



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



90

November 6, 2023

His Excellency, Governor Christopher T. Sununu
and The Honorable Council
State House
Concord, NH 03301

REQUESTED ACTION

Approve Martingale LLC's request to perform the following work on Piscataqua River in Portsmouth pursuant to NH Department of Environmental Services (NHDES) Wetlands Bureau permit #2021-02150, and in accordance with RSA 482-A:3. The Portsmouth Conservation Commission's vote to recommend approval of the project as proposed failed for reasons that were not related to environmental issues. The outcome of this local vote is addressed in the Findings and summarized in the enclosed documents from the Commission.

Expand an existing 12 foot x 100 foot wharf by constructing an additional 712 square foot wharf section on the westerly end of the frontage and an 883 square foot wharf section on the easterly end of frontage with no modifications to be made to the existing 10 foot x 75 foot float, providing three slips on the frontage accessed by a 3 foot x 25 foot ramp and a 14 foot 8 inch x 4 foot platform all adjacent to property having approximately 185 feet of frontage along the tidal reach of the Piscataqua River in Portsmouth. Compensatory mitigation to be provided for permanent impacts within tidal surface waters is a one-time payment into the Aquatic Resource Mitigation Fund ("ARM") of \$44,894.81 dollars.

NHDES imposed the following conditions as part of this approval:

1. In accordance with Env-Wt 307.16, all work shall be done in accordance with the revised plans dated December 20, 2021 by Ambit Engineering, Inc., as received by the NH Department of Environmental Services (NHDES) on March 30, 2022.
2. The existing wharf and both areas of proposed wharf shall be solely supported by piles, freestanding, and detached from the mixed use structure located on the adjacent property identified as Lot 54 on Portsmouth Tax Map 106 (the Property) as required to maintain compliance with RSA 482-A:26.
3. In accordance with Env-Wt 307.06 and Env-Wt 307.10(i), all in-water pile driving shall be installed during the dredge window which is November 15 to March 15 to avoid impacts that could adversely affect fish habitat, wildlife habitat, or both.
4. In accordance with Env-Wt 314.02(b) and (c), for projects in the coastal area, the permittee shall record any permit issued for overwater structures, shoreline stabilization, and any work in the tidal buffer zone, tidal wetlands, or sand dunes at the registry of deeds in the county in which the property is located. Any limitations or conditions in the permit so recorded shall run with the land beyond the expiration of the permit. The permittee shall provide the department with a copy of the permit stamped by the registry with the book and page and date of receipt.

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

5. In accordance with Env-Wt 307.03(a), no activity shall be conducted in such a way as to cause or contribute to any violation of surface water quality standards specified in RSA 485-A:8 or Env-Wq 1700; ambient groundwater quality standards established under RSA 485-C; limitations on activities in a sanitary protective area established under Env-Dw 302.10 or Env-Dw 305.10; or any provision of RSA 485-A, Env-Wq 1000, RSA 483-B, or Env-Wq 1400 that protects water quality.
6. All work shall be conducted and maintained in such a way as to protect water quality as required by Rule Env-Wt 307.03(a) through (h).
7. In accordance with Env-Wt 307.03(c)(4), water quality control measures shall be capable of minimizing erosion; collecting sediment and suspended and floating materials; and filtering fine sediment.
8. In accordance with Env-Wt 307.03(c)(3), water quality control measures shall be installed prior to start of work and in accordance with the manufacturer's recommended specifications or, if none, the applicable requirements of Env-Wq 1506 or Env-Wq 1508.
9. In accordance with Env-Wt 307.03(c)(5), water quality control measures shall be maintained so as to ensure continued effectiveness in minimizing erosion and retaining sediment on-site during and after construction.
10. In accordance with Env-Wt 307.04(a), activities that produce suspended sediment in jurisdictional areas that provide value as bird migratory areas or fish and shellfish spawning or nursery areas, shall be done so as to avoid and minimize discharges of dredged material or placement of fill material during spawning or breeding seasons by using water quality protection techniques as specified in Env-Wt 307 and timing of project as specified in Env-Wt 307.10(g) or (h), as applicable.
11. In accordance with Env-Wt 307.03(b), all work, including management of soil stockpiles, shall be conducted so as to minimize erosion, minimize sediment transfer to surface waters or wetlands, and minimize turbidity in surface waters and wetlands using the techniques described in Env-Wq 1505.02, Env-Wq 1505.04, Env-Wq 1506, and Env-Wq 1508; the applicable BMP manual; or a combination thereof, if the BMP manual provides less protection to jurisdictional areas than the provisions of Env-Wq 1500.
12. In accordance with Env-Wt 307.03(g)(1), the person in charge of construction equipment shall inspect such equipment for leaking fuel, oil, and hydraulic fluid each day prior to entering surface waters or wetlands or operating in an area where such fluids could reach groundwater, surface waters, or wetlands.
13. In accordance with Env-Wt 307.03(g)(3) and (4), the person in charge of construction equipment shall maintain oil spill kits and diesel fuel spill kits, as applicable to the type(s) and amount(s) of oil and diesel fuel used, on site so as to be readily accessible at all times during construction; and train each equipment operator in the use of the spill kits.
14. In accordance with Env-Wt 307.03(g)(2), the person in charge of construction equipment shall repair any leaks prior to using the equipment in an area where such fluids could reach groundwater, surface waters, or wetlands.
15. In accordance with Env-Wt 307.03(h), equipment shall be staged and refueled outside of jurisdictional areas (unless allowed) and in accordance with Env-Wt 307.15.

MITIGATION

16. The permit is contingent providing a check in the amount of \$44,894.81 to the NHDES Aquatic Resource Mitigation Fund by the applicant as calculated per Env-Wt 803.07 and RSA 482-A:30.
17. In accordance with Env-Wt 807.01(b), the payment shall be received by NHDES within 120 days from the approval decision or NHDES will deny the application.

