

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF ENVIRONMENTAL SERVICES  
WETLANDS COUNCIL

RECEIVED

OCT 25 2022

NH DES  
LEGAL UNIT

APPEAL OF JAMES CONTOIS

PETITION FOR APPEAL FROM A DECISION OF THE  
NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES

I, James M. Contois of Claremont, appeal the New Hampshire Department of Environmental Services' (NHDES) September 27, 2022 decision, Exhibit I, to approve Ford of Claremont's permit application to dredge and fill 25,815 SF of palustrine wet meadow wetlands for commercial development at 17 Lane Ridge Rd, Claremont (Tax Map #165, Lot #14). In summary, the Department has failed to protect the wet meadow in a decision that is contrary to the Claremont City Code and the Claremont Master Plan. The decision also violates Env-Wt 313.01(b) and (c) because there is a practicable alternative to the proposed project and because the proposed project causes unnecessary destruction of wetlands. For this reason, the NHDES decision is unlawful and unreasonable.

**I. APPELLANT**

James M. Contois  
7 Glenwood Drive  
Claremont, NH 03743  
603-504-8379  
jcontois48@gmail.com

I am a member of both the Claremont City Council and the Claremont Conservation Commission (hereinafter "CCC"), but I submit this appeal as a private citizen and I do not speak for nor represent either. This information is provided for transparency.

**II. JURISDICTION**

Pursuant to RSA 21-0:5-a, "the wetlands council shall hear all administrative appeals from department decisions made under RSA 482-A relative to wetlands, or under RSA 483-B relative to shoreland protection and shall decide all disputed issues of fact in such appeals, in accordance with RSA 21-0:14."

### **III. STANDING**

For the following reasons, I have standing to bring this appeal:

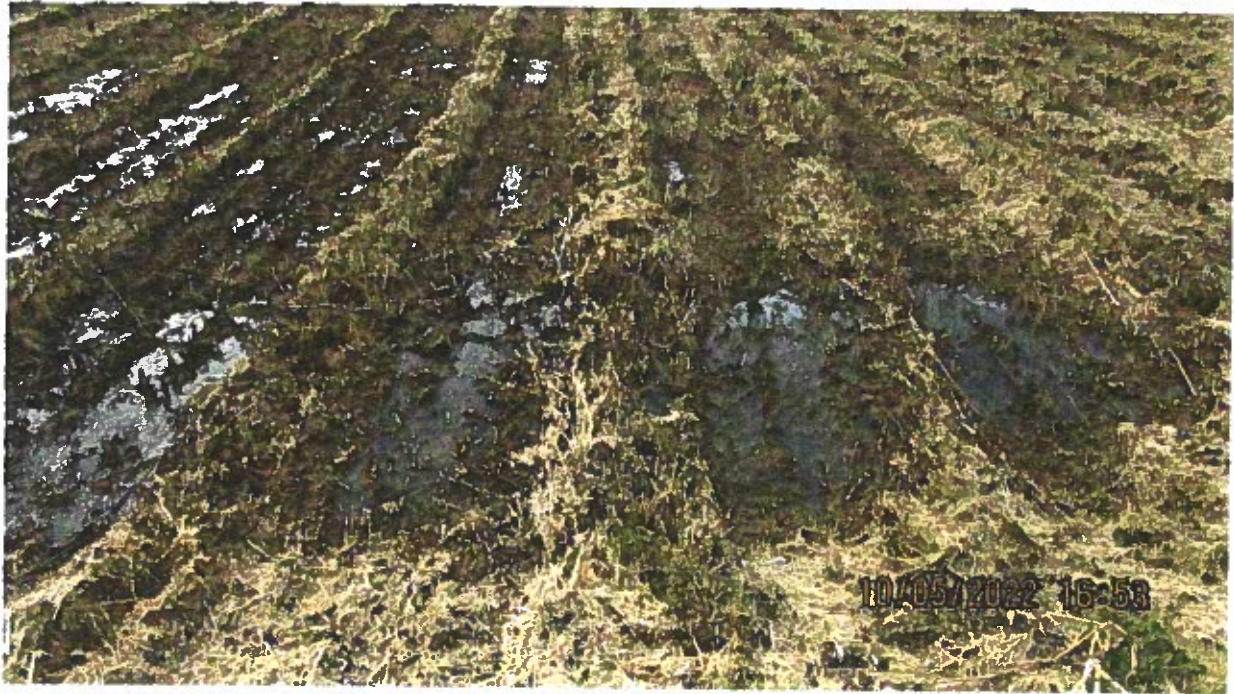
1. I am a Claremont resident who resides in close proximity to the project site;
2. I provided written and oral comments during the permitting process; and
3. I have a longstanding and documented interest in protecting the wetland in question.

I have been observing the site since 2004 when I relocated to Claremont, NH. I live locally and pass the area at least daily. In a 2020 letter to “Christian Gomes, Claremont Ford”, Exhibit II, I described the property as having “a beautiful wet meadow for a front lawn”, and I expressed my concerns for the destruction of the wet meadow. In addition, I provided written testimony, as highlighted, to DES, on July 13, 2022, Exhibit III, and I testified at the DES public hearing in Concord on July 13, 2022. The recording of the public hearing is at <https://www.youtube.com/watch?v=U48u5U2F4EU>, with my testimony beginning at 49:00.

### **IV. DESCRIPTION OF LAND**

The location of the proposed project is 17 Lane Ridge Rd, Claremont, Tax Map #165, Lot #14 with 3.3 acres of land ("subject parcel"). The subject parcel is located at the intersection of Lane Ridge Road and Charlestown Road and is owned by Lane Ridge Realty, LLC. The adjacent parcel is located at tax map 165, lot 13 owned by Ford of Claremont. Please see the following photos of the destroyed wet meadow.

