

Keeping it Legal

The Right to Know Law: NH RSA 91-A

LACs are subject to the Right-to-Know law, LACs must comply with 91-A. Please do not conduct a permit application review via email or conference call that would be a violation of the 91-A requirements. LACs must discuss and vote on permit applications in a public meeting that has been properly posted.

Here is the link to RSA 91-A: [NH RSA 91-A Access to Governmental Records and Meetings](#), and please see Appendix A: *Local River Management Advisory Committees: Compliance with Right-to-Know*, prepared by Amy Manzelli, Esq. October 19, 2013.

Property Access

LACs don't have permission to access private property unless the property owner says "yes". Being affiliated with DES doesn't provide an LAC the right to access private property.

Where to Find More Information - Important Resources and Links

DES OneStop - [Onestop Search](#)

DES Wetlands and Shoreland Permit Query - [Wetland Permits Query Parameters](#)

Wetlands and Shoreland Weekly Decisions Report - [Permit Application Decision Reports - Wetlands Bureau - NH Department of Environmental Services](#)

LRMP Survey Monkey – Do you need a shoreland permit? <https://www.surveymonkey.com/s/shoreland>

Wetlands and Shoreland Permitting Regions Map – need an updated map and link

Wetlands and Shoreland Compliance Regions Map – need an updated map and link

Shoreland Program's Google Earth Image of Designated Rivers, June 2014 - put on the RMPP page & insert link

Others - ???

How to Reply - Who to Send It to and What to Include

LACs should file comments in all cases, including "no comments". If you are not going to submit comments, please let the inspector know.

Jacque needs to confirm this - If the LAC can't make the deadline for comments but has concerns, please email DES to inform staff that the comment deadline will be missed and why, and indicate the date comments will be sent. DES staff will notify applicant of this delay and hold permit or notify LAC of date that permit will be issued on the original 30 day cycle and that their comments will be submitted to applicant post permit issuance.

When submitting comments/correspondence:

- 1) Send them to inspector identified on the application, copy the applicant and the Rivers Program. Do not send comments or questions directly to the Rivers Program, we may not be available.
- 2) If there is a DES file #, it must be included!
- 3) If there is no DES file#, then include town name, tax map/lot number and street address
- 4) Please try to focus comments and concerns on those items that are specific to the application and within the purview of DES.

For example, when responding to DES, please frame your comments as requests which can improve the project. If the comment is presented to DES as a question, we may not have the staff resources to fully address it. For example: "Has DES considered the effect on water quality that a french drain will have at this location?" Rather: "Town records have indicated significant runoff from the ledge at this proposed location.

The LAC suggests the use of an additional dry well on the property, sized to handle the additional runoff."

- 5) If you submit non-regulatory comments/concerns that are not within DES jurisdiction, we will review them but we cannot act upon them. Traditionally, DES permitting staff has sent them to the applicant and asked the applicant to respond to the LAC. Alternatively, an LAC can submit their comments/concerns directly to the applicant and copy DES.

- 6) Please use template or standardized checklist so reviews are consistent – one to another. See UMLAC and LMLAC checklists, included in Appendix C.
- 7) Acknowledge your local corridor management plan when reviewing applications by asking these questions:
 - Is the proposed activity/development consistent with the river classification (natural, rural, rural-community and community)?
 - Will the proposed activity/development alter the resource values and characteristics for which the river was nominated?
- 8) Reference BMPs where appropriate. See Appendix B for a list of BMPs.

General Information that is Helpful to DES

In addition to the checklists provided in the appendices, there is other information that LACs can provide to DES that is useful when reviewing an application, such as:

- 1) Are there stricter ordinances, especially local setbacks that DES should know about?
- 2) Is the river a drinking water supply?
- 3) Are there existing/local stormwater and/or drainage issues?
- 4) Is the area prone to flooding?
- 5) Are there steep grades? (not always shown on the plan)
- 6) Is the property vegetated? (not always shown on the plan)
- 7) Are exotic species present on the property or in the immediate area?
- 8) Are there compacted surfaces that aren't accounted for as impervious surfaces? i.e. gravel driveways
- 9) Are activities approvable at the local level? For example, does the activity go up to the property line, then it is probably violating local setbacks.
- 10) Are the actual site conditions along the river and/or within the river corridor accurately reflected in the application and plans?

