for preventing or mitigating impacts.</p>		
8.	<p>Jurisdictional areas(s) where work is proposed; check box(es) below. Check the definitions in the instructions for additional information. (If your resource type is not listed, contact DES for guidance):</p>		
Nontidal wetland: swamp, wet meadow, etc.	Bank of surface water body	Intermittent (seasonal) stream	Name of water body from USGS topographic map: Lake Winnepesaukee
Vernal pool	Lake or pond	XX Perennial stream or river	Tributary to:
Upland tidal buffer zone	Sand dune	Tidal wetland	Prime Wetland Buffer (within 100 feet of prime wetland)
Freshwater marsh	Bog/fen (peatland)	Atlantic Ocean	Municipally designated prime wetland
9.	<p>Provide a brief description of all proposed work including: 1) the size of the impact area (square feet) in the resource, 2) the size (in acres) of the entire parcel(s), and 3) the compensatory mitigation proposed, if applicable, per Env-Wt 302.03(c). Attach a separate page if you are not completing this using a computer.</p> <p>Remove two existing seasonal docks and construct "U" shaped crib dock and rebuild existing walkway along shore... 504 +/- sq ft new impact over public subm. lands.</p>		
10.	<p>Does the project require compensatory mitigation to offset unavoidable impacts to wetlands? If Yes, attach a copy of the completed Mitigation Checklist.</p>		NO
11.	<p>Have you requested a waiver of any wetland rules per Env-Wt 204? If Yes, attach your waiver request to this application.</p>		YES
12.	<p>Is there any DES emergency authorization associated with this property? Are you aware of any DES enforcement issues related to this property? If Yes, provide the file number(s): _____</p>		NO
13.	<p>Explain why it is necessary to impact a wetland or other jurisdictional area to construct your project.</p> <p>To provide safe dockage at this site a permanent dock is necessary and due to the NW exposure a wave attenuator has been proposed to make this dockage safer... as this dock is used to access island properties, safe dockage is especially important... see attached...</p>		

14.	<p>Explain why your project design proposes less environmental impact on areas in DES Wetlands jurisdiction than other alternatives. What other alternatives were considered? (Attach a separate page if you are not completing this expandable box on a computer)</p> <p>This dockage is less impacting than a rock breakwater and due to the exposure of this site and the necessity of access to island properties, this project represents a minimal impact for safe dockage...</p>
------------	---

Jurisdictional area	Impact Type (indicate whether temporary or permanent)			
	Dredge	Fill	Structure	Total
Wetlands				sq. ft.
Impacts to very poorly drained soils (only required for pond construction)				sq. ft.
Prime wetland				sq. ft.
Vernal pool				sq. ft.
Prime Wetland Buffer (within 100 feet of designated prime wetland)				sq. ft.
Stream or River				sq. ft.
Bank of stream or river				sq. ft.
Bed of perennial stream				linear feet
				sq. ft.
Thread of Intermittent Stream				linear feet
Bank of Lake (for beach construction & replenishment, bank stabilization)				
Shoreline (see following page for how to calculate this average length)				linear feet
Dredge/fill within bank				sq. ft.
Dredge/fill within bank				cubic yards
Lake or Pond (below full lake elevation) Impacts for docks and structures listed in item 15 are entered below.				
Shoreline subject to impacts				linear feet
				sq. feet
Dredge or fill of lakebed				cubic yards
				sq. ft.
Sand dune				sq. ft.
Tidal wetland				sq. ft.
Upland tidal buffer zone				sq. ft.
Undeveloped?/ Developed? (choose one or both, as appropriate)				

16. Calculate and provide length of shoreline frontage.

Shoreline frontage is the average of two distances, 1) the actual natural navigable shoreline footage, and 2) a straight line drawn between property lines, both of which are measured at the normal high water line.

(a) Pin to pin distance (linear feet)	(b) Actual natural navigable shoreline (from pin to pin)	$\frac{(a) + (b)}{2} =$	Shoreline frontage (linear feet)
150	151.5 +/-		150 +

17. Enter the information below if you are proposing any docking structures. Your plans must show proposed and existing docking structures.

Docking structures (proposed)	Square Feet
Surface area of all permanent structures:	504 +/-
Surface area of all seasonal structures:	

18. Other DES Permitting Requirements

NA Have you addressed requirements of Comprehensive Shoreland Protection Act (CSPA), RSA 483-B?