EXPLANATION

NHDES approved this project on October 27, 2022. NHDES supported its decision with the following findings:

1. Pursuant to Env-Wt 606.17(a)(1), all new overwater structure construction in tidal waters/wetlands shall be classified as major.
2. The existing wharf is a commercial tidal dock as defined in Env-Wt 602.11, of the working waterfront type as defined in Env-Wt 602.62.
3. Pursuant to Env-Wt 606.12 Commercial Tidal Docks: Working Waterfront, the dimensions and configurations of a working waterfront facility shall be based on its use, rather than standard dimensions or configurations.
4. On June 4, 1996, the Wetlands Board, predecessor to the Wetlands Bureau, issued Wetlands Permit #1995-01922 to reconstruct an existing 12 foot x 100 foot wharf.
5. On November 13, 2007, NHDES approved Wetlands Permit #2006-02499 which authorized impacts in the tidal buffer zone for the construction of a mixed use building separate from, but adjacent to, the pre-existing wharf.
6. On January 2, 2013, NHDES approved Wetlands Permit #2012-01050 which authorized construction of a 10 foot x 75 foot float, providing three slips on the frontage of the Property to be accessed by a 3 foot x 25 foot ramp and a 14 foot 8 inch x 4 foot platform to be attached to the previously approved wharf.
7. On July 6, 2021, NHDES received an application to expand the 12 foot x 100 foot existing private wharf by extending wharf construction along the shore to the west and east of the existing structure.
8. The majority of the proposed wharf expansion would be located seaward of the mean high tide line and within the public submerged tidal lands.
9. The Applicant proposed to allow a portion of the wharf area, 544 square feet, to be used for restricted public access to the water and to provide access meeting the requirements of the Americans with Disabilities Act (ADA) through the adjacent restaurant and building to offset those areas of wharf expansion proposed for the purpose of providing additional restaurant seating over the public submerged tidal lands.
10. On October 8, 2021, NHDES received a letter from the Portsmouth Conservation Commission declining to recommend approval of the application.
11. The project as approved and conditioned to restrict the timing of impacts should not have adverse impact on protected aquatic species utilizing this tidal portion of the Piscataqua River.
12. The Department finds that because the project is not of significant public interest and will not significantly impair the resources of the Piscataqua River a public hearing under RSA 482-A:8 is not required.

NHDES Wetlands Bureau permit #2021-02150 application documents are enclosed for review by the Governor and the Executive Council in consideration of this request and in accordance with RSA 482-A:3, II(a), as it is a major project located in New Hampshire public waters.

We respectfully request your approval of this item.



Robert R. Scott
Commissioner

NHDES-W-06-012



**STANDARD DREDGE AND FILL
WETLANDS PERMIT APPLICATION**
Water Division/Land Resources Management
Wetlands Bureau
Check the Status of your Application



RSA/Rule: RSA 482-A/Env-Wt 100-900

APPLICANT'S NAME: Martingale LLC

TOWN NAME: Portsmouth

Administrative Use Only	Administrative Use Only	Administrative Use Only	File No.:
			Check No.:
			Amount:
			Initials:

A person may request a waiver of the requirements in Rules Env-Wt 100-900 to accommodate situations where strict adherence to the requirements would not be in the best interest of the public or the environment but is still in compliance with RSA 482-A. A person may also request a waiver of the standards for existing dwellings over water pursuant to RSA 482-A:26, III(b). For more information, please consult the Waiver Request Form.

SECTION 1 - REQUIRED PLANNING FOR ALL PROJECTS (Env-Wt 306.05; RSA 482-A:3, I(d)(2))

Please use the Wetland Permit Planning Tool (WPPT), the Natural Heritage Bureau (NHB) DataCheck Tool, the Aquatic Restoration Mapper, or other sources to assist in identifying key features such as: priority resource areas (PRAs), protected species or habitats, coastal areas, designated rivers, or designated prime wetlands.

Has the required planning been completed?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the property contain a PRA? If yes, provide the following information:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<ul style="list-style-type: none"> Does the project qualify for an Impact Classification Adjustment (e.g. NH Fish and Game Department (NHF&G) and NHB agreement for a classification downgrade) or a Project-Type Exception (e.g. Maintenance or Statutory Permit-by-Notification (SPN) project)? See Env-Wt 407.02 and Env-Wt 407.04. 	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<ul style="list-style-type: none"> Protected species or habitat? <ul style="list-style-type: none"> If yes, species or habitat name(s): <u>Atlantic sturgeon (Acipenser oxirinchus), shortnose sturgeon (Acipenser brevirostrum)</u> NHB Project ID #: <u>21-1524</u> 	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
• Bog?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
• Floodplain wetland contiguous to a tier 3 or higher watercourse?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
• Designated prime wetland or duly-established 100-foot buffer?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
• Sand dune, tidal wetland, tidal water, or undeveloped tidal buffer zone?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Is the property within a Designated River corridor? If yes, provide the following information:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<ul style="list-style-type: none"> Name of Local River Management Advisory Committee (LAC): <u>N/A</u> 	

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<ul style="list-style-type: none"> A copy of the application was sent to the LAC on Month: <input type="checkbox"/> Day: <input type="checkbox"/> Year: N/A 	
For dredging projects, is the subject property contaminated? <ul style="list-style-type: none"> If yes, list contaminant: <input type="checkbox"/> 	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is there potential to impact impaired waters, class A waters, or outstanding resource waters?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
For stream crossing projects, provide watershed size (see WPPT or Stream Stats): N/A	
SECTION 2 - PROJECT DESCRIPTION (Env-Wt 311.04(i)) Provide a brief description of the project and the purpose of the project, outlining the scope of work to be performed and whether impacts are temporary or permanent. DO NOT reply "See attached"; please use the space provided below. The project proposes to construct an overwater deck expansion, a public wharf deck, and a tidal docking float expansion resulting in 2,901 sq. ft. of permanent impact to tidal wetlands. (overall structure length 43.5' as measured from MHW) on 190+/- feet of frontage along the Piscataqua River.	
SECTION 3 - PROJECT LOCATION Separate wetland permit applications must be submitted for each municipality within which wetland impacts occur.	
ADDRESS: 99 Bow Street	
TOWN/CITY: Portsmouth	
TAX MAP/BLOCK/LOT/UNIT: Map 106, Lot 54	
US GEOLOGICAL SURVEY (USGS) TOPO MAP WATERBODY NAME: Piscataqua River <input type="checkbox"/> N/A	
(Optional) LATITUDE/LONGITUDE in decimal degrees (to five decimal places): X: 1,227,494.4913° North	

