

ROLE OF THE EXETER CC IN THE PROJECT REVIEW PROCESS

With project review, the Conservation Commission has 2 main advisory roles. One is to the State for **Wetland Dredge and Fill** applications that addresses direct impacts to wetlands. The State does not provide protection to the upland around wetlands (ie. wetland buffers). The State also will look to the Commission to make recommendations on [wetland mitigation](#), should it be required.

The other common role the Commission has is to make recommendations to the Planning Board for impacts to the upland area (buffer) abutting wetlands or riparian areas (shorelands). These buffer impacts require the approval of a **Wetland or Shoreland Conditional Use Permit (CUP)** as defined in our [Zoning Ordinances \(9.1 and 9.3\)](#).

A CUP can only be issued by the Planning Board upon demonstration of meeting the CUP criteria which you can find in the zoning ordinance regulations. You are advising them on your opinion as to whether the application meets those criteria. Following the meeting, a memo will be sent to the Planning Board with your conclusions. This memo indicates whether you recommend approval/denial and any conditions. Your conditions should be measurable and specific enough that the applicant, the planning board, and the Town staff can confirm they have been met. Should you choose to recommend denial, you should identify which criterion was not met. You can provide the applicant with a choice to either return with a modified plan, or move on to the PB with a negative recommendation. For obvious reasons, the former is the preferred approach.

STATE WETLAND DREDGE AND FILL

The wetland regulations were amended in December 2019 and established a few new categories for wetland applications. The categories are [Standard, Expedited, Permit by Notification, and a Prime Wetland Waiver](#). There are also Statutory Permit by Notification (SPN) applications which do not involve the Conservation Commission. The [slides from the NHACC annual meeting presentation](#) is a good source for and overview of changes, requirements, and role of the CC.

Expedited Review is for **projects of a lower impact threshold** for wetland impact. For these, they present the application and are hoping that you will support signing the application at the meeting. This shows NHDES you support the application having a shorter review time frame. If you do not sign, the application takes the standard review timeframe. Should you choose not to sign, you should say why and also provide any comments you want considered when the project is evaluated by NHDES because it will not come back to you for feedback.

Standard Review has three thresholds: **Minimum Impact, Minor Impact and Major Impact**. In all cases, they are seeking your recommendation to NHDES. These are the applications you see most often and should always include:

- An accurately filled out application
- A functional assessment (minor and major projects) completed by a certified wetland scientist
- Demonstration of Avoidance and Minimization (new project specific [BMP Guidance](#)).
- Minimum impact projects should have a statement by a wetland scientist saying the project is located and designed to minimize impacts to wetlands functions and values.
- NH Fish and Game Recommendations, NH Heritage Database Check

The recommendations you make on these are sent to NHDES in a letter after the meeting. This letter indicates whether you recommend approval/denial (or your standard language is object/do not object) and any conditions.

QUESTIONS AND THINGS TO CONSIDER DURING PROJECT REVIEW

- Look for the wetland scientists stamp on plans.
- What standards did they use? Look for a certification note on plan.
- How long ago were the wetlands delineated? Long enough that they be re-delineated?
- How much time between when the wetland scientist delineated and surveyor plotted the boundary? If long did they have wetland scientist refresh the flags?
- Is there a report that accompanies the delineation / plan?
- Are the individual flag locations and letters/numbers identified on the plan? This is helpful for reference during site walk.
- How were the flags located and plotted on the plan? By GPS (less accurate) or by instrument survey (more accurate - and more important the closer the proposed work or if direct impact is proposed)?
- Were wetlands delineated with snow on the ground? (Winter delineations deserve a closer look.)
- Did they look at a time when vernal pools could be detected?
- Is this a natural wetland boundary or a manmade wetland boundary (created by fill or other activity)?
- Was the fill legally permitted? (before 1969 without permits or after 1969 with permits) If no permit it can be considered a violation.
- If they assert that the fill was placed before 1969....Can you provide documentation... such as aerial photographs?
- Has Heritage provided comments? NHFG? To make sure their concerns are included it may make sense to include their comments in a condition.
- All wetland applications must demonstrate they meet the following aspects for avoidance and minimization:
 - No practicable alternative with less adverse impact.
 - Maintains hydrologic connections.
 - Avoids and minimizes impacts to:

- marshes
- exemplary natural communities, vernal pools, documented fisheries, etc.
- Commerce, navigation, recreation.
- Floodplain wetlands.
- Natural riverine forested wetland systems and scrub-shrub marsh complexes of high ecological integrity.
- Wetlands adjacent to drinking water supply and groundwater aquifer levels.
- Stream channels and their ability to handle runoff
- Mapping Resources:
 - Major projects undergo Technical Review Committee (TRC) review. This includes the Planner, myself, Building/Code Enforcement, DPW, Fire/Police and a consultant who reviews the drainage plans etc. Ideally we try to schedule projects to come to you after the TRC and provide comments & applicants response. These can be insightful.
 - There are a number of online mapping programs that can help to consider impacts:
 - [NHDES Wetland Permit Planning Tool](#) – look for significant wetlands/peatland/etc.
 - [Coastal Viewer](#) – sea level rise, wildlife action plan, wildlife corridors, coastal conservation plan, and more.
 - [Aquatic Restoration mapper](#) – evaluates crossing structure efficiency for wildlife, hydraulic capacity, etc.
 - I also have Exeter’s property boundary data in a format you could add to Google Earth Pro. I like this to evaluate past conditions of a property. Ask if you would like a copy of this.

KEY ZONING ORDINANCE (ZO) and SITE PLAN REVIEW REGULATIONS

Article 7 Open Space Regulations. These are to allow some flexibility in dimensional requirements for lots to preserve sensitive resources. Lots can be smaller, closer together and squished into less sensitive areas.

7.7.1.A The Open Space regulations offer up density bonuses as an incentive. They can receive a 10% density bonus if they conserve 50% or more of the land upon written notice by the ConCom of agreement to accept land.

9.1.3.F Should you question validity of wetland delineation, you can request the Planning Board to call for independent wetland scientist to delineate the area in question and report findings to the PB.

Site Plan – 7.12/9. 8 Natural Resource Plan – Determined at the TRC whether it is needed. I technically represent the CC at the TRC but if you feel one should have been requested, please suggest so. Plan includes inventory of key resources, impact evaluation, mitigation.

WETLAND CUP CONDITIONS (ZO 9.1.6)

These are the conditions that are required to be met in order to issue a wetland CUP. Not meeting any one of these conditions is grounds to recommend denial or require modifications in design.

1. That the proposed use is permitted in the underlying zoning district;
2. No alternative design which does not impact a wetland or wetland buffer or which has less detrimental impact on the wetland or wetland buffer is feasible;
***AVOIDANCE & MINIMIZATION:** Can this use be accommodated elsewhere on the lot w/o impacting the buffers? Do you see another way to accommodate this project without impacting buffers or with less impact to buffers? This is your key to considering whether the proposal is the least impactful alternative and is quite strongly worded (no alternative design with less impacts is feasible).*

3. A wetland scientist has provided an impact evaluation that includes the “functions and values” of the wetland(s), an assessment of the potential project-related impacts and concluded to the extent feasible, the proposed impact is not detrimental to the value and function of the wetland(s) or the greater hydrologic system.
This is helpful for ensuring you are provided the wetland scientist’s function and values assessment required under NHDES regs during CUP review (this way you have the meat of the report even if you are reviewing CUP prior to the wetland application being filed).

You could also read this as referring to the general value of the wetland and/or ecological system and have them explain their evaluation of how the proposal may affect the larger system and any of the functions that wetlands provide (habitat, flood storage, water quality, etc).

Another thought here is, should you feel one buffer is less valuable, this could justify a position for shifting away from a more sensitive buffer and toward a less sensitive buffer.

