



CITY OF CONCORD
New Hampshire's Main Street™
Community Development Department
Planning Division

Staff Report for Planning Board

Meeting on June 18, 2025

Project Summary – Conditional Use Permits

Project: Wetland Buffer, Bluff Buffer, and Shoreland Buffer Disturbance for utility distribution replacement project (2025-055)
Property Owner: Public Service Co of NH aka Eversource Energy
Applicant: GZA GeoEnvironmental, Inc
Project Address: Unaddressed Garvins Falls Rd
Tax Map Lot: 89Z 14

Determination of Completeness:

Per Section 34.05 of the Site Plan Regulations, a completed application for a conditional use permit without a companion site plan application will contain the required information listed in Section 14.02 *Design Review Phase* of the Site Plan Regulations and will be legible and competently prepared.

In making a determination of completeness, the Board shall consider the written recommendation of the Planning Division, as well as any written communications from the applicant, abutters, and parties of interest; **however, no hearing shall be opened nor shall testimony be received on a determination of completeness.** If the application is determined complete, the Board shall then open the public hearing.

Section 36.14(1) *Determination of Completeness* of the Site Plan Regulations provides additional language regarding the determination of completeness, and states that a completed application shall contain all required information for each stage of the application process; shall be legible and properly prepared; shall accurately portray existing conditions; shall be accompanied by copies of special investigative studies; and shall contain sufficient information and detail for a full review and action by the Board.

The Planning Division reviewed the application for completeness based upon the criteria of the Site Plan Regulations and concludes that all criteria for completeness have been met, and that the application contains sufficient information and detail for a full review and action by the Board.

Based upon the Planning Division's review of the application, the Planning Division recommends that the Board move to:

- **Determine that the application is complete;**
- **State that the project does meet the criteria for a development of regional impact per RSA 36:55; and,**
- **Open the public hearing.**

The Board has 65 days within which to consider and act on the application once the application is determined complete, per RSA 676:4(I)(c). The 65-day period shall commence upon the date of the

regular meeting of the Board at which the application was accepted as complete on June 18, 2025, and end on August 22, 2025. If the applicant has not demonstrated compliance with the Site Plan Regulations by the end of the statutory timeline (August 22, 2025), the applicant may request a postponement or the Board may approve, approve conditionally, or deny the application based on the information provided.

However, if the Board determines the application complete and also a development of regional impact on June 18, 2025, per RSA 676:4(I)(c)(1), the deadline to approve, conditionally approve, or disapprove the complete application is automatically extended by 30 days past the normal 65-day period providing a deadline of **September 21, 2025**.

Project Description:

The applicant is proposing impacts to wetland buffers, bluff buffers, and shoreland protection buffers for the 334G distribution line structure replacement project, at Tax Map Lot 89Z 14, unaddressed Garvins Falls Rd, in the Office Performance (OFP) District and Open Space Residential (RO) District.

Compliance:

The following analysis of compliance with the Zoning Ordinance and Site Plan Regulations is based on a 10-page narrative, dated May 13, 2025, with revisions through June 6, 2025, prepared by GZA GeoEnvironmental, Inc; a 7-page photo log dated May 14, and September 16, 2024; and a 12-sheet site plan titled “334G Distribution Line Structure Replacement Project,” dated April 30, 2025, prepared by GZA GeoEnvironmental, Inc.

1. Project Details and Zoning Ordinance Compliance:

Zoning District:	Open Space Residential (RO) District Office Performance (OFP) District
Existing Use:	Electrical service line and utility pole structures
Proposed Use:	Electrical service line and utility pole structures
Overlay Districts:	
Flood Hazard (FH) District	Not provided
Shoreland Protection (SP) District	Yes
Historic (HI) District	None
Penacook Lake Watershed (WS) District	None
Aquifer Protection (AP) District	None

- 1.1 The Planning Division conducted a zoning compliance review of the project on June 5, 2025, and determined that the project as submitted is compliant with the Zoning Ordinance.

2. Comments:

- 2.1 Per Section 6.01(4) *Conformity with Zoning*, for an application to be determined complete, the proposed application must be in conformity with the Zoning Ordinance at the time the notices are mailed to the abutters notifying of the Board’s consideration of completeness. To be determined complete where a variance is being requested from the Zoning Board of Adjustment, the site plan application must either comply with the Zoning Ordinance, or the applicant must have obtained favorable approval of the required variances prior to the time the notices are mailed to the abutters notifying of the Board’s consideration of completeness. The Planning Division determined that the application conforms with the Zoning Ordinance, and that determination was made prior to the abutter notifications being mailed on June 3, 2025.

- 2.2 Per Section 34.04 *Independent Application*, where no subdivision or site plan approval would otherwise be required, the application and review procedure for conditional use permits shall be in accordance with the requirements of the Site Plan Regulations for a minor site plan application with respect to the requirements for the submittal of abutters notices, public notice, determination of completeness, public hearings, and timing of decisions by the Planning Board. Section 34.05 *Application Requirements* immediately follows and provides the requirements for a complete application, stating that the requirements contained in Section 14.02 *Design Review Phase* shall be used to determine if conditional use permit applications without a companion site plan application are complete. Accordingly, staff utilized the procedures for a minor site plan application in the processing of the stand-alone conditional use permit applications and items from Section 14.02 *Design Review Phase* in the review for determining completeness.
- 2.3 Section 34.05(4) authorizes the Clerk to determine that certain requirements of Section 14.02 may not be relevant for the particular circumstances of the site or proposed use, for which a conditional use permit is requested. Unless otherwise noted below that an item is missing from the application and required, the Clerk has determined that certain requirements of Section 14.02 have either been provided, or are not relevant for the particular proposed site or use.