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Y: 212,344.3018* West		
SECTION 4 - APPLICANT (DESIRED PERMIT HOLDER) INFORMATION (Env-Wt 311.04(a))		
If the applicant is a trust or a company, then complete with the trust or company information.		
NAME: Martingale LLC		
MAILING ADDRESS: [REDACTED]		
TOWN/CITY: [REDACTED]	STATE: [REDACTED]	ZIP CODE: [REDACTED]
EMAIL ADDRESS: [REDACTED]		
FAX: [REDACTED]	PHONE: 603-427-0725	
ELECTRONIC COMMUNICATION: By initialing here: [REDACTED] I hereby authorize NHDES to communicate all matters relative to this application electronically.		
SECTION 5 - AUTHORIZED AGENT INFORMATION (Env-Wt 311.04(c))		
<input type="checkbox"/> N/A		
LAST NAME, FIRST NAME, M.I.: Riker, Steven, D.		
COMPANY NAME: Ambit Engineering, Inc.		
MAILING ADDRESS: 200 Griffin Road, Unit 3		
TOWN/CITY: Portsmouth	STATE: NH	ZIP CODE: 03801
EMAIL ADDRESS: sdr@ambitengineering.com		
FAX: [REDACTED]	PHONE: 603-430-9282	
ELECTRONIC COMMUNICATION: By initialing here: <i>SR</i> I hereby authorize NHDES to communicate all matters relative to this application electronically.		
SECTION 6 - PROPERTY OWNER INFORMATION (IF DIFFERENT THAN APPLICANT) (Env-Wt 311.04(b))		
If the owner is a trust or a company, then complete with the trust or company information.		
<input type="checkbox"/> Same as applicant		
NAME: [REDACTED]		
MAILING ADDRESS: [REDACTED]		
TOWN/CITY: [REDACTED]	STATE: [REDACTED]	ZIP CODE: [REDACTED]
EMAIL ADDRESS: [REDACTED]		
FAX: [REDACTED]	PHONE: [REDACTED]	
ELECTRONIC COMMUNICATION: By initialing here: [REDACTED] I hereby authorize NHDES to communicate all matters relative to this application electronically.		

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SECTION 7 - RESOURCE-SPECIFIC CRITERIA ESTABLISHED IN Env-Wt 400, Env-Wt 500, Env-Wt 600, Env-Wt 700, OR Env-Wt 900 HAVE BEEN MET (Env-Wt 313.01(a)(3))

Describe how the resource-specific criteria have been met for each chapter listed above (please attach information about stream crossings, coastal resources, prime wetlands, or non-tidal wetlands and surface waters):
Please see attached narrative:

SECTION 8 - AVOIDANCE AND MINIMIZATION

Impacts within wetland jurisdiction must be avoided to the maximum extent practicable (Env-Wt 313.03(a)).* Any project with unavoidable jurisdictional impacts must then be minimized as described in the Wetlands Best Management Practice Techniques For Avoidance and Minimization and the Wetlands Permitting: Avoidance, Minimization and Mitigation Fact Sheet. For minor or major projects, a functional assessment of all wetlands on the project site is required (Env-Wt 311.03(b)(10)).*

Please refer to the application checklist to ensure you have attached all documents related to avoidance and minimization, as well as functional assessment (where applicable). Use the Avoidance and Minimization Checklist, the Avoidance and Minimization Narrative, or your own avoidance and minimization narrative.

*See Env-Wt 311.03(b)(6) and Env-Wt 311.03(b)(10) for shoreline structure exemptions.

SECTION 9 - MITIGATION REQUIREMENT (Env-Wt 311.02)

If unavoidable jurisdictional impacts require mitigation, a mitigation pre-application meeting must occur at least 30 days but not more than 90 days prior to submitting this Standard Dredge and Fill Permit Application.

Mitigation Pre-Application Meeting Date: Month: Day: Year:

N/A - Mitigation is not required

SECTION 10 - THE PROJECT MEETS COMPENSATORY MITIGATION REQUIREMENTS (Env-Wt 313.01(a)(1)c)

Confirm that you have submitted a compensatory mitigation proposal that meets the requirements of Env-Wt 800 for all permanent unavoidable impacts that will remain after avoidance and minimization techniques have been exercised to the maximum extent practicable: I confirm submittal.

N/A - Compensatory mitigation is not required

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SECTION 11 - IMPACT AREA (Env-Wt 311.04(g))

For each jurisdictional area that will be/has been impacted, provide square feet (SF) and, if applicable, linear feet (LF) of impact, and note whether the impact is after-the-fact (ATF; i.e., work was started or completed without a permit).

For intermittent and ephemeral streams, the linear footage of impact is measured along the thread of the channel. *Please note, installation of a stream crossing in an ephemeral stream may be undertaken without a permit per Rule Env-Wt 309.02(d), however other dredge or fill impacts should be included below.*

For perennial streams/ivers, the linear footage of impact is calculated by summing the lengths of disturbances to the channel and banks.

Permanent impacts are impacts that will remain after the project is complete (e.g., changes in grade or surface materials).

Temporary impacts are impacts not intended to remain (and will be restored to pre-construction conditions) after the project is completed.

JURISDICTIONAL AREA		PERMANENT			TEMPORARY		
		SF	LF	ATF	SF	LF	ATF
Wetlands	Forested Wetland			<input type="checkbox"/>			<input type="checkbox"/>
	Scrub-shrub Wetland			<input type="checkbox"/>			<input type="checkbox"/>
	Emergent Wetland			<input type="checkbox"/>			<input type="checkbox"/>
	Wet Meadow			<input type="checkbox"/>			<input type="checkbox"/>
	Vernal Pool			<input type="checkbox"/>			<input type="checkbox"/>
	Designated Prime Wetland			<input type="checkbox"/>			<input type="checkbox"/>
	Duly-established 100-foot Prime Wetland Buffer			<input type="checkbox"/>			<input type="checkbox"/>
Surface Water	Intermittent / Ephemeral Stream			<input type="checkbox"/>			<input type="checkbox"/>
	Perennial Stream or River			<input type="checkbox"/>			<input type="checkbox"/>
	Lake / Pond			<input type="checkbox"/>			<input type="checkbox"/>
	Docking - Lake / Pond			<input type="checkbox"/>			<input type="checkbox"/>
	Docking - River			<input type="checkbox"/>			<input type="checkbox"/>
Banks	Bank - Intermittent Stream			<input type="checkbox"/>			<input type="checkbox"/>
	Bank - Perennial Stream / River			<input type="checkbox"/>			<input type="checkbox"/>
	Bank / Shoreline - Lake / Pond			<input type="checkbox"/>			<input type="checkbox"/>
Tidal	Tidal Waters			<input type="checkbox"/>			<input type="checkbox"/>
	Tidal Marsh			<input type="checkbox"/>			<input type="checkbox"/>
	Sand Dune			<input type="checkbox"/>			<input type="checkbox"/>
	Undeveloped Tidal Buffer Zone (TBZ)			<input type="checkbox"/>			<input type="checkbox"/>
	Previously-developed TBZ			<input type="checkbox"/>			<input type="checkbox"/>
	Docking - Tidal Water	2,910		<input type="checkbox"/>			<input type="checkbox"/>
TOTAL		2,910					

SECTION 12 - APPLICATION FEE (RSA 482-A:3, I)

MINIMUM IMPACT FEE: Flat fee of \$400.