Photos from October 5, 2022, show the present condition of the property, a total destruction of the wet meadow:









## **V. DECISION BEING APPEALED**

I appeal the decision of Mary Ann Tilton, Wetlands Bureau Administrator, dated September 27, 2022, granting approval of Ford of Claremont's permit application to dredge and fill 25,815 SF of palustrine wet meadow wetlands for commercial development at 17 Lane Ridge Rd, Claremont. The Department File Number is 2021-02551, Exhibit I.

## **VI. RELIEF REQUESTED BY APPELLANT**

I request that the Wetlands Council deny and reverse the Wetland Bureau's decision and remand the decision to issue the permit.

The decision is unlawful and unreasonable for the following reasons:

- (1) The decision does not conform to the Claremont Master Plan;
- (2) The decision does not conform to Appendix C of the Claremont City Code (Site Plan Regulations);
- (3) The September 27 decision states at #18: *This permit is not valid until a construction monitoring plan prepared by a certified professional erosion and sediment control specialist or certified wetland scientist is submitted to NHDES, in accordance with Env-Wt 307.18(b).* Per the October 5 photos I have provided, Ford of Claremont has disrupted the property in a way that does not conform to the directive.
- (4) It violates the Claremont City Code as it states in part: Pursuant to RSA 674:44, the purpose and scope of Claremont's Site Plan Review Regulations are as follows:
  - (a) Provide for the safe and attractive development of the site and guard against such conditions as would involve excessive danger or injury to health safety, or prosperity by reason of:
    - (1) Inadequate protection for the quality of aquifers and groundwater;
    - (2) Undesirable and preventable elements of pollution such as noise, smoke, soot, particulates, or any other discharge into the environment which might prove excessively harmful to persons, structures, or adjacent properties;
  - (b) Provide for the harmonious and aesthetically pleasing development of the municipality and its environs.
  - (c) Provide for open spaces and green spaces of adequate proportions.
  - (d)
- (5) The decision erroneously implies there is no alternative solution while ignoring an alternative recommended by the CCC, Exhibit IV, and also in my oral testimony at the public hearing. Simply move the dealership to the west approximately 200 feet.
- (6) The contiguous wetland in front of the proposed and existing dealership exceeds the figures reported by the Agent. The wetland GIS measurements that I took are more than 108,000 square feet (120ft x 900ft) minimum. GIS. This is a large discrepancy

On September 7, 2021, NHDES received a CCC letter recommending denial, Exhibit IV. The CCC "finds great value in these wet meadows (that the Applicant is proposing to impact) and struggles continuously to convince the owner of the value". Further, the CCC states that "The owner is proposing destroying 39,200 SF of wet meadow. The Commission fails to see how this equation is balanced."

Additionally, the CCC states that "every wet meadow is of value and every effort must be made to preserve them before they are all paved over or built on." To support reduction of impacts at the subject parcel, the CCC states that it; "believes that the proposed dealership could be moved back to the west far enough to substantially reduce or even eliminate any impacts to this portion of the wet meadow and keep it as a continuous unit with the northern half." The CCC concludes that "the proposed dealership could be moved back out of the wet meadow and thereby eliminate the near complete loss of it, the Commission recommends that this application be denied" (in its 9/2/21 letter)

## VII. STATEMENT OF FACTS

In 2020, DES released a fact sheet titled Wetlands Permitting: Avoidance, Minimization, and Mitigation. Here DES states in part, "If a project is a major impact project, compensatory mitigation may be required. **Compensatory mitigation** means the activities or projects that offset unavoidable permanent impacts of a project".

The notice of public hearing regarding Ford of Claremont's proposed dredge and fill project states "compensatory mitigation is proposed as a one-time payment into the Aquatic Resources Mitigation (ARM) Fund within the Lower Connecticut River watershed account." The DES September 27 decision stipulates an in-lieu payment to the ARM fund.

The impacts are avoidable if the project is moved west on the property, approximately 200 ft. or if the Wetlands Bureau denies the permit.

On August 4, 2022, NHDES received a video and letter, Exhibit IV, from the CCC which:

- 1) disagreed with the applicant's wetland functional assessment as to which wetland is of "higher value",
- 2) stated the Applicant's desire to display more inventory closer to Charlestown Road was clearly the driving force behind the original site plan,
- 3) pointed out the fact that the existing, thriving Ford dealership is sited away from the highway proves that customers are willing to travel the length of the driveway to view inventory.



### Env-Wt 313.03 Avoidance and Minimization.

This chapter explains how to avoid and minimize impacts to wetlands and how to maintain wetlands for dependent wildlife.

- Repeatedly, in the application and associated documents from the applicant's agents, the figures of the wet meadow impact area are less than 40,000 sq ft. Measurements that I took are more typically 108,000 square feet (120ft x 900ft) minimum, as measured by GIS. This is a large discrepancy.
- NHDES has relied extensively in their findings on Ferwerda Mapping and Fieldstone Land Consultants for data and justification of mitigation and avoidance. There has been no third party verification of the reported results of these applicant-paid consultants. As previously pointed out, in just one instance, disagreement between what these consultants report and the NH Wildlife Action Plan 2015 run contrary to each other.
- In the application approval letter under findings of fact and law you find that the parcel has low ecological integrity, and this runs contrary to the NH Wildlife Action Plan in 2015.
- The approval letter stated that the applicant has avoided and minimized through significant reductions in wetland impacts. Not only have the facts reported in C. 8. not been satisfactorily resolved with the CCC as the approval letter claims but three days after the decision to approve NHDES file #2020-02551 the applicant went to the wet meadow and decimated it by mowing all vegetation in the wet meadow (see section IV photos). The Applicant has not addressed the CCC concerns through its revised application and plans, public hearing presentation, follow up wetland scientist second opinion, follow up wildlife report, and analysis of practical cost considerations and safety logistics that have impacted the Applicant's overall project design as referenced in the Findings of Fact and Determinations of Law # 2 -7 in Exhibit I. All concerns have been accepted but not verified by DES and certainly not the CCC.
- The project has violated the spirit and the letter of the law by ignoring the vision statements of NHDES, the Claremont Mater Plan and the The Claremont City Code, Appendix C, Site Plan Regulations which call for the safe and attractive development of the site and guard against inadequate protection of aquifers and groundwater. The Code also asks for harmonious and aesthetic development, provide for open spaces and green spaces and create conditions favorable for health, safety convenience and prosperity.
- The approval does not take into the consideration the many emails from citizens objecting to the project, the CCC objection, the conflicting NHDES rules and regulations and my objection.

