

Conditional Use Narrative for
Reduced Wetlands Buffer for Common Driveway
York Properties, LLC
Concord Tax Map 15P Lot 35-1 & Boscawen Tax Map 83 Lot 63-2
120 Elm Street
Concord & Boscawen, New Hampshire

The subject property is an undeveloped parcel located at 120 Elm Street and owned by York Properties, LLC (“York”), which was part of a two lot subdivision obtained by Apple Hill Properties, LLC (“Apple Hill”) in 2013 (the “Property”). The majority of the Property is located within the Town of Boscawen, but the road frontage and access to the lot is located in the City of Concord. The Property consists of Lot 35-1 on Concord Tax Map 15P and Lot 63-2 on Boscawen Tax Map 83. The total parcel acreage is 5.0199 acres, of which 4.7018 acres is in Boscawen and the remaining 0.3181 acres is located in Concord. The Concord portion of the property is in the RN zoning district. When this parcel was subdivided by Apple Hill in 2013, a shared driveway for the two subdivided lots was created over an existing driveway on Concord Lot 15P-35 and Boscawen Lot 83-63-1 and an easement was recorded for the same (the “Common Driveway”). The records show that a CUP and a waiver were both required for the Common Driveway.

In August 2024, York approached the City of Concord to obtain a driveway permit in order to develop the Property. On or about August 20, 2024, the City of Concord informed them that the waiver sought by Apple Hill in obtaining the subdivision approval was for the construction of a driveway for up to only two dwellings. Even though the argument was made to the City that during discussion in the April 17, 2013 City of Concord Planning Board minutes, the City staff noted the potential for 2-4 additional buildings on lot 2, the City of Concord has determined that ultimately, the Planning Board decision expressly approved a waiver for up to two dwelling units, and no more. Basically, they stated that Apple Hill requested and obtained the wrong waiver to support more than two dwelling units using the Common Driveway.

In or about June 2014, Apple Hill obtained approval from the Town of Boscawen to establish a two family on 118 Elm Street, which is Lot 1 of the subdivision (“Lot 1”). This was neither discussed with the City of Concord, nor disclosed to York when Apple Hill sold the Property to them. Similarly, Apple Hill never paved or finished the Common Driveway as required under the subdivision approval and as shown on the recorded plan. These two items are significant given that the City of Concord has now determined that Apple Hill only obtained a waiver for two dwellings and prior to the sale of the Property to York, Apple Hill established a second dwelling on Lot 1, thereby using the Common Driveway to access two dwelling units on Lot 1 alone.

As it stands today, per the decision of the City of Concord, the lot that York owns is landlocked and cannot be built upon. Even though York has a recorded easement to access the Property, the City of Concord has stated that it will not issue York a driveway permit to use the Common Driveway at this point in time. In fact, the City of Concord has indicated that in order to use the Common Driveway as access to the Property, York would not only be required to

apply for and obtain a new CUP for impact to wetland buffer, but York would need to apply for certain waivers in order to use the Common Driveway to access more than the two established dwelling units. The only other option that York has to use the Common Driveway as its access, without applying for the waivers, would be to comply with the City of Concord driveway requirements for a 3-8 dwelling unit private common driveway. In order to meet those requirements, the existing access driveway would need to be widened. Unfortunately, York does not own the underlying fee interest in the Common Driveway and the deeded easement doesn't permit them to expand or widen the area. The only way that this could happen is with the permission of the owner of Lot 1. York previously contacted the owner of Lot 1 to discuss this, but she indicated York was not permitted to expand the Common Driveway, and in fact, she stated that she would oppose any new applications and waivers that York submits to the City of Concord to try to use the Common Driveway at all.

Based on the above information and the fact that the owner of Lot 1 has expressly indicated that she will oppose any attempts by York to use the Common Driveway as access to the Property, the only option for York to access the Property is through its frontage located in the City of Concord.

CUP Criteria:

Basic Criteria under Section 28-9-4(b)(4):

The Planning Board shall approve an application for a conditional use permit if it finds, based on the information and testimony submitted with respect to the application, that:

- a. The use is specifically authorized in this ordinance as a conditional use. The actual use is for a common residential driveway and utilities and the CUP needed is for a reduction in the wetland buffer, which is specifically authorized under Section 28-4-3(d) of the Zoning Ordinance.
- b. If completed as proposed by the applicant, the development in its proposed location will comply with all requirements of this Article, and with the specific conditions or standards established in this ordinance for the particular use. As stated above, the actual use is for a common residential driveway and utilities and the CUP needed is for a reduction in the wetland buffer, which is specifically authorized under Section 28-4-3(d) of the Zoning Ordinance. York will comply with all requirements of this Article.
- c. The use will not materially endanger the public health or safety. As stated above, the actual use is for a common residential driveway and utilities and will not materially endanger the public health or safety.
- 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. As stated above, the actual use is for a common residential driveway and utilities, which is compatible with the uses in the area. This is the only place that it can be located in order to provide access to the Property.

e. The use will not have an adverse effect on highway or pedestrian safety. As stated above, the actual use is for a common residential driveway and utilities, which is compatible with the uses in the area and will not have any adverse effect on highway or pedestrian safety.

f. The use will not have an adverse effect on the natural, environmental, and historic resources of the City. The proposed common residential driveway is designed to maintain hydrological connectivity within the wetland. There will be no impact to natural resources or historic resources as a part of this proposal.