Accordingly, the Clerk has determined that information required by the following sections of the Site Plan Regulations may be missing in whole or in part from the application, but such information is not relevant for the particular circumstances of the requested conditional use permits for disturbance to wetland buffers, bluff buffers, and shoreland protection buffers:

- Section 12.02(1)(b)
 - Sections 12.03(1), 12.03(3), 12.03(6)
 - Section 12.04
 - Sections 12.06(1), 12.06(3) through (5).
 - Section 12.09
 - Section 14.02(3)(a)(iv), (v), (vi), (vii), (ix), (x)
 - Section 14.02(4)(a) through (f)
 - Section 14.02(5)(a), (c), and (d)
- 2.4 The Assessing Department reviewed the application and had no general comments.
- 2.5 The General Services Department reviewed the application and had no general comments.
- 2.6 The Fire Department reviewed the application and had no general comments.
- 2.7 The Engineering Services Division reviewed the application and had the following general comments:
- a) The project will require the following state and/or federal permits associated with the site design:
- NHDES Wetlands Permit by Notification
 - NHDES Shoreland Protection Permit by Notification
 - USACE New Hampshire General Permit

b) The following permit(s) will need to be obtained from the Engineering Services Division prior to the start of construction:

- Excavation Permit
- Other permits deemed necessary by the City Engineer

3. Compliance with Site Plan Regulations:

The following items from Section 14.02 are missing from the application, and are relevant to a complete review of the application; thus, the following items are required to determine the application complete:

- 3.1 Section 12.02(1)(c) requires the date the plan was prepared and date of subsequent revisions. Figure 3 – *Wetland Setback Plan* is dated March 11, 2025, and shall be dated April 30, 2025, similar to every other sheet provided in the plan set.
- 3.2 Section 12.03(2) requires that a New Hampshire licensed professional engineer shall prepare, sign, and seal all plans where grading, drainage, and utility information is proposed. The licensed engineer who prepared the plans shall sign and seal the cover sheet or site plan.
- 3.3 Section 12.03(5) requires where wetland boundaries are required to be delineated, the delineation shall be performed by a New Hampshire certified wetland scientist who shall sign and seal the plan upon which the wetland boundaries are mapped. The certified wetland scientist shall sign and seal figure 3 – *Wetland Setback Plan*.
- 3.4 Section 12.06(2) *Easements* requires plan or deed references for recorded easements, whether public or private, on the properties proposed for development. A plan or deed reference note shall be added to the plan for the utility easement for the 334G line referenced in the project narrative and shown on the plan.
- 3.5 Section 12.07 *Wetland Delineations* requires wetland delineations are to be prepared by a New Hampshire certified wetland scientist who shall sign and seal the existing condition plan and site plan. The date of the wetland delineation shall be noted on the plans. The certified wetland scientist shall sign and seal, and note the date of the wetland delineation on figure 3 – *Wetland Setback Plan*.
- 3.6 Section 14.02(3)(b)(ii) *Man-made Features* requires identification of municipal special district boundaries to be shown. A note shall be added to the plan stating whether or not the property is located in the City of Concord Flood Hazard Zoning Overlay (FH) District. If the property is located within the FH District as defined by Section 28-3-2 *Flood Hazard (FH) District* of the Zoning Ordinance, the boundaries shall be shown on the plans and the plans shall conform with requirements of the FH District.

The items below are missing from the application, but they are not required as part of the determination of completeness and are, therefore, allowed to be addressed as conditions of approval.

- 3.7 Section 13.01(6) *State and Federal Permits* requires a copy of any application made to a state or federal agency required for the approval of this site plan, including those required for the development of off-site improvements. A copy of any state or federal permits, including permit by notification, shall be submitted prior to final approval.
- 3.8 Add the Planning Board approval block on the cover sheet of the plan set. Staff can provide a template as a .pdf, .dwg, or .jpg if requested.