If your property is in the "protected shoreland" -- the area that is within 250 feet of a fourth order stream, a designated river, a lake or pond 10 acres or greater in size (on the DES *Official List of Public Waters*), or tidal water, you will need to comply with the requirements of the Comprehensive Shoreland Protection Act (CSPA).

What is considered "protected shoreland"? To determine if your property is located in "protected shoreland," go to www.des.nh.gov/cspa or the following websites:

- A "fourth order" or larger stream or river (www.des.nh.gov/cspa).
- Any river or river segment designated as protected under the N.H. Designated Rivers Program, RSA 483 (www.des.nh.gov/rivers/).
- Public waters (www.des.nh.gov/Dam/)
- Tidal waters.

As of July 1, 2008, projects that involve construction, excavation, or filling within the protected shoreland, require a DES Shoreland Permit, unless the work is specifically permitted under a Wetlands Permit, OR exempted under Rule Env-Wq 1406.03 or Env-Wq 1406.04 (see des.nh.gov/rules/desadmin_list.htm#env-wq1400), and a DES Alteration of Terrain permit 50,000 square feet if any part of disturbance is within the protected shoreland. For more information: www.des.nh.gov/AOT/ and RSA 485-A:17.

No Does this project require a DES Alteration of Terrain (AoT) permit? If yes, does this application and the other application reflect the same project area in its entirety?

Date of submittal to DES: _____

DES AoT File number: _____

No Does this project require a DES Subdivision or Subsurface Disposal System permit(s)? If yes, does this application and the other application reflect the same project area in its entirety?

Date of Subsurface/Subdivision application submittal to DES: _____

DES Subsurface/Subdivision File number: _____

19. In accordance with RSA 482-A:3, XIV (b), I, Paul W. Goodwin, hereby authorize DES to communicate all matters relative to this application electronically with the individual identified below at the email address identified below. I agree to send an electronic return/read receipt of all emails sent by the department and understand that the department will do the same. I also agree that DES will be notified immediately of any change in the email address identified below. Please note that DES limits the size of documents that can be received or stored electronically. Any submittals that have a file size over 5 MB must be provided in hard copy.

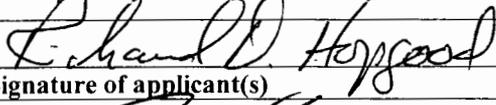
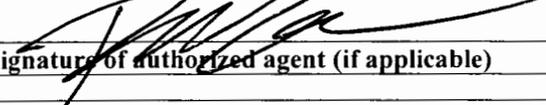
(Check one box only and supply email address)

Landowner email: _____ Applicant email: _____
 Agent email: pwg@docksource.com

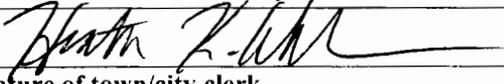
20. **FILING FEE:** A check or money order payable to the NH DES Wetlands Bureau must accompany this application. The minimum fee is \$200. Minor and major impact projects are charged at the rate of: \$0.20 per square foot of requested impact (if less than 1,000 square feet of impact is proposed, the minimum fee of \$200 applies). All applications for shoreline structures shall include a base fee of \$200. In addition, minor and major impact shoreline projects shall include fees charged at the rate of: \$0.20 per square foot for requested dredge or fill impacts; \$1 per square foot for requested seasonal docking structure; and \$2 per square foot for requested permanent docking structure. The application will be considered administratively incomplete until the required fee is paid in full. **Attach the appropriate fee calculation worksheet(s).**

21. **APPLICANT SIGNATURE.** By signing this application, I am certifying that:

- 1) All abutters have been identified in accordance with the definition given in the instructions and I or my agent have/has sent notices to those abutters by Certified Mail.
- 2) I have read and provided the required information outlined in Env-Wt 302.04 and listed on the "Checklist for Submission of Your Standard Dredge and Fill Application," dated June 2008.
- 3) I have read and understand Env-Wt 302.03 and have chosen the least impacting alternative.
- 4) I have reviewed the information being submitted and that to my knowledge the information is true and accurate.
- 5) I have submitted a copy of the application materials to the NH State Historic Preservation Officer.
- 6) Authorize the municipal conservation commission to inspect the site of the proposed project.
- 7) I understand that the willful submission of falsified or misrepresented information to the New Hampshire Department of Environmental Services is a criminal act, which may result in legal action.