NON-ENFORCEMENT RELATED, PUBLICLY-FUNDED AND SUPERVISED RESTORATION PROJECTS, REGARDLESS OF IMPACT CLASSIFICATION: Flat fee of \$400 (refer to RSA 482-A:3, 1(c) for restrictions).

MINOR OR MAJOR IMPACT FEE: Calculate using the table below:

Permanent and temporary (non-docking):	SF	× \$0.40 = \$
Seasonal docking structure:	SF	× \$2.00 = \$
Permanent docking structure:	2910 SF	× \$4.00 = \$ 11,640
Projects proposing shoreline structures (including docks) add \$400 =		\$ 400
Total =		\$ 12,040

The application fee for minor or major impact is the above calculated total or \$400, whichever is greater = \$

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SECTION 13 - PROJECT CLASSIFICATION (Env-Wt 306.05)
Indicate the project classification.

<input type="checkbox"/> Minimum Impact Project	<input type="checkbox"/> Minor Project	<input checked="" type="checkbox"/> Major Project
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SECTION 14 - REQUIRED CERTIFICATIONS (Env-Wt 311.11)

Initial each box below to certify:

Initials: <i>SR</i>	To the best of the signer's knowledge and belief, all required notifications have been provided.
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Initials: <i>SR</i>	The information submitted on or with the application is true, complete, and not misleading to the best of the signer's knowledge and belief.
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Initials: <i>SR</i>	<p>The signer understands that:</p> <ul style="list-style-type: none"> The submission of false, incomplete, or misleading information constitutes grounds for NHDES to: <ol style="list-style-type: none"> Deny the application. Revoke any approval that is granted based on the information. If the signer is a certified wetland scientist, licensed surveyor, or professional engineer licensed to practice in New Hampshire, refer the matter to the joint board of licensure and certification established by RSA 310-A:1. The signer is subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641. The signature shall constitute authorization for the municipal conservation commission and the Department to inspect the site of the proposed project, except for minimum impact forestry SPN projects and minimum impact trail projects, where the signature shall authorize only the Department to inspect the site pursuant to RSA 482-A:6, II.
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Initials: <i>SR</i>	If the applicant is not the owner of the property, each property owner signature shall constitute certification by the signer that he or she is aware of the application being filed and does not object to the filing.
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SECTION 15 - REQUIRED SIGNATURES (Env-Wt 311.04(d); Env-Wt 311.11)

SIGNATURE (OWNER): 	PRINT NAME LEGIBLY:	DATE:
SIGNATURE (APPLICANT, IF DIFFERENT FROM OWNER): 	PRINT NAME LEGIBLY:	DATE:
SIGNATURE (AGENT, IF APPLICABLE): 	PRINT NAME LEGIBLY: Steven D. Riker	DATE: 6/14/2021

SECTION 16 - TOWN / CITY CLERK SIGNATURE (Env-Wt 311.04(f))

As required by RSA 482-A:3, I(a)(1), I hereby certify that the applicant has filed four application forms, four detailed plans, and four USGS location maps with the town/city indicated below.

TOWN/CITY CLERK SIGNATURE: 	PRINT NAME LEGIBLY:
TOWN/CITY:	DATE:

NHDES-W-06-012

DIRECTIONS FOR TOWN/CITY CLERK:

Per RSA 482-A:3, I(a)(1)

1. IMMEDIATELY sign the original application form and four copies in the signature space provided above.
2. Return the signed original application form and attachments to the applicant so that the applicant may submit the application form and attachments to NHDES by mail or hand delivery.
3. IMMEDIATELY distribute a copy of the application with one complete set of attachments to each of the following bodies: the municipal Conservation Commission, the local governing body (Board of Selectmen or Town/City Council), and the Planning Board.
4. Retain one copy of the application form and one complete set of attachments and make them reasonably accessible for public review.

DIRECTIONS FOR APPLICANT:

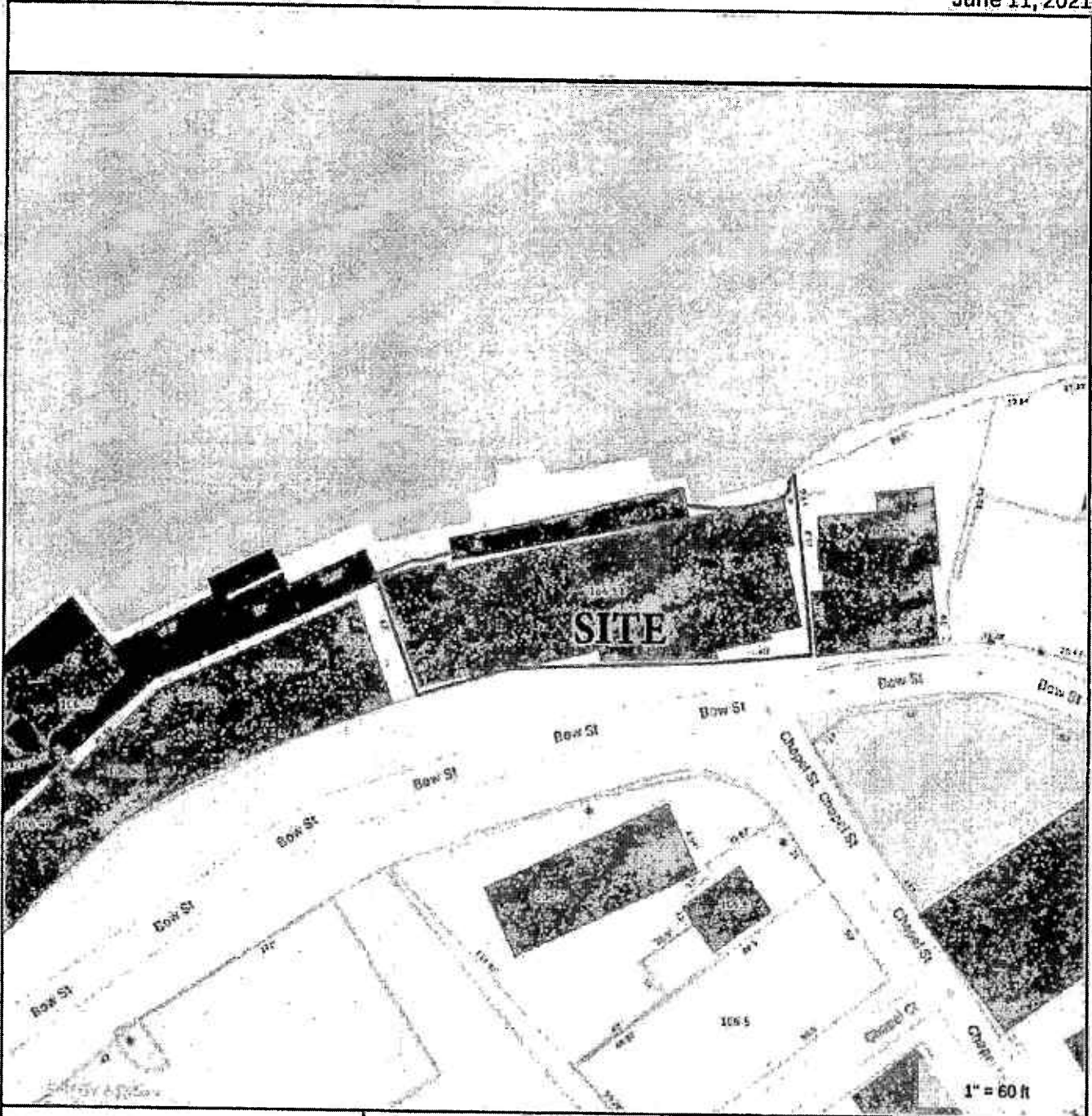
Submit the original permit application form bearing the signature of the Town/City Clerk, additional materials, and the application fee to NHDES by mail or hand delivery at the address at the bottom of this page. Make check or money order payable to "Treasurer – State of NH".

