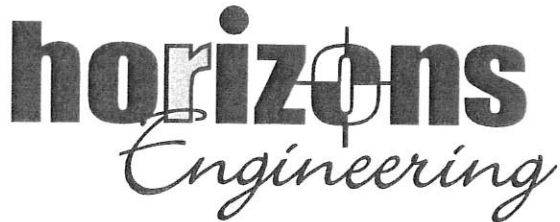


Public Viewing



5 Railroad Street, Newmarket, NH 03857 • Ph 603-659-4979 • Fax 603-659-4627 • www.horizonsengineering.com

August 8, 2022

Ms. Kristin Duclos
NHDES Wetlands Bureau
PO Box 95
Concord, NH 03302-0095

GERRISH DRIVE
SUBDIVISION

Re: **RFMI NHDES File Number 2021-03763 ; Subject property 91 Bagdad Rd, Durham Tax Map #10, Lot #8-8 and Madbury Tax Map #9 Lot 32**

Dear Kristin:

Pursuant to the RFMI dated February 10, 2022 please find attached a full response. A response to each one of the numbered items is below, and numbered tabs are included which has additional information to support the response. Also included is a revised application with updates reflecting the plan changes and signatures of the owners and town clerks. The revised plan sheets are attached and references to the specific sheets are provided in the numbered responses.

1. The property owner has provided a letter to respond to the abutters concerns. That letter was previously submitted but is also included in this response. Tab #1
2. The original application provided an explanation of why the alternative access ROW's could not be used. Included with this response in tab #2 is additional legal information proving that the Bagdad Road access ROW cannot be used because the Property owner/developer/applicant does not have ownership or rights to construct a roadway within this ROW. Therefore, because this ROW does not provide legal access to the owner for use as a roadway, this access does not have to be considered as an alternative. As previously stated, regarding the Route 108 ROW, this access is in excess of a 30% existing grade and a road could not be constructed at a maximum of 8% slope meeting the towns requirements. In addition, the grading impacts would be extensively outside of the existing 50' ROW onto private property which is not allowed, including impacts to wetlands on the adjacent properties. Given these reasons listed above, the additional legal information attached, and the proposed design and construction techniques incorporated into this proposed design, the project is in compliance with Env-Wt 311.07, 313.03 and 525.02(b).
3. All abutters were properly notified by certified mail and a copy of the abutters list, and the certified receipts are attached. Tab #3
4. All abutters were notified, the property in Madbury (TM 9, L32) is part of the subject parcel that crosses the town boundaries. The revised wetland application has added Madbury to section 3 –

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project location and the application received a signature from the town clerk of Madbury. The revised application form with Town clerk signature is included herewith.

5. The proposed disturbances outside of the limits of the applicant's property is the R-O-W owned by the town of Durham. Durham has given permission to use this R-O-W for the project, subject to acquiring all relevant permits. A revised application form with section 6 updated with the Town of Durham as owner and the Town of Durham signature is attached herewith including a letter from the town planner documenting the applicants right to use the ROW. Tab #5
6. A waiver is being requested from the requirement to have permission to work within 10-ft of an abutter's property. A letter of approval from Michael and Molly White (Tax Map 206, Lot 18) has been included with this package. The other abutter to be impacted does not support the project and requiring their approval will prevent access to the property. Attached is a waiver request and abutter permission letter. Tab #6
7. This project does not involve a subdivision. The project was named "The Crossing Subdivision" because it was reviewed under Durham's cluster subdivision regulation. The project is a condominium with the ownership being the units and the parcel being the condominium association. The project does not propose any new lot lines or subdivision of land that would require approval from the state. The stamped boundary survey and topographic plan of the parcel is included with this submission, and all the engineering plans are based on this survey plan. Therefore, this plan set meets the requirements for surveyed plans. The stamped boundary survey plans are sheets S-1, S-2 & S-3.
8. A new NHB datacheck report was received and is included in this response, along with the communications with the Heritage Bureau. NHB has no concerns about the project. Tab #8
9. In accordance with Env-Wt 311.05(a)(18) and Env-Wt 311.04(g)(7), the areas of permanent and temporary impact have been hatched and noted on the revised plans on sheet C101.
10. The impact areas and silt sock locations have been modified. In some locations silt sock lines are drawn just outside of the disturbance area to aid with readability of the plan, however the revised total area includes all disturbances. The wetland impact area has increased by 1071 SF, and an additional fee of \$428.0 has been included with this response. This fee is less the overage of \$0.40 previously paid.
11. Wetland crossing #3 has been modified to maintain hydrologic connectivity within the existing wetland in accordance with Env-Wt 524.04(d). The culvert has been redesigned to discharge into the downstream wetland to provide the connectivity, however due to the other culvert, the outlet is slightly raised. Disturbance for grading and installation of outlet protection has been included. The revisions are shown on sheets C102 & C204.
12. The location of existing streams has been shown on the plans in accordance with Env-Wt311.05(a)(13). All properly delineated wetlands and streambanks are shown on sheet C100 and stamped by the wetland scientist responsible for the delineation.
13. The plans have been modified to incorporate the construction of a new stream channel adjacent to the proposed retaining wall of the roadway. This channel will help to maintain the flows and preserve adjacent wetland and riparian functions in accordance with Env-Wt 524.04(d). Just to be clear, the original design intent incorporated this constructed channel, but during a site walk with Dave & Stefanie they had requested that we do not propose this extra disturbance noting

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that with the construction of the retaining wall the channel would be naturally replaced over time without all the extra disturbance. We have been able to minimize the disturbance and incorporate the channel back into the design. This is shown on sheet C202.

14. Section 11 of the standard application has been revised to include the modifications to the plan and updated stream impacts.
15. The box culvert design has been revised to match the proposed inverts with the existing conditions in accordance with Env-Wt 904.01(a). This is shown on sheet C202.
16. The existing and proposed information for the stream crossings is now shown on sheets C201-C205 in accordance with Env-Wt 903.04(b)(3).
17. A plan based on LiDAR from Granit was used to approximate the size of the contributing watersheds. This plan is provided herewith. Tab #17
18. Culvert cross-sections showing the 50-year design storm water elevation, bedding material and backfill zones, have been included in the revised plan set shown on sheet C205.
19. The design of the diversions and dewatering systems to be used during construction of the stream crossings have been detailed on the revised plans sheets C202 -C204.
20. A new existing conditions plan showing the wetland and stream delineation has been included with this response. The plan shows which wetland scientist was responsible for wetland delineation and stream delineation. The plan sheet is C100.
21. The existing conditions plan was revised in accordance with Env-Wt311.05(b)(5) to indicate the dates that wetlands and streams were delineated, and the method used to complete the delineation. Plan sheet C101

Sincerely;



Michael J. Sievert, PE
VP Structural Engineering

Horizons Engineering, Inc.

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STANDARD DREDGE AND FILL WETLANDS PERMIT APPLICATION

Water Division/Land Resources Management
Wetlands Bureau



[Check the Status of your Application](#)

RSA/Rule: RSA 482-A/Env-Wt 100-900

APPLICANT'S NAME: Martha & Michael Mulhern **TOWN NAME:** Durham

Administrative Use Only	Administrative Use Only	Administrative Use Only	File No.:
			Check No.:
			Amount:
			Initials:

A person may request a waiver of the requirements in Rules Env-Wt 100-900 to accommodate situations where strict adherence to the requirements would not be in the best interest of the public or the environment but is still in compliance with RSA 482-A. A person may also request a waiver of the standards for existing dwellings over water pursuant to RSA 482-A:26, III(b). For more information, please consult the [Waiver Request Form](#).

SECTION 1 - REQUIRED PLANNING FOR ALL PROJECTS (Env-Wt 306.05; RSA 482-A:3, I(d)(2)) Please use the Wetland Permit Planning Tool (WPPT) , the Natural Heritage Bureau (NHB) DataCheck Tool , the Aquatic Restoration Mapper , or other sources to assist in identifying key features such as: priority resource areas (PRAs) , protected species or habitats , coastal areas, designated rivers, or designated prime wetlands.	
Has the required planning been completed?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the property contain a PRA? If yes, provide the following information: <ul style="list-style-type: none"> • Does the project qualify for an Impact Classification Adjustment (e.g. NH Fish and Game Department (NHF&G) and NHB agreement for a classification downgrade) or a Project-Type Exception (e.g. Maintenance or Statutory Permit-by-Notification (SPN) project)? See Env-Wt 407.02 and Env-Wt 407.04. • Protected species or habitat? <ul style="list-style-type: none"> ○ If yes, species or habitat name(s): ○ NHB Project ID #: • Bog? • Floodplain wetland contiguous to a tier 3 or higher watercourse? • Designated prime wetland or duly-established 100-foot buffer? • Sand dune, tidal wetland, tidal water, or undeveloped tidal buffer zone? 	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
Is the property within a Designated River corridor? If yes, provide the following information: <ul style="list-style-type: none"> • Name of Local River Management Advisory Committee (LAC): • A copy of the application was sent to the LAC on Month: Day: Year: 	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

For dredging projects, is the subject property contaminated? • If yes, list contaminant:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is there potential to impact impaired waters, class A waters, or outstanding resource waters?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
For stream crossing projects, provide watershed size (see WPPT or Stream Stats): 10.7 Ac / 22.2 Ac (contributing areas from LiDAR)	
SECTION 2 - PROJECT DESCRIPTION (Env-Wt 311.04(i))	
Provide a brief description of the project and the purpose of the project, outlining the scope of work to be performed and whether impacts are temporary or permanent. DO NOT reply "See attached"; please use the space provided below.	
<p>The existing lot has one single-family home at the southern side of the lot. The proposed project is for the development of a residential pocket neighborhood at the northern side of the lot. The lot is not proposed to be subdivided, but a mix of duplex and single family houses are proposed which will create a condominium association. A total of 18 units including the existing single-family house are proposed.</p> <p>The new homes will be accessed through a nearby subdivision to the west of the lot on Gerrish Drive. A new private road is proposed to connect to Gerrish Drive and loop around the proposed cluster of houses on the northern portion of the lot. The proposed road will be approximately 1800 feet long and include two stream crossings and one wetlands crossing.</p> <p>The project proposes additional disturbances for stormwater drainage infrastructure, including a treatment swale and gravel wetlands adjacent to the road and wetlands.</p> <p>The project will disturb approximately 4.25 acres of mostly forested area. Of this disturbed area, approximately 0.2 acres is proposed in wetland areas.</p> <p>The approximately 11 acres of undisturbed areas on the lot are proposed to be put into conservation.</p>	
SECTION 3 - PROJECT LOCATION	
Separate wetland permit applications must be submitted for each municipality within which wetland impacts occur.	
ADDRESS: 91 Bagdad Rd	
TOWN/CITY: Durham & Madbury	
TAX MAP/BLOCK/LOT/UNIT: Durham TM 206, Lot 46 (formerly TM 10, Lot 8-8), Madbury TM9, Lot 32, Town ROW	
US GEOLOGICAL SURVEY (USGS) TOPO MAP WATERBODY NAME: Unnamed/not shown <input checked="" type="checkbox"/> N/A	
(Optional) LATITUDE/LONGITUDE in decimal degrees (to five decimal places):	43,14926° North 70,90882° West

SECTION 4 - APPLICANT (DESIRED PERMIT HOLDER) INFORMATION (Env-Wt 311.04(a))		
If the applicant is a trust or a company, then complete with the trust or company information.		
NAME: Michael & Martha Mulhern		
MAILING ADDRESS: 91 Bagdad Rd		
TOWN/CITY: Durham	STATE: NH	ZIP CODE: 03824
EMAIL ADDRESS: mmulhern@comcast.net		
FAX:	PHONE: (603) 828-2908	
ELECTRONIC COMMUNICATION: By initialing here: _____, I hereby authorize NHDES to communicate all matters relative to this application electronically.		
SECTION 5 - AUTHORIZED AGENT INFORMATION (Env-Wt 311.04(c))		
<input type="checkbox"/> N/A		
LAST NAME, FIRST NAME, M.I.: Sievert, Michael, J		
COMPANY NAME: Horizons Engineering Inc.		
MAILING ADDRESS: 5 Railroad St		
TOWN/CITY: Newmarket	STATE: NH	ZIP CODE: 03857
EMAIL ADDRESS: msievert@horizonsengineering.com		
FAX:	PHONE: (603) 444-4111	
ELECTRONIC COMMUNICATION: By initialing here: <i>MS</i> , I hereby authorize NHDES to communicate all matters relative to this application electronically.		
SECTION 6 - PROPERTY OWNER INFORMATION (IF DIFFERENT THAN APPLICANT) (Env-Wt 311.04(b))		
If the owner is a trust or a company, then complete with the trust or company information.		
<input checked="" type="checkbox"/> Same as applicant		
NAME:		
MAILING ADDRESS:		
TOWN/CITY:	STATE:	ZIP CODE:
EMAIL ADDRESS:		
FAX:	PHONE:	
ELECTRONIC COMMUNICATION: By initialing here _____, I hereby authorize NHDES to communicate all matters relative to this application electronically.		