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. The only use before the City of Concord is for a common residential driveway and utilities and the driveway is being proposed to meet all of the driveway regulations and will comply with the same.

Specific CUP Criteria Under Section 28-4-3(d):

Please see attached.



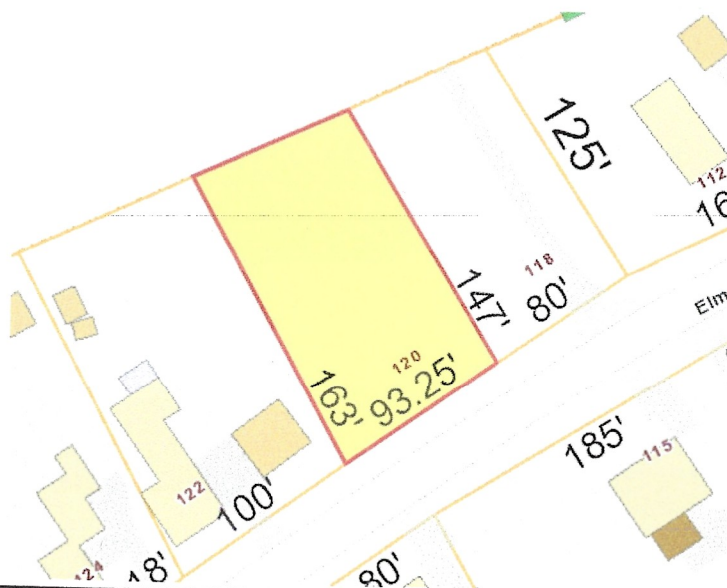
York Properties LLC
120 Elm Street
Concord NH

Response to 5 points of Article 28-4-3-D:

- 1) The disturbance of the buffer is necessary to the establishment of an allowable principal use on the buildable land area of the lot. The wetland in question crosses the entirety of the road frontage of the lot. To access the buildable area, the wetland must be crossed which will in turn impact the City of Concord's 50 foot wetland buffer.
- 2) The disturbance to the buffer cannot practicably be located otherwise on the lot to eliminate or reduce the impact to the buffer. As discussed above, the wetland in question crosses the entirety of the road frontage of the lot. The proposed crossing is at the narrowest portion of the forested wetland to minimize the impact.
- 3) There is no impact to downstream hydrologically connected water and wetland resources. The culvert was designed to maintain hydrological connectivity of the wetland in question. Also it should be noted that this wetland is a forested wetland and there is no stream channel.
- 4) A Standard Dredge and Fill Wetland Application has been filed with NHDES, as a part of this submission, USACOE checklists and permit review have also been filed. Response is pending.
- 5) A Standard Dredge and Fill Wetland Application has been filed with NHDES, as a part of this submission, USACOE checklists and permit review have also been filed. Response is pending. All necessary parties have been notified through this process.

In summary, to access the proposed building area of the site, there is no way to avoid an impact to Jurisdictional Wetlands or the City of Concord's 50 foot wetland buffer. The crossing has been designed to maintain hydrological connectivity and all state and federal agencies that require review have been notified as a result of the assembling and submission of the NHDES Standard Dredge and Fill Wetland Application. The impact has been designed to meet the City of Concord's road design standards and has been engineered to meet those requirements (by RJB Engineering, LLC). The impact is designed to cross at the narrowest point, per NHDES minimization standards. Impact to the buffer cannot be changed due to the City design standards.

TAX MAP 15P & 83
CONCORD/BOSCAWEN, NH



Client: York Properties LLC
Location: 120 Elm Street
 Concord, NH 03303

Prepared by:
 Beaver Brook Planning and Design
 PO Box 2272
 Concord, NH 03302



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



May 07, 2025

YORK PROPERTIES LLC
13 LAMPREY RD
CANTERBURY NH 03224

Re: Approved Standard Dredge and Fill Wetlands Permit Application (RSA 482-A)
NHDES File Number: 2025-00646
Subject Property: Elm St, Concord, Tax Map/Block/Lot(s): 15P/no block/35-1; 83/no block/63-2

Dear Applicant:

On May 07, 2025, the New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau approved the above-referenced Standard Dredge and Fill Wetlands Permit Application. Enclosed please find Wetlands Permit # 2025-00646 to dredge and fill 1,005 square feet (SF) of palustrine forested wetlands for installation of a 15"x 32' HDPE culvert for access to a residential development. Permanent impacts include 1,005 SF for grading, erosion controls, and culvert and headwall installation. The permittee shall notify the department in writing at least one week prior to commencing any work under this permit and shall file a notice of completion of work and certificate of compliance with the department within 10 working days of completion of the work authorized by this permit.