irm@des.nh.gov or (603) 271-2147

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June 11, 2021



Property Information
Property ID 0106-0054-0000
Location 99 BOW ST
Owner MARTINGALE LLC



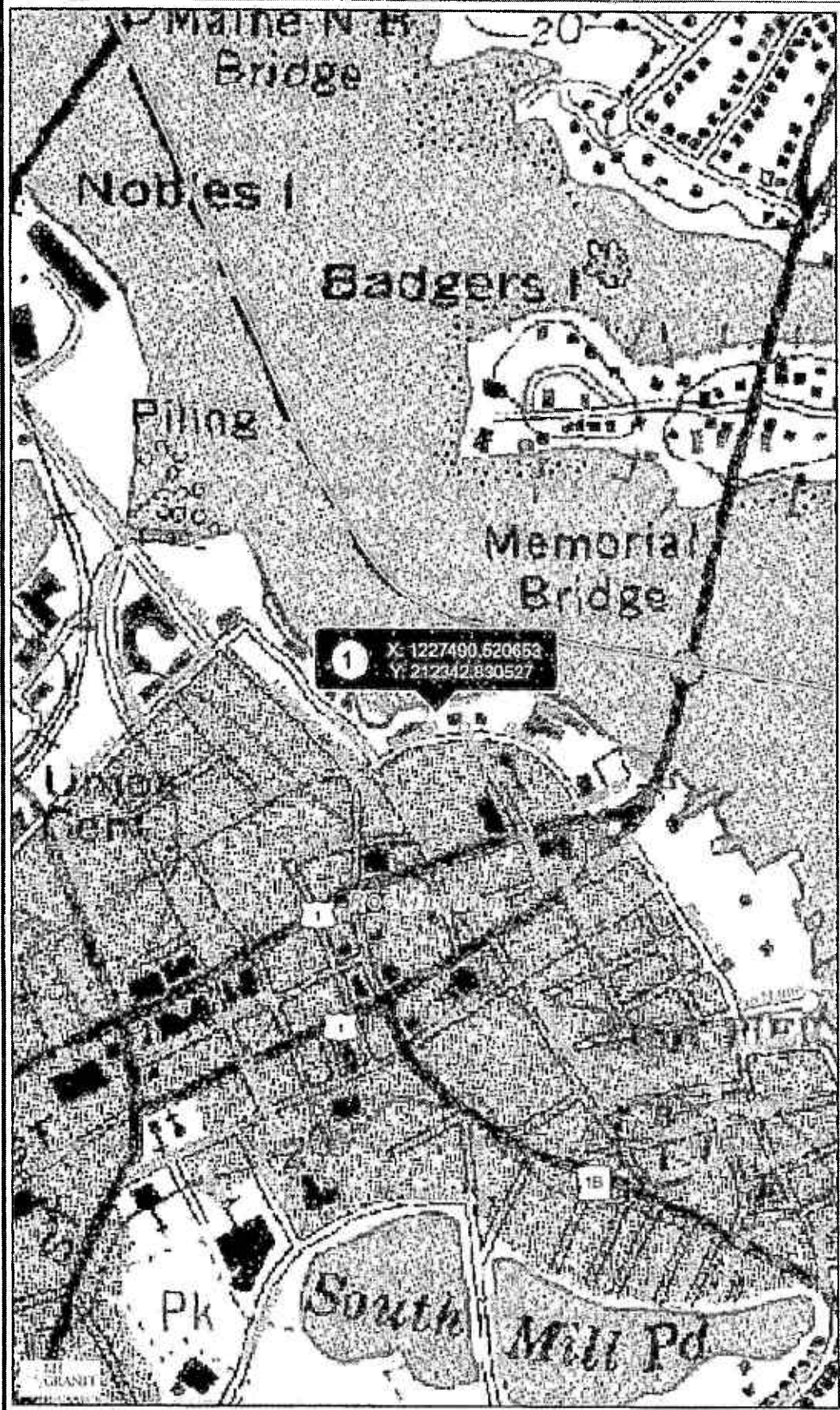
**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 4/1/2019
 Data updated 7/17/2019


**Print map scale is approximate.
 Critical layout or measurement
 activities should not be done using
 this resource.**

Map by NH GRANIT



- Legend**
- State
 - County
 - City/Town

Map Scale
1: 6,494



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Map Generated: 6/15/2021

Notes





The State of New Hampshire
**Department of Environmental
Services**



Robert R. Scott, Commissioner

This application contains confidential information from the NH Natural Heritage Bureau (NHB) Datacheck tool provided by the NH Department of Natural and Cultural Resources, NHB. This information is being withheld from disclosure to the public.

Please direct all questions regarding the confidential information to Pamela G. Monroe, Legal Unit Administrator, NH Department of Environmental Services, at: pamela.g.monroe@des.nh.gov, or (603) 271-3137.

**ACTION SHEET
CONSERVATION COMMISSION**

**1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

3:30 P.M.

