



MADBURY CONSERVATION COMMISSION

13 TOWN HALL ROAD
MADBURY, NEW HAMPSHIRE 03823

February 13, 2022

Madbury Planning Board
13 Town Hall Rd
Madbury NH 03823

Re: Application for Conditional Use Permits for LandCare
282 and 284 Knox Marsh Road
Madbury, NH 03823
(Tax Map 9, Lots 3 and 4)

Dear Planning Board,

The Madbury Conservation Commission (CC) is pleased to comment on the Conditional Use Permits (CUP) requested for the site plan review for LandCare, at 282 and 284 Knox Marsh Road, Madbury, NH. Specifically, the Planning Board (PB) requested input from the CC on the CUPs related to Zoning Article IX, Article IX-A, and Article X.

The properties in question abut the Bellamy River, which upstream provides about sixty percent of the fresh water supply for the City of Portsmouth and a potential source of water for the Town of Madbury (Hicks Hill Water System). Downstream the Bellamy River abuts fresh water supply wells for the City of Dover, and is used for the recharge of some of those wells. We note this to highlight the often overlooked value of this water resource, now and for the future.

The property at 284 Knox Marsh Rd (Map 9 Lot 4) has been the subject of wetland and shoreland violations and subject to restoration efforts imposed by the Town of Madbury. This activity occurred prior to the ownership of Lot 4 by LandCare. We believe the current use of the properties is governed by two separate site plan reviews. Lot 3 was last before the Planning Board in 1999, and Lot 4 in 1990. There has been un-reviewed expansion and change of use on these lots. In 2012, the Board of Selectmen met with the owner and indicated that the owner go to the Planning Board for a review. We note this because the application assumes current conditions are a starting point for their CUPs.

Conditional Use Permit Request #1.
Zoning Article IX. Wetland Area Conservation Overlay District.
Section 4. C. 1.

The first request is to disturb the 25' wet area buffer for an 8' wide paved walking path between two wetlands to allow the employees safe access to parking. The second request is to disturb the 25' buffer area for parking.

1. The PB should consider if the prior unauthorized disturbance should be the starting point for the existing conditions. Alteration of the land is not a permitted use in the wet area setback.
2. If the path and parking area are in a wet area setback it would be a prohibited use, as alteration of the surface configuration of the land by the addition of fill or dredging is prohibited, except for agricultural land drainage.
3. The proposed path is a negative impact as it further fragments the two adjacent wetlands.
4. The applicant should consider a smaller width path and perhaps make it pervious or a bridge, although we recognize that could make winter maintenance (salting) an issue.

Conditional Use Permit Request #2.
Zoning Article IX-A. Aquifer and Wellhead Protection Overlay District.
Section 5. C. 1. B.

The second CUP request is for an impervious area of greater than 15%. The application proposes a 45% combined impervious area on the two lots.

1. The stormwater management facility will not attenuate any salt usage on the large traffic area proposed for the site.
2. The applicant should demonstrate the size and need for parking and material storage.
3. The PB should require routine monitoring and inspection of activities to assure, confirm, and document compliance with setbacks, buffers and the maintenance of the stormwater facility.

Conditional Use Permit Request #3.
Zoning Article X. Shoreland Protection Overlay District. Section 4. C. 2. b.

The third CUP request is to allow a disturbance within the 100' Bellamy River district. The applicant proposes to construct a stormwater management structure, locate storage bins, have a gravel inventory storage area, and have traffic use in the district.

1. The use of a CUP in this ordinance is all about crossings to gain access to

land that is otherwise available for permitted uses. The requested uses are not for crossings to areas outside the protected district.

2. A CUP is permitted if the use is consistent with ordinance. The purpose of this ordinance is to conserve aquatic and terrestrial habitat that is associated with riparian areas and preserve and enhance those aesthetic values associated with the natural shoreland. The loss of buffer for both water quality and habitat is not consistent with this ordinance.
3. The bins, gravel inventory storage area, and traffic use should not be allowed in the protected shoreland.
4. The question of impoundment has been raised as a supposedly permitted use. It could be agreed that the intended function of the impoundment should be the focus of the question. The stormwater treatment impoundment is not consistent with permitted uses listed Section 4 of this article, where all uses are about conservation areas and trails, wildlife habitat, disturbance related to the development of water supplies, natural drainage ways, and recreational uses consistent with the purpose of the article. We do not feel that the stormwater impoundment is of the type allowed in shoreland setback.
5. We note that Madbury's Shoreland Protection Overlay District, approved by voters in 1989, is still in alignment with a recently (Nov. 2021) developed drinking water quality buffer model ordinance by the NH DES, Strafford Regional Planning Commission, and the Rockingham Planning Commission. It promotes a minimum 100' buffer to ensure water quality protection for sources of drinking water. (<https://www.des.nh.gov/blog/new-guidance-available-protect-surface-sources-drinking-water>)

In conclusion, the CC recommends that the PB engage a 3rd party to evaluate the value of the two adjacent wetlands, and any losses to the values of the shoreland riparian area by placing the stormwater management system within the shoreland setback.

Sincerely,



Eric Fiengenbaum
Madbury Conservation Commission, Chair