	Richard D. Hopgood, Tstee	6-30-11
Signature of applicant(s)	Print applicant's name(s)	Date
	PW Goodwin, Watermark Marine	6/22/11
Signature of authorized agent (if applicable)	Print agent name	Date

22. **TOWN CLERK SIGNATURE:** I hereby certify that the applicant has filed five sets of all materials with the town/city of TUFTONBORO as required by Chapter 482-A:3, and I have received and retained certified postal receipts (or copies) for all abutters identified by the applicant. Upon signing the application below, I will forward immediately by certified mail to the DES the original application materials, including the filing fee, and distribute the three copies to each of the following: the local governing body, the municipal planning board, if any, and the municipal conservation commission, if any. Town clerk retains one copy.

	7-13-11
Signature of town/city clerk	Date

For DES Office Use Only:			
Fee received (amount):	DES File # <u>11-1677</u>	Name on check: <u>owner</u>	
<u>7/14</u>	<u>2936</u>	<u>1,208.00</u>	<u>BC</u>
date of check	date check received	check#	amount initials
Additional check: Date of check: _____		Date check received: _____	Check number: _____ Check amount: _____

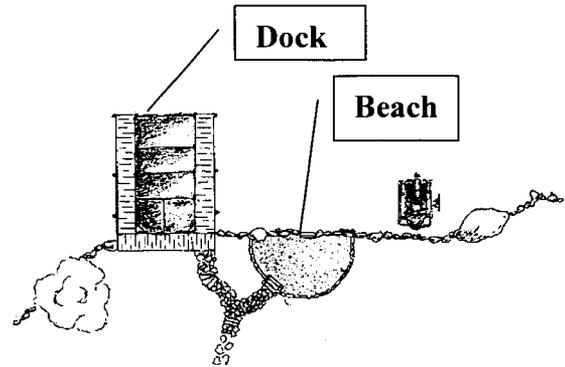
The U.S. Army Corps of Engineers has reissued its New Hampshire Programmatic General Permit (PGP) effective June 28, 2007. The Corps is requiring the submission of a new Corps Secondary Impacts Checklist to be submitted with the DES wetland application. The Corps will review this information to assess direct, indirect (secondary impacts) and cumulative impacts. The Corps **Secondary Impacts Checklist**, Appendix B to the New Hampshire PGP, is attached to this DES wetland application. The PGP does not impose any obligation on DES to assess secondary impacts that does not already exist in state law.

Calculating the Appropriate Application Fee to be Submitted with a Standard Dredge and Fill Application