3.9 The Engineering Services Division performed a review of this application and had the following compliance comments:

- a) An erosion control plan shall be included in the plan set pursuant to Section 16.02(13) *Erosion Control* of the Site Plan Regulations.
- b) The erosion control/restoration notes on Sheet S1 shall include the following notes for compliance with Sections 27.09(2) through 27.09(5):
 1. As required by Section 27.09(2) *Disturbed Areas*, a note shall be added that all disturbed areas remaining idle for more than 21 days shall be stabilized, including stockpiles.
 2. As required by Section 27.09(3) *Site Restoration*, a note shall be added that all disturbed land shall be recovered with loam and a minimum depth of six inches. The loam shall be fertile, natural soil, typical of the locality, free from large stones, roots, sticks, clay, peat, weeds and sod, and obtained from a naturally well drained area, nor contain toxic materials to plants. When possible, top soil, topsoil from the proposed development shall be redistributed so as to provide the required cover.
 3. As required by Section 27.09(3) *Site Restoration*, a note shall be added that unless otherwise stated, all disturbed areas shall be seeded in accordance with the City of Concord Construction Standards and Details.
 4. As required by Section 27.09(4) *Monitoring and Maintenance*, a note shall be added, or note 7 shall be revised, stating that sedimentation and erosion control measures shall be removed after final site stabilization in accordance with City, NHDES and NPDES requirements.
 5. As required by Section 27.09(5) *Final Stabilization*, general note 6 on Sheet S1 shall be revised to conform with the requirements that a site shall be deemed to be stabilized when it is in a condition in which the soils on the site will not erode under the conditions of a 10-year storm. Temporary sediment and erosion control devices shall not be removed until permanent stabilization is established for the entire site or phase of the development. All temporary erosion and sediment control measures shall be removed after the completion of construction.
- c) Pursuant to Section 27.09(1) *Erosion Control Plan*, the site plan or erosion control plan shall show the location of the typical wetland crossing detail provided on Sheet S2.
- d) Pursuant to Section 27.09 *Erosion Control*, a detail of the stump grindings shown in the typical wetland crossing detail on Sheet S2 shall be provided. If the stump grindings are the same or similar treatment as the straw waddle detail on Sheet S3, please clarify.
- e) Pursuant to Section 27.09 *Erosion Control*, the temporary construction entrance/exit detail provided on Sheet S2 shall be replaced with, or revised to meet or exceed the requirements of, City of Concord Construction Detail E-1 *Construction Entrance Detail*.
- f) Pursuant to Section 27.09(1) *Erosion Control Plan*, the site plan or erosion control plan shall show the location of the following construction details provided on Sheet S3: dewatering

- basin; typical water bar; slope installation detail of erosion control blanket; and straw waddle. If any of the details are not to be used, they shall be removed from Sheet S3.
- g) Pursuant to Section 27.09(1) *Erosion Control Plan*, the typical water bar detail, the “can” and “should” in notes 1 and 2, shall respectively be changed to, “shall.”
- 3.10 The Fire Department performed a review of this application and had no compliance comments.
- 3.11 The General Services Department performed a review of this application and had no compliance comments.
- 3.12 The Assessing Department performed a review of this application and had no compliance comments.
- 4. Variances:**
- 4.1 No variances are requested.
- 5. Waivers:**
- 5.1 No waivers are requested.
- 6. Conditional Use Permits:**
- The applicant requests approval for three conditional use permits in accordance with Section 28-4-3(d) *Conditional Use Permits Required for Certain Disturbance of Wetland Buffers*; Section 28-4-4(4) *Conditional Use Permits Required for Certain Disturbance of Bluffs and Buffers*; and Section 28-3-3(f) *Conditional Use Permit Required for Disturbance of Buffers in the SP District*.

Per Section 28-9-4(b) *Conditional Use Permits*, the Planning Board shall approve an application for a conditional use permit if it finds, based on the information submitted with respect to the application, that:

- a. The use is specifically authorized in this ordinance as a conditional use;

Review: The applicant states “...Article 28 Section 4-3(d) of the Concord Zoning Ordinance, a Conditional Use Permit may be issued by the Planning Board allowing the disturbance of a wetland buffer in conjunction with construction or installation “*of roads, utilities, and drainage improvements and other uses which require the placement of impervious surfaces, and the draining, dredging, filling, recontouring, or grading of the land*” within the wetland buffer. Additionally, in accordance with Article 28 Section 4-4(d) of the Concord Zoning Ordinance, a Conditional Use Permit may be issued by the Planning Board allowing the disturbance of bluff buffer in conjunction with construction or installation of “*driveways, streets, and roads, including skidder or logging roads; railroads; parking lots or loading areas; utilities; drainage improvements; subsurface disposal systems, or the a replacement of an existing subsurface disposal system or leach field; or other activities which require the placement of impervious surfaces, or the recontouring, or grading of the land within the buffer*”. Lastly, in accordance with Article 28 Section 3-3(f)(1) of the Concord Zoning Ordinance, a Conditional Use Permit may be by the Planning Board allowing disturbance within the Shoreland Protection (SP) District buffers “*in conjunction with the construction or installation of roads, bridges, and utilities which will cross a river or watercourse.*” Staff concurs that the use is specifically authorized in this ordinance as a conditional use.

- b. If completed as proposed by the applicant, the development in its proposed location will comply with the requirements of this article, and with the specific conditions of standards established in this ordinance for the particular use;

Review: The applicant states, "...the utility structures will be replaced within the existing and maintained ROW and Eversource is not proposing to expand the existing ROW or install new utility lines. The proposed impacts associated with this project are temporary and required for safe access, work pad placement and structure replacement." Staff notes that the site meets the standards of this section.

- c. The use will not materially endanger the public health or safety;

Review: The applicant states, "...the proposed project includes the replacement of infrastructure that is old and worn and must be replaced to ensure safety and reliability of the electrical infrastructure." Staff is unaware of any public health or safety dangers posed by the proposed replacement project.

- d. The use will be compatible with the neighborhood and with adjoining or abutting uses in the area in which it is to be located;

Review: The applicant states, "... the utility structures will be replaced within the existing and maintained ROW and Eversource is not proposing to expand the width of the ROW or install new utility lines within the ROW. As a result, no changes to the existing use of the property are anticipated." Staff concurs that the applicant is proposing maintenance of existing infrastructure present at the property.

- e. The use will not have an adverse effect on highway or pedestrian safety;

Review: The applicant states, "...equipment and construction vehicles will be contained within the ROW and not alongside the road and therefore will not result in an impact to highway or pedestrian safety." Staff concurs and notes that Garvins Falls Road already serves as access to the facilities being repaired as part of this use.

