

Memorandum

TO: Members of the Planning Board
 FROM: Liz Durfee, AICP, Planner
 Date: March 3, 2020

Subject: CUP & Temporary Impacts to Wetlands

Overview of Issue

A Conditional Use Permit (CUP) is required for activities that occur within the Wet Area Conservation Overlay District (Zoning Ordinance Article IX). Article IX Section 4 describes the permitted, prohibited, and limited and regulated uses in this district. Occasionally, temporary activities within wetlands are proposed. An example of this was the temporary wetland crossing required to maintain an existing Eversource station. Article IX could be tweaked to be more explicit about the procedure and necessary local approval for projects with only temporary impacts.


Issues for the Planning Board to Review

- 1) Correct the RSA reference. Article IX Section 4(C)(2) references RSA 483-A. This chapter covers the NH Lakes Management Program. RSA 482-A covers dredge and fill in wetlands. The ordinance should reference RSA 482-A.

- 2) Review and consider whether all projects that file a wetland permit with NHDES should require a CUP under Zoning Ordinance Article IX. RSA 482-A(XV) allows utilities to qualify for a minimum impact permit but does not explicitly exempt utilities from the requirements of the whole section (RSA 482-A). Similarly, the new wetland rules indicate that qualifying projects under Env-Wt 308.04(d) are eligible for a Statutory Permits-by-Notification (SPN). SPN is one of several categories of wetland permits (Table 1).

The current language of Article IX could be clarified so that it is easier for applicants and board members to determine the right course of action when there are projects with temporary impacts and/or projects that are eligible for NHDES review other than the standard application. SPN applications do not require a signature or review from the local conservation commission. The Planning Board should discuss if temporary impacts to wetlands should be regulated at the local level through the CUP process. Temporary impacts associated with some but not all projects that NHDES receives a wetland permit for are reviewed at the local level by Madbury’s Conservation Commission.

Table 1. New (December 2019) NHDES Wetland Rules categories of Notifications/Applications

	NHDES Categories of Wetland Permits
Lowest impact/most general category  Greatest impact/least general category	Emergency Authorizations
	Statutory Permits-by-Notification (SPN)
	Routine Roadway Maintenance
	Permits-by-Notification (PBN)
	Small Motor Mineral Dredge
	Expedited Minimum Impact (EXP)
	Standard Application