Finally, The NHDES letter stated that this permit is not valid until a construction monitoring plan prepared by a certified professional erosion and sediment control

specialist or certified wetland scientist is submitted to NHDES, in accordance with Env-Wt 307.18(b). The plan should include a wetland drawdown plan; dredge spoil dewatering plan; erosion, sedimentation, and water quality control monitoring; action items in the event of an encounter with or observations of protected wildlife species and relocation plan for native wildlife species throughout the duration of the project. This has not been completed and the Applicant has moved ahead with the destruction of the Wet Meadow, see Exhibit IV, photographs,

## VIII. CONCLUSION

The issues in this matter are not complex.

- The applicant desires visibility from Charlestown Road (Application, page 11). However the new dealership is approximately 200 feet closer to the road than the existing dealership owned by the same person, Christian Gomes, which is apparently successful. The desire for high visibility is no reason to damage a wetland.
- I, the citizens of Claremont who responded to the application, and the CCC do not want the wet meadow to be destroyed, compromised or paved over.
- NHDES has ignored the evidence in an unlawful and unreasonable way in approving the application as noted above.

I, the appellant, respectfully requests that the Wetlands Council vacate and remand the decision to grant NHDES file # 2021-02551. 2018-01767.

Respectfully submitted,

  
/s/ James M. Contois

7 Glenwood Drive

Claremont, NH 03743

[jcontois48@gmail.com](mailto:jcontois48@gmail.com)

603-504-8379

10/21/2022 CERTIFICATION

I, James M. Contois, certify that, in accordance with Ec-Wet 201.01(a), Ec-Wet 201.03 and Ec-Wet 203.01 (d) that the Appeal was submitted in PDF format to [appeals@des.nh.gov](mailto:appeals@des.nh.gov) and within 5 business days, the original and one copy will be delivered by First Class Mail to:

Wetlands Council ✓

Attn: Appeals Clerk

c/o DES Legal Unit

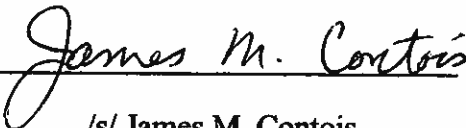
29 Hazen Drive

P.O. Box 95

Concord, NH 03302-0095

10/24/2022

Date

  
/s/ James M. Contois

I also hereby certify that on this date I have sent by electronic mail copies of this Notice of Appeal, including Exhibits, to all people listed below as required by Ec-Wet 203.01(d):

**Rene Pelletier** ✓

Water Division Director

Rene. [j.pelletier@des.nh.gov](mailto:j.pelletier@des.nh.gov)

29 Hazen Drive

P.O. Box 95

Concord, NH 03302-0095

Claremont Conservation Commission, **Gary Dickerman, Chair** ✓

% deForest Bearse

dbearse@claremontnh.com

58 Opera House Square

Claremont, NH 03743

Claremont Planning Board ✓

% deForest Bearse

dbearse@claremontnh.com

58 Opera House Square

Claremont, NH 03743

City of Claremont, NH ✓

c/o Julia Bizarro

jbizarro@claremontnh.com

58 Opera House Square

Claremont, NH 03743

City of Claremont, NH ✓

c/o Gwen Melcher

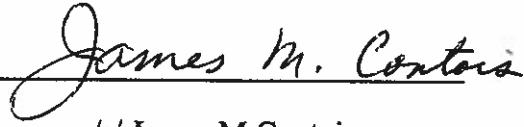
centralcollections@claremontnh.com

58 Opera House Square

Claremont, NH 03743

10/24/2022

Date



/s/ James M Contois

I also hereby certify that on this date that I have sent by USPS mail, copies of this Notice of Appeal, including Exhibits, to all people listed below as required by Ec-Wet 203.01(d):

Owner/Applicant

Ford of Claremont ✓  
155-157 Charlestown Road  
Claremont, NH 03743

Agent

Fieldstone Land Consultants PPLC ✓  
Kennith M Robinson  
206 Elm Street  
Milford, NH 03055

Town

As certified above to City of Claremont Municipal Clerk/Con Com/Planning Board

Abutters/Interested Parties:

Beth A/John A Haynes ✕  
23 Tengren Ave  
Claremont, NH 03743

Kenneth C/Olga Gruenbaum ✕  
53 Lane Ridge Road  
Claremont, NH 03743

Tag Realty LLC ✕

155 Charlestown Rd  
Claremont, NH 03743

Wendy Thomas  
50 Lane Ridge Road  
Claremont, NH 03743

Dale Hodgdon  
50 Lane Ridge Road  
Claremont, NH 03743

Steven Cornell  
24 Tengren Ave  
Claremont, NH 03743

Thermacut Inc  
153 Charlestown Road  
Claremont, NH 03743

Rede LLC  
147 Charlestown Road  
Claremont, NH 03743

Debra Smith  
24 Tengren Ave

Claremont, NH 03743

Newspapers:

Eagle Times: published Saturday, June 25, 2022

Union Leader: Published Sunday June 26, 2022

10/24/2022

Date

*James M. Contois*

/s/ James M. Contois

**Exhibit I**



The State of New Hampshire  
**Department of Environmental  
Services**

**Robert R. Scott, Commissioner**



September 27, 2022

FORD OF CLAREMONT  
155-157 CHARLESTOWN RD  
CLAREMONT NH 03743

**Re: Approved Standard Dredge and Fill Wetlands Permit Application – Required Payment to  
Aquatic Resource Mitigation Fund (RSA 482-A)**

**NHDES File Number: 2021-02551**

**Subject Property: 17 Lane Ridge Rd, Claremont, Tax Map #165, Lot #14**

Dear Applicant:

On September 26, 2022, the New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau approved the above-referenced Standard Dredge and Fill Wetlands Permit Application to dredge and fill 25,815 SF of palustrine wet meadow wetlands for commercial development to support a car dealership and associated parking. Compensatory mitigation to be provided in the form of a one-time payment into the NHDES Aquatic Resource Mitigation (ARM) Fund of \$148,609.56 based on the cumulative impacts that have occurred from permit #2017- 02138 (7,410 SF) and new impacts.

**This approval is contingent on the following conditions being met:**

1. In accordance with Env-Wt 307.16, all work shall be in accordance with the revised plans last revised May 9, 2022, as received by NHDES on May 19, 2022.
2. This approval and permit is contingent on and subject to review and approval by the NHDES Alteration of Terrain ("AOT") Bureau and its permitting, conditions, rules, and requirements pursuant to RSA 485-A:17.
3. The permit is contingent on submission of a one-time payment in the amount of \$148,609.56 to the Aquatic Resource Mitigation Fund by the Applicant as calculated per Env-Wt 803.07 and RSA 482-A:30.
4. In accordance with Env-Wt 807.01(b), the payment shall be received by NHDES within 120 days from the approval decision or NHDES will deny the application.
5. In accordance with Env-Wt 524.05(a), commercial development projects in non-tidal wetlands shall submit a construction notice with the department at least 48 hours prior



- to commencing work.
6. In accordance with RSA 482-A:11, V, Env-Wt 408.03 and Env-Wt 408.04, additional jurisdictional impacts that are a consistent scheme of development or on the same property, will be classified as major projects and require compensatory mitigation.
  7. In accordance with Env-Wt 307.10(d), dredged materials shall be disposed of out of jurisdictional areas.
  8. In accordance with Env-Wt 307.10(f), dredged materials to be stockpiled in uplands shall be dewatered in sedimentation basins that are contained within turbidity controls that prevent turbid water from leaving the basins; and located outside of any jurisdictional area.
  9. In accordance with Env-Wt 307.11(a), 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.
  10. In accordance with Env-Wt 307.05(e), 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).

[www.des.nh.gov](http://www.des.nh.gov)

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095  
NHDES Main Line: (603) 271-3503 • Subsurface Fax: (603) 271-6683 • Wetlands  
Fax: (603) 271-6588 TDD Access: Relay NH 1 (800) 735-2964

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11. In accordance with Env-Wt 307.03(g)(1)-(4), the person in charge of construction equipment shall inspect for leaking fuel, oil, and hydraulic fluid each day, repair any leaks prior to using the equipment in an area where such fluids could reach groundwater, surface waters, or wetlands and maintain oil spill kits and diesel fuel spill kits, as applicable to the type(s) and amount(s) of oil and diesel fuel used, on site.
12. In accordance with Env-Wt 307.11(c), slopes shall be immediately stabilized by a method specified in Env-Wq 1506 or Env-Wq 1508, as applicable, to prevent erosion into adjacent wetlands or surface waters.
13. In accordance with Env-Wt 307.03(e), all exposed soils and other fills shall be permanently stabilized within 3 days following final grading.
14. In accordance with Env-Wt 307.11(b), limits of fill shall be clearly identified prior to commencement of work and controlled in accordance with Env-Wt 307.03 to ensure that fill does not spill over or erode into any area where filling is not authorized.
15. In accordance with Env-Wt 307.12(d), mulch used within an area being restored shall be natural straw or equivalent non-toxic, non-seed-bearing organic material.
16. In accordance with Env-Wt 307.03(a), no activity shall be conducted in such a way as to cause or contribute to any violation of surface water quality standards specified in RSA 485-A:8 or Env-Wq 1700; ambient groundwater quality standards established under RSA 485-C; limitations on activities in a sanitary protective area established under Env Dw 302.10 or Env-Dw 305.10; or any provision of RSA 485-A, Env-Wq 1000, RSA 483-B, or Env-Wq 1400 that protects water quality.
17. In accordance with Env-Wt 307.03(b), 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 using the techniques described in Env-Wq 1505.02, Env-Wq 1505.04, Env-Wq 1506, and Env Wq 1508; the applicable BMP manual; or a combination thereof, if the BMP manual provides less protection to jurisdictional areas than the provisions of Env-Wq 1500.

**MONITORING:**

18. This permit is not valid until a construction monitoring plan prepared by a certified professional erosion and sediment control specialist or certified wetland scientist is submitted to NHDES, in accordance with Env-Wt 307.18(b). The plan should include a wetland drawdown plan; dredge spoil dewatering plan; erosion, sedimentation, and water quality control monitoring; action items in the event of an encounter with or observations of protected wildlife species and relocation plan for native wildlife species throughout the duration of the project.
19. Within 60 days following the completion of the project, a report that describes the monitoring conducted and date(s) of inspections, and includes photos showing the extent of jurisdictional impacts, shall be submitted to NHDES, in accordance with Env-Wt 307.18(c).
20. Within 60 days following the completion of the project, a report by a wetland scientist that describes the upland restoration conducted in accordance with Plan Sheet "C-23", shall be submitted to NHDES. In accordance with Env Wt 307.18(c), for two consecutive growing seasons following construction, annual monitoring reports shall be submitted to the department that describe the status of plantings and a description of any necessary adjustments.