- f. The use will not have an adverse effect on the natural, environmental, and historic resources of the City; and

Review: The applicant states, "the proposed project requires temporary wetland impacts, temporary wetland buffer impacts, temporary protected shoreland buffer impacts, and temporary bluff buffer impacts. Where possible, impacts were avoided and minimized." Staff notes the application has been reviewed by the City of Concord's Conservation Commission, who recommended approval as submitted; the applicant states "as part of project scoping, the project team has completed wetland delineation and coordination with the NH Natural Heritage Bureau and NH Fish and Game Department"; and, the applicant stated "... archeological evaluations are being conducted in spring 2025 based on review by the New Hampshire Division of Historic Resources". Staff notes based mitigation proposed and temporary nature of the impacts to repair existing infrastructure, the conditional use permit will not have an adverse effect on the natural and environmental resources of the City.

- g. The use will be adequately serviced by necessary public utilities and by community facilities and services of a sufficient capacity to ensure the proper operation of the proposed use, and will not necessitate excessive public expenditures to provide facilities and services with sufficient additional capacity.

Review: The applicant states, "...Public expenditures or public facilities are not anticipated as a result of this project." Staff notes Garvins Falls Road already services the existing 334G utility line access.

- 6.1 The applicant requests approval for a conditional use permit (PL-CUP-2025-0090) in accordance with Section 28-4-3(d) *Conditional Use Permits Required for Certain Disturbance of Wetland Buffers* of the Zoning Ordinance to allow for the disturbance of the wetland buffer for the replacement of the existing utility structures 250, 251, and 252, consisting of a total of six utility structure poles, along the 334G distribution line in the City of Concord at Tax Map Lot 89Z 14, along Garvins Falls Rd.

The Planning Board may grant a conditional use permit allowing the disturbance of a buffer in conjunction with construction or installation of roads, utilities, and drainage improvements and other uses which require the placement of impervious surfaces, and the draining, dredging, filling, recontouring, or grading of the land within the buffer. In granting a permit, the Planning Board may attach conditions to the permit including, but not limited to, requirements for more extensive buffers, additional plantings in areas to be revegetated, and a reduction in the extent of impervious surfaces within the buffer

Per Section 28-4-3(d), in addition to the requirements of Section 28-9-4(b), *Conditional Use Permits*, of this ordinance, an applicant for a permit shall provide adequate documentation in order for the Planning Board to make a finding that the proposed disturbance of the buffer meets the following conditions:

- (1) The disturbance of the buffer is necessary to the establishment of an allowable principal or accessory use on the buildable land area of the lot;

Review: The applicant states, "...impacts to wetland and wetland buffers are necessary for access to structures and construction of temporary work areas." Staff notes the applicant had demonstrated in their narrative and plans an effort to minimize the wetland buffer impacts while still accessing and maintaining the existing 334G utility line.

- (2) The proposed disturbance to the buffer cannot practicably be located otherwise on the lot to eliminate or reduce the impact to the buffer and represents the minimum extent of disturbance necessary to achieve the reasonable use of those portions of the lot consisting of buildable land;

Review: The applicant states, "the utility line is currently within an established and maintained ROW, and therefore proposing access within the ROW is the least impacting disturbance." Staff notes the proposed location and impacts minimize the impacts, utilizing existing access routes and constructing temporary measures as necessary to complete the replacement of the aged and worn utility structures.

- (3) The proposed disturbance to the buffer minimizes the environmental impact to the abutting wetland, and to downstream property and hydrologically connected water and wetland resources;

Review: The applicant states, “work will be conducted in accordance with NH Department of Environmental Services (NHDES) Best Management Practices Manual for Utilities in and Adjacent to Wetlands and Waterbodies (March 2019).” Staff notes the application has been reviewed by the City of Concord’s Conservation Commission, who recommended approval as submitted, and the applicant states “as part of project scoping, the project team has completed wetland delineation and coordination with the NH Natural Heritage Bureau and NH Fish and Game Department.” Staff notes based on the mitigated impacts proposed, and restoration efforts described on the plan, the conditional use permit will not have an adverse effect on the natural and environmental resources of the City.

- (4) Where applicable, wetland permit(s) have been received or are obtained from the NHDES and USACOE; and

Review: The applicant states, “GZA, on behalf of Eversource, will submit NHDES Wetlands Permit by Notification (PBN) for proposed temporary wetland impacts in the City of Concord. In addition, it is anticipated that the proposed project will also be permitted as a minimum impact project through the USACE New Hampshire General Permit.” Staff notes a copy of state and federal permits is required by the Site Plan Regulations prior to final approval.

- (5) Where applicable, permits or proof of compliance with all other state and/or federal regulations have been received or are obtained.

Review: The applicant states, “the project team can provide copies of permits and/or proof of compliance with other state and/or federal regulations upon request and following receipt from state/federal agencies.” Staff notes a copy of state and federal permits is required by the Site Plan Regulations prior to final approval.

- 6.2 The applicant requests approval for a conditional use permit (PL-CUP-2025-0091) in accordance with Section 28-4-4(d) *Conditional Use Permits Required for Certain Disturbance of Bluffs and Buffers* of the Zoning Ordinance to allow for the disturbance of the buffer to a bluff for the replacement of the existing utility structure 252 along the 334G distribution line in the City of Concord Tax Map Lot 89Z 14, along Garvins Falls Road.