SECTION 4 - APPLICANT (DESIRED PERMIT HOLDER) INFORMATION (Env-Wt 311.04(a))		
If the applicant is a trust or a company, then complete with the trust or company information.		
NAME: Michael & Martha Mulhern		
MAILING ADDRESS: 91 Bagdad Rd		
TOWN/CITY: Durham	STATE: NH	ZIP CODE: 03824
EMAIL ADDRESS: mmulhern@comcast.net		
FAX:	PHONE: (603) 828-2908	
ELECTRONIC COMMUNICATION: By initialing here: _____, I hereby authorize NHDES to communicate all matters relative to this application electronically.		
SECTION 5 - AUTHORIZED AGENT INFORMATION (Env-Wt 311.04(c))		
<input type="checkbox"/> N/A		
LAST NAME, FIRST NAME, M.I.: Sievert, Michael, J		
COMPANY NAME: Horizons Engineering Inc.		
MAILING ADDRESS: 5 Railroad St		
TOWN/CITY: Newmarket	STATE: NH	ZIP CODE: 03857
EMAIL ADDRESS: msievert@horizonsengineering.com		
FAX:	PHONE: (603) 444-4111	
ELECTRONIC COMMUNICATION: By initialing here <i>MS</i> , I hereby authorize NHDES to communicate all matters relative to this application electronically.		
SECTION 6 - PROPERTY OWNER INFORMATION (IF DIFFERENT THAN APPLICANT) (Env-Wt 311.04(b))		
If the owner is a trust or a company, then complete with the trust or company information.		
<input type="checkbox"/> Same as applicant		
NAME: Town of Durham (Gerrish Ext. ROW only)		
MAILING ADDRESS: 8 Newmarket Rd		
TOWN/CITY: Durham	STATE: NH	ZIP CODE: 03824
EMAIL ADDRESS: mbehrendt@ci.durham.nh.us		
FAX: (603) 868-1858	PHONE: (603) 868-8064	
ELECTRONIC COMMUNICATION: By initialing here _____, I hereby authorize NHDES to communicate all matters relative to this application electronically.		

<p>SECTION 7 - RESOURCE-SPECIFIC CRITERIA ESTABLISHED IN Env-Wt 400, Env-Wt 500, Env-Wt 600, Env-Wt 700, OR Env-Wt 900 HAVE BEEN MET (Env-Wt 313.01(a)(3))</p> <p>Describe how the resource-specific criteria have been met for each chapter listed above (please attach information about stream crossings, coastal resources, prime wetlands, or non-tidal wetlands and surface waters):</p> <p>Env-Wt 400: Jurisdictional areas were delineated by a NH Wetland Scientist in accordance with Env-Wt 400.</p> <p>Env-Wt 500: This project proposes residential development. The development was designed in accordance with Env-Wt 524. The project does not propose >1 Ac of wetland impacts and no off-site alternatives analysis was conducted.</p> <p>Env-Wt 600: This project does not propose any impacts to coastal land or tidal waters/wetlands.</p> <p>Env-Wt 700: This project does not propose any impacts to prime wetlands.</p> <p>Env-Wt 900: Stream crossings were designed in accordance with Env-Wt 904. All crossings proposed are tier 1 and have contributing areas far less than the 200 Ac cutoff. Additional information on the crossing can be found in the attached stream crossing worksheets.</p>
<p>SECTION 8 - AVOIDANCE AND MINIMIZATION</p> <p>Impacts within wetland jurisdiction must be avoided to the maximum extent practicable (Env-Wt 313.03(a)).* Any project with unavoidable jurisdictional impacts must then be minimized as described in the Wetlands Best Management Practice Techniques For Avoidance and Minimization and the Wetlands Permitting: Avoidance, Minimization and Mitigation Fact Sheet. For minor or major projects, a functional assessment of all wetlands on the project site is required (Env-Wt 311.03(b)(10)).*</p> <p>Please refer to the application checklist to ensure you have attached all documents related to avoidance and minimization, as well as functional assessment (where applicable). Use the Avoidance and Minimization Checklist, the Avoidance and Minimization Narrative, or your own avoidance and minimization narrative.</p> <p><i>*See Env-Wt 311.03(b)(6) and Env-Wt 311.03(b)(10) for shoreline structure exemptions.</i></p>
<p>SECTION 9 - MITIGATION REQUIREMENT (Env-Wt 311.02)</p> <p>If unavoidable jurisdictional impacts require mitigation, a mitigation pre-application meeting must occur at least 30 days but not more than 90 days prior to submitting this Standard Dredge and Fill Permit Application.</p> <p>Mitigation Pre-Application Meeting Date: Month: Day: Year:</p> <p><input checked="" type="checkbox"/> N/A - Mitigation is not required)</p>
<p>SECTION 10 - THE PROJECT MEETS COMPENSATORY MITIGATION REQUIREMENTS (Env-Wt 313.01(a)(1)c)</p> <p>Confirm that you have submitted a compensatory mitigation proposal that meets the requirements of Env-Wt 800 for all permanent unavoidable impacts that will remain after avoidance and minimization techniques have been exercised to the maximum extent practicable: <input type="checkbox"/> I confirm submittal.</p> <p><input checked="" type="checkbox"/> N/A – Compensatory mitigation is not required)</p>

SECTION 11 - IMPACT AREA (Env-Wt 311.04(g))

For each jurisdictional area that will be/has been impacted, provide square feet (SF) and, if applicable, linear feet (LF) of impact, and note whether the impact is after-the-fact (ATF; i.e., work was started or completed without a permit).

For intermittent and ephemeral streams, the linear footage of impact is measured along the thread of the channel. *Please note, installation of a stream crossing in an ephemeral stream may be undertaken without a permit per Rule Env-Wt 309.02(d), however other dredge or fill impacts should be included below.*

For perennial streams/ivers, the linear footage of impact is calculated by summing the lengths of disturbances to the channel and banks.

Permanent impacts are impacts that will remain after the project is complete (e.g., changes in grade or surface materials).

Temporary impacts are impacts not intended to remain (and will be restored to pre-construction conditions) after the project is completed.

JURISDICTIONAL AREA		PERMANENT			TEMPORARY		
		SF	LF	ATF	SF	LF	ATF
Wetlands	Forested Wetland	6919		<input type="checkbox"/>	236		<input type="checkbox"/>
	Scrub-shrub Wetland			<input type="checkbox"/>			<input type="checkbox"/>
	Emergent Wetland			<input type="checkbox"/>			<input type="checkbox"/>
	Wet Meadow			<input type="checkbox"/>			<input type="checkbox"/>
	Vernal Pool			<input type="checkbox"/>			<input type="checkbox"/>
	Designated Prime Wetland			<input type="checkbox"/>			<input type="checkbox"/>
	Duly-established 100-foot Prime Wetland Buffer			<input type="checkbox"/>			<input type="checkbox"/>
Surface Water	Intermittent / Ephemeral Stream	1232	251	<input type="checkbox"/>	333	28	<input type="checkbox"/>
	Perennial Stream or River			<input type="checkbox"/>			<input type="checkbox"/>
	Lake / Pond			<input type="checkbox"/>			<input type="checkbox"/>
	Docking - Lake / Pond			<input type="checkbox"/>			<input type="checkbox"/>
	Docking - River			<input type="checkbox"/>			<input type="checkbox"/>
Banks	Bank - Intermittent Stream			<input type="checkbox"/>			<input type="checkbox"/>
	Bank - Perennial Stream / River			<input type="checkbox"/>			<input type="checkbox"/>
	Bank / Shoreline - Lake / Pond			<input type="checkbox"/>			<input type="checkbox"/>
Tidal	Tidal Waters			<input type="checkbox"/>			<input type="checkbox"/>
	Tidal Marsh			<input type="checkbox"/>			<input type="checkbox"/>
	Sand Dune			<input type="checkbox"/>			<input type="checkbox"/>
	Undeveloped Tidal Buffer Zone (TBZ)			<input type="checkbox"/>			<input type="checkbox"/>
	Previously-developed TBZ			<input type="checkbox"/>			<input type="checkbox"/>
	Docking - Tidal Water			<input type="checkbox"/>			<input type="checkbox"/>
TOTAL		8151	251		566	28	

SECTION 12 - APPLICATION FEE (RSA 482-A:3, I)

- MINIMUM IMPACT FEE:** Flat fee of \$400.
- NON-ENFORCEMENT RELATED, PUBLICLY-FUNDED AND SUPERVISED RESTORATION PROJECTS, REGARDLESS OF IMPACT CLASSIFICATION:** Flat fee of \$400 (refer to RSA 482-A:3, 1(c) for restrictions).
- MINOR OR MAJOR IMPACT FEE:** Calculate using the table below:

Permanent and temporary (non-docking):	8720 SF	×	\$0.40 =	\$ 3488
Seasonal docking structure:	SF	×	\$2.00 =	\$ 0
Permanent docking structure:	SF	×	\$4.00 =	\$ 0
Projects proposing shoreline structures (including docks) add \$400 =				\$ 0
Total =				\$ 3488
The application fee for minor or major impact is the above calculated total or \$400, whichever is greater = \$ 3488*				




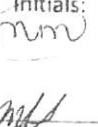
irm@des.nh.gov or (603) 271-2147 *Original App. Fee = 3060*
 NHDES Wetlands Bureau, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095
www.des.nh.gov *Add. payment w/this App = 428.**
 Page 5 of 7

SECTION 13 - PROJECT CLASSIFICATION (Env-Wt 306.05)
 Indicate the project classification.

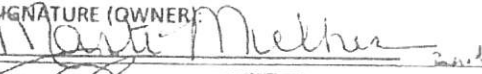


Minimum Impact Project Minor Project Major Project

SECTION 14 - REQUIRED CERTIFICATIONS (Env-Wt 311.11)

Initial each box below to certify:


Initials: 	To the best of the signer's knowledge and belief, all required notifications have been provided.
Initials: 	The information submitted on or with the application is true, complete, and not misleading to the best of the signer's knowledge and belief.
Initials: 	The signer understands that: <ul style="list-style-type: none"> • The submission of false, incomplete, or misleading information constitutes grounds for NHDES to: <ol style="list-style-type: none"> 1. Deny the application. 2. Revoke any approval that is granted based on the information. 3. If the signer is a certified wetland scientist, licensed surveyor, or professional engineer licensed to practice in New Hampshire, refer the matter to the joint board of licensure and certification established by RSA 310-A:1. • The signer is subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641. • The signature shall constitute authorization for the municipal conservation commission and the Department to inspect the site of the proposed project, except for minimum impact forestry SPN projects and minimum impact trail projects, where the signature shall authorize only the Department to inspect the site pursuant to RSA 482-A:6, II.
Initials: 	If the applicant is not the owner of the property, each property owner signature shall constitute certification by the signer that he or she is aware of the application being filed and does not object to the filing.

SECTION 15 - REQUIRED SIGNATURES (Env-Wt 311.04(d); Env-Wt 311.11)

SIGNATURE (OWNER): 	PRINT NAME LEGIBLY: Marti Mulhern	DATE: 8-5-22
SIGNATURE (APPLICANT, IF DIFFERENT FROM OWNER): 	PRINT NAME LEGIBLY: TODD SEIVERT, Town of Durham	DATE: 8/5/22
SIGNATURE (AGENT, IF APPLICABLE): 	PRINT NAME LEGIBLY: MICHAEL J SEIVERT	DATE: 8/5/22

SECTION 16 - TOWN / CITY CLERK SIGNATURE (Env-Wt 311.04(f))

As required by RSA 482-A:3, I(a)(1), I hereby certify that the applicant has filed four application forms, four detailed plans, and four USGS location maps with the town/city indicated below.

