JAN25'23 AM10:24 RCVD

The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

99

January 25, 2023

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

1.Grant to Edward H. Benway, Trustee of the Edward H. Benway Revocable Trust (successor in interest to Nancy Hall), created under an Agreement dated December 12, 2011, pursuant to RSA 482-A:17, the right to place fill in the bed of public waters in Newcastle, New Hampshire, as previously authorized by the Governor and Executive Council on March 13, 2015, as Agenda Item #39.

2.Execute the final version of the draft Deed and Grant of Right submitted herewith, in the manner required by RSA 482-A:17 (requiring the signatures of the Governor and all individual Executive Councilors, attested by the Secretary of State), and authorize the Department of Environmental Services to deliver such fully executed deed for recording in the Rockingham County Registry of Deeds to Mr. Benway as the successor-in-interest to the original applicant, Nancy Hall.

EXPLANATION

The Department's Wetlands Bureau approved the original underlying project application on February 6, 2015 (DES Wetlands Bureau File #2012-01896). The Department then submitted its request for authorization to the Governor and Executive Council to approve original Petitioner Nancy Hall's request for a Grant of Right to place fill in public waters in the Piscataqua River Back Channel, forming 2,368 square feet of land contiguous to the Petitioner's frontage along Little Harbor, on the Piscataqua River, in Newcastle. The foregoing request was granted by the Governor and Executive Council on March 13, 2015, as Agenda Item #39, but it does not appear that any deed or other instrument was ever executed in accordance with the explicit requirements of RSA 482-A:17 or delivered to the original Petitioner for recording in the registry of deeds. The property affected by the original Petition has since been sold, and the current owner has now reasserted the original Petitioner's request for the Grant of Right pursuant to RSA 482-A:17 with the objective of obtaining the fully executed instrument conveying such right for recording, as explicitly contemplated by the statute.

Based on the foregoing, I respectfully recommend reauthorization of the previously authorized Grant of Right, and I also respectfully request proper execution of the Deed and Grant of Right, a final draft of which is submitted herewith, by the Governor and each individual Executive Councilor, attested by the Secretary of State.

Respectfully submitted,

Robert R. Scott
Commissioner

www.des.nh.gov
29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
NHDES Main Line: (603) 271-3503 • Subsurface Fax: (603) 271-6683 • Wetlands Fax: (603) 271-6588
TDD Access: Relay NH 1 (800) 735-2964

Liz Knowland

The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

NHDES

Thomas S. Burack, Commissioner

MAR 18 2015
NHDES
LAND RESOURCES MANAGEMENT

February 13, 2015

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

APPROVED G & C
DATE 3/13/15
ITEM # 39

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

TSB/CGA/emk

NEW HAMPSHIRE DEPARTMENT OF STATE

I, David M. Scanlan, Deputy Secretary Of State, of the State of New Hampshire, do hereby certify that the Governor and Executive Council, at their meeting on March 13, 2015 approved **ITEM** #39 Nancy Hall's request to perform work on the Piscataqua River Back Channel in New Castle.

In Testimony Whereof , I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this thirteenth day of March, in the year of Our Lord, two thousand and fifteen.

Deputy Secretary of State

Return to:
Pierce Atwood LLP
1 New Hampshire Ave. Ste 350
Portsmouth, NH 03801

DRAFT

DEED AND GRANT OF RIGHT

TO PLACE FILL IN PUBLIC WATERS (RSA 482-A:17)

KNOW ALL PERSONS BY THESE PRESENTS:

The STATE OF NEW HAMPSHIRE, acting by and through its Governor and Executive Council pursuant to action taken on the date hereof (Agenda Item #_____), having an address of 107 North Main Street, Concord, New Hampshire 03301, does hereby acknowledge and affirm prior action taken by the Governor and Executive Council on March 13, 2015 (Agenda Item #39), approving the request of Petitioner Nancy Hall for a Grant of Right to retain fill placed in public waters contiguous to said Petitioner's shoreline frontage along Little Harbor, on the Piscataqua River, in the Town of New Castle, Rockingham County, New Hampshire, upon the recommendation of the New Hampshire Department of Environmental Services, and, for and in just consideration of the sum of Ten Dollars ($10.00) paid to the State of New Hampshire, receipt of which is hereby acknowledged, and pursuant to NH RSA 482-A:17 [Grant of Right] and the foregoing approval of the Governor and Executive Council on March 13, 2015, does hereby grant to Edward H. Benway, Trustee of the Edward H. Benway Revocable Trust (successor in interest to Nancy Hall), created under an Agreement dated December 12, 2011, with a mailing address of P.O. Box 823, 18 Ritson Street, New Castle, New Hampshire 03854, the right to retain fill placed in public waters forming 2,368 sq. ft. of land contiguous to the Petitioner's shoreline frontage along Little Harbor, on the Piscataqua River, in the Town of New Castle, Rockingham County, New Hampshire, the land created thereby being more particularly described as follows:

Beginning at the northwest corner of the premises at the southeast corner of land now or formerly of McCarron; thence Southerly 93 feet more or less by a retaining wall along the shoreline of Mill Pond (part of the Piscataqua River); thence turning and running N 88°44'09" E a distance of 41.11 feet to an iron rod; thence turning and running N 13°14'22" W 16.64 feet along land of Benway; thence turning and running N 35°23'39"W 80.27 feet by said Benway land to the point of beginning. This area is shown as "Deeded Area 2,368 S.F." on a plan titled "Tax Map 11 – Lot 12 Boundary Line of Agreement Town of New Castle & Edward H. Benway Revocable Trust Grant of Right State of New Hampshire to Edward H. Benway Revocable Trust," dated August 2013, last revised July 18, 2014, prepared by Ambit Engineering, Inc., and recorded in the Rockingham County Registry of Deeds as D-39286 (the "Plan").

This Deed and Grant of Right is made upon the following conditions recommended by the New Hampshire Department of Environmental Services in its Requested Action letter to the Governor and Executive Council dated February 13, 2015: that by accepting and recording this Deed and Grant of Right in said Registry, Edward H. Benway, Trustee of the Edward H. Benway Revocable Trust, for himself and for each of his successors and assigns, covenants and agrees to maintain the premises described herein and shown on the Plan in a manner that meets the standards and requirements of NH RSA 483-B, and to obtain appropriate permits under NH RSA 482-A for any work in the bank where said premises meets Little Harbor, on the Piscataqua River.

This Deed and Grant of Right in and to the premises described herein is conveyed subject to any easements, liens, restrictions, and encumbrances of record.

Pursuant to Rev. 802.03(a), only the grantee shall be liable for payment of the real estate transfer tax imposed by NH RSA 78-B:1.

This Deed and Grant of Right is exempt from the LCHIP surcharge pursuant to NH RSA 478:17-g, II(a).

DRAFT

[signatures appear on the following page]

Executed this ___ day of _____ 2022.

STATE OF NEW HAMPSHIRE
By and through its
Governor and Executive Council

By: _____
Christopher T. Sununu, Governor

By: _____
Joseph D. Kenney, Councilor

By: _____
Cinde Warmington, Councilor

Attest: _____
David M. Scanlan
Secretary of State

By: _____
Janet Stevens, Councilor

By: _____
Theodore L. Gatsas, Councilor

By: _____
David K. Wheeler, Councilor

DRAFT

State of New Hampshire
County of _____

This instrument was acknowledged before me this _____ day of _____ 2022 by Christopher T. Sununu, as the duly authorized Governor of the State of New Hampshire, and by Joseph D. Kenney, Cinde Warmington, Janet Stevens, Theodore L. Gatsas, and David K. Wheeler, as the duly authorized Executive Councilors of the State of New Hampshire.

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