The Planning Board may grant a conditional use permit allowing the disturbance of a buffer in conjunction with construction or installation of driveways, streets, and roads, including skidder or logging roads; railroads; parking lots or loading areas; utilities; drainage improvements; subsurface disposal systems, or the a replacement of an existing subsurface disposal system or leach field; or other activities which require the placement of impervious surfaces, or the recontouring, or grading of the land within the buffer. The Planning Board may also grant a conditional use permit allowing the disturbance of a bluff in conjunction with construction or installation of utilities, drainage improvements, railroads, roads that span a ravine, or a collector street, arterial street, or a limited access highway where such street or highway is designed to connect buildable land at the top of a bluff to buildable land at the bottom of a bluff.

In addition to the requirements of Section 28-9-4(b), *Conditional Use Permits*, of this ordinance, the following provisions shall apply to an application for a permit for disturbance of a buffer or bluff:

- (1) An applicant for a permit shall provide a plan showing, as applicable, the proposed vegetation removal, grading, drainage, erosion control measures, retaining walls, impervious surfaces, utilities and appurtenances, and subsurface disposal systems. The plan shall be prepared by a licensed engineer, except that in the case of the installation of skidder or logging roads or other buffer disturbances related to timber harvesting, the plan shall be prepared by a licensed forester;

Review: The applicant has provided a plan showing proposed impacts and provided erosion control details for measures to be used. The plan was prepared by GeoEnvironmental, Inc Engineers and Scientists, however the signature and seal of the professional engineer who prepared the plans is not provided.

- (2) Adequate documentation, certified by a licensed engineer or a licensed forester, as applicable, shall be submitted to the Planning Board in order for the Board to make a finding that the proposed disturbance of a buffer or bluff, as specified herein, meets the following conditions:
 - a. The disturbance of a buffer is necessary for timber harvesting, or for the establishment of an allowable principal use on the buildable land area of the lot;

Review: The applicant states "...this project is for the maintenance and repair of the existing 334G utility line located within an existing and maintained utility ROW, an allowable principal use within the lot." Staff notes this use is necessary to access and conduct the necessary maintenance and replacement for the existing utility lines and structures.

- b. The proposed disturbance to a buffer represents the minimum extent of disturbance necessary to conduct a timber harvest, or to achieve the reasonable use of those portions of the lot consisting of buildable land;

Review: The applicant states "The proposed work pad area has been scoped to the size necessary to provide a safe work area to stage equipment and construction vehicles during structure replacement." Staff notes the applicant is utilizing an existing maintenance road to the greatest extent possible before needing to establishing temporary access ways and work zones to replace the required utility pole structures.

- c. Stormwater runoff and drainage system outfalls relating to the disturbance of a buffer or bluff will be directed away from the bluff;

Review: The applicant states "Stormwater runoff will be directed away from the bluff using appropriate erosion controls during construction." Staff notes Engineering Services has recommended that the Planning Board require a separate erosion control plan to be provided as a condition of approval.

- d. The proposed disturbance of a buffer or bluff will not destabilize the bluff, or cause erosion of the bluff to occur at a rate in excess of that which occurs under natural conditions from wind and water; and

Review: The applicant states “The use of temporary matting will prevent rutting and will not result in vegetation removal within the buffer. Prior to the start of construction, erosion controls will be installed around the work pad area to limit and prevent erosion and sedimentation. Temporary upland mats will be removed upon completion of work, and it is anticipated that after completion of construction, the site will be restored to its existing condition.” Staff notes Erosion Control / Restoration Note 1 on Sheet S1 further states that the site shall be inspected on a weekly basis and after .25-inch or greater rainfall events.

- e. Where applicable, permits or proof of compliance with all related state and federal regulations have been received or are obtained.

Review: The applicant states “The project team will provide copies of requested permits and/or proof of compliance with other state and/or federal regulations upon receipt from state/federal agencies. Work will not begin until applicable permits have been approved.” Staff notes receipt of the required state and/or federal permits, prior to final approval, is also a requirement of the Site Plan Regulations.

- (3) In granting a permit, the Planning Board may attach conditions to the permit including but not limited to requirements for more extensive buffers, revegetation of the disturbed area with native species, installation of additional plantings of native species to supplement existing vegetation, and a reduction in the extent of impervious surfaces within a buffer.

Review: Section 9 of this report contains staffs recommended conditions of approval.

- 6.3 The applicant requests approval for a conditional use permit (PL-CUP-2025-0092) in accordance with Section 28-3-3(f) *Conditional Use Permit Required for Disturbance of Buffers in the SP District* of the Zoning Ordinance to allow for the disturbance of the buffer for the replacement of the existing utility structure 252 along the 334G distribution line in the City of Concord Tax Map Lot 89Z 14, along Garvins Falls Road.

The Planning Board may grant a conditional use permit allowing the disturbance of buffers in conjunction with the construction or installation of the following: a. Roads, bridges, and utilities which will cross a river or watercourse; b. Drainage improvements adjacent to surface waters; and, c. Water dependent uses and structures including, but not necessarily limited to, boathouses, beaches, docks, piers, and moorings.

In granting an application for a conditional use permit, the Planning Board may allow the placement of impervious surfaces, and the dredging, filling, recontouring, or grading of the land within the buffer. The Planning Board may attach conditions in granting a permit including, but not limited to, requirements for more extensive buffers, additional plantings in areas to be revegetated, and limitations on the extent of impervious surfaces within the buffer. In addition to the requirements of Section 28-9-4(b) *Conditional Use Permits*, of this ordinance, an applicant for a permit shall provide adequate documentation in order for the Planning Board to make a finding that the proposed disturbance of the buffer meets the following conditions:

- a. The proposed disturbance to the buffer represents the minimum extent of disturbance necessary to achieve the reasonable use of, or provide access to, land outside of the buffer area;

Review: The applicant states “Temporary upland matting is proposed for the required work in order to reduce ground disturbance and prevent vegetation removal within the upland buffers associated with Structure 252. This has been designed to minimize disturbance to the greatest extent practicable.” Staff notes the applicant is also utilizing an existing maintenance and access road to the greatest extent possible.