Once the project has been constructed or the site modified/developed and if it doesn't appear to match the permit as approved, then notifying the permitting staff would be appreciated. We don't want you to be our enforcers, however, you can be a set of helpful eyes; if something doesn't meet the permit conditions then we need to know that.

Did You Know

DES can't hold up or approve an application contingent on something that is not within our jurisdiction. DES can only require what is in its statute or rules. For example, DES cannot require that a trail system be installed before issuing a permit.

AoT plans are 90% complete when stamped by an engineer; therefore, they are 90% complete when they arrive at DES. In order for the LAC to have greater input on AoT permits, the LAC should ask the applicant to make a presentation at a meeting prior to submittal to DES. LACs should reach out to the engineering firms/developers and ask them to present their proposals to solicit their input early on in the process.

When there are impacts in both Wetlands and Shoreland jurisdiction and completely within Wetlands jurisdiction, then only a wetlands permit is required. However, applicants still need to demonstrate in the wetlands application that the project complies with the Shoreland requirements.

For the Shoreland PBN process, it is important to note that while RSA 482-A, requires that local river advisory committees (LAC) be notified of Wetland PBNs, there is no corresponding requirement to notify LACs of Shoreland PBNs in RSA 483-B, the SWQPA. Moreover the Shoreland PBN process as laid out in the statute is truly a notification process. If the notification is complete the Department does not have the opportunity to evaluate and either approve or deny the project; the law requires it be accepted.

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Appendix A

Local River Management Advisory Committees: Compliance with Right-to-Know
Amy Manzelli, Esq. October 19, 2013



Local River Management Advisory Committees:

Compliance with Right-to-Know

by Amy Manzelli

October 19, 2013

These are the very basic highlights of RSA 91-A, New Hampshire's Right-to-Know law. Please see the law itself, or the Attorney General's memo about it, for the specifics.

1. Local River Management Advisory Committees (LAC) authorized in RSA 483:8-a are likely subject to the Right-to-Know law.
2. If a LAC does not comply with the Right-to-Know law, its action may be invalidated and it may have to pay attorneys' fees.
3. Meetings must be open to the public.
4. A "meeting" is essentially any occasion involving communication of a quorum of the LAC, including emails.
5. Consultation with legal counsel, where the legal counsel is present or on the phone or video conference, is neither a meeting nor a non-public or executive session, and therefore a LAC can do this at any time outside of a meeting.
6. During a meeting, a LAC can go into "nonpublic" or "executive session" only for certain reasons and only after required procedures are followed.
7. Records associated with the LAC are likely "governmental records" that must be made available to the public.
8. LACs must provide notice of meetings.
9. LACs must keep minutes of meetings.

*Please note that this is not intended to be relied upon as legal advice.



Appendix B

List of and links to BMP Manuals

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Appendix C

Sample Project Review Checklists:
Upper Merrimack River LAC Checklist
Lower Merrimack River LAC Checklist

Upper Merrimack River Local Advisory Committee
Permit Application Review Guidance
as of January 19, 2012

Overview

The Upper Merrimack River Local Advisory Committee (UMRLAC) receives notification of permit applications submitted to the New Hampshire Department of Environmental Services (DES) on a regular basis. Applications for Alteration of Terrain, Dredge and Fill (Wetlands), and Shoreland permits are most common. UMRLAC will also review FERC related documents as well as operational plan revisions/improvements to wastewater processing facilities along the corridor.