**This approval is based on the following findings:**

**A. Standards for Approval**

1. RSA 482-A public purpose finds that it is in the public good to protect and preserve its wetlands from despoliation and unregulated alteration because of the values that wetlands provide including habitat and reproduction areas for plants, fish, and wildlife of importance, providing groundwater levels, in assisting stream channels and their ability to handle runoff of waters, and in their natural ability to absorb flood waters and silt, their function in limiting general flood damage, and consideration of impacts on commerce, recreation, and aesthetic enjoyment.
2. Pursuant to Env-Wt 313.01, Criteria for Approving Standard Applications, the following standards as established in the cited rules shall be met:
  - a) Functional assessments under Env-Wt 311.10;
  - b) Avoidance and minimization specified in Env-Wt 313.03, subject to the mitigation requirements set out in Env-Wt 800;
  - c) Compensatory mitigation under Env-Wt 800;
  - d) All applicable conditions specified in Env-Wt 307;
  - e) All resource-specific criteria in Env-Wt 400 and Env-Wt 500, and
  - f) All project-specific criteria established in Env-Wt 500.
3. Pursuant to Env-Wt 313.01c) the requirements to avoid and minimize shall not be deemed to be met if:
  - a) There is a practicable alternative that would have a less adverse impact on the area and environments under the department's jurisdiction;
  - b) The project will cause random or unnecessary destruction of wetlands; or

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- c) The project would cause or contribute to the significant degradation of waters of the state or the loss of any Priority Resources Areas.
4. Pursuant to Env-Wt 313.03, the Applicant is required to demonstrate that the potential impacts to jurisdictional areas have been avoided to the maximum extent practicable and that any unavoidable impacts have been minimized, as described in the A/M BMPs, available as noted in Appendix B.
5. Pursuant to Env-Wt 313.03 (b), for minor and major projects, the Applicant is required to specifically demonstrate that:
- There is no practicable alternative that would have a less adverse impact on the area and environments under the department's jurisdiction;
  - The project avoids and minimizes impacts to ...non-tidal marshes where documented to provide sources of nutrients for finfish, crustacea, shellfish, and wildlife of significant value;
  - The project maintains hydrologic connections between adjacent wetlands or stream systems;
  - The project avoids and minimizes impacts to wetlands and other areas of jurisdiction under RSA 482-A, especially those in which there are exemplary natural communities, vernal pools, protected species and habitat, documented fisheries, and habitat and reproduction areas for species of concern, or any combination thereof;
  - The project avoids and minimizes impacts that eliminate, depreciate, or obstruct public commerce, navigation, or recreation;
  - The project avoids and minimizes impacts to floodplain wetlands that provide flood storage;
  - The project avoids and minimizes impacts to natural riverine forested wetland systems and scrub-shrub marsh complexes of high ecological integrity;
  - The project avoids and minimizes impacts to wetlands that would be detrimental to adjacent drinking water supply and groundwater aquifer levels; and
  - The project avoids and minimizes adverse impacts to stream channels and the ability to handle runoff of waters.
6. For commercial projects, pursuant to Env-Wt 524, the project avoids and minimizes impacts to wetlands, watercourses, and sensitive and valuable wetlands in accordance with Env-Wt 311.07 and Env-Wt 313.03; the project complies with the design criteria specified in Env-Wt 524.04 and the construction criteria specified in Env Wt 524.05.
7. Per Env-Wt 524.04, the project may not use wetlands or surface waters to serve as stormwater or water quality treatment, the project maintains existing fishery spawning, feeding, or cover habitat and fish passage necessary to maintain fishery or habitat populations; and the project maintains existing wetland-dependent wildlife habitat and its associated migratory pathways, reproductive sites, and associated wetland complex or wetland community system.
8. Per Env-Wt 102.12, "Avoidance" means not impacting jurisdictional areas if there is a practicable alternative to the proposed project that would have less impact on the aquatic ecosystem or jurisdictional areas, so long as the alternative does not have other significant adverse environmental consequences and is consistent with 40 CFR 23010(a).

9. Per Env-Wt 103.62 "Practicable" means "practicable" as defined at 40 CFR 230.3(1), ("means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."

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10. Per RSA 482-A:11, III, where the conservation commission makes a recommendation to the department in its report, the department shall specifically consider such recommendation and make written findings with respect to each issue raised in such report which is contrary to the decision of the department.

11. Pursuant to RSA 482-A:11, V, "... a series of minor projects undertaken by a single developer or several developers over a period of 5 years or less may, when considered in the aggregate, amount to a major project in the opinion of the department; all such related projects shall be subject to a public hearing as provided in RSA 482-A:8. A series of minor projects shall be considered in the aggregate if they abut or if they are a part of an overall scheme of development or are otherwise consistent parts of an eventual whole."