This permit is not valid unless signed by the permittee and the principal contractor, if any, who will build or install the project. Prior to start of construction, a copy of this permit shall be posted in a secure manner in a prominent place at the site of the approved project. It shall remain posted until the project is completed. Transfer of this permit to a new owner shall require notification to, and approval of, the NHDES. **This permit does not convey any property right, nor does it preclude the need to meet any other applicable state, federal, or municipal legal requirements.**

In accordance with RSA 482-A:10, RSA 21-O:14, and Rules Ec-Wet 100-200, **any person aggrieved by this decision may file a Notice of Appeal directly with the NH Wetlands Council (Council) within 30 days of the decision date, May 07, 2025.** Every ground claiming the decision is unlawful or unreasonable must be fully set forth in the Notice of Appeal. Only the grounds set forth in the Notice of Appeal are considered by the Council. Information about the Council, including Council Rules, is available at <https://www.nhec.nh.gov/wetlands-council/about>. For appeal related issues, contact the Council Appeals Clerk at (603) 271-3650.

This approval is based on the following findings:

1. This is classified as a minimum impact project per Rule Env-Wt 524.06(a), as the project is for residential access and impacts to jurisdictional areas other than a watercourse are less than 3,000 square feet.
2. NHB DataCheck letter NHB#24-3563 identified the presence of protected species. The applicant has implemented NH Fish and Game recommendations per Env-Wt 311.01(b)(1) and Env-Wt 311.06(g), to avoid and minimize project-related impacts to protected species.
3. The applicant has demonstrated avoidance and minimization in accordance with Env-Wt 313.03 by sizing the culvert to maintain hydrologic connectivity and impacting wetlands in the narrowest section possible.
4. The applicant has demonstrated that there is no other access to the parcel without impacting wetlands. A letter from the applicant's attorney, Maria Dolder of Hebert & Dolder dated March 6, 2025, indicated access via the shared driveway for the subdivision was no longer permitted for this parcel, thereby requiring impacts to wetlands for building an access route.

5. The applicant provided meeting minutes from the Concord Conservation Commission dated April 9, 2025, stating they do not oppose the project or have any comments on the proposal.
6. The applicant provided the Contoocook and North Branch Rivers LAC a copy of the application on March 14, 2025. The applicant stated that the LAC did not provide comments on the application.

If you have any questions, please contact me at Kara.Villone@des.nh.gov or (603)271-3376.

Sincerely,

A handwritten signature in cursive script that reads "Kara Villone".

Kara M. Villone
Wetland Permitting Specialist, Wetlands Bureau
Land Resources Management, Water Division

Enclosure

Copied: Beaver Brook Planning and Design, LLC
Boscawen Municipal Clerk
Boscawen Conservation Commission
Concord Municipal Clerk
Concord Conservation Commission
Contoocook and North Branch Rivers Local River Advisory Committee

WETLANDS PERMIT 2025-00646

NOTE CONDITIONS

PERMITTEE: YORK PROPERTIES LLC
13 LAMPREY RD
CANTERBURY NH 03224

PROJECT LOCATION: ELM ST, CONCORD
Tax Map/Block/Lot(s): 15P/no block/35-1; 83/no block/63-2

WATERBODY: UNNAMED WETLANDS

APPROVAL DATE: MAY 07, 2025 **EXPIRATION DATE:** MAY 07, 2030

The New Hampshire Department of Environmental Services' (NHDES) review of permit application 2025-00646 has found that it is consistent with RSA 482-A. NHDES hereby issues this Wetlands Permit authorizing the impacts described provided the Conditions imposed are met. To validate this Permit, the Permittee and the Principal Contractor are required to sign below.

PERMIT DESCRIPTION:

Dredge and fill 1,005 square feet (SF) of palustrine forested wetlands for installation of a 15"x 32' HDPE culvert for access to a residential development. Permanent impacts include 1,005 SF for grading, erosion controls, and culvert and headwall installation.