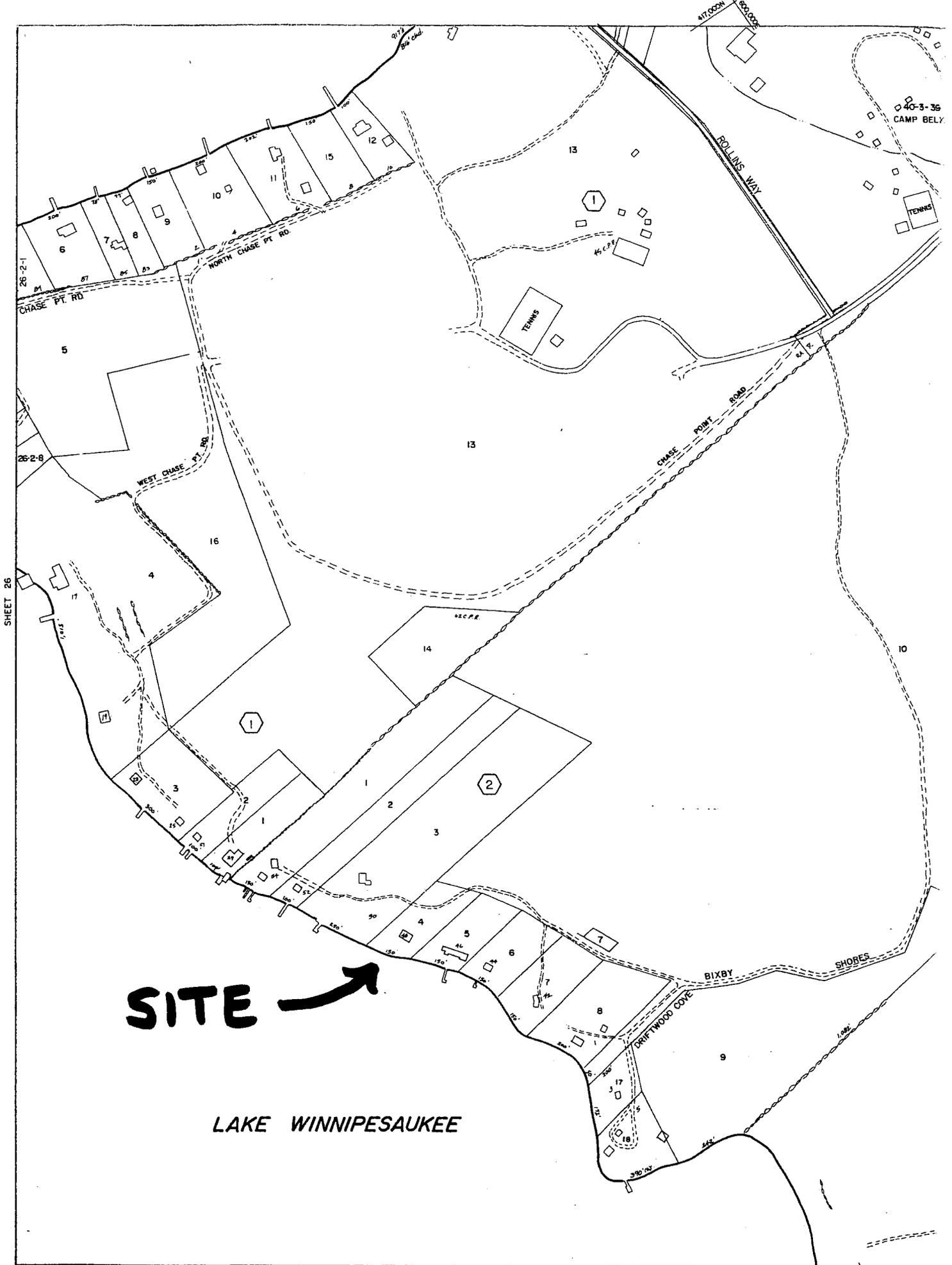
Worksheet B

Use this worksheet for the following shoreline structure projects:

- Construction or modifications of seasonal or permanent docking facilities.
- Dredge or fill within lake bed
- Excavation, fill or construction within the banks of surface water body.