## **B. Background Findings**

1. On February 3, 2021, the Applicant's Agent, Fieldstone Land Consultants, PLLC, NHDES supervisors and staff, US Army Corps, and NH Fish and Game environmental coordinator all participated in a pre-application meeting on the proposed project.
2. On March 21, 2021, following the pre-application meeting the agent for the Applicant shared a conceptual grading plan for the project with NHDES staff and based on this proposed impact plans, NHDES made the following recommendations: a) Locate any stormwater management outside of wetlands; b) Use retaining walls to reduce overall impacts; c) Propose wetland restoration for temporary impacts; d) include formal erosion control and construction sequencing. All recommendations were included in the proposed plans.
3. On August 10, 2021, NHDES received the standard wetland application from Ford of Claremont requesting to impact approximately 39,200 square feet of wetlands to include construction of a single story 20,390 square foot building to be used as an automobile dealership and service facility.
4. The location of the proposed project is 17 Lane Ridge Rd, Claremont, Tax Map #165, Lot #14 (with 3.3 acres of land ("subject parcel"). The subject parcel is located at the intersection of Lane Ridge Road and Charlestown Road and is owned by Lane Ridge Realty, LLC.
5. The adjacent parcel is located at tax map 165, lot 13 owned by Ford of Claremont.
6. On August 10, 2022, NHDES received a letter from the Claremont Conservation Commission that it intends to review the Ford application and provide comments within the 40-day comment period.
7. On September 7, 2021, NHDES received a Claremont Conservation Commission (hereinafter "CCC") letter recommending denial. The CCC "finds great value in these wet meadows (that the Applicant is proposing to impact) and struggles continuously to convince the owner of the value". Further, the CCC states that "The owner is proposing destroying 39,200 SF of wet meadow. The Commission fails to see how this equation is balanced." Additionally, the CCC states that "every wet meadow is of value and every effort must be made to preserve them before they are all paved over or built on." To support reduction of impacts at the subject parcel, the CCC states that it "believes that the proposed dealership could be moved back to the west

far enough to substantially reduce or even eliminate any impacts to this portion of the wet meadow and keep it as a continuous unit with the northern half." The CCC concludes that "the proposed dealership could be moved back out of the wet meadow and thereby eliminate the near complete loss of it, the Commission recommends that this application be denied" (in its 9/2/21 letter).

8. Between October 7, 2021, and May 19, 2022, NHDES requested more information, received responses from the applicant, and exchanged information and clarifications on the status of the completeness of the application.
9. On June 24, 2022, NHDES issued a notice of a public hearing on the proposed application at the subject parcel to be held on July 13, 2022, at NHDES. This public hearing was held pursuant to RSA 482-A:11, V.
10. The NHDES kept the record open to receive additional public comments until August 12, 2022.
11. After the technical review of the NHDES staff, the Applicant reduced the wetlands impacts from approximately 39,200 square feet to 25,815 square feet by eliminating some parking, removing an internal travel aisle, and reducing vehicle display area. Overall, the wetlands impacts were reduced by 13,385 square feet for 34 % reduction in proposed plan impacts. The revised changes were captured in the May 2022 plan submission and presented by Agent for the Applicant, Fieldstone Land Consultants, LLC, at the July public hearing.
12. In addition to the proposed in lieu fee mitigation payment for this project, the applicant proposed restoration of wetlands including 9, 118 square feet of wetlands on tax map 165, lot 13 (occupied by Ford of Claremont). Upland

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peninsulas will be removed to replicate wetlands. The proposed mitigation effectively results in net wetland impact of 16, 697 square feet in addition to the ARM Fund ILF payment.

13. During the public hearing, the Applicant' Agent noted that any flood flow alteration will be addressed through the pending NHDES - Alteration of Terrain application.
14. Following the public hearing, the agent provided a CWS second opinion of the functions and values of the wetlands at the subject parcel by Ferwerda Mapping, LLC. The August 11, 2022, Ferwerda Mapping ("Ferwerda report") functional assessment finds that the wetlands proposed for impact ranked low for ecological integrity because of the adjacent state roads, car dealerships, town roads, mowing, cut vegetation, presence of man-made structures nearby (culverts). The Ferwerda report states that the adjacent roadways "are a source of degradation to the wetland from road salts, sediments and the many cars and trucks that pass by directly adjacent to the wetland." Additionally, the Ferwerda assessment found that the limited applicability of flood storage, limited groundwater recharge function, noteworthiness is not applicable (as there are no documented protected species of habitat), and limited wildlife habitat as the subject wetlands scores 4 of the possible 23 qualifiers. Overall, the Ferwerda report notes "this wetland did not score as a highly functioning and valuable wetland primarily due to the location and undiversified wetland classification".
15. The Applicant also submitted a wildlife report prepared by Natural Resource Consulting Services ("NRCS") dated December 10, 2021, and in the NRCS' professional opinion that if the recommended BMPs are followed the project will not jeopardize the continued existence of state or federally threatened or endangered species.

connections to maintain flows necessary to preserve adjacent wetland and riparian functions as articulated in the Fieldstone response dated May 9, 2022, p. 6. 10. Per Env-Wt 524.04 the Applicant has ensured that the project design does not use wetlands or surface waters to serve as stormwater or water quality treatment.

11. The payment into the ARM fund shall be deposited in the NHDES fund for the Lower Connecticut River watershed per RSA 482-A:29 to serve as compensatory mitigation for this project.
12. The Department decision is issued in letter form and upon receipt of the ARM fund payment, the Department shall issue a posting permit in accordance with Env-Wt 803.11(c).
13. Per Rule Env-Wt 803.10(e), the department has accepted the proposal for an in-lieu mitigation payment as the proposal meets the requirements of Env-Wt 803.10(b), and of [Env- Wt 803.10(c) / Env-Wt 803.10(d)], and the mitigation type or combination of mitigation types listed in Rule Env-Wt 803.08(a) Table 800-1 that are available in the same watershed as the impacts for compensating jurisdictional area losses are not practicable.

Pursuant to RSA 482-A:28, this approval is contingent on receipt of a one-time in-lieu mitigation payment of \$148,609.56 to the NHDES Aquatic Resource Mitigation (ARM) Fund. NHDES recommends delaying payment until after the 30-day reconsideration period ending October 27, 2022. In accordance with Env-Wt 803.11(c)(2) and Env-Wt 807.01(b), if NHDES has not received the in-lieu mitigation payment within 120 days of this letter, or by January 25, 2023, NHDES will deny the application. Please include a copy of this letter with the payment.