UMRLAC designates a lead representative from the committee to conduct an initial review of an application and provide the full committee with relevant portions of each application prior to an upcoming meeting where the materials will be discussed by the full committee. The lead representative on UMRLAC compiles materials for review and has them posted to <http://www.merrimackriver.org/documents/> for committee members to download prior to the next scheduled meeting.

The UMRLAC committee members perform their individual reviews prior to the next scheduled meeting and bring their comments for discussion and consideration by the full committee. The UMRLAC reviews the full size plan sheets (when available) at the meeting, discusses review outcomes by individual members, and generates a list of questions (if appropriate) in response to the application for consideration by the applicant and DES. The UMRLAC lead reviewer prepares a response letter and provides it to the full committee for final review prior to transmittal to the applicant and/or DES as directed in the application package.

UMRLAC Review Guidelines

1. Lead reviewer verifies that proposed work occurs within the quarter mile corridor of the Merrimack River.
2. Lead reviewer confirms the following information to ensure application is complete:
 - a. Cover letter and letter of transmittal includes DES File Number
 - b. DES program is referenced with contact information for follow-up

- c. Agent and/or applicant contact information is included for information requests
 - d. Application package includes all referenced documents listed on the Letter of Transmittal (Copy of cover letter to DES, DES Application and Checklist, Drainage Reports, Site Plans, Operation and Maintenance Plans, etc.)
3. Lead reviewer determines the comment submittal date established by DES in the cover letter.
 - a. If the comment submittal date is after the upcoming UMLAC meeting, the lead reviewer continues to Step 4.
 - b. If the comment submittal date is before the upcoming UMLAC meeting, a course of action needs to be discussed with the Chair relative to requesting and extension or calling a special meeting to provide review and comments.
4. The UMLAC lead reviewer prepares a consolidated review package (PDF) for UMLAC members that will be posted on the UMLAC website prior to the next meeting. Best professional judgment is used by the lead review as to what content will be posted for download prior to the meeting.
5. Individual reviews are brought to the UMLAC meeting and brought forth for discussion and consideration as a full committee. Full plan sets are reviewed (when applicable) by UMLAC and the lead reviewer facilitates discussion and records all UMLAC questions and comments relative to the review process.
6. The lead UMLAC reviewer prepares a draft response letter and provides it to the Chair of UMLAC for final layout on letterhead and distribution to the committee for final review and approval.
7. The Chair of UMLAC submits response letter to DES (with copies to the Rivers Management and Protection Program and any other relevant parties) by the deadline date listed on the application cover letter provided to UMLAC by DES.

Common Permit Application/Proposal elements noted by UMLAC in response letters

Stormwater Management and Treatment

1. Are the post development runoff calculations less than pre-development conditions?
2. Does the post-development condition infiltrate 100% of stormwater runoff?
3. Do the proposed stormwater management practices and conveyance system promote infiltration whenever possible if site conditions permit?
4. If standard catch basins are proposed, has the applicant considered deep sump and/or infiltrating catch basins to reduce treatment/storage volumes on site?
5. If detention/retention basins are proposed, has the applicant considered integration of gravel wetlands instead to reduce the impacts of thermal pollution to receiving waters?
6. Do proposed catch basins integrate "T" or "elbow" orifices on overflow outlets from catch basins to trap debris, oils, and greases?

7. When and where appropriate, will catch basin grates be marked with “dump no waste – drains to wetlands, river, or stream”?
8. What is the scheduled inspection program for catch basins and other stormwater Best Management Practices (BMPs) on the site?
9. Who is responsible for ensuring that regular BMP inspections occur?
10. What is the fate of sediments removed from the stormwater treatment system?
11. Has an Operations and Maintenance Plan been drafted for the stormwater system?
12. The UMRLAC promotes the use of porous pavement/concrete products in the corridor where appropriate. Has this option been explored for the site?