TOWN/CITY CLERK SIGNATURE: 	PRINT NAME LEGIBLY: Lorne Pitt
TOWN/CITY: Durham	DATE: 8/8/2022

DIRECTIONS FOR TOWN/CITY CLERK:

Per RSA 482-A:3, I(a)(1)

1. IMMEDIATELY sign the original application form and four copies in the signature space provided above.
2. Return the signed original application form and attachments to the applicant so that the applicant may submit the application form and attachments to NHDES by mail or hand delivery.
3. IMMEDIATELY distribute a copy of the application with one complete set of attachments to each of the following bodies: the municipal Conservation Commission, the local governing body (Board of Selectmen or Town/City Council), and the Planning Board.
4. Retain one copy of the application form and one complete set of attachments and make them reasonably accessible for public review.

DIRECTIONS FOR APPLICANT:

Submit the original permit application form bearing the signature of the Town/City Clerk, additional materials, and the application fee to NHDES by mail or hand delivery at the address at the bottom of this page. Make check or money order payable to "Treasurer – State of NH".

To: NHDES Kristin Duclos, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095
From: Marti and Mike Mulhern, 91 Bagdad Road, Durham, NH 03824
Date: March 8, 2022

RE: Request for More Information-Response to abutter letter dated November 30, 2021

Dear Ms. Duclos,

The intent of this letter is to address Gail Kelley's concerns regarding our project. We acknowledge that she wrote a passionate and seemingly compelling case against our approval. However, we will demonstrate that her letter contains unverifiable statements and grossly inaccurate allegations. In addition, Ms. Kelley has made defamatory statements about us, our team of experts, and the Town Planner, in a clear effort to portray us as dishonest and manipulative. We deny any wrongdoing and believe the facts will speak for themselves.

We started the subdivision process (publicly) in the summer of 2018 at a Planning Board meeting for a lot line adjustment. Since then we have participated in countless meetings with the Durham Town Council, the Planning Board, the Conservation Commission and Durham Public Works. The process has been slow, thorough, vigorous and well documented. At most meetings the public was allowed unlimited time to make comments, and ask questions. Ms. Kelley was present and spoke, at nearly every meeting and wrote many letters. All of the concerns mentioned in Ms. Kelley's letter to you have been publicly discussed and answered.

1) "A High Intensity Soil Survey (HISS) map produced by a NH-certified soil scientist, and..."

The HISS map was produced by Mr. Mariano and he provided digital maps of the soil survey to Mike Sievert, who incorporated them into the site Inventory Plan initially submitted to the Town of Durham on 11/20/19.

2) "...written certification by the Strafford County Soil Conservation District confirming the accuracy of that map -- both *required documents for a subdivision application, per Durham's Subdivision Regulations (Section 7.06 Verification of Soils Data)* -- are missing from the *Mulhern file.*"

In a letter dated January 14, 2022 the Town Attorney, Laura Spector stated, "...There was no verification of the soil survey by the Strafford County Conservation District. There was no error in accepting the application without such a verification."

3) "A soil survey identifies true wetlands and their extent. Using this survey, the HISS map portrays areas that lend themselves to development and those that do not because of the presence of wetland."

While one of the functions of a soil survey is to determine wetlands and their extent, it is not the sole function. Gail Kelley raised no objection to the density of the residences for which the HISS map was used.

4) "The Town Council vote is particularly worrisome. It enables the Mulherns to request a lot line adjustment for the section of the property that contains the access point from the

Bagdad Road ROW. The Planning Board will readily grant that request. The Mulherns can then sell off that parcel and rightfully claim – at last – that they don't have legal access from that ROW."

On November 10, 2021 the Planning Board approved "The Crossings", an 18 unit conservation subdivision, which includes the house at 91 Bagdad Road. The house cannot be severed from the project without receiving a Town Council variance, re-approval from the Planning Board and amending the condominium documents. There are no plans to go through that process.

5) "I had a phone conversation with Mr. Mariano to determine whether I was correctly interpreting his report to mean that most of the Mulhern property is outside of any WCOD. He confirmed that interpretation is correct."

- a) There are no records of Ms. Kelley's conversation with Mr. Mariano. However, in an email to Mike Sievert on November 25, 2021 Mr. Mariano stated, "An abutter kept calling me. I read the meeting minutes and it looks like she misunderstood what I said."
- b) According to Mark West, the wetlands scientist who worked on the project, most of the property falls within the WCOD and it is impossible to build a road from Bagdad Road without going through high value wetlands.

6) "...the Mulhern file contains maps prepared by the project engineer Michael Sievert, who is not a soil scientist..."

The implication that Mr. Sievert, would have created soil maps on his own is outrageous.

7) Town Planner's Site Walk Restrictions, Gag Order

Mr. Behrendt has no power to block requests for site walks. Both the Planning Board and Conservation Commission members made the decision not to view the Bagdad Road entrance. However, several members said they walked the entire property on their own.

8) "We have seen that a route to the subdivision house sites...already exists on the subdivision property..."

- a) The referenced path was created by an excavator in order to dig test pits.
- b) The "bridge" was created by laying felled trees across the stream.
- c) The suggestion that a footpath is synonymous with a 50' wide, cleared and paved road is laughable.

9) "Mr. Sievert's use of the term 'legal access' opens another scheme the Mulhern's have used...Mr. Sievert has already publicly stated he will use the "legal access" issue to prevent DES reviewers from seeing the alternative access route from the Bagdad Road ROW."

Ms. Kelley's statements are not supported by facts or evidence. Her clear intention is to vilify us and to discredit Mr. Sievert. In addition, Mike Sievert walked through the property to the woods road, which leads out to the Bagdad Road access with the wetland bureau staff Dave Price and Stefanie Giallongo.

10) Legal Access Issue- "The Bagdad Rd. ROW is a paved, 50-foot road installed in 1974 as an access for the three lot owners along its length. As is common for rights of way and

easements, this one was not owned by anybody. The homeowners using it share its maintenance costs.”

These allegations are erroneous in almost every way. The facts are:

- a) We purchased lot# 10-8-6 in 2005. An existing gravel driveway serviced 95 and 91 Bagdad.
- b) April 2005, Town of Durham granted us a Driveway Permit Modification and per specifications, we built a 12' wide driveway down to our house site, with about 5' of clearance on either side.
- c) We paved the entire driveway around 2007
- d) The driveway is owned solely by Dr. Greg Imbrie of 93 Bagdad Road. See letter by Attorney Sharon Somers dated January 11, 2021 attached.
- e) 91, 93 and 95 Bagdad Rd homeowners have a Maintenance Agreement. The agreement affirms that 91 & 95 Bagdad homeowners rights, "...to use said right-of-way for means of ingress and egress and for all other customary uses as a driveway.”

There are significant portions of Ms. Kelley's letter that did not warrant a response. Those sections contain allegations that are irrelevant, unsubstantiated and based on opinions rather than facts. Ms. Kelley also made disparaging remarks about us and our team of professionals. Her statements contradict nearly all expert opinions, including the independent engineer Mark J. Verostick, P.E. who was hired, at our expense, to review Mike Sievert's work.

We made several attempts to collaborate with Gail Kelley and Andrew Merton to design a road that would be palatable to them, but they were uncooperative at every turn. During a Zoom meeting, they refused to give permission to move the road closer to their property to give more room to their neighbor's, Mike and Molly White at 20 Ambler Way. At another meeting last August, Mike Sievert and the Mulherns met Ms. Kelley and Mr. Merton at their lot to discuss plans to contour their driveway to meet the proposed roadway. Mike Sievert staked their driveway and gave a detailed explanation of the proposed changes. He explained that their current undersized, crushed culvert is causing their flooding and backflowing to Mr. Lewis' property next door. Ms. Kelley and Mr. Merton brushed off his expert opinion and refused to grant permission for us to improve their driveway when we build the proposed road.

In the near future Mike Sievert will be sending a complete response to the rest of the items on your list. Included will be a document entitled **“The Crossings” Access Points**, which will provide detailed information about the Route 108, Gerrish Drive and Bagdad Road easements. The document contains many attachments that provide clear evidence that the Gerrish Drive R.O.W. is the *only* entrance to our building site that does not present unreasonable, and impractical legal, environmental, and topographical obstacles.

Thank you for your time and consideration,
Marti & Mike Mulhern

To: NHDES Kristin Duclos, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095
From: Marti and Mike Mulhern, 91 Bagdad Road, Durham, NH 03824
Date: June 9, 2022

RE: Request for more information

Dear Ms. Duclos,

Enclosed is our response to your request for more information about the three possible access points to our land: The Gerrish Drive right-of-way, the Route 108 easement and the Bagdad Road driveway. Please note that all three possible entrances were discussed extensively by Durham's Town Council, Planning Board and Conservation Commission during our nearly three year "conservation subdivision" process. Our counsel Sharon Somers, and the Town's Attorney, Laura Spector Morgan, also each provided legal opinion about our options.

In this letter we will provide clear evidence that the Gerrish Drive right-of-way is the *only* entrance to our building site that does not present unreasonable, and impractical legal, environmental, and topographical obstacles. Exhibit #1 shows the entire parcel with the three entrances labeled.

1. Bagdad Road Driveway

History:

We purchased 15+ acres of undeveloped land in Durham and Madbury in April of 2005. Our deed's description, Book 3178, Page 0099 (Exhibit #2) matched the "New Parcel" area of plan 49-99 (Exhibit #3), which included the driveway. We approached the Town about building, and were granted permission to build a single house since there were 2 existing homes on the driveway that ended just beyond the house at 91 Bagdad Road. Our Driveway Permit Modification (Exhibit #4) granted us access permission, "via a common driveway...that will not exceed 12 feet in width." We extended the driveway and built the house at 93 Bagdad Road. We later paved the 12' wide driveway.

In 2013, we purchased 91 Bagdad Road, as a rental property. It consisted of a small house with 2 acres of land that abutted our 93 Bagdad property and shared the common driveway. Our deed, Book 4095, Page 0129 provided us use of the driveway for ingress and egress. (Exhibit #2)

In 2017 we began the subdivision process with Bob Stowell as our engineer. Things moved slowly and we were ready to downsize, so Bob suggested a lot line adjustment. He created a 2 acre parcel to sell with 93 Bagdad and the remaining land stayed with 91 Bagdad Rd. The lot line adjustment was approved in July of 2018 and soon after we put 93 Bagdad Rd on the market. It quickly went under contract, but during the title search

an error with the driveway was discovered; the front portion of the driveway had been previously conveyed to the owners of 95 Bagdad Rd. The driveway ownership posed two legal issues. One, the driveway was part of the new 93 Bagdad Rd parcel approved by the Town so altering that parcel would require going back for re-approval. Two, the description in the purchase and sale agreement with Dr. Imbrie included the driveway and he would not complete the conveyance without it. We contacted our title insurance company Old Republic (Exhibit #6) and they proposed that the quickest resolution was to ask our neighbors, Amanda and Juan Nieves at 95 Bagdad, to convey their driveway ownership rights to us so we could immediately transfer them to Dr. Imbrie, along with the sale of the house. Dr. Imbrie also required us to create a driveway maintenance agreement before closing. (Exhibit #2) Juan and Amanda Nieves of 95 Bagdad Rd conveyed the front portion of the driveway to us so we could complete the sale of 93 Bagdad Rd. (Exhibit #2)

Legal:

1. Mr. Nieves has publicly stated and written (Exhibit #7) that he would never grant permission for the construction of a road using the Bagdad driveway.
2. Dr. Greg Imbrie of 93 Bagdad Road owns the entire driveway. He also stated in writing that he would not give his consent to build a road via the driveway (Exhibit #8).
3. Therefore, in order to construct a road from Bagdad Road, we would have to litigate two neighbors. No town official could require such an unreasonable expectation of us. In addition, the legal opinion provided to us is that it is *highly unlikely* that we would win such a case (Exhibit #9)

Environmental:

1. In addition to the legal hurdles, the creation of a road from Bagdad Road would have extreme environmental impacts. The total road length to the development's "loop road" would be 1,160 feet. The existing 12' wide driveway would be expanded to 26' wide and continue at that width through a newly created 50' wide right-of-way another 675'+ to the proposed loop road.
2. The right-of-way and new road would cut through forest and high quality wetlands. In fact, such a road would bisect not only *the highest value wetland on the parcel*, but also the future "Conservation Area" surrounding this high quality wetland. The total area disturbed would be 41,202.7 sf *higher* than using the Gerrish Drive entrance.
3. It would be impractical to extend sewer lines from a Bagdad Road entrance. Therefore, Gerrish Drive residents with failing septic systems would not have the option to connect to the sewer. Furthermore, the new development would require private septic systems, which would be maintained by individual homeowners rather than the Town.