**September 15, 2021
Reconvened from
September 08, 2021**

MEMBERS PRESENT: Chair Barbara McMillan; Vice Chair Samantha Collins Members:
Allison Tanner, Thaddeus Jankowski, Andrew Samonas, and
Henry Mellynchuk

MEMBERS ABSENT: Jessica Blasko

ALSO PRESENT: Peter Britz, Environmental Planner/Sustainability Coordinator

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I. APPROVAL OF MINUTES

1. August 11, 2021

*After due deliberation, the Commission voted to **approve** the minutes as amended.*

II. CONDITIONAL USE PERMIT APPLICATIONS (NEW BUSINESS)

4. 910 Sagamore Avenue
Karen Butz Webb, Owner
Assessor Map 223, Lot 26A

*After due deliberation, the Commission voted to recommend **approval** of the Wetland
Conditional Use Permit Application to the Planning Board with the following **stipulations**:*

III. STATE WETLAND BUREAU APPLICATIONS (OLD BUSINESS)

A. 99 Bow Street
Martingale, LLC, Owner
Assessor Map 106, Lot 54

*After due deliberation, the Commission voted to recommend approval of the State Wetlands
Bureau, however, the vote (-) failed to pass and therefore, the recommendation was **denied**.*

IV. OTHER BUSINESS

There was no other business discussed.

d.) Loading. Loading trucks already cause lots of congestion on Bow Street. It will only become worse with increased demand for restaurant supplies. And finally;

e.) Smoking. The staff at the Martingale and Surf restaurants do not have an appropriate area to take smoking breaks. They currently congregate on the side of Bow Street across from our property. This is not only a health and safety issue but it is also unsightly with the cigarette butts littering the street. The proposed expansion will require additional staff and will only make this issue worse.

Sincerely,

David and Patricia Mansfield

**REGULAR MEETING
CONSERVATION COMMISSION**

**1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
CONFERENCE ROOM "A"**

3:30 P.M.

MAY 9, 2012

AGENDA

I. OLD BUSINESS

- A. Approval of minutes – April 11, 2012

II. CONDITIONAL USE PERMIT APPLICATIONS

- I. 545 F.W. Hartford Drive
Kenneth M. Buttermore, owner
Assessor Map 250, Lot 97

III. STATE WETLANDS BUREAU PERMIT APPLICATIONS

- A. Standard Dredge and Fill Application
200 Grafton Road, Pease Golf Course
Pease Development Authority, owner
Assessor Map 320, Lot 0
- B. Standard Dredge and Fill Application
99 Bow Street
Martingale Wharf Limited Partnership, owner
Assessor Map 106, Lot 54
- C. (Work Session) Standard Dredge and Fill Application
NH Department Of Transportation
Lafayette Road Improvements
Assessor Map 244, Lot 3
Lafayette Road Right-of-way

IV. OTHER BUSINESS

- I. Discussion of Conservation Commission vacancies

V. ADJOURNMENT

V. ANTICIPATION OF NON-PUBLIC SESSION

The Commission closed the Public Hearing portion of the meeting and moved to a Non-Public Session.

VI. ADJOURNMENT

*At 5:40p.m., the Commission voted to **adjourn** the meeting.*

Chairman Miller asked if there were anymore questions for the applicant. Hearing none, he asked for a motion.

Vice Chairman Blanchard made a motion to recommend approval of the application to the State Wetlands Bureau. The motion was seconded by Mr. DiPentima. Chairman Miller asked for discussion.

Vice Chairman Blanchard stated that she had expressed her concern about the general nature of the business which was golfing and the way the turf was managed. She said that she appreciated the fact that the engineering was better but that she would like to see an improved system of monitoring the run off. On the merits of what was in front of them, the project would improve the site.

Mr. DiPentima commented that the golf course has existed since 1901. He felt the project seemed to improve what was there in terms of run off and discharge from the site. It might not be perfect but he felt it was worthy of approval.

Ms. Tanner agreed with what had been said but added that she wondered if there was any way to recommend monitoring and that the latest best practices are used. Chairman Miller commented that he would like to see something like that. At this point, there was considerable discussion as to what monitoring would be recommended.

Vice Chairman Blanchard amended her motion to include the following stipulations:

- 1) That turf management practices are consistent with best management practices and evolving scientific improvements to reduce nitrogen loading.
- 2) That any mitigation plans include monitoring the input and output of nitrogen and other nutrients and pesticides to and from the site.

Mr. DiPentima stated that he felt the stipulations were reasonable. He said that the PDA was a State entity and they should be setting the example for the rest of the industry especially in such a sensitive area.

Hearing no other discussion, Chairman Miller called for the vote. The motion to recommend approval of the application to the State Wetlands Bureau with the following stipulations passed by a unanimous (7-0) vote:

- 1) That turf management practices are consistent with best management practices and evolving scientific improvements to reduce nitrogen loading.
- 2) That any mitigation plans include monitoring the input and output of nitrogen and other nutrients and pesticides to and from the site.

**B. Standard Dredge and Fill Application
99 Bow Street**

**Martingale Wharf Limited Partnership, owner
Assessor Map 106, Lot 54**

Mr. Zach Taylor of Riverside and Pickering Marine Contractors was present to speak to the application. He stated that they would like to construct a new dock along the shoreline. It would be a floating dock structure approximately 10 feet wide and 143 feet in length but it would be designed a bit differently than the traditional dock. It would be a pie shaped structure. He pointed out that the ramp and float would be seasonal structures.

Mr. Taylor explained that the existing wharf has gone through the Department of Environmental Services a few times. The wharf has been permitted for five boat slips but currently there are no boat slips. It was now just a wharf that can only be accessed at high tide and on a calm day. Mr. Taylor said that the purpose of the project was to provide that access.

Mr. Taylor told the Commission that they were limited to building along the shoreline instead of wharfing out because they were in the federal navigable project setback. He said that the new wharf system would provide access down to the supporting dock system and landing. He explained in detail the conditions of the area that warranted a different approach to the project.

According to Mr. Taylor, the impacts would be minimal since there was no emergent vegetation or eel grass in the area and was essentially a previously disturbed site. He pointed out that it was a historical area and a maritime location. He added that the docking structure would not extend any further out than any of the other docking structures in the area.

Mr. DiPentima asked if the harbormaster was included in the planning process. Mr. Taylor replied yes and added that the Army Corp of Engineers had reviewed the project as well.

Vice Chairman Blanchard commented that it would be wall to wall wood down on the river. Mr. Taylor told the Commission that he looked at old photos of the area that showed an entire strip of wharf that wrapped down to what was now Harbour Place.

Ms. Tanner commented that she recently saw a Moran tugboat go right by the area where the structure was proposed to be built.

Ms. McMillan asked how large the boats would be that would be accessing the dock. Mr. Taylor said that the size would be limited to a 20-25 foot boat in order to use the five slips. Mr. Vandermark asked if larger boats would be restricted. Mr. Taylor said no but it would reduce the number of slips available when a larger boat was docked there.