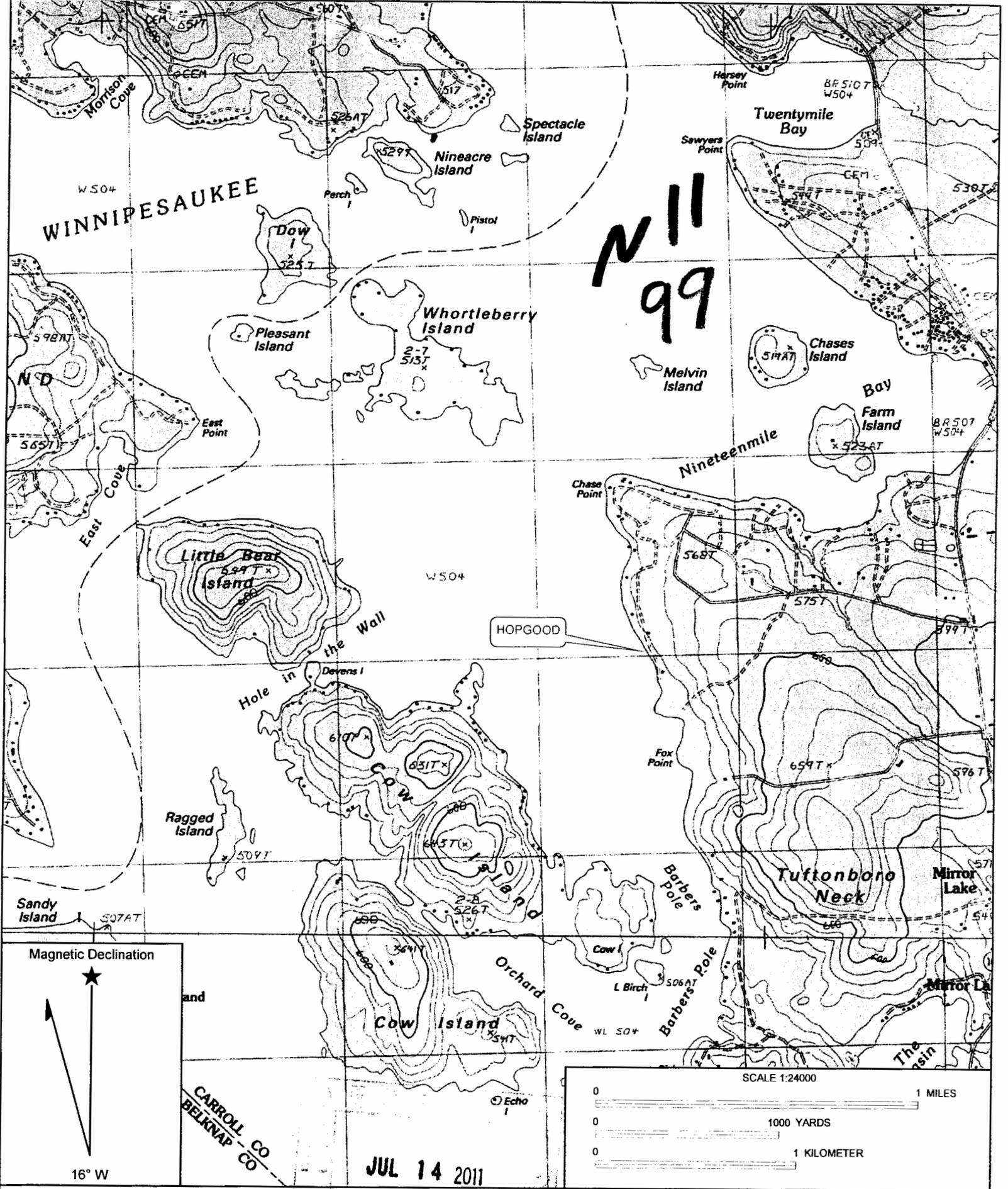
For Minor and Major Impact Projects:		Fee calculation rate and square feet of impact	Fee (subtotals and total)
1	Base application fee		\$200.00
2a	Total square feet of new impacts to wetland, bank, and other jurisdictional areas		
2b	Multiply line 2a by \$0.20 fee per square foot of new impacts to determine the ADDITIONAL fee for wetlands, bank or other jurisdictional area		\$
3a	Total square feet of dredge and fill of surface waters		
3b	Multiply line 3a by \$0.20 fee per square foot of impact to determine the ADDITIONAL fee for surface water dredge and fill.		\$
4a	Total square feet of proposed seasonal docking structure		
4b	Multiply line 4a by \$1 fee per square foot of impact to determine the ADDITIONAL fee for seasonal structure(s):		\$
5a	Total square feet of proposed permanent docking structure	504	
5b	Multiply line 5a by \$2 fee per square foot of impact to determine the ADDITIONAL fee for permanent structure(s):		\$1,008.00
6	Required Fee: Add lines 1, 2b, 3b, 4b, and 5b		\$1,208.00



SITE →

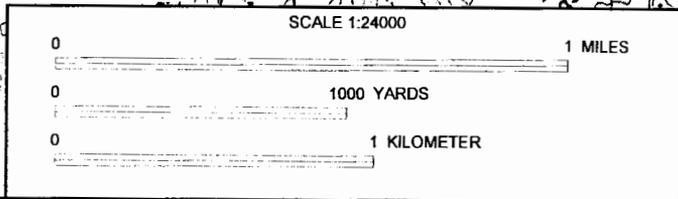
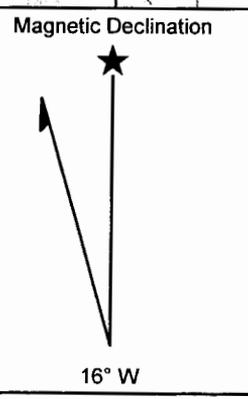
LAKE WINNIPESAUKEE

MAP # 39



N 11
99

HOPGOOD



JUL 14 2011

Name: MELVIN VILLAGE
Date: 1/21/2011
Scale: 1 inch equals 2000 feet

Location: 043° 38' 26.02" N 071° 18' 29.72" W NAD 27
Caption: HOPGOOD BIXBY SHORE FAMILY TRUST
Tuftonboro, NH