- b. The proposed disturbance to the buffer minimizes the environmental impact to the adjacent surface waters;

Review: The applicant states “vegetation removal and grading will not be required within the 250-ft Shoreland Protection District for the proposed access and maintenance work. During Construction, erosion and sediment controls will be installed to prevent erosion and sedimentation into adjacent surface waters.” Staff notes erosion control details and notes have been provided in the plan set.

- c. The proposed disturbance to the buffer cannot practicably be located otherwise to eliminate or reduce the impact to the buffer and the adjacent surface waters;

Review: The applicant states “As Structure 252 is located approximately 75-feet from the Merrimack River, temporary disturbance within the 250-foot Protected Shoreland District is unavoidable.” Staff notes this work is necessary to replace existing utility infrastructure.

- d. In the case of an application for a conditional use permit for a water dependent use or structure, a permit from NHDES in accordance with RSA 482-A, Fill and Dredge in Wetlands, has been received; and

Review: The applicant states “the proposed work within the shoreland buffer will take place in uplands, and does not involve a water dependent structure.”

- e. Where applicable, permits or proof of compliance with all other state and federal regulations have been received.

Review: The applicant states “GZA anticipates submitting a NHDES Shoreland Permit by Notification (PBN) for the work proposed within the 250-ft protected shoreland of the Merrimack River.” Staff notes receipt of the required state and/or federal permits, prior to final approval, is also a requirement of the Site Plan Regulations.

7. Architectural Design Review:

- 7.1 No architectural design review is required.

8. Conservation Commission:

- 8.1 The applicant appeared before the Conservation Commission on June 11, 2025, at which time the Conservation Commission voted to recommend that the Planning Board approve the conditional use permit application as submitted.

9. Recommendations:

- 9.1 Staff recommends that the Planning Board **adopt the findings of fact**, which include: information provided in staff reports; the applicant’s submission materials; testimony provided during the public hearing; and/or, other documents or materials provided in the public hearing

Based on the adopted findings of fact, staff recommends that the Planning Board make the motion outlined below:

- 9.2 **Grant the conditional use permit** (PL-CUP-2025-0090) for disturbances to the wetland buffer for the replacement of the existing utility structures 250, 251, and 252, consisting of a total of six utility structure poles, and related site work for temporary access and construction pads along the 334G distribution line, in accordance with Section 28-4-3(d) *Conditional Use Permits Required for Certain Disturbance of Wetland Buffers*, at Tax Map Lot 89Z 14, along Garvins Falls Road, because the criteria from Section 28-4-3(d)(1) through (5) and Section 28-9-4(a) through (g) have been met, or will be met, and subject to the following precedent and subsequent conditions:

(a) **Precedent Conditions** – to be fulfilled within one year and prior to signature of the final plans by the Planning Board Chair and Clerk, unless otherwise specified:

1. For compliance with the Site Plan Regulations, revise the plans as follows:
 - a. Per Section 12.02(1)(c), Figure 3 – *Wetland Setback Plan* is dated March 11, 2025, and shall be dated April 30, 2025, similar to every other sheet provided in the plan set.
 - b. Per Section 12.03(2), the licensed engineer who prepared the plans shall sign and seal the cover sheet or site plan.
 - c. Per Section 12.03(5), the certified wetland scientist shall sign and seal Figure 3 – *Wetland Setback Plan*.
 - d. Per Section 12.06(2) *Easements*, a plan or deed reference note shall be added to the plan for the utility easement for the 334G line referenced in the project narrative and shown on the plan.
 - e. Per Section 12.07 *Wetland Delineations*, the certified wetland scientist shall sign, seal, and note the date of the wetland delineation on Figure 3 – *Wetland Setback Plan*.
 - f. Per Section 14.02(3)(b)(ii) *Man-made Features*, a note shall be added to the plan stating whether or not the property is located in the City of Concord Flood Hazard Zoning Overlay (FH) District. If the property is located within the FH District as defined by Section 28-3-2 *Flood Hazard (FH) District* of the Zoning Ordinance, the boundaries shall be shown on the plans and the plans shall conform with requirements of the FH District.
 - g. Section 13.01(6) *State and Federal Permits*, a copy of any state or federal permits, including permit by notification, shall be submitted prior to final approval.
 - h. Add the Planning Board approval block on the cover sheet of the plan set. Staff can provide a template as a .pdf, .dwg, or .jpg if requested.