Hearing no other questions, Chairman Miller asked for a motion. Vice Chairman Blanchard made a motion to recommend approval of the application to the State Wetlands Bureau. The motion was seconded by Mr. Vandermark. There was no discussion.

The motion to recommend approval of the application to the State Wetlands Bureau passed by a unanimous (7-0) vote.

**ACTION SHEET
CONSERVATION COMMISSION**

**1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

3:30 p.m.

June 10, 2015

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman MaryAnn Blanchard;
Members, Barbara McMillan, Kimberly Meuse, Kate Zamarchi;
Alternates Samantha Wright, Adrienne Harrison

MEMBERS ABSENT: Allison Tanner, Matthew Cardin

ALSO PRESENT: Peter Britz, Environmental Planner/Sustainability Coordinator

I. APPROVAL OF MINUTES

1. April 8, 2015
2. April 29, 2015
3. May 13, 2015

It was moved, seconded, and passed unanimously to approve the minutes as presented.

II. CONDITIONAL USE PERMIT APPLICATIONS

- A. 200 West Road
Micronics, Inc., owner
City of Portsmouth, applicant
Assessor Map 267, Lot 22

The Commission voted to recommend approval of the application to the Planning Board as presented.

- B. 1163 Sagamore Road
Chinburg Builders, owner
Assessor Map 224, Lot 17

At the applicant's request, the Commission voted to postpone review of the application to the July 8, 2015 meeting.

- C. 3201 Lafayette Road
Hillcrest at Portsmouth, LLC, owner
Assessor Map 291, Lot 7

The Commission voted to recommend approval of the application to the Planning Board as presented with the following stipulations:

1) The applicant shall include in the Site Plan a comprehensive water resource management plan (utilizing tools such as pavers, drainage systems, drip edge, and other best management practices for stormwater) as well as invasive management to include potential restriction of further future development in the wetland buffer proximal to the Berry Brook Watershed.

2) The applicant shall install pervious pavers on all walkways.

- D. Borthwick Avenue (amendment)
Public Service Company of New Hampshire, owner
Assessor Map 234, Lots 1, 2, 3, 7-4A, 7-7, 7-3

The Commission voted to recommend approval of the application to the Planning Board as presented.

III. STATE WETLANDS BUREAU PERMIT APPLICATIONS

1. Standard Dredge and Fill Application
200 West Road
Micronics, Inc., owner
Assessor Map 267, Lot 22

The Commission voted to recommend approval of the application to the State Wetlands Bureau.

2. Standard Dredge and Fill Application
99 Bow Street
Martingale, LLC
Assessor Map 106, Lot 54

The motion to recommend approval of the application to the State Wetlands Bureau failed to pass.

**MINUTES of
THE HISTORIC DISTRICT COMMISSION**

**1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

6:30 p.m.

July 07, 2021

MEMBERS PRESENT: Acting Chairman Jon Wyckoff; Acting Vice-Chair Margot Doering; City Council Representative Paige Trace; Members Martin Ryan, David Adams, and Dan Brown, Alternates Karen Bouffard and Heinz Sauk-Schubert

MEMBERS EXCUSED: Reagan Ruedig

ALSO PRESENT: Nick Cracknell, Principal Planner, Planning Department

.....
Alternate Sauk-Schubert took a voting seat for all petitions except where otherwise noted.

I. APPROVAL OF MINUTES

1. June 02, 2021

The June 2 minutes were **approved** as presented by unanimous vote.

2. June 09, 2021

The June 9 minutes were **approved** as amended by unanimous vote.

Acting Chair Wyckoff stated that Petition 3 for 12 South Street and Administrative Approval Item 1 for 14 Mechanic Street were postponed.

II. ADMINISTRATIVE APPROVALS

Note: the items were not reviewed in sequence.

It was moved, seconded, and passed unanimously to pull out Administrative Approval Items 2, 7, 11, and 13 for separate review.

1. 14 Mechanic Street

The item was postponed.

2. 32 Pickering Street

IV. OTHER BUSINESS

A. Discussion about 6.6 acre conservation land donation

No action was taken.

V. ADJOURNMENT

At 7:35 p.m., it was moved, seconded, and passed unanimously to adjourn the meeting.

Respectfully submitted,

Liz Good
Planning Department Administrative Clerk

Ms. Trace said it was an acceptable design to the neighborhood because it would be on a building that wasn't a historic one and would speak to a current issue. She said it was an expression of a group of people, it was a non-profit project, and it was something appropriate for that particular building.

The motion passed unanimously, 7-0.

2. **Petition of Martingale, LLC, owner, for property located at 99 Bow Street, wherein permission was requested to allow new construction to an existing structure (expand existing deck and dock structure) as per plans on file in the Planning Department. Said property is shown on Assessor Map 106 as Lot 54 and lies within the Downtown Overlay, Character District 5 (CD5) and Historic Districts.**

SPEAKING TO THE PETITON

Architect Jeremiah Johnson was present on behalf of the applicant, along with project designer Terence Parker and Attorney Sherilyn Burnett Young. Mr. Johnson reviewed the petition and said two separate decks were proposed: the west end deck expansion would be a public wharf deck and the east end deck expansion would expand the outside dining and also include a floating dock. He noted that there would be no increase in occupancy.

Acting Vice-Chair Doering asked who was in charge of how much the decks could go over the water. Mr. Johnson said it was the State. In response to further questions, Mr. Johnson said the right section of the left deck expansion would be an extension of the drink rail and a hostess stand, and the other side would be a public 504-sf deck and another slightly larger deck. He said there would be appropriate signage and the decking material would be similar to the existing decking, with a new rail design. Mr. Adams asked for more explanation on why both additions to the current deck were curved toward the waterfront. Mr. Johnson said it was a nice way to soften the sharp corners. It was further discussed. Mr. Brown asked what the deck's current capacity was changed to. Mr. Johnson said it was currently 100 and would increase to just under 200, making the total restaurant capacity 333. City Council Representative Trace noted that there were multiple points of egress into the restaurant and onto the deck and asked how it was known that the ebb and flow would work properly and that there would be only 200 people at most on the deck. Mr. Johnson said it was a seasonal operation and that people would be counted at the door. He said people could only access the deck by coming down the stairs from the interior or from the tiny pinch point at the far end of the dock.

Mr. Parker spoke to the proposed murals, noting that they were based on a book written by the University of New Hampshire professor Jeff Bolster about the history of Afro-American sailors. He said the murals would be bronze sculptures and would be located near the 32 linear feet of seating on the public dock. He noted that the murals were scaled back from 27 feet to 17 feet and from 16 feet to about seven feet at the request of Harpoon Willy's so that they wouldn't obscure their views. He said the east mural would have planter boxes and a green wall on the back side.