Topographical:

1. Entering from Route 108, Bagdad Rd curves up a hill. The existing driveway is past the crest of the hill and the sight distance from this existing right-of-way (driveway) does not meet the Town's minimum 200' of all season safe sight distance.
2. Furthermore, a 2021 Strafford Regional Planning Commission traffic study conducted just .4 miles from the driveway on Bagdad Road, reported a daily average of 1,999 cars, which is considered high traffic volume.

2. Route 108

Legal:

1. When we purchased 93 Bagdad Road the legal opinion provided was that the existing shared driveway and right-of-way from Route 108 was not a viable entrance to the current building site. In fact, Old Republic would not issue title insurance for its use to access a building site. (Exhibit #10)
2. The right of way is partially owned by Mr. Bill Berndtson who has publicly stated that he would consult with his attorney if consideration was given to building a roadway off 108 that would affect his property.

Topographical:

1. From a practical point, this access straddles both property lines, and the town lines of Madbury and Durham.
2. The current driveway is on a busy section of Route 108, making it an unsuitable entrance to a subdivision.
3. Most importantly, the driveway traverses very steep slopes, in excess of 30%. The steep slopes make it impossible to construct a roadway at a maximum slope of 8% to meet the Town standards. In addition, construction of such a roadway would grossly exceed the 50' right-of-way width, extending further onto private property.

Environmental:

The R.O.W. abuts the creek that spills down from Gerrish Drive and travels under Route 108. There are currently two culverts on the driveway.

3. Gerrish Drive Extension

Legal:

1. When we purchased the base parcel in 2005, our attorney Chris Wyskiel gave the opinion that the Gerrish Drive right-of-way was the logical entrance to the back portion of our land. In 1972 Walter Cheney deeded it to the Town of Durham to be used specifically as a "future road." (Exhibit #11) The "future road" appears on abutters' deeds, is shown on the "Pine Ridge" subdivision plan (Exhibit #12) and has been noted on tax maps for decades.
2. The Town attorney, Laura Spector Morgan advised the Town Council when considering whether or not to approve the use of the right-of-way for a road,

"...This particular piece of property was deeded to the town to be a street...The fact that the developer did a lot line adjustment which affected access to the property isn't something that the council can take into consideration. I don't see a rational basis on which to deny the request to construct what was always intended to be a street...The mere fact that the abutters would prefer not to have that additional traffic is not a consideration for the council in making this decision."

Environmental:

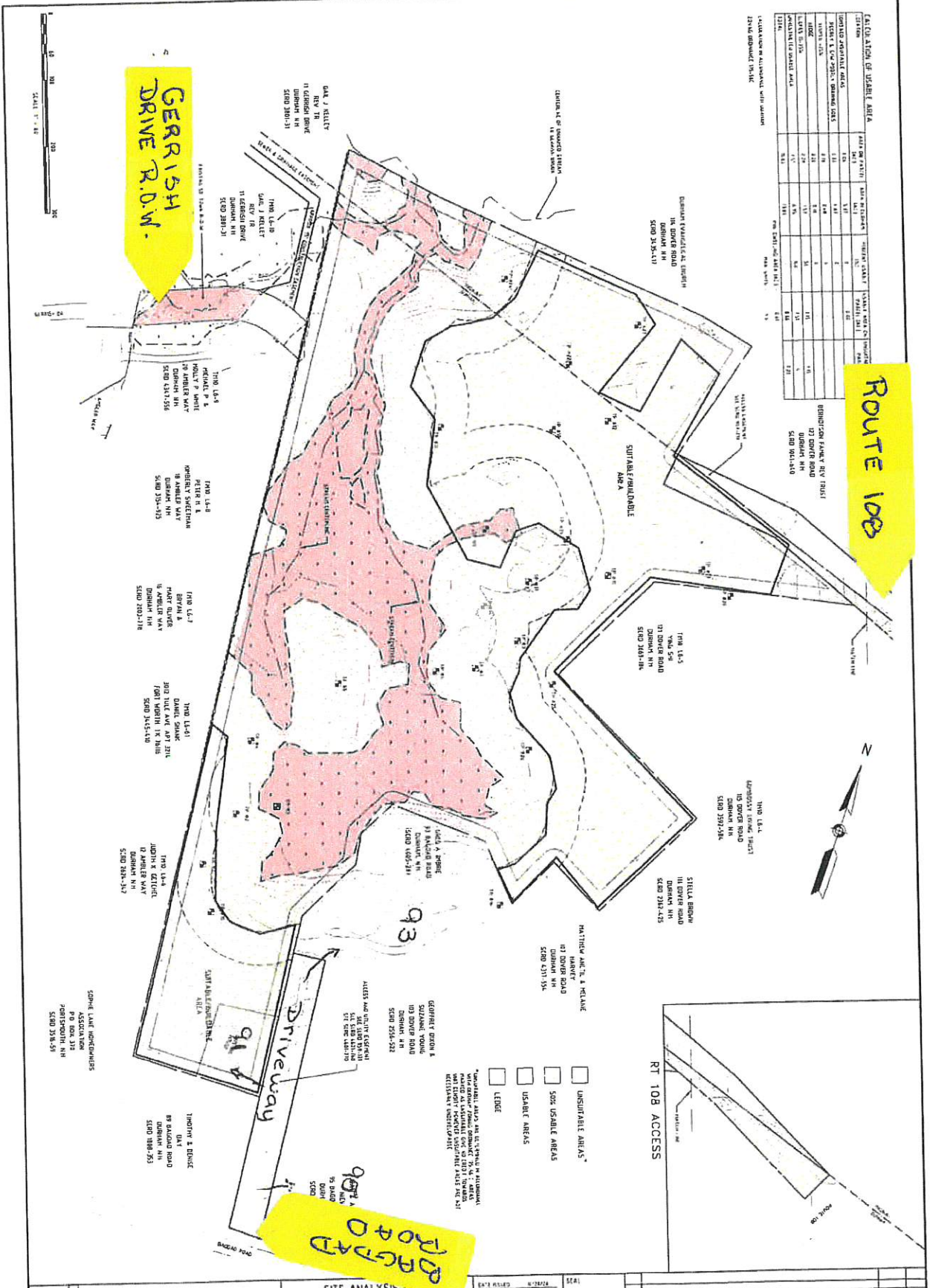
1. The wetlands in the right-of-way have been denigrated by stormwater runoff and failing septic systems. Mike and Molly White of 20 Ambler Way are the closest abutters to the proposed road and they disclosed that their failing septic needs to be pumped every six months. Several other neighborhood residents have reported failing septic systems. Durham Town Sewer lines will be extended into "The Crossings" at the applicants' expense. The lines will run down Gerrish Drive and residents along that road will be able to hook up to the sewer for a nominal fee.
2. According to Mark West's Wetland Assessment report dated 12-15-20, the Gerrish Drive Extension wetlands are of a significantly lower value than any of the wetlands on the Mulhern property and "Algae observed in the stream channel indicates excess nutrients are present."
3. The total road length is 475' to the "loop road", which is 675' less than a road from Bagdad Road and the total disturbed area would be 41,202.7 sf less than using Bagdad Road driveway. This results in far less impervious surface area, clearing, stormwater treatment and negative environmental impact to the highest value wetland.

Exhibit # 1

LIST OF AREAS OF UNSTABLE AREA

UNSTABLE AREA	DATE OF INVESTIGATION	ENGINEER'S NAME	UNSTABLE AREA TYPE
UNSTABLE AREA 1	1/10/11	J. M. KELLY	SLURRY WALL
UNSTABLE AREA 2	1/10/11	J. M. KELLY	SLURRY WALL
UNSTABLE AREA 3	1/10/11	J. M. KELLY	SLURRY WALL
UNSTABLE AREA 4	1/10/11	J. M. KELLY	SLURRY WALL
UNSTABLE AREA 5	1/10/11	J. M. KELLY	SLURRY WALL
UNSTABLE AREA 6	1/10/11	J. M. KELLY	SLURRY WALL
UNSTABLE AREA 7	1/10/11	J. M. KELLY	SLURRY WALL
UNSTABLE AREA 8	1/10/11	J. M. KELLY	SLURRY WALL
UNSTABLE AREA 9	1/10/11	J. M. KELLY	SLURRY WALL
UNSTABLE AREA 10	1/10/11	J. M. KELLY	SLURRY WALL

ROUTE 108



- UNSTABLE AREAS*
- 50% USABLE AREAS
- USABLE AREAS
- LEGEND

MJS ENGINEERING, P.C.
 93 BAGDAD ROAD, DURHAM, NH 03824
 PHONE: 603.882.1111
 FAX: 603.882.1112
 WWW.MJS-ENG.COM

SITE ANALYSIS
 Prepared for
 MULLIERN
 TAX MAP 10, LOT 8-6
 93 BAGDAD ROAD, DURHAM, NH 03824

NO.	REVISIONS	DATE	BY
1	INITIAL APPROVAL TO THE CLIENT'S DESIGN TEAM		
2			
3			

C107

Exhibit #2

From: Sharon Cuddy Somers
Sent: Monday, January 11, 2021 10:03 AM
To: Jennifer Herron <jherron@dtclawyers.com>
Subject: FW: Message from KM_C759

Mike:

Attached please find several deeds which will clarify the conveyances into the Mulherns , particularly as regards the issue of the access to Bagdad Road. My understanding is that a deed has been provided to the Planning Board already based on the plan, which notes a deed reference of Book 4095, Page 129.

The attached deeds supplement and clarify the conveyance shown in Book 4095, Page 129.

1. The conveyance from Manock to Mulhern, Book 3178, Page 99 is the base parcel conveyed to the Mulherns in 2005. This deed includes a fee interest in the area marked " Access and Utility Easement" despite the fact that the fee interest had previously been conveyed out of the Manock chain.
2. The next conveyance occurs in 2013, Page 4095 from Allen to Mulhern, and this conveys an access easement to Bagdad.
3. The third conveyance occurs in 2018 at Book 4601 and conveys to the Mulherns from Nieves the fee interest incorrectly conveyed to them in 2016 but reserves an access easement to Bagdad Road
4. The final conveyance is the deed from Mulhern to Imbrie at Book 4605, Page 287 which properly includes the fee and reserves to the Mulherns an access easement over the Imbrie fee to get to Bagdad Road. This description accurately conveys the interest that should have been reflected in the 2005 conveyance from Manock to Mulhern.