2. For compliance with the Site Plan Regulations and compliance comments provided from the Engineering Services Division, revise the plan as follows:

- a) An erosion control plan shall be included in the plan set pursuant to Section 16.02(13) *Erosion Control* of the Site Plan Regulations.
- b) The erosion control/restoration notes on Sheet S1 shall include the following notes for compliance with Sections 27.09(2) through 27.09(5):
 1. Per Section 27.09(2) *Disturbed Areas*, a note shall be added that all disturbed areas remaining idle for more than 21 days shall be stabilized, including stockpiles.
 2. Per Section 27.09(3) *Site Restoration*, a note shall be added that all disturbed land shall be recovered with loam and a minimum depth of six inches. The loam shall be fertile, natural soil, typical of the locality, free from large stones, roots, sticks, clay, peat, weeds and sod, and obtained from a naturally well drained area, nor contain toxic materials to plants. When possible, top soil, topsoil from the proposed development shall be redistributed so as to provide the required cover.
 3. Per Section 27.09(3) *Site Restoration*, a note shall be added that unless otherwise stated, all disturbed areas shall be seeded in accordance with the City of Concord Construction Standards and Details.
 4. Per Section 27.09(4) *Monitoring and Maintenance*, a note shall be added, or Note 7 shall be revised, stating that sedimentation and erosion control measures shall be removed after final site stabilization in accordance with City, NHDES and NPDES requirements.
 5. Per Section 27.09(5) *Final Stabilization*, general note 6 on Sheet S1 shall be revised to conform with the requirements that a site shall be deemed to be stabilized when it is in a condition in which the soils on the site will not erode under the conditions of a 10-year storm. Temporary sediment and erosion control devices shall not be removed until permanent stabilization is established for the entire site or phase of the development. All temporary erosion and sediment control measures shall be removed after the completion of construction.
- c) Per Section 27.09(1) *Erosion Control Plan*, the site plan or erosion control plan shall show the location of the typical wetland crossing detail provided on Sheet S2.
- d) Per Section 27.09 *Erosion Control*, a detail of the stump grindings shown in the typical wetland crossing detail on Sheet S2 shall be provided. Clarify if the stump grindings are the same or similar treatment as the straw waddle detail on Sheet S3.
- e) Per Section 27.09 *Erosion Control*, the temporary construction entrance/exit detail provided on Sheet S2 shall be replaced with, or revised to meet or exceed the requirements of, City of Concord Construction Detail E-1 *Construction Entrance Detail*.
- f) Per Section 27.09(1) *Erosion Control Plan*, the site plan or erosion control plan shall show the location of the following construction details provided on Sheet S3: dewatering basin; typical water bar; slope installation detail of erosion control blanket; and straw waddle. If any of the details are not to be used, they shall be removed from Sheet S3.
- g) Per Section 27.09(1) *Erosion Control Plan*, in the typical water bar detail, the “can” and “should” in notes 1 and 2, shall respectively be changed to, “shall”
3. Upon notification from the Planning Division that the final plan set complies with Planning Board conditions, Zoning Ordinance requirements, and the Site Plan Regulations, the applicant shall deliver to the Planning Division two full-size plan sets for endorsement by the Planning Board Chair and Clerk of the Planning Board.

(b) **Subsequent Conditions** – to be fulfilled as specified:

1. This approval notwithstanding, the applicant is responsible for full knowledge of, and compliance with, the municipal code, Site Plan Regulations, and Concord Construction Standards and Details for the project, unless a variance, waiver, or conditional use permit is granted.
2. Erosion control measures shall be installed and maintained in accordance with Section 27.09 of the Site Plan Regulations.
3. Per Section 36.19 of the Site Plan Regulations, it shall be the duty of the Clerk to enforce the regulations and to bring any violations or lack of compliance herewith, to the attention of the City Solicitor and Code Administrator.
4. In accordance with Section 36.28 of the Site Plan Regulations, wetland buffers shall be clearly and permanently marked before, during, and after construction. Permanent markers used shall either be the marker discs available for purchase from the Planning Department, or match the marker discs available from the Planning Department and be subject to the Clerk's approval prior to placement.
5. In accordance with Section 28-9-4(b)(7) *Expiration of a Conditional Use Permit* of the Zoning Ordinance, if the use or construction so authorized by granting a conditional use permit has not commenced within a two-year period from the date of the decision of the Planning Board, then the conditional use permit shall be deemed to have expired and the Planning Board's decision shall be considered null and void.
6. Prior to the start of any work, the applicant shall apply and receive appropriate permits required by the Engineering Services Division.
7. Prior to the start of any work, a site stabilization guarantee shall be provided in accordance with Section 27.11 *Site Stabilization Guarantee* of the Site Plan Regulations. The City Engineer may call said financial guarantee, and stabilize a disturbed site if, upon notice, the applicant has not stabilized or restored the site. A single site stabilization guarantee can be considered for planning case 2025-055, consisting of the three conditional use permits associated with the project: PL-CUP-2025-0090; PL-CUP, 2025-0091; and PL-CUP-2025-0092.
8. In accordance with Section 17-6-10 of the Traffic Code, truck traffic for vehicles with a gross weight over nine tons shall be prohibited from travel on roads with posted load limits. Waivers for travel of overweight vehicles on posted roads shall not be considered unless requested by the Public Utilities Commission stating such waiver is requested for consideration of the City Manager as an emergency to address public safety and wellbeing. The contractor/developer/applicant/property owners shall comply with this code and schedule work accordingly.