Site Conditions and General Comments/Questions

13. Has everything been done to minimize encroachment into riparian buffer areas?
14. What measures will be taken to eliminate the risk of invasive species becoming established when seeding and mulching disturbed areas?
15. The UMRLAC requests that all outdoor lighting be installed with down-facing shields to minimize light pollution that has negative impacts upon wildlife in the corridor.
16. Where are the designated snow storage areas going to be situated on the property?
17. Does the applicant have a salt reduction strategy for this property?
18. The UMRLAC requests that if the applicant contracts for snow removal, sanding, and/or salting that they consider selecting those contracts that have successfully completed the New Hampshire Green SnowPro Certification Program
<http://www.t2.unh.edu/green-snowpro-certification>
19. The UMRLAC recommends that any proposed parking areas with parking “islands” incorporate curb cuts and rain gardens and/or bioinfiltration techniques to store and treat runoff and provide functional vegetation and green space.
20. The UMRLAC promotes the separation of impervious cover (roofs, sidewalks, parking areas, etc.) and urges applicants to consider incorporation of green roof technologies, rain gardens, rain barrels, dry wells, and other management practices that eliminate effective impervious cover on the property.

Lower Merrimack River LAC DEVELOPMENT REVIEW CHECKLIST for projects within the ¼ mile River Corridor

Refer to Lower Merrimack River Corridor Management Plan, May 2008 for guidelines

(<http://www.nashuarpc.org/about/related-organizations/lmrlac/>)

Submit checklist to: Gene Porter, Chair

gporter77@gmail.com

1. **Date** checklist submitted to LMRLAC:
2. **Project name:**

3. **Project Location** including tax lot number(s) and street number:
4. **Owner of Property:**
5. **Contact Name, tel # and email** (email required to receive copy of LAC comments submitted to DES or Town):
6. **Description** of the proposed project, subdivision, other development (e.g., number of lots, acreage, intended use, timeline, etc.):
7. **Will a NH DES Alteration of Terrain, Wetland or Shoreland permit be required?**
8. **Will a local wetland special exception or review by ConCom be required?**
If yes to # 7 or 8, attach copy of all application(s) and plans in sufficient detail for LMRLAC to comment. Any revisions to applications or plans must also be submitted with a description of project change.
9. Provide copy of application and plans submitted to **Planning Board** in sufficient detail for LMRLAC to provide comment. Has the 1/4 mile river corridor boundary been noted on the plan?
10. Provide percent and square footage of both existing and proposed **impervious surface**. Refer to the Shoreland Water Quality Protection Act, [RSA 483-B](#), for definition of impervious surface.
11. For **waterfront property** describe landscaping plan. Refer to UNH Cooperative Extension's *Landscaping at the Water's Edge: An Ecological Approach*.
12. Describe proposed **stormwater management**. Will any piped conveyances, including by-pass flows, be directed to the river or associated wetlands or surface water, either via existing or new outlets?
13. Have any **innovative land use techniques** been incorporated into the project? Refer to DES' *Innovative Land Use Planning Techniques: A Handbook for Sustainable Development*.
14. Do private or public existing **paths, trails or easements** exist on the property or adjacent land? Are any proposed? Does the project provide public or private access at the top of the bank or to the river? Describe and provide plan and copy of all easements.
15. Does project meet the guidelines of **town master plans or the Lower Merrimack River Corridor Management Plan** for open space/public recreation/access?
16. Are there opportunities for **bank restoration** in the project area that could be remediated by the applicant? Refer to DES Guidelines for *Naturalized River Channel Design and Bank Stabilization*, 2007.
17. Will **eagle summer or winter habitat**, perch, roost or forage sites be affected by this project? Is project consistent with *NH Wildlife Action Plan* guidelines?
18. Is project likely to affect the river and adjacent areas by **light, sound, appearance**, etc.? If so, what measures are being taken to mitigate?

19. Will the project require a modification to an existing or **new culvert associated with surface water or a wetland**? Describe. If surface water, will the standards of the *NH DES Stream Crossing Guidelines* be met?

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Appendix D
Sample Response Letter

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