THIS PERMIT IS SUBJECT TO THE FOLLOWING PROJECT-SPECIFIC CONDITIONS:

1. All work shall be done in accordance with the approved plans dated March 5, 2025, by Beaver Brook Planning and Design, LLC as revised through May 7, 2025, and provided to NHDES on May 7, 2025, per Env-Wt 307.16 and Env-Wt 314.03(b).
2. The permittee shall submit a construction notice with the department at least one week prior to commencing work, per Env-Wt 314.03(a).
3. Water quality control measures shall be installed prior to start of work and in accordance with the manufacturer's recommended specifications, per Env-Wt 307.03(c)(3).
4. Water quality control measures shall be maintained to ensure continued effectiveness in minimizing erosion and retaining sediment on-site during and after construction, per Env-Wt 307.03(c)(5).
5. 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, per Env-Wt 307.03(g)(1).
6. Equipment shall be staged and refueled outside of jurisdictional areas, per Env-Wt 307.03(h) and Env-Wt 307.15.
7. Fill shall be clean sand, gravel, rock, or other material that meets the project's specifications for its use and does not contain any material that could contaminate surface or groundwater or otherwise adversely affect the ecosystem in which it is used, per Env-Wt 307.11(a).
8. To prevent the use of soil or seed stock containing nuisance or invasive species, the contractor responsible for work shall follow Best Management Practices for the Control of Invasive and Noxious Plant Species (Invasive Plant BMPs), per Env-Wt 307.05(e).
9. 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, per Env-Wt 307.03(b).
10. Slopes shall be immediately stabilized to prevent erosion into adjacent wetlands or surface waters, per Env-Wt 307.11(c).
11. All exposed soils and other fills shall be permanently stabilized within 3 days following final grading, per Env-Wt 307.03(e).

12. If any temporary impact area that is stabilized with seeding or plantings does not have at least 75% successful establishment of wetlands vegetation after 2 growing seasons, the area shall be replanted or reseeded, as applicable, in accordance with Env-Wt 307.12(f).
13. A standard permit shall be signed by the permittee and principal contractor who will build or install the project prior to start of construction; and not be valid until signed as required by Env-Wt 314.01 (a) and (b).
14. The permittee shall file a notice of completion and certificate of compliance with the department within 10 working days of completing the work authorized by the permit per Env-Wt 314.08(a).

ANY INDIVIDUAL CONDUCTING WORK UNDER THIS PERMIT IS ADVISED OF THE FOLLOWING:

1. This permit does not preclude the need to meet any other applicable state, federal, or municipal legal requirements.
2. The permit holder is responsible for reading, and ensuring compliance with, the applicable general conditions established in Env-Wt 307.
3. This permit does not in any way authorize the take of threatened or endangered species, as defined by RSA 212-A:2, or of any protected species or exemplary natural communities, as defined in RSA 217-A:3.
4. This approval does not convey any property right. The permittee is responsible for ensuring that they have the legal authority to access the subject lands and conduct the impacts described.

APPROVED:



Kara M. Villone
Wetland Permitting Specialist, Wetlands Bureau
Land Resources Management, Water Division

THE SIGNATURES BELOW ARE REQUIRED TO VALIDATE THIS PERMIT (Env-Wt 314.01).

PERMITTEE SIGNATURE (required)

PRINCIPAL CONTRACTOR SIGNATURE (required)



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



**NOTICE TO RECIPIENTS OF
MINIMUM IMPACT NH WETLANDS PERMITS or APPROVALS**

Your permit was approved by the New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau as a minimum impact project, and you may proceed after receiving NHDES Wetlands Bureau authorization under the Department of the Army General Permits for the State of New Hampshire (NHGP) unless you receive written notification from the U.S. Army Corps of Engineers (USACE) within 30 days of the NHDES authorization. If the project is eligible for Self-Verification (Minimum) under the NHGP, you must ensure the project is in full compliance with the terms and general conditions of the applicable NHGPs. If any of the terms or general conditions are not met, your project must be reviewed under the Pre-Construction Notification (Minor/Major) procedures or individual permit procedures.

For the purpose of the NHGP, Minimum Impact Projects do not include new construction of:

- Dams.
- Dikes.
- Restoration Projects.
- Water withdrawal of diversion projects which require fill in wetlands or surface waters.
- Any projects involving more than 3,000 square feet of a water body or wetland fill and secondary impacts.
- **Projects where a discharge of dredge or fill material is proposed within a vernal pool depression.**
- **Projects with 5,000 square feet or greater of non-tidal wetlands impact, impacts to tidal wetlands, stream work greater than 200 linear feet.**
- **Projects that may affect a federally threatened or endangered species, or cause an effect to a historic property.**

Also, not included under Minimum Impact Projects are those projects that include the reconstruction or replacement of currently unserviceable structures/fills. The projects must be reviewed through the screening procedures of minor impact projects.

These approvals do not relieve you from obtaining any necessary local permits that may be required by your town.

If you have any questions, feel free to give us a call at 603-271-2147 or contact USACE at 1-978-318-8295, 1-978-318-8832, or by email at cenae-r-nh@usace.army.mil.

This notice was sent with minimum impact permit.