City Council Representative Trace noted that the public had not seen the handouts given out to the Commission. Mr. Johnson suggested pulling the murals out of the petition and resubmitting them at a later date. It was agreed to remove the murals component from the petition.

Acting-Chair Wyckoff opened the public hearing.

SPEAKING AGAINST THE PETITION

John Sherman of 111 Bow Street said he owned Unit 2. He said he submitted some materials to the Commission about how the border in the 20-ft side buffer between his building and the applicant's was being used for trash storage and that the trash would increase because the restaurant size would double. Acting-Chair Wyckoff said trash wasn't in the Commission's purview. Mr. Sherman said the Commission previously approved a much different plan. He said the applicant went before the Conservation Commission in 2012 and had said they would not extend the docking structure any further into the water. He said the Conservation Commission did not approve the project and neither did the Department of Environmental Services (DES). Acting-Chair Wyckoff said the applicant would have to go before the Conservation Commission again, but that the HDC was a design review board. Mr. Sherman said the proposed project was massive for the waterfront.

John Hare of 113 Bow Street said he was strongly opposed to the proposed expansion due to concerns about noise and light and also added congestion to Bow Street from more delivery and trash removal trucks.

David Sands of 113 Bow Street said the project was killing the historic character of the building and the area.

Katy Sherman of 111 Bow Street, Unit 2, said when the existing wharf was approved, the owner said he wouldn't ask for anything more. She said the garbage was being pushed against her building already and would be doubled with the expansion. She said the dock was within her 20-ft buffer, and she was concerned about how the tugboats would navigate around the expanded wharf. She said the project was a huge impact to the shoreland and wetlands and should have a site review. Mr. Cracknell said the project would be reviewed by the Technical Advisory Committee and a site plan would get approved, which would capture all the issues of waste disposal and zoning buffer compliance. He said the ecological impacts on marine life were a Conservation Commission issue, and lighting, noise and traffic impacts were not the HDC's purview. He offered to meet with her and her husband to further discuss the issues.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Sherilyn Young said the building was redeveloped in 2012 but now had greater flexibility. She said the structures on the waterside were consistent with other waterfront commercial structures in the area. She said the applicant received the approval of the condominium association at 109 and 111 Bow Street to consent to the 0-ft setback and would also go before the DES but wouldn't have to go before the Army Corps of Engineers. She said two of the Commission's review purposes were to strengthen the local economy and to promote

the use for education, pleasure, and welfare of the community. She said the project would offer the public a unique view of the waterfront.

No one else rose to speak, and Acting-Chair Wyckoff closed the public hearing.

DECISION OF THE COMMISSION

Mr. Adams moved to grant the Certificate of Approval for the petition as presented, for purposes of discussion. Mr. Ryan seconded.

DISCUSSION

Mr. Adams said he had a problem with the deck's optics because it looked like a pleasure dock instead of a historic working one and he was uncomfortable with having it be the signature of the City. He said he was also bothered by the curved nature of the decks. He said the applicant was throwing a bone by making a portion of the dock public. He said he was in support of much of the project conceptually except for the actual design of it. Mr. Ryan said the waterfront wouldn't ever be a working dock again and that the existing dock was already a pleasure dock. He said concerns about noise, trash, odors, and so on were not the Commission's purview. He said he saw nothing more than an expansion of what was already there and thought it was a good expansion and a lot was done to provide artwork. He said it was where the public got access to the waterfront, and he said it was also his way of experiencing the waterfront by going there and having a drink because he didn't have access to any waterfront from his home. He said he would support the project and looked forward to it. He noted that it would bring in more tourism and might be more intense but it was just the nature of what currently existed on the waterfront.

City Council Representative Trace said the massing was huge and said she felt she was looking at something in Monte Carlo. She said she couldn't get behind the project because it was just too large. Acting Vice-Chair Doering agreed. She said she appreciated that the applicant was trying to give the public some access but thought that access was relatively small compared to the mass requested for the restaurant's use. Mr. Brown agreed and said a smaller and tucked-in deck in the first half would fit in better. Mr. Sauk-Schubert said he agreed that the public access portion was a bone the developers were throwing to the public and thought it should be enlarged. He said he didn't know of any other decks that were segmented like that. He said he saw it as a pure commercial enterprise that didn't really give back to Portsmouth. Ms. Bouffard agreed that the massing was too much and thought the public offering wasn't large enough to make a difference.

DECISION

The motion failed by a vote of 5-2, with Acting Vice-Chair Doering, Mr. Adams, Mr. Brown, Mr. Sauk-Schubert, and City Council Representative Trace voting in opposition.

3. **REQUEST TO POSTPONE** - Petition of **William T. & Susan Manfull, owners**, for property located at **12 South Street**, wherein permission is requested to allow new construction to an existing structure (construct a 1-story addition at the rear of the structure) as per plans on





CITY OF PORTSMOUTH

Community Development Department
(603) 610-7281

Planning Department
(603) 610-7216

CONSERVATION COMMISSION

October 6, 2021

TO: DES Wetlands – Coastal Region
222 International Drive, Suite 175
Portsmouth, NH 03801

Attn: Permit Coordinator

RE: Standard Dredge and Fill Application

MEETING DATE: September 15, 2021

CONSTRUCTION SITE: 99 Bow Street

This Commission recommends approval of the cited project.

This Commission requests the statutory 40-day delay in order to allow for further investigation of the project. (See below)

This Commission recommends denial of the cited project for the reasons.

Other

After due deliberation, The Conservation Commission voted (4-0) on a motion to **deny recommendation** of the application to the State Wetlands Bureau.

FOR THE COMMISSION:

Sincerely,

Samantha Collins, Vice-Chair
Conservation Commission

cc: Peter Britz, Environment Planner/Sustainability Coordinator
Marlingale, LLC, owner
Steven Riker, C.W.S, Ambit Engineering, Inc.

RECEIVED

OCT 08 2021

ENVIRONMENTAL SERVICES
"BY NH DES WETLANDS BUREAU"

ABUTTER'S LIST

JN 3308

Client: Martingale LLC

Project Address: 99 Bow Street, Portsmouth, NH 03801

MAP	LOT	NAME(S)	PO BOX	STREET ADDRESS	CITY/STATE/ZIP
		109-111 Bow Street Condominium ASRT LLC BOWSPORTS EV Corporation George B. Glidden Revocable Trust Frank Marjan Revocable Trust ASRT LLC ASRT LLC Montgomery Portsmouth Trust John Samonas Forum Group LLC & Blue Star Properties			