NEW HAMPSHIRE NATURAL HERITAGE BUREAU

To: Paul Goodwin
Watermark Marine Construction
29 Gilford East Drive
Gilford, NH 03249

Date: 1/21/2011

From: NH Natural Heritage Bureau

Re: Review by NH Natural Heritage Bureau of request dated 1/21/2011

NHB File ID: NHB11-0176

Applicant: Hopgood Bixby Shore Family Trust

Tax Map(s)/Lot(s): 039-004
Tuftonboro

Project Categories:
Shoreland Construction/Alteration: Dock (permanent)

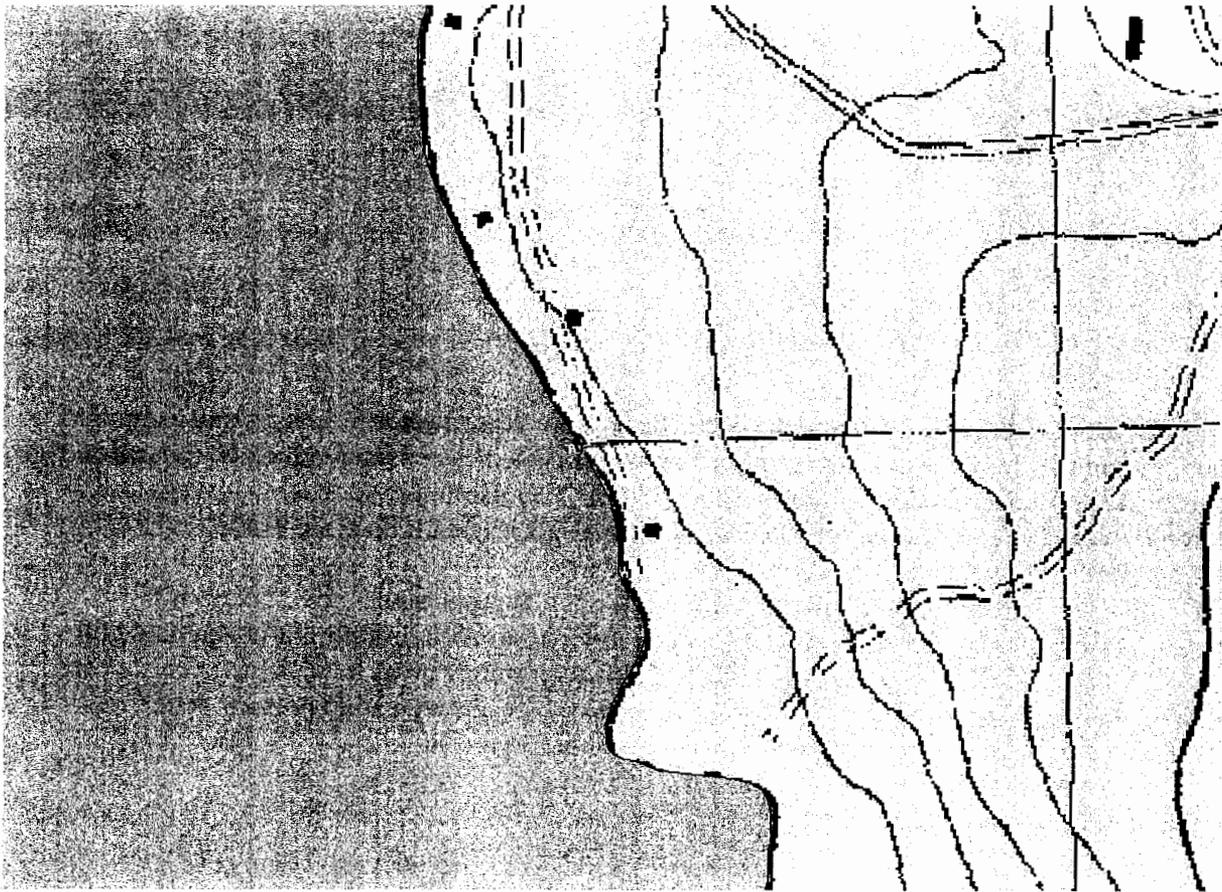
The NH Natural Heritage database has been checked for records of rare species and exemplary natural communities near the area mapped below. The species considered include those listed as Threatened or Endangered by either the state of New Hampshire or the federal government. We currently have no recorded occurrences for sensitive species near this project area.