2005 APR 27 12:57

STRAFFORD COUNTY
REGISTRY OF DEEDS

DEPARTMENT OF REVENUE ADMINISTRATION		REAL ESTATE TRANSFER TAX	
***1 THOUSAND		6 HUNDRED AND	55 DOLLARS
MO	DAY	YR	AMOUNT
04	27	2005	\$ 709125
			***1655.00
VOID IF ALTERED			

SEQ CHAPTER \h \r 1

WARRANTY DEED

FRANCIS D. MANOCK and DOROTHY L. MANOCK, husband and wife, of 11

Triangle Avenue, Pembroke, Maine, for consideration paid, grants to **MICHAEL J.**

MULHERN and MARTHA A. MULHERN, husband and wife, of 11 Shearwater Street,

Durham, Strafford County, New Hampshire, **AS JOINT TENANTS WITH RIGHTS OF**

SURVIVORSHIP, with **WARRANTY COVENANTS**, the following:

A certain tract or parcel of land situate on the Northerly side of Bagdad Road and the Westerly side of N.H. Route 108, in Durham and Madbury, Strafford County, New Hampshire, and shown as Tax Map 10, Lot 8-6 on plan entitled "Plan of Lot Line Adjustments for Francis D. and Dorothy L. Manock, 121 Dover Road, Durham, New Hampshire," dated April, 1997, drawn by KEM Land Survey, Inc., approved by the Durham Planning Board on May 27, 1997, recorded at the Strafford County Registry of Deeds as Plan 49-99, more particularly bounded and described pursuant to said plan as follows:

Beginning at a point on the northerly side of Bagdad Road, said point marking the southeasterly corner of land now or formerly of Timothy and Denise Day; then turning and running N 10E 51' 00" E along land now or formerly of Day a distance of two hundred and no hundredths (200.00') feet, more or less, to a point at land now or formerly of Diane C. Archie; then turning and running N 10E 51' 00" E along land now or formerly of Archie a distance of four hundred and no hundredths (400.00') feet, more or less, to a point marking the northeasterly corner of land of Archie; then turning and running N 75E 25' 07" W along land now or formerly of Archie a distance of two hundred and three hundredths

009703

BK3178 PG0099

(200.03') feet, more or less, to a point in a stone wall at land now or formerly of John Gannon; then turning and running along the stone wall and land now or formerly of Gannon and land now or formerly of the John R. Cavanaugh Rev. Trust a distance of three hundred eighty and ninety hundredths (380.90') feet, more or less, to a point; then turning and running N 11E 45' 00" E along the stone wall and land now or formerly of Dominick More and land now or formerly of Daniel and Susan Fuchs a distance of two hundred thirty-six and ninety hundredths (236.90') feet, more or less, to a point; then turning and running N 11E 07' 00" E along the stone wall and land now or formerly of Fuchs and land now or formerly of Andrew Merton a distance of one hundred eighty and seventy hundredths (180.70') feet, more or less, to a point; then turning and running N 10E 34' 00" E along the stone wall and land now or formerly of Merton a distance of one hundred thirty-three and no hundredths (133.00') feet, more or less, to a point; then continuing N 10E 34' 00" E along the stone wall and land of Merton a distance of sixty-eight and no hundredths (68.00') feet, more or less, to a point at land now or formerly of Gerrish; then turning and running along land now or formerly of Gerrish the following courses and distances: S 64E 54' 00" E a distance of one hundred sixty-two and no hundredths (162.00') feet, more or less, to a point; then turning and running S 68E 29' 00" E a distance of four hundred twenty-four and fifty hundredths (424.50') feet, more or less, to a point; then turning and running S 61E 12' 00" E a distance of eighty-nine and no hundredths (89.00') feet, more or less, to a point at land now or formerly of Berndtson (sic); then turning and running S 32E 16' 00" W along land now or formerly of Berndtson a distance of one hundred ninety-eight and seventeen hundredths (198.17') feet, more or less, to a point marking the southwesterly corner of land now or formerly of Berndtson; then turning and running S 55E 02' 10" E a distance of six hundred twenty-two and seventy-one hundredths (622.71') feet, more or less, to a steel stake located on the westerly sideline of N.H. Route 108; then turning and running S 44E 02' 00" W along the westerly sideline of N.H. Route 108 a distance of fifty-one and forty hundredths (51.40') feet, more or less, to an iron rod marking the easterly corner of land shown on the plan as Tax Map 10, Lot 8-5; then turning and running along Tax Map 10, Lot 8-5 the following courses and distances: N 46E 12' 00" W a distance of two hundred and no hundredths (200.00') feet, more or less, to an iron rod; then turning and running S 51E 55' 43" E a distance of sixty-eight and fifty-five hundredths (68.55') feet, more or less, to an iron rod; then turning and running N 86E 00' 20" W a distance of three hundred one and seventy-two hundredths (301.72') feet, more or less, to an iron rod; then turning and running S 43E 48' 00" W a distance of two hundred and no hundredths (200.00') feet, more or less, to an iron rod; then turning and running S 46E 12' 00" E a distance of three hundred and no hundredths (300.00') feet, more or less, to a steel stake marking the corners of land now or formerly of Albert Gombossy and land now or formerly of Stella Whitehouse; then turning and running S 43E 48' 00" W along land now or formerly of Whitehouse a distance of two hundred and no hundredths (200.00') feet, more or less, to a point at land now or formerly of William

and Nancy Bonin; then turning and running N 46E 12' 00" W along land now or formerly of Bonin a distance of one hundred and no hundredths (100.00') feet, more or less, to a point; then turning and running S 43E 48' 00" W along land now or formerly of Bonin a distance of two hundred sixty-four and eighty-two hundredths (264.82') feet, more or less, to an iron rod at land now or formerly of Noel and Carrie Walker; then turning and running N 79E 09' 00" W along land now or formerly of Walker a distance of one hundred fifty-five and sixty-eight hundredths (155.68') feet, more or less, to a steel stake; then turning and running S 10E 51' 00" W along land now or formerly of Walker and land now or formerly of Richard Tappan a distance of four hundred ten and seven hundredths (410.07') feet, more or less, to a steel stake; then turning and running on a curve to the left having a radius of 20.00 feet, a distance of twenty-nine and twelve hundredths (29.12') feet, more or less, to a point on the northerly side of Bagdad Road; then turning and running N 72E 35' 00" W along Bagdad Road a distance of sixty-eight and sixteen hundredths (68.16') feet, more or less, to the point of beginning.

BK3178 PG0101

Meaning and intending to convey a portion of the premises conveyed to Francis D. Manock and Dorothy L. Manock by deed of Eileen R. Carr dated October 28, 1953, recorded at the Strafford County Registry of Deeds, Book 623, Page 426. See also deed from Alma Bednarik (fka Alma M. Cross) to Francis D. Manock and Dorothy L. Manock dated August 29, 1996, recorded at the Strafford County Registry of Deeds, Book 1885, Page 471, re-recorded at Book 1892, Page 295 (re-conveys the remaining property located in Madbury, NH, which was once a portion of the property described in the above deed at Book 623, Page 426)

Also conveyed herewith, together with and appurtenant to the above described premises, but with Quitclaim Covenants (and not Warranty Covenants) is any and all of the grantees' rights in and to, and to use, the common driveway built and located partly on the above described premises, which common driveway is shown on plan recorded July 10, 1975 at the Strafford County Registry of Deeds as Pocket #1, Folder 12, Plan 51, and any and all of the grantees' rights in the fifty (50') foot right of way as shown on plan recorded September 24, 1976, in said Registry as Plan 17-61.

Signed this 22 day of April, 2005.

Francis D. Manock

Francis D. Manock

Dorothy L. Manock

Dorothy L. Manock

STATE OF MAINE
COUNTY OF Washington

April 22, 2005

Personally appeared the above-named Francis D. Manock and Dorothy L. Manock and acknowledged the foregoing instrument to be their voluntary act and deed.

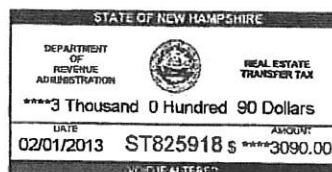
Janice A. Scanlon

Notary Public
My Commission Expires:

JANICE A. SCANLON
Notary Public, Maine
My Commission Expires June 8, 2007

BK3178 PG0102





WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That Michael D. Allen, Married person of 349 Route 108, Madbury NH 03823 and Lisa D. Allen, a single person of 12 Littlehale Road, Durham, NH 03824, for consideration paid grant(s) to Michael J. Mulhern and Martha A. Mulhern, Husband and Wife of 93 Bagdad Road, Durham NH 03824 as joint tenants with rights of survivorship with WARRANTY COVENANTS:

A certain tract of land situate off the Northerly side of Bagdad Road, in the Town of Durham, County of Strafford and State of New Hampshire, as set forth on a plan entitled "Land of Francis D. & Dorothy L. Manock, Durham, New Hampshire, G.L. Davis & Associates" dated April 1974 and recorded at the Strafford County Registry of Deeds as Plan No 21/8/3, bounded and described as follows:

Beginning on the Westerly side of a reserved right of way at an iron pipe at the Northeast corner of land now or formerly of Furman; which pip is Two Hundred (200) feet N 10° 51' E from the Northerly side of Bagdad Road, thence N 75° 25' W along said Furman land a distance of Two Hundred (200) feet to a steel stake at land now or formerly of Faucy; thence N 11° 01' E by and along said Faucy land a distance of Two Hundred Eighty Six (286) feet to an iron pipe and Lot #6, situate in the Pine Ridge Development so-called; thence N 10° 25' E by and along said Lot #6 and Lot #6A in the Pine Ridge Development a distance of One Hundred Fourteen (114) feet to land now or formerly of Manock; thence S 75° 25' E by and along said Manock land a distance of Two Hundred (200) Feet to a steel stake; thence S 10° 51' W a distance of One Hundred Seventy Seven and Eight Tenths (177.8) feet, thence continuing S 10° 51' W a distance of Two Hundred Twenty Two and Two tenths (222.2) feet to the point of beginning.

Subject to

Right to use and reserved right of way as set forth on Plan No. 21/8/3 recorded Strafford County Registry of Deeds for the purposes of ingress and egress from Bagdad Road to said premises.

Slope easement granted to the State of New Hampshire by instrument dated May 16, 1962, recorded at Book 775, Page 177, Strafford County Registry of Deeds.

Easement granted to New England Telephone and Telegraph Company by instrument dated January 3, 1964, recorded at Book 775, Page 177, Strafford County Registry of Deeds.

Easement granted to New Hampshire Electric Cooperative, Inc., by instrument dated July 29, 1965, and recorded at Book 802, page 142, Strafford County Registry of Deeds.

Easement Deed from Sally M. Tappan and Richard C. Tappan to Alfred W. Homan and Naomi M. Homan dated 12-29-1975 recorded at Book 979, Page 310, Strafford County Registry of Deeds.

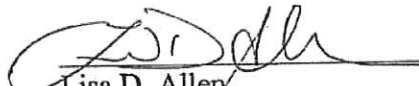
Any and all matters per Plan No. 21/8/3, recorded Strafford County Registry of Deeds,

Meaning and intending to describe and convey the same premises conveyed to Michael D. Allen and Lisa D. Allen by virtue of a deed from Earl E. Archie and Diane C. Archie dated 01/08/2013 recorded in Book 2343, Page 343, with the Strafford County Registry of Deeds.

This is not homestead property of the grantors or their spouse.

Executed this 31st day of January, 2013.


Michael D. Allen


Lisa D. Allen



State of New Hampshire

Rockingham, ss.

On January 31, 2013, before me, the undersigned notary public, personally appeared the above-named, Michael D. Allen and Lisa D. Allen and proved to me through satisfactory evidence of identification, which was a driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.


Notary Public: *Kate Catalano*
My Commission Expires:

QUITCLAIM DEED

KNOW ALL PERSONS BY THESE PRESENTS, that **Juan P. Nieves and Amanda P. Nieves, husband and wife**, of 95 Bagdad Road, Durham, New Hampshire 03824, for consideration paid, grant to **Michael J. Mulhern and Martha A. Mulhern, husband and wife**, of 93 Bagdad Road, Durham, New Hampshire, 03824, as joint tenants with rights of survivorship, with QUITCLAIM COVENANTS, the following:

All our right, title and/or interest in and to a certain tract or parcel of land in fee simple situate on the northerly side of Bagdad Road in the Town of Durham, County of Strafford and State of New Hampshire and which premises are identified as the "Access Easement" area on a Plan entitled "Lot Line Adjustment Plan Michael & Martha Mulhern 91 & 93 Bagdad Road and Durham Road-Route 108" dated June 6, 2018, prepared by Trittech Engineering Corporation, Job No. 17105 and to be recorded in the Strafford County Registry of Deeds and being further depicted as follows:

Beginning at a steel stake at Bagdad Road at Tax Map 10, Lot 8-7 at the southwest corner of land of Juan Nieves and Amanda Nieves; thence continuing along a curve with a radius of 20.00' a distance of 28.94' to a steel stake along land of Nieves;

Thence continuing N 05° 29' 25" W along said access easement area and land of Nieves and along land now or formerly of Dixon and Young (Tax Map 10, Lot 8-9) a distance of 410.10' to a rebar to be set at land of Mulhern;

Thence turning and running S 84° 31' 59" West across said access easement area to a point at Tax Map 10, Lot 8 -8 at other land of Mulhern;

Thence turning and running S 05° 29' 25" E along said land of Mulhern to a rebar to be set at the northwest corner of Tax Map 10, Lot 8-1, being land now or formerly of Day;

Thence continuing S 05° 29' 25" E along land of Day 201.20' to a steel stake at Bagdad Road;

Thence turning and running S 88° 56' 54" E a distance of 68.03' to a steel stake at the point of beginning.