In accordance with RSA 482-A:10, RSA 21-O:14, and Rules Env-WtC 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, September 26, 2022. 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://nhec.nh.gov/wetlands/index.htm>. For appeal related issues, contact the Council Appeals Clerk at (603) 271-6072.

If you have any questions, please contact Mary.A.Tilton@des.nh.gov or (603) 271-2147.

Sincerely,



Mary Ann Tilton  
Assistant Administrator, Wetlands Bureau  
Land Resources Management, Water Division

cc: Agent

Municipal Clerk/Conservation Commission  
Abutters/Interested Parties

## **Exhibit II**

8/8/2020

Good Morning Christian Gomes, Claremont Ford

I want to congratulate you on your recent purchase of Lambert Auto. Thank you for investing in Claremont, a great place to live. With an eye to the future you are a Claremont visionary. Many citizens are working hard to keep Claremont on the track of economic development. You are one of them.

I also have a secondary reason for writing to you. Your dealership on the Charlestown Road has a beautiful wet meadow for a front lawn. Periodically you cut this wet meadow. The result is that a beautiful meadow that enhances your property becomes another mowed field of no purpose or value. Wet meadows collect rain runoff and filter water that flows into the ground. In the process of collecting and storing water the vegetation of wet meadows removes the excess nutrients accumulated by the water, acting as a natural filter. This nutrient rich environment provides vital food and habitat for many insects, amphibians, reptiles, birds, and mammals.

Cutting this beautiful meadow has no value added for your dealership. I would ask that in the future you refrain from mowing this meadow to protect our environment. Mowing in the late fall or early winter is the most appropriate time to avoid harm to the environment. It is imperative that we recognize the importance of preserving these valuable wetlands.

I understand from reading your file at the Planning and Development Office that "maintaining landscaping" was an issue but I do not believe that not mowing indicates non-compliance. Typically, wet meadows are cut in the fall or winter when the ground is dry and hard and there will be little impact to wildlife. This beautiful wet meadow actually enhances your business road appeal. Of course, it is understood that any growth blocking or preventing you from doing business would and should be dealt with.

Thank you for listening.

James M. Contois

Ward II

7 Glenwood Drive

Claremont, NH 03743

603-504-8379

### **Exhibit III**

The highlighted comments below are where my spoken testimony at the NHDES Hearing in Concord, NH on July 13, 2022 were taken from. I spoke from notes and spontaneously.

7.12.21 Submission to the Claremont Planning Board for the proposed development of an auto dealership, tax map 165-14, submitted by James Contois, Ward II. This development does conform to the Claremont City Code, APPENDIX C - SITE PLAN REGULATIONS as highlighted. The development does not conform to the Claremont Master Plan as highlighted>

#### **Appendix C: Article II: - Purpose and scope**

Pursuant to RSA 674:44, the purpose and scope of Claremont's Site Plan Review Regulations are as follows:

- (a) Provide for the safe and attractive development of the site and guard against such conditions as would involve excessive danger or injury to health safety, or prosperity by reason of: (1 ) Inadequate drainage or conditions conducive to flooding of the property or that of another; (2 ) Inadequate protection for the quality of aquifers and groundwater.
- (b) Provide for the harmonious and aesthetically pleasing development of the municipality and its environs.
- (c) Provide for open spaces and green spaces of adequate proportions.
- (h) Include such provisions as will tend to create conditions favorable for health, safety, convenience, and prosperity in the City of Claremont.

**Claremont Master Plan: Excerpts.** Development of this site is not in accordance with the Claremont Master Plan. The Master Plan Vision, pg. 2, Claremont, NH Master Plan

1. The City's beautiful natural areas, rural lands and history continue to be the foundation of its identity and these assets will be secured for future generations.
2. Ch 7, natural Resources, Claremont residents: understand the importance of natural resources that are properly and sustainably managed, support the preservation of key areas in Claremont with significant natural resources values. **Wetlands, Wetlands** are areas where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands include such areas as swamps, bogs, fens, floodplains and shorelands. They are delicate ecosystems that are susceptible to disruption by change. Wetlands are valued for their ability to: • recharge groundwater and streams, provide flood attenuation, abate pollution, and



provide wildlife habitat. Wetlands function as natural water treatment and storage areas and provide an important part of the overall habitat for wildlife. Wetland areas in Claremont are generally well-distributed with concentrations along river ways and in small catchment areas.

3. The 2013 Natural Resources Inventory mapped 358 wetlands in the city, of which 146 (totaling 510 acres) were identified for comparative evaluation. Each wetland was ranked as having high, moderate, or low functional value. Pg. 10, **Water Resources Goals: Goal 1. Protect and improve the quality of the City's surface and groundwater resources. Scenic Areas, the scenic areas of a community are often its most cherished visual component. These areas add a great deal to the community's unique character. Scenic areas can include: Meadows and agricultural lands, Water bodies, Create and adopt a watershed management plan to regulate land use activities that affect the quality and quantity of the City's surface and groundwater resources.**

4. **Community Use of Natural Resources, Open Space**, the term "Open Space" is generally understood to mean any land area that lacks human structures. Agricultural fields, open pastures, and meadows are considered "open space". It can relate to rural areas where development is spread wide apart with areas of undeveloped land in between. It can also relate to urban open space in the form of public parks and recreation areas – anywhere in the urban area that is mainly grass, trees, shrubs, and flowers, areas designed to provide respite from pavement, buildings, and vehicles. Open space helps: Enhance the small-town character; Provide scenic views that contribute to the quality of life and to a visitor's aesthetic experience; Support tourism; Promote self-sufficiency and small-scale economy when continued for agricultural purposes; Enhance and protect wildlife habitat. Rural open space lands provide habitat and travel corridors for wildlife, educational opportunities and "breathing space" for residents and visitors, as well as a disappearing link with history. Local farms provide fresh, high-quality food directly to the community and the region, eliminating the need for energy- and cost-intensive shipment and travel. They contribute directly and indirectly to the economy by providing the quality of life that attracts companies and their workforce as well as tourists.