A negative result (no record in our database) does not mean that a sensitive species is not present. Our data can only tell you of known occurrences, based on information gathered by qualified biologists and reported to our office. However, many areas have never been surveyed, or have only been surveyed for certain species. An on-site survey would provide better information on what species and communities are indeed present

This review is valid through 1/21/2012.



MAP OF PROJECT BOUNDARIES FOR: NHB ID# NHB11-0176

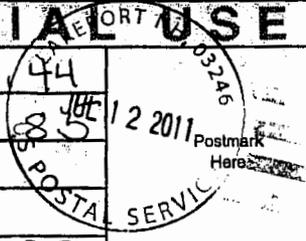


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Total Postage & Fees	\$ 3.29



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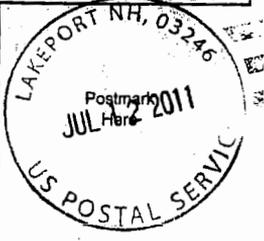
Bell Family Trust
 [REDACTED]
 Peterborough, NH 03458

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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.29



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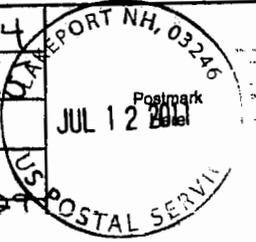
Gothardt Realty Trust
 [REDACTED]
 Needham, Ma. 02191

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For delivery information visit our website at www.usps.com

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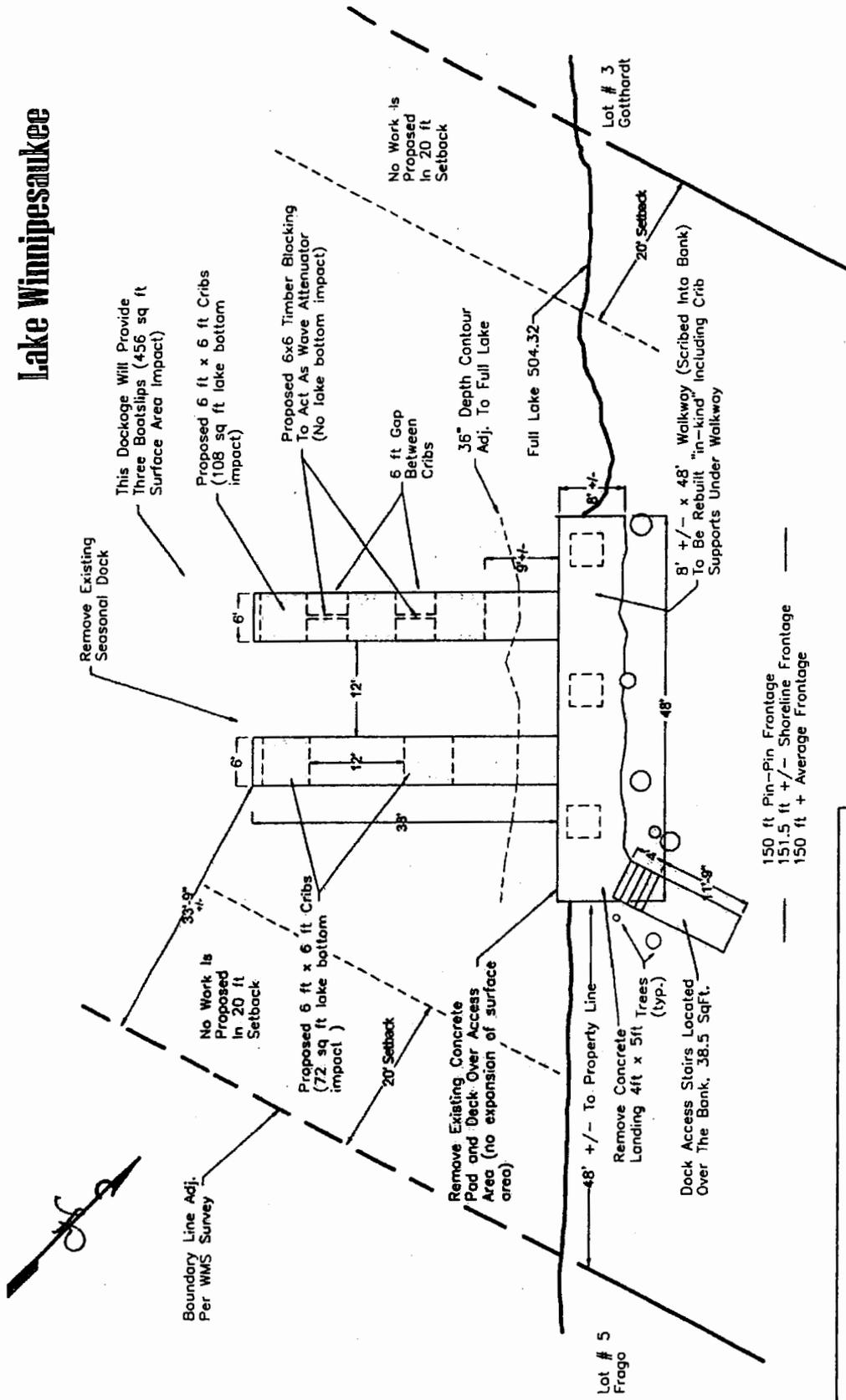
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Total Postage & Fees	\$ 3.29