Being a portion of the premises described in deed of Chris Croasdale and Genevieve Croasdale

to Juan P. Nieves and Amanda P. Nieves dated March 30, 2016 and recorded in Book 4369, Page 791. See also Plan of Land of Francis D. and Dorothy L. Manock recorded as Plan 21, Pocket 8, Folder 3 for further depiction of said right of way and access easement.


Meaning and intending to correct the description and confirm release of any right title and interest in the fee title to the access easement area depicted on said plan and further described in deed of Richard C. Tappan and Sally M. Tappan to Alfred Homan and Naomi Homan in deed dated February 2, 1975 and recorded in Book 959, Page 121 of the Strafford County Registry of Deeds and made part of the premises shown on said Plan as Final Map 10, Lot 8-6.

Reserving, however, to the Grantors herein and their heirs and assigns the non-exclusive use of said access easement in common with others over said access easement area.


Grantors here by release all rights of homestead and other interests in the above-described property.

This is a non-contractual transfer, and no revenue stamps are required.

Dated this 18 day of September, 2018.



Juan P. Nieves

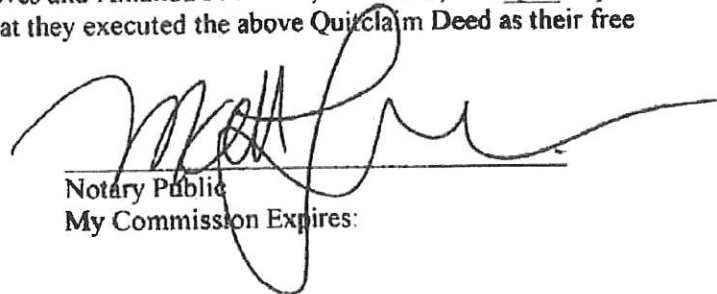


Amanda P. Nieves

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

Personally appeared Juan P. Nieves and Amanda P. Nieves, before me, this 18th day of September, 2018, and acknowledged that they executed the above Quitclaim Deed as their free act and deed,





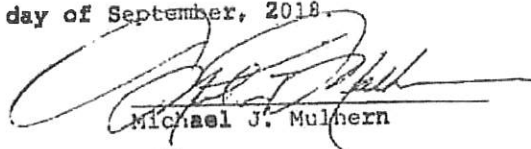
Notary Public
My Commission Expires:

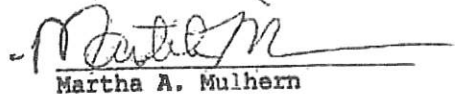
3. The rights of the owners of Map 10, Lot 8-7 to use the Access and Utility Easement area as shown on plan entitled "Lot Line Adjustment Plan, Michael & Martha Mulhern, 91 & 93 Bagdad Road and Durham Road - Route 108, Durham New Hampshire" dated June 6, 2018, and prepared by Trittech Engineering Corporation, recorded at the Strafford County Registry of Deeds on September 21, 2018 as plan numbers 116-085, 116-086 and 116-087. See reservation of rights in the Quitclaim Deed from Juan P. Nieves and Amanda P. Nieves recorded in the Strafford County Registry of Deeds at Book 4601, Page 768.
4. The Driveway Maintenance Agreement between Michael J. Mulhern and Martha A. Mulhern and Juan P. Nieves and Amanda P. Nieves dated September 15, 2018 and recorded at Strafford County Registry of Deeds, Book 4601, Page 0770.
5. Notice of Decision by Town of Durham recorded in the Strafford County Registry of Deeds, at Book 4602, Page 301.

Meaning and intending to convey a portion of the same premises conveyed to the grantors by deed of Francis D. Manock and Dorothy L. Manock dated April 22, 2005 and recorded in the Strafford County Registry of Deeds at Book 3178, Page 009. See also Quitclaim deed Juan P. Nieves and Amanda P. Nieves dated September 15, 2018 and recorded at Strafford County Registry of Deeds, Book 4601, Page 0770.

The Grantors hereby release all right of homestead in the above described property.

Signed this 28th day of September, 2018.

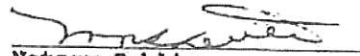

Michael J. Mulhern


Martha A. Mulhern

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

Personally appeared the above named Michael J. Mulhern and Martha A. Mulhern this 28th day of September, 2018, known to me, or satisfactorily proven to be the persons whose names appear above and who executed the foregoing instrument as their free act and for the purposes contained herein.

Before me,



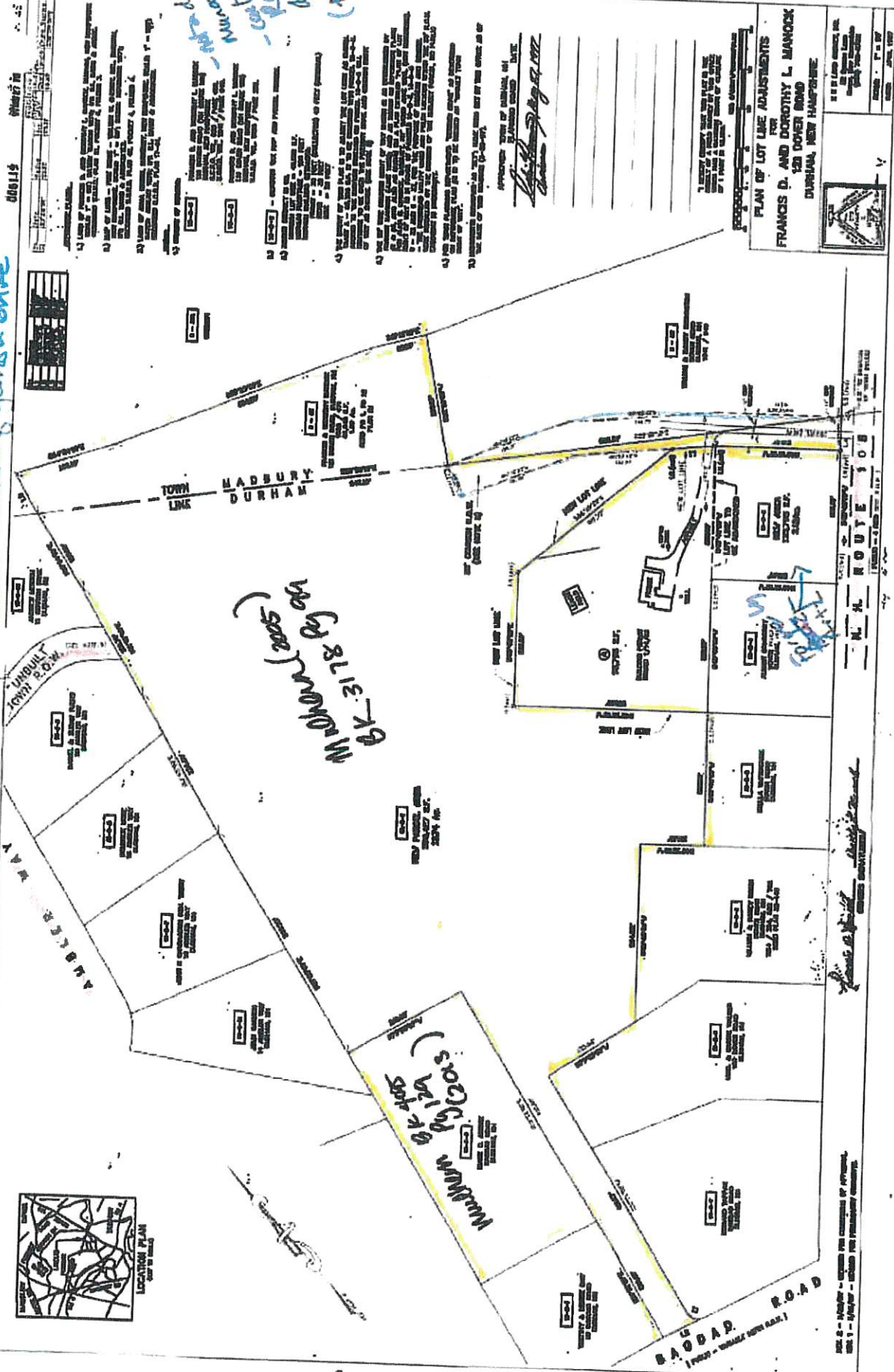
Notary Public

My Commission Exp:



Plan 49-99

OWNER: MARY J. YOUNG ON ONR



AK-3178 (sq ft) by M. J. Young

MILWAUKEE (sq ft) by M. J. Young

- 1. THE PROPERTY IS TO BE DIVIDED INTO LOTS AS SHOWN ON THIS PLAN.
- 2. THE LOTS ARE TO BE CONVEYED TO THE BUYER AS SHOWN ON THIS PLAN.
- 3. THE BUYER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL GOVERNMENT.
- 4. THE BUYER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY UTILITIES AND SERVICES.
- 5. THE BUYER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INSURANCE.
- 6. THE BUYER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY TITLE INSURANCE.
- 7. THE BUYER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDING FEES.
- 8. THE BUYER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDING TAXES.
- 9. THE BUYER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDING COSTS.
- 10. THE BUYER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDING CHARGES.

PLAN OF LOT LINE ADJUSTMENTS
FOR
FRANCIS D. AND DOROTHY L. MANOCK
150 DOVER ROAD
DURHAM, NEW HAMPSHIRE

APPROVED BY THE COMMISSIONER OF REVENUE
STATE OF NEW HAMPSHIRE
DATE: 10/15/1977

APPROVED BY THE COMMISSIONER OF REVENUE
STATE OF NEW HAMPSHIRE
DATE: 10/15/1977

SEE 2 - MAPS - SHOW THE EXTENT OF PROPERTY.
SEE 3 - MAPS - SHOW THE PRELIMINARY LAYOUT.

Exhibit #4



DEPARTMENT OF PUBLIC WORKS
TOWN OF DURHAM
100 STONE QUARRY DRIVE
DURHAM, NH 03824
603/868-5578
FAX 603/868-8063

FORM REVISED 09/01/98

DRIVEWAY PERMIT MODIFICATION

Michael & Martha Mulhern
11 Shearwater Street
Durham, NH 03824

DATE ISSUED: April 1, 2005
DATE DRIVE ACCEPTED: _____
PERMIT # 05-10
ROAD Bagdad Road
TAX MAP # 10 lot 8-6

Permission to access via a common driveway, entrance, exit, approach adjoining Bagdad Road pursuant to the location and specifications as described below, is hereby granted. Failure to adhere to the Conditions of Approval or failure to complete construction of said facility within one (1) calendar year of the date of this permit shall render this permit null and void. Facilities constructed in violation of these conditions shall be corrected immediately upon notification by the Public Works Director or costs of removing said facility shall be fully borne by the owner.

PLEASE NOTE CONDITIONS

1. One common driveway entrance to service is permissible. The common drive as it currently exists does conform to conditions as outlined below.
2. The width of this access drive will not exceed 12 feet in width. The common drive entrance can exist as is, with flared approaches as it currently meets the existing Town roadway pavement.
3. No structures, including buildings, permanent or portable signs, lights, displays, fences, walls, etc. shall be permitted on, over or under the roadside right-of-way.
4. The applicant shall comply with all applicable ordinances and regulations of the municipality and other state agencies (zoning, wetlands, erosion control, etc.).
5. The roadside right-of-way line is located approximately 25 feet on either side of the center of roadway pavement.
7. Maintenance of sight distance is the responsibility of the owner.