5. **Wildlife Habitats**, pg. 27, The NH Fish and Game Department, in cooperation with other agencies, organizations, and individuals, produced the NH Wildlife Action Plan (WAP) in 2005 (habitats revised 2010). The WAP was designed as a planning and educational tool for federal, state, and municipal governing bodies, conservation commissions, land trusts and other conservation organizations, and private landowners, as well as the general public, to promote the conservation and management of NH's biological diversity. The WAP provides a resource for developing informed land use decisions and land management planning. The intent was to ensure that an adequate representation of various wildlife habitats is maintained across our landscape, keeping common species common in NH and working to prevent the loss of our rare and endangered species. **The WAP Map 5: lists the proposed development**

**plans as having the Highest Ranked Wildlife Habitat (from 2015 NH Wildlife Action Plan). This area is designated a Wet Meadow. 68% of survey respondents to the Master Plan said that these ecologically significant areas should be protected with a combination of outright purchase by the City, landowner education, conservation easements, and zoning/subdivision regulations. The city should consider developing individual management plans for each of the significant areas to ensure their long-term health and preservation.**

## **Exhibit IV**

**This is an August 1, 2022 video taken by the CCC to show the wet meadow.**

<https://youtu.be/cFxzAAr8Y74>

**The CCC letter as part of this Exhibit follows:.**

- The 2017 plans for the completed project on adjacent parcel 165-13 show three 24-in culverts placed under the access drive to facilitate the north-south flow of water from the wet meadow. Only 2 of these culverts are indicated on the plan for parcel 165-14. Mr. Robinson was unable to tell the Commission why only two culverts are now needed.
- The 2017 plans for the completed project adjacent parcel 165-13 show an 18 in culvert under the access drive that is clearly within the property line of the dealership. On the plan for parcel 165-14, this culvert is shown as a 24-in culvert in the Charlestown Road right-of-way. Mr. Robinson was unable to explain the difference.

The Commission is unable to determine if these changes are because of the design of the new dealership project and their proposed drainage modifications. It appears that the entire flow of water from the wet meadow on the adjacent parcel (165-13) will be restricted to the two remaining culverts. These culverts appear to empty into a small sliver of land between the road and a retaining wall on parcel 165-14. It is difficult for the Commission to understand how this will be adequate.

The Commission finds great value in these wet meadows and has struggled continuously and consistently to convince the owner of that value. The Commission has asked repeatedly that the owner stop mowing the wet meadow (on parcel 165-13) – acknowledging that he has every right to do so under certain circumstances – on the grounds that the natural vegetation will never grow tall enough to obscure the view of the owner's vehicles; that not mowing the vegetation will preserve the natural home of the insects, amphibians and birds that utilize it; and that to the people of Claremont the wet meadow vegetation is more beautiful than the lawn the owner appears to be trying to create. And now that same party wishes to pave over the southern half of the very wet meadow that the Commission has tried so hard to preserve.

The Commission believes that the proposed dealership could be moved back to the west far enough to substantially reduce or even eliminate any impacts to this portion of the wet meadow and keep it as a continuous unit with the northern half. The Commission was told that this was unacceptable for the following reasons:

- They are trying to avoid impacts to another wet area located to the west of the proposed site; this site is described as much higher value than the wet meadow.
- The cars need to be closer to the road to facilitate drive by viewing like the other dealerships along Charlestown Road.
- The wet meadow is next to a busy roadway and therefore of much lower ecological value.
- The rest of the road is already commercially developed.

The Commission respectfully counters these points with the following:

- The wet area the consultant is trying to avoid is approximately 8,000 SF in size and is not connected to another wetland. The owner is proposing destroying 39,200 SF of wet meadow. The Commission fails to see how this equation is balanced.
- The fact that this wet meadow is the last of its kind in the neighborhood is not justification for its destruction. The Commission believes that just the opposite is true. The life forms that rely on this wet meadow for their homes, food, etc. will have nowhere to go once it is buried beneath asphalt paving. The sum of money to be paid in exchange for permission to

destroy the wet meadow will be of no use to the life forms that currently call it home. And there is no guarantee that whatever land may be set aside in compensation for the loss of this wet meadow will remain protected in perpetuity either.

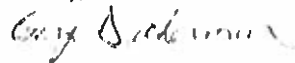
The applicant claims, "*The project has been designed to avoid all impact to the highest function and values of the resource area*" and "*The proposed site design improves the overall functions and values of the wetland resource area*". The Commission fails to see how either of these statements can be valid in light of the proposed plan to pave over 39,200 SF of a wet meadow.

The Commission respectfully takes the stand that every wet meadow is of value and every effort must be made to preserve them before they are all paved over or built on.

Lastly, please refer to Land Resources Management File #201 02138, Lane Ridge Road and Charlestown Road, Claremont, Tax Map 165, Lot 13 and the letter dated July 16, 2021 relative to an outstanding enforcement action. This is relevant because the two properties share the same entrance driveway.

Because the Commission believes that the proposed dealership could be moved back out of the wet meadow and thereby eliminate the near complete loss of it, the Commission recommends that this application be denied.

Sincerely,



Gary Dickerman, Chair  
Claremont Conservation Commission