4. That the design, construction and maintenance of the proposed use will, to the extent feasible, minimize detrimental impact on the wetland or wetland buffer;
***MINIMIZATION:** Could access routes be moved to another location with fewer impacts, could lots be re-arranged, could a better BMP like a gravel wetland or pervious pavement be used, could snow be required to be trucked offsite, were retaining walls used to reduce temporary impacts from slope grading, could the impervious footprint be*

reduced etc.? With the more stringent requirements that have been placed on the town to minimize nitrogen and impervious cover through our MS4 Permit (Stormwater Permit) and our Administrative Order of Consent (Wastewater Treatment Plant) there is a very strong argument for the use of the best BMPs possible unless something about the site makes them ineffective or impossible to install.

The PB has the ability to grant reductions in things like parking for the conservation of open space and buffers. If you feel parking is excessive, you could recommend they consider less parking.

Another way this could help is in the event redesign would trigger a waiver from a Site and Sub condition. This could be your reason to the PB to explain why you feel a waiver is justified. One good example of this is we have a mandatory 50' perimeter buffer around developments. Sometimes this is important to protect abutters, sometimes (frankly) it just eats up perfectly dry developable space.

5. That the proposed use will not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of groundwater, or other reasons;
The most obvious ways that loss of wetlands could create a hazard is flooding or reductions in water quality. Consider whether the wetland is near/adjacent to an impaired water body, FEMA flood zone, etc. This is often easily dismissed because we require them to model pre- and post- development conditions in a drainage analysis to ensure they are not creating a problem. We hire out review of this document to Underwood Engineers and they ensure their models meet our regulations. You could ask them to explain what their models showed, what they considered for watershed boundaries (particularly if you know something about the connectivity of the surrounding area to be sure their models included it), the results of pre- and post-development models, and what storm event did they use to model those. You could also look at the [Land Conservation Plan: Water Resources Update](#) and see if this area is important for flood storage.

6. The applicant may propose an increase in wetland buffers elsewhere on the site that surround a wetland of equal or greater size, and of equal or greater functional value than the impacted wetland.

Could be helpful to add a larger directional buffer around a vernal pool for example to provide connection to an undeveloped portion of the lot.

7. In cases where the proposed use is temporary or where construction activity disturbs areas adjacent to the immediate use, the applicant has included a restoration proposal revegetating any disturbed Exeter Zoning Ordinance – Amended March 2022 9-8 area within the buffer with the goal to restore the site as nearly as possible to its original grade and condition following construction.

This is justification for requiring restoration of temporary impacts—in both grade and condition. Seeding, live plantings, etc.

8. That all required permits shall be obtained from the New Hampshire Department of Environmental Services Water Supply and Pollution Control Division under NH RSA §485-A: 17, the New Hampshire Wetlands Board under NH RSA §483-A, and the United States Army Corps of Engineers under Section 404 of the Clean Water Act.;

[SHORELAND CUP CONDITIONS \(ZO 9.3.4.G.2\) p 145](#)

This section of our ordinance is a challenge to interpret frankly. In addition to having a very complicated definition for what the shoreland district is, there are requirements stashed in odd places like within the definitions (example: contiguous wetland requirement). Just as with the Wetland CUP, the proposal has criteria it is required to meet. Use regulations define things like impervious surface limits and building setbacks etc. The conditions for the CUP are below:

- a. The proposed use will not detrimentally affect the surface water quality of the adjacent river or tributary, or otherwise result in unhealthful conditions.
Think stormwater runoff, flood control. The UNH stormwater center provided a comparison of stormwater infrastructure pollution removal. See p 11 [HERE](#).
- b. The proposed use will discharge no waste water on site other than that normally discharged by domestic waste water disposal systems and will not involve on-site storage or disposal of hazardous or toxic wastes as herein defined.
There is a definition of Hazardous and Toxic materials in the shoreland zoning ordinance. It includes things like pesticides, herbicides, petroleum products, etc.
- c. The proposed use will not result in undue damage to spawning grounds and other wildlife habitat.
They should be providing their justification for how they conclude a lack of impacts.
- d. The proposed use complies with the use regulations identified in Article 9.3.4 Exeter Shoreland Protection District Ordinance – Use Regulations and all other applicable sections of this article.