Exhibit # 5



OLD REPUBLIC
National Title Insurance Company

Jane M. O'Sullivan, First Vice President
Old Republic National Title Insurance Company
83 Lafayette Road, P.O. Box 625
Hampton Falls, New Hampshire 03844
603-647-8485; toll free 800-884-8485
josullivan@oldrepublictitle.com

September 21, 2020

VIA E-MAIL

Mr. Michael Hulhern
91 Bagdad Road
Durham, NH 03824

Re: 93 Bagdad Road, Durham, NH

Dear Mike:

This letter will serve to confirm our recent conversation wherein I informed you that we are unable to locate the original title file for the above referenced property but do have a copy of the owner's policy that was issued to you relative to the above property in late April of 2005. The owner's policy provided is for property identified as Lot 10-8-6 on Plan 49-99 recorded in the Strafford County Registry of Deeds. The property, according to the plan, has direct access to Bagdad Road as shown on the plan.

As you are aware, we were contacted in September of 2018, by Signature Title, who did title to the above premises for the purchasers or their respective lender of 93 Bagdad Road to notify us that that property which we had previously insured had a title issue in that the portion of the premises providing the access to Bagdad Road had actually been previously conveyed and was now owned by the Nieves as part of their property known as 95 Bagdad Road and described Deed recorded at Book 4369, Page 791. A corrective deed from the Nieves was obtained to correct the title issue and that corrective deed was recorded in September of 2018. I have attached a copy of the deed from the Nieves conveying all their right, title and/or interest in the strip of land providing access. Please note that, apparently, in connection with the conveyance from the Nieves, there was also a Maintenance Agreement that appears to have been recorded to provide for proportionate maintenance of the strip of land since the same is used for access to Bagdad for abutting parcels.

In connection with your recent call to me, I went back and note that there is some reference in the Nieves chain about a possible reservation of a right of way in favor of the Town of Durham but that reference leads back to a Deed at Book 2841, Page 134 which mentions the possibility of the Tappans (predecessors in title to the Nieves) dedicating and conveying the same to the Town for public use. We have not researched any such possible conveyance as the same was not noted in your vesting deed or in the Owner's Policy issued in 2005 nor was the same raised by Signature Title in connection with the Corrective Deed in 2018.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'Jane M. O'Sullivan', written in black ink.

Jane M. O'Sullivan
First Vice President

Enc: As Stated

Exhibit # 6

Doc # 0013402 Sep 19, 2018 9:37 AM
Book 4601 Page 0770 Page 1 of 3
Register of Deeds, Strafford County

→ Return to:
Trombley Kfoury, P.A.
166 South River Road
Suite 250
Bedford, NH 03110

DRIVEWAY MAINTENANCE AGREEMENT

between

**Michael J. Mulhern and Martha A. Mulhern
and
Juan P. Nieves and Amanda P. Nieves**

This Driveway Maintenance Agreement made this 15th day of September, 2018, between Michael J. Mulhern and Martha A. Mulhern of 93 Bagdad Road, Durham, New Hampshire 03824 and Juan P. Nieves and Amanda P. Nieves of 95 Bagdad Road, Durham, New Hampshire 03824, their successors, heirs and assigns forever.

WHEREAS, Michael J. Mulhern and Martha A. Mulhern are the owners of certain property located in Durham, County of Strafford and State of New Hampshire shown as Lot 10-8-8 (91 Bagdad Road) and Lot 10-8-6 (93 Bagdad Road) on a plan entitled "Plan of Lot Line Adjustments for Francis D. and Dorothy L. Manock, 121 Dover Road, Durham, New Hampshire", dated April, 1997 and recorded in the Strafford County Registry of Deeds as Plan 49-99.

WHEREAS, Juan P. Nieves and Amanda P. Nieves are the owners of certain property located in Durham, County of Strafford and State of New Hampshire shown as Lot 10-8-7 (95 Bagdad Road) on a plan entitled "Plan of Lot Line Adjustments for Francis D. and Dorothy L. Manock, 121 Dover Road, Durham, New Hampshire", dated April, 1997 and recorded in the Strafford County Registry of Deeds as Plan 49-99.

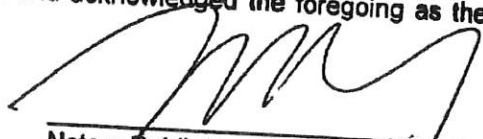
WHEREAS, any conveyance of the above property is subject to the right to use the right-of-way as shown on the plan entitled "Land of Francis D. & Dorothy L. Manock, Durham, New Hampshire", dated April, 1974 and recorded as Plan 21, Pocket 8, Folder 3 in the Strafford County Registry of Deeds and the rights in common of Lot 10-8-8; 10-8-6 and Lot 10-8-7 to use said right-of-way for means of ingress and egress and for all other customary uses as a driveway.

WHEREAS, the above parties, their successors, heirs and assigns forever, agree to share in the cost of any upkeep, repair and maintenance, including snow removal, of said shared driveway. The said driveway is owned by Lot 10-8-6 and Lot 10-8-7 and 10-8-8 shall share in the expenses up to the point of their respective individual driveway.

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

Personally appeared before me this 15th day of September, 2018, the above named Michael J. Mulhern and Martha A. Mulhern and acknowledged the foregoing as their free act and deed.



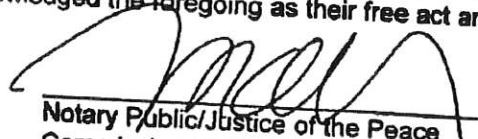


Notary Public/Justice of the Peace
Commission expires:

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

Personally appeared before me this 15th day of September, 2018, the above named Juan P. Nieves and Amanda P. Nieves and acknowledged the foregoing as their free act and deed.





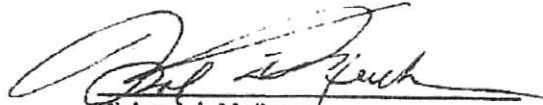
Notary Public/Justice of the Peace
Commission expires:


The parties shall pay the following percentage of expenses for their shared section of the driveway.

Lot 10-8-8	91 Bagdad Road	42.5%
Lot 10-8-6	93 Bagdad Road	42.5%
Lot 10-8-7	95 Bagdad Road	15.0%

This Driveway Maintenance Agreement shall commence on the date of execution and shall be binding upon all parties, their successors, heirs and assigns forever and shall run with the land.

EXECUTED this 15th day of September, 2018.


Michael J. Mulhern


Martha A. Mulhern


Juan P. Nieves



Amanda P. Nieves

Exhibit # 7

To whom it may concern:

During the summer of 2018, my neighbor Mike Mulhern, was selling his property at 93 Bagdad Road. During that time the title company, on behalf of the purchaser, discovered an issue with the driveway. With how the title company described the situation it turned out that I actually "owned" part of the driveway going past 91 Bagdad, and the last part belonging to 93 Bagdad Road. I worked with Mike to have the title company create a deed so that 93 Bagdad Rd has ownership of the whole driveway. I also signed an agreement with Mike and Greg (the purchaser and now owner of 93 Bagdad Rd) of how we would divide expenses related to the care and upkeep of the driveway. At no point during our discussions did we talk about it being made into a roadway. I had one small child at the time, and am working on more, so being tucked back away from the main roadway, with our extended driveway is a huge reason why we bought our property in 2016. For this to be considered, anything more than a driveway is just plain false and at no point during our discussion in 2018, and all the meetings we had on this issue, did Mike or his wife ever mention this being done for any other reason except to correct property line issues discovered by the title company.

V/r

1st Lieutenant Juan P. Nieves US Army (ret)
Owner-95 Bagdad Rd Durham NH 03824

Exhibit # 8

April 26, 2020

Town of Durham
Planning Board
8 Newmarket Rd.
Durham, NH 03824

Dear Planning Board,

This letter is to clarify the ownership of the driveway giving access to 93 Bagdad Rd., Durham, NH. I purchased the property located at 93 Bagdad Rd., Durham, NH from Marti and Michael Mulhern on September 28, 2018.

The prior owners (Mulherns) and neighbors (Nieves) were under the impression that the Mulherns had full ownership of the driveway access to 93 Bagdad with an easement to allow 91 and 95 Bagdad access to their properties.

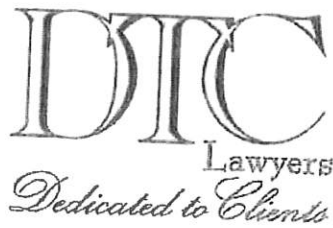
When I visited the property, the driveway was thought to be owned by the Mulherns. During the title process, it was discovered that the Mulherns did not have the sole legal right to convey the driveway to me because it was owned, in part by Juan and Amanda Nieves. In September, 2018 Juan and Amanda Nieves deeded their interest in the driveway to the Mulherns so I could have full ownership of the driveway.

I own the driveway and under no circumstances would I give the Mulherns permission to build a road in its place to access their land.

Sincerely,

Dr. Greg A Imbrie
Owner: 93 Bagdad Rd., Durham, NH 03824

Exhibit # 9



CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

Please Respond to the Exeter Office

March 18, 2021

VIA ELECTRONIC MAIL (sneedelltc@gmail.com)

Sally Needell, Chair
Durham Conservation Commission
8 Newmarket Road
Durham, NH 03824

Re: Michael and Martha Mulhern
91 Bagdad Road, Durham, New Hampshire
Subdivision Application / Conditional Use Application

Dear Chair Needell and Members of the Commission:

This letter is provided following your meeting of February 22, 2021 and in anticipation of your meeting of March 22, 2021 at which time you will review a draft report to go to the Planning Board.

During the meeting on February 22, 2021, the Chair referenced various complexities associated with the project and the Commission then analyzed the four impacted areas against the four criteria on which the Commission is required to make recommendations.

The Commission was unable to reach consensus regarding whether there was an alternative location for the proposed road crossing. While several references were made by Commission members and abutters regarding the conflicting views of myself and the town attorney, the fact is that the Commission is required to examine the concept of "alternative location" through the lens of what is reasonably practical. Here, my understanding is that town counsel agrees with the fact that the Mulherns cannot unilaterally decide to use Bagdad Road and, that the permission of two other interested parties, namely the Imbries and the Nieves, is required before Bagdad Road can be used for the development project. Both of these parties are on record to indicate that they will not grant consent to allow the Mulhern easement to be used to allow access for anything other than the Mulhern house lot. My understanding is that the town attorney believes that it is unclear whether a court would force the interested parties to allow

ELIZABETH M. MACDONALD
JOHN J. RATHGAN
DENISE A. POULOS
ROBERT M. DEROSTER
CHRISTOPHER L. BOLDI
SHARON CUDDY SOMERS
DOUGLAS M. MANSFIELD
KATHERIN E. MILLER
CHRISTOPHER C. HILSON
HEIDI J. BARRETT KILCHEN
JUSTIN L. PASAY
ERICA MAHER
CHRISTOPHER D. HAWKINS
BRENDAN A. O'DONNELL
FLAINE F. HOEPPNER
WILLIAM K. WARREN

RETIREE
MICHAEL J. DONAHUE
CHARLES E. TUCKER
ROBERT D. CIANDELLA
NICHOLAS R. AESCHLIMAN

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253

Bagdad Road to be used. By contrast, I do not believe that there is any question that the Court would rule against any request to force the interested parties to allow Bagdad Road to be used for access to the proposed development.

Under New Hampshire law, key concepts in determining the rights of easement holders are:

1. The language of the easement;
2. The "reasonableness" of the request to change the original easement; and
3. The burden to be placed on the other interested parties.

Here, an easement was granted to the Mulherns by Michael D. Allen in 2013 to use Bagdad Road for ingress and egress to "said premises". In other words, it was not an easement with broad language such as "for all purposes" or pertaining to land other than the Allen parcel. The easement area is a fairly narrow roadway serving only three properties, and I do not believe a court would find that it is "reasonable" to allow the easement to be burdened with traffic associated with fifteen homes. Finally, I believe a court would find that such an expansion of easement rights would be burdensome to the Imbries and the Nieves because the level of activity would be expanded by over four times the current level of activity.

In short, it is not "reasonably practical" to expect the Mulherns to initiate litigation against their neighbors in what I believe to be a fruitless venture, all at considerable cost in legal fees to themselves and their neighbors. With this conclusion in mind, the Conservation Commission and Planning Board should follow the earlier recommendation of the town attorney and simply review the road proposal as presented on its merits.

As well, although the Conservation Commission minutes demonstrate that the Commission appears to understand the scope of their assignment, it bears repeating that, contrary to comments from the abutters, the Commission is charged solely with rendering advice to the Planning Board on the four criteria set forth in Section 175-61 (B). The decision to require various studies rests with the Planning Board, and the examination of the criteria in 175-C 1-8 resides solely with the Planning Board and even then, only as the criteria pertains to wetland impacts.