9.3 **Grant the conditional use permit** (PL-CUP-2025-0091) for disturbances of bluffs and buffers for the replacement of the existing utility structure 252, and related site work for temporary access and construction pads along the 334G Distribution line, in accordance with Section 28-4-4(d) *Conditional Use Permits Required for Certain Disturbance of Bluff and Buffers*, at Tax Map Lot 89Z 14, along Garvins Falls Road, because the criteria from Section 28-4-4(d)(1) through (2) and Section 28-9-4(a) through (g) have been met, or will be met, and subject to the following precedent and subsequent conditions:

- (a) **Precedent Conditions** – to be fulfilled within one year and prior to signature of the final plans by the Planning Board Chair and Clerk, unless otherwise specified:
 1. Per Section 12.03(2), and Section 28-4-4(d)(1) of the Zoning Ordinance, the licensed engineer who prepared the plans shall sign and seal the cover sheet or site plan.
 2. Prior to final approval, the accompanying conditional use permits for impacts to wetland

buffers (PL-CUP-2025-0090) and impacts to shoreland protection buffers (PL-CUP-2025-0092) shall also be determined ready for final approval by the Clerk of the Planning Board.

(b) **Subsequent Conditions** – to be fulfilled as specified:

1. This approval notwithstanding, the applicant is responsible for full knowledge of, and compliance with, the municipal code, Site Plan Regulations, and Concord Construction Standards and Details for the project, unless a variance, waiver, or conditional use permit is granted.
2. Erosion control measures shall be installed and maintained in accordance with Section 27.09 of the Site Plan Regulations.
3. Per Section 36.19 of the Site Plan Regulations, it shall be the duty of the Clerk to enforce the regulations and to bring any violations or lack of compliance herewith, to the attention of the City Solicitor and Code Administrator.
4. In accordance with Section 28-9-4(b)(7) *Expiration of a Conditional Use Permit* of the Zoning Ordinance, if the use or construction so authorized by granting a conditional use permit has not commenced within a two-year period from the date of the decision of the Planning Board, then the conditional use permit shall be deemed to have expired and the Planning Board's decision shall be considered null and void.
5. Prior to the start of any work, a site stabilization guarantee shall be provided in accordance with Section 27.11 *Site Stabilization Guarantee* of the Site Plan Regulations. The City Engineer may call said financial guarantee, and stabilize a disturbed site if, upon notice, the applicant has not stabilized or restored the site. A single site stabilization guarantee can be considered for planning case 2025-055, consisting of the three conditional use permits associated with the project: PL-CUP-2025-0090; PL-CUP, 2025-0091; and, PL-CUP-2025-0092.
6. In accordance with Section 17-6-10 of the Traffic Code, truck traffic for vehicles with a gross weight over nine tons shall be prohibited from travel on roads with posted load limits. Waivers for travel of overweight vehicles on posted roads shall not be considered unless requested by the Public Utilities Commission stating such waiver is requested for consideration of the City manager as an emergency to address public safety and wellbeing. The contractor/developer/applicant/property owners shall comply with this code and schedule work accordingly.

9.4 **Grant the conditional use permit** (PL-CUP-2025-0092) for disturbances of buffers in the Shoreland Protection District for the replacement of the existing utility structure 252, and related site work for temporary access and construction pads along the 334G Distribution line, in accordance with Section 28-3-3(f) *Conditional Use Permit Required for Disturbance of Buffers in the SP District*, at Tax Map Lot 89Z 14, along Garvins Falls Road, because the criteria from Section 28-3-3(f)(2)(a) through (e) and Section 28-9-4(a) through (g) have been met, or will be met, and subject to the following precedent and subsequent conditions:

(a) **Precedent Conditions** – to be fulfilled within one year and prior to signature of the final plans by the Planning Board Chair and Clerk, unless otherwise specified:

1. Prior to final approval, the accompanying conditional use permits for impacts to wetland buffers (PL-CUP-2025-0090) and impacts to buffers to bluffs (PL-CUP-2025-0091) shall also be determined ready for final approval by the Clerk of the Planning Board.

(b) **Subsequent Conditions** – to be fulfilled as specified:

1. This approval notwithstanding, the applicant is responsible for full knowledge of, and compliance with, the municipal code, Site Plan Regulations, and Concord Construction Standards and Details for the project, unless a variance, waiver, or conditional use permit is granted.
2. Erosion control measures shall be installed and maintained in accordance with Section 27.09 of the Site Plan Regulations.
3. Per Section 36.19 of the Site Plan Regulations, it shall be the duty of the Clerk to enforce the regulations and to bring any violations or lack of compliance herewith, to the attention of the City Solicitor and Code Administrator.
4. In accordance with Section 28-9-4(b)(7) *Expiration of a Conditional Use Permit* of the Zoning Ordinance, if the use or construction so authorized by granting a conditional use permit has not commenced within a two-year period from the date of the decision of the Planning Board, then the conditional use permit shall be deemed to have expired and the Planning Board's decision shall be considered null and void.
5. Prior to the start of any work, a site stabilization guarantee shall be provided in accordance with Section 27.11 *Site Stabilization Guarantee* of the Site Plan Regulations. The City Engineer may call said financial guarantee, and stabilize a disturbed site if, upon notice, the applicant has not stabilized or restored the site. A single site stabilization guarantee can be considered for planning case 2025-055, consisting of the three conditional use permits associated with the project: PL-CUP-2025-0090; PL-CUP, 2025-0091; and, PL-CUP-2025-0092.
6. In accordance with Section 17-6-10 of the Traffic Code, truck traffic for vehicles with a gross weight over nine tons shall be prohibited from travel on roads with posted load limits. Waivers for travel of overweight vehicles on posted roads shall not be considered unless requested by the Public Utilities Commission stating such waiver is requested for consideration of the City manager as an emergency to address public safety and wellbeing. The contractor/developer/applicant/property owners shall comply with this code and schedule work accordingly.

Prepared by: ATB