Review impervious surface limits, building setbacks, surface alteration, veg buffer, etc.

- e. The design and construction of the proposed use will be consistent with the intent of the purposes set forth in Article 9.3.1 Exeter Shoreland Protection District Ordinance – Authority and Purpose.

SITE PLAN AND SUBDIVISION KEY REGULATIONS

6.5 Technical Review Committee includes a representative from ConCom. I typically represent the interests of the CC but if something was not addressed, you should feel free to bring it up. The recommendation for conducting a Natural Resources Plan/Environmental Impact Statement should come out at the TRC. If you feel it should be required but was not included, bring it up. The EIS requirements are discussed in 9.8 (site and sub).

9.6.2 The Planning Board may request your advisory opinion on watercourses, water bodies, floodplains, wetland areas, steep slopes, aquifer recharge areas, wildlife habitats, large or unique trees, and scenic views. IMO offering your opinion on these when a project is before you (even if there isn't an official request from the planning board) can save the applicant (and you) a repeated trip back to the next CC meeting.

9.6.3 The Planning Board considers whether the recreational space meets intent, one of which is how accessible it is to conservation lands. The CC knows best where trails and connectivity is so your opinion here could be valuable.

9.7.4. Tree Planting: At its discretion, the Board may require the developer to plant shade trees within the rights-of-way of a subdivision layout. The developer shall supply planting plans to the Board who will seek an advisory opinion on said plans from the Conservation Commission.

Some other things I think about when reviewing are:

- Has a site walk been conducted?
- Should PB require wetland boundary disks?
- Have snow storage areas been shown on the plan? Is there risk to an impaired stream/river from snow storage runoff? All snow storage should be directed to stormwater treatment area before entering a wetland
- Does the landscaping plan include any species on the [prohibited](#) or [watch](#) list? Or any that are discouraged (like Bradford pear for example)
- Is lighting dark-sky compliant? Shielded, full cut-off. Also note warmer LED spectrum has been shown to have less wildlife/insect impacts than cooler LEDs. Minimize lighting overspill to buffers/woodland.

- Natural bottom culverts? Spans, arcs, or open bottom culverts are always preferred to culverts. Crossings to bank full span? Did it consider sea level rise (if appropriate)? Did it leave upland for wildlife connectivity?
- Any habitat for protective species? Does it impact connectivity between important areas?
- Are there existing stands of invasive plants, especially those extremely difficult to control like knotweed?
- Straight (vertical) granite curbing directs critters to catch basins. They follow it until they find a gap (catch basin for example). In general, sloped curbing is preferred though for safety along sidewalks it is often discouraged. Avoid a side-box inlet and encourage a grate instead.
- If there is large wetland habitat next to the development are the designs that could encourage movement around development and discourage movement through development?
- Ensure erosion control is limited to woven organic material as biodegradable plastic can trap salamanders and snakes.
- Does the plan set with any trails show grading lines to understand how contours affect trail use?
- If the plans include trails is there a note describing the trail and/or a trail spec?
- If the applicant includes a connection to the trail is there signage proposed?
- Is trail maintenance responsibility addressed?
- Additional measures can be found [HERE](#).

Prior to accepting conservation land be sure the following happens:

- Has the CC walked the property?
- Any potential for contaminants? If any potential, require environmental review.
- Is layout conducive to monitoring? Odd shapes, or disjointed parcels are more difficult.
- Any existing encroachments, invasives, dumping?
- Any special conditions (bikes, hunting, trails, etc)
- Require a baseline document
- A CC (or rep) shall confirm boundary markers prior to issuance of CO
- Consider a one-time (or annual) stewardship fee
- Does accepting this land place an undue burden on CC? Are there circumstances that make it likely to have enforcement issues? Consider requiring boundary discs along residential lots.