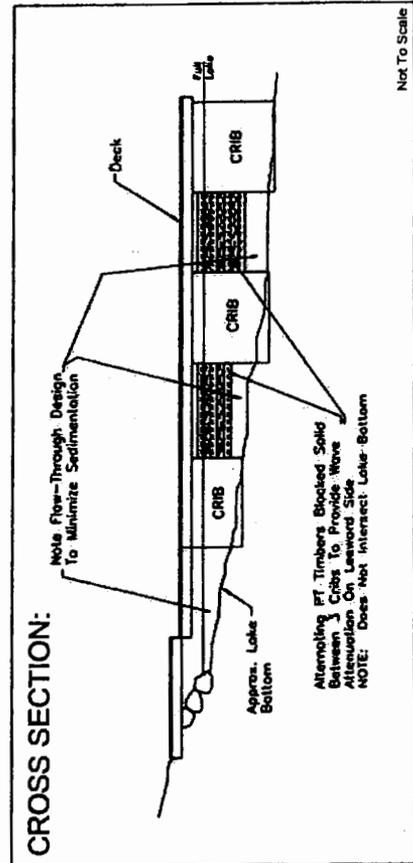
7009 2250 0000 0084 2751

William & Elizabeth Frago
 [REDACTED]
 Exeter, NH 03833

Lake Winnepesaukee



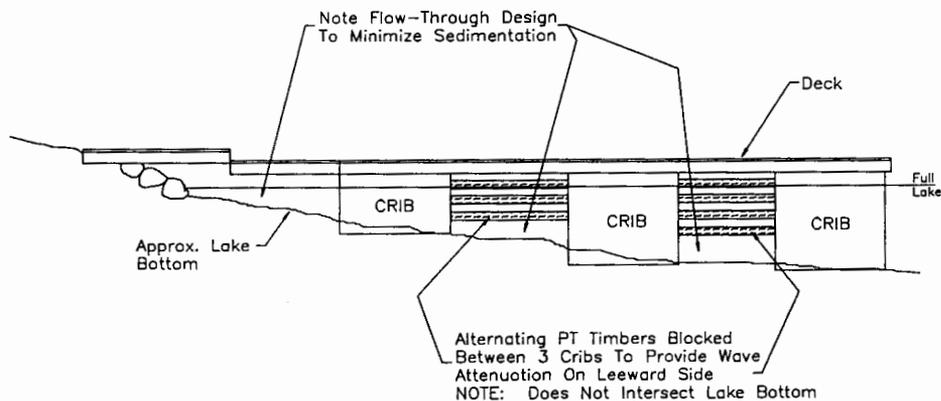
HOPGOOD PROPERTY
Tuftonboro, NH
REV 9/18/13 1" = 20'
DES File #2011-01677



Watermark Marine Construction
Laconia, Meredith & Sunapee, NH
(603) 293-4000/Fax (603) 524-8100
www.docksource.com



Wave Attenuator Cross Section:



HOPGOOD PROPERTY
Tuftonboro, NH
4/23/12 1" = 10'

DES File #2011-01677



Watermark Marine Construction
Gilford, New Hampshire
(603) 293-4000/Fax (603) 524-8100
www.docksource.com/www.shorefrontproducts.com