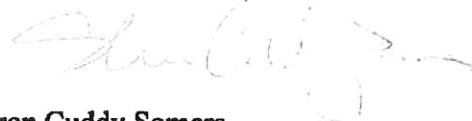
By statute, the Planning Board is only given a certain amount of time in which to make decisions on site plans and subdivisions, and generally obtains permission from the applicant to exceed that timeline. We have granted such permission but at the same time also want the town review to be completed as swiftly as possible. The Conservation Commission's advice is an important component of this process, but it is important that your work be brought to a conclusion. It would certainly be possible for you to complete your report, take a vote and then present same at the next Planning Board meeting, together with whatever supplemental explanations you feel would assist the Board.

Sally Needell, Chair
March 18, 2021
Page 3

We strongly encourage you to complete your review on March 22 and provide the results to the Planning Board for their review on March 24, 2021.

Please feel free to contact me with any questions.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC



Sharon Cuddy Somers
ssomers@dtclawyers.com

SCS/jh

cc: Michael Mulhern and Martha Mulhern
MJS Engineering, P.C.
Mark West, West Environmental, Inc.
Robbi Woodburn, ASLA, Woodburn & Company
Durham Planning Board

S:\MP-MZ\Mulhern, Michael & Martha\Town of Durham\2021 03 18 Needell Letter.docx



2 Executive Park Drive
Bedford, New Hampshire 03110
(603) 647- 8485
(603) 647- 1457 FAX
www.oldrepublictitle.com
Home Office: Minneapolis, Minnesota 55401-2499

Exhibit # 10

February 8, 2005

Michael and Marty Mulhern
Shearwater Drive
Durham, NH 03824

Re: Property of Manock, Durham, New Hampshire

Dear Michael and Marty:

Pursuant to our discussion, I will not be able to provide title insurance which would insure the access via the 50' Common R.O.W. as shown on the plan entitled "Plan of Lot Line Adjustments for Francis D. and Dorothy L. Manock" dated April, 1997 and recorded in the Strafford County Registry of Deeds as Plan No. 49.99 (hereinafter the "Plan"). Copy attached as Exhibit 1.

As you can see from a review of the referenced Plan the majority of the ROW extends over Lot 9-33, owned by William Berndston (hereinafter "Berndston"). In order to determine any rights remaining in Manock to the ROW, a review of Berndston's title is necessary. Berndston's lot has changed slightly in dimensions from its initial formation in the following two deeds:

1. Deed from Francis D. Manock and Dorothy L. Manock to Alma C. Manock recorded in the Strafford County Registry of Deeds at Book 797, Page 259 (200' x. 200'); and
2. Deed from Francis D. Manock and Dorothy L. Manock to Alma M. Cross recorded in the Strafford County Registry of Deeds at Book 967, Page 219. Copy attached as Exhibit 2.

For the purposes of this letter Alma C. Manock will also be referred to as Alma M. Cross and following the two conveyances above Alma M. Cross owned all of the property in the Town of Madbury as shown on the April, 1974 plan of Francis and

Dorothy Manock. Copy attached as Exhibit 3. Please note the ROW is not shown on the 1974 Plan, just a driveway accessing the 200 x 200 Lot of Alma M. Cross.

When the Manocks conveyed the property in deed number 2, above, they retained the following relating to the ROW:

Subject, also, to the said Francis D. Manock and Dorothy L. Manock reserving the right to dedicate and convey to the Towns of Durham and Madbury for public use a roadway Fifty (50) feet in width and satisfactory to the Towns extending along the northeasterly boundary of land of Artz to other land of Francis D. Manock and Dorothy L. Manock.

According to this reservation the ROW extends along the boundary of "Artz" to other land of Manock. The conveyance is made from the 1974 Plan and the "Artz" property is 200 feet in depth. It follows to say the ROW extends 200 feet to other land of Manock.

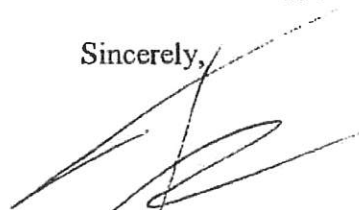
Alma M. Cross deeded the property affected by the ROW to Davis Wolowitz and Roxanne S. Tooker by deed recorded in the Strafford County Registry of Deeds at Book 986, Page 412. This deed is from the plan entitled "Land of Alma Cross" dated August, 1976. The legal description does not mention any right of way retained by Francis and Dorothy Manock. Alma M. Cross does not retain any interest for herself. I will point out that the 1976 Plan depicts the ROW. Exhibit 4.

Alma M. Cross conveys the 200' x 200' property to Davis Wolowitz and Roxanne S. Tooker by deed recorded in the Strafford County Registry of Deeds at Book 986, Page 410. The legal description contained in these two deeds from Alma M. Cross are the same as now owned by Berndston.

I have been unable to find any reservation or conveyance which would allow the Manocks to extend the ROW more than 200 feet into the Berndston property and therefore will not be able to insure access over a larger area.

Thank you for your attention to this matter and if any party has further documentation that may change my conclusion I would be happy to review same.

Sincerely,



Timothy A. Boucher

WARRANTY DEED

WALTER W. CHENEY, INC., a corporation duly organized under and by virtue of the laws of the State of New Hampshire, and having a principal place of business in the Town of Durham, County of Strafford and State of New Hampshire, for consideration paid, grant to TOWN OF DURHAM, a municipal corporation existing under and by virtue of the laws of the State of New Hampshire and situate in the County of Strafford and State of New Hampshire, with WARRANTY covenants:

A certain tract of land designated as a "Future Street" extending Easterly from Gerrish Drive in the Town of Durham, County of Strafford and State of New Hampshire as set forth in a plan entitled, "Pine Ridge" by G.L. Davis & Associates, Dover, New Hampshire, and recorded as Plan 42 in Pocket 4, Folder 4 of the Strafford County Registry of Deeds, bounded and described as follows:

Beginning at the Northwestern corner of Lot #9 as set forth on said plan, thence running North 10° 20' East across Gerrish Drive a distance of Fifty-two and three tenths (52.3) feet to a point at the Southwesterly corner of Lot #10; thence turning and running North 83° 28' East by and along Lot #10 a distance of One Hundred Twenty-four and four tenths (124.4) feet; thence continuing on a curve to the right with a radius of One Hundred Fifty (150) feet a distance of One Hundred Eighteen and Six Tenths (118.6) feet; thence continuing in a Southeasterly direction to the Southeasterly corner of Lot #10 and land of Manock a distance of Twenty-three and Five Tenths (23.5) feet; thence turning and running South 10° 33' West by and along land of the said Manock a distance of Fifty-six and seven tenths (56.7) feet to the Northeasterly corner of Lot #9; thence turning and running in a Northwesterly direction by and along said Lot #9 a distance of Fifty and three tenths (50.3) feet; thence continuing on a curve to the left with a radius of One Hundred (100) feet a distance of Seventy-nine (79.0) feet; thence continuing South 83° 28' West by and along Lot #9 a distance of One Hundred Thirty-nine and Six Tenths (139.6) feet to the point of beginning.

Subject to the condition that said premises shall not, for a period of seven (7) years from the date hereof, be developed for street purposes, without prior consent of the grantor, Walter W. Cheney, Inc.

Meaning and intending to convey a portion of the premises acquired by Walter W. Cheney, Inc. by Warranty Deed of Lathrop B. Merrick and Barbara Merrick, to be recorded, and in accordance with a vote of Walter W. Cheney, Inc. dated March 29, 1965 and recorded in Book 793, Page 152 of the Strafford County Registry of Deeds.

WITNESS its hand and corporate seal, this 28th day of Feb, 1972

In the presence of: [Signature]

WALTER W. CHENEY, INC. By: [Signature] Its President



State of New Hampshire Strafford, ss

Feb 28, 1972

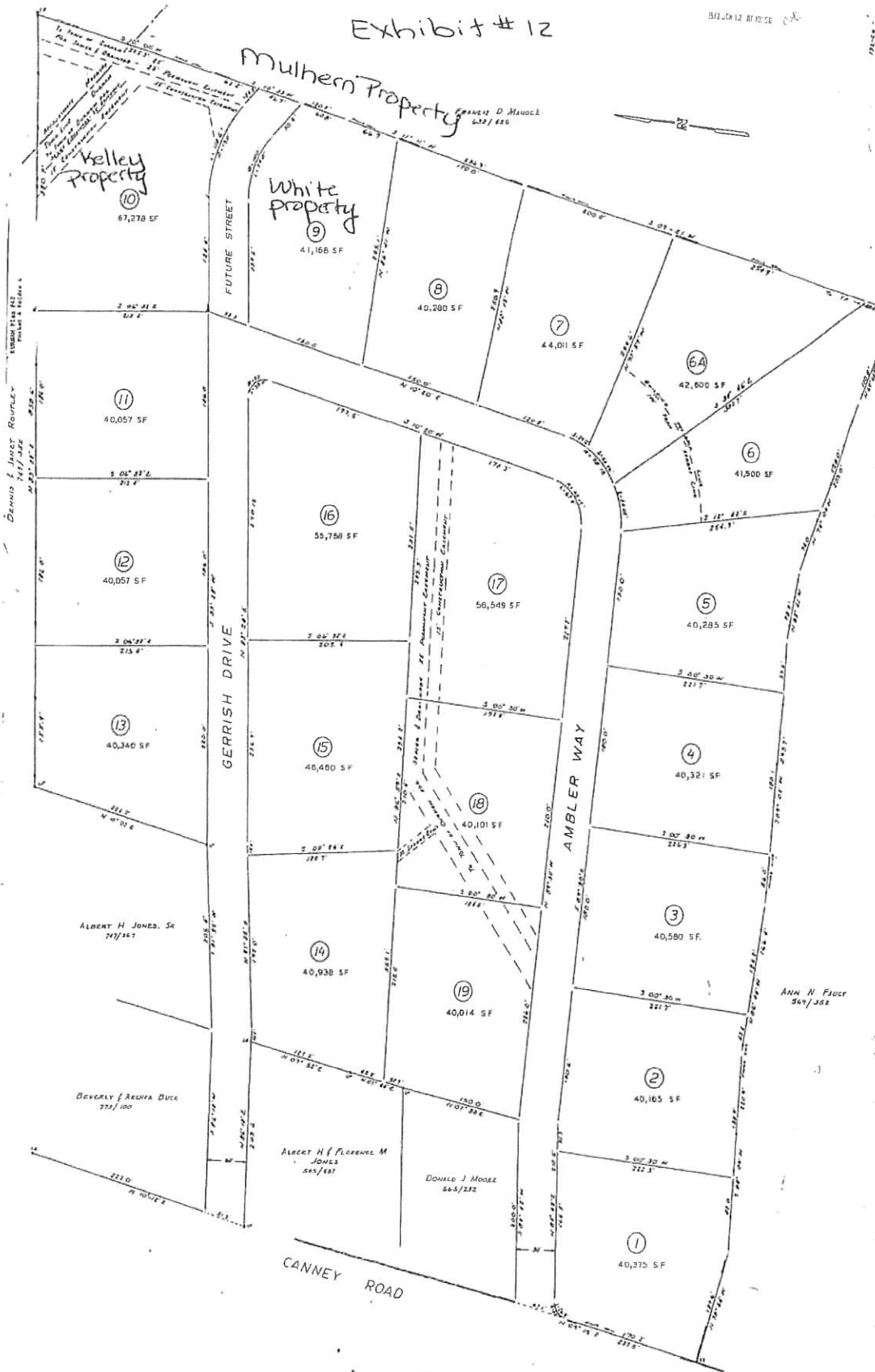
Personally appeared Walter W. Cheney, President and duly authorized officer of Walter W. Cheney, Inc. and acknowledged the foregoing instrument to be its voluntary act and deed. Before me,

[Signature] Justice of the Peace - Notary Public

1972 MAR 22 PM 3:17

Exhibit # 12

B19.0412 REVERSE



FOR RECORDING:
 DURHAM PLANNING BOARD
 APPROVED 5 JANUARY 1972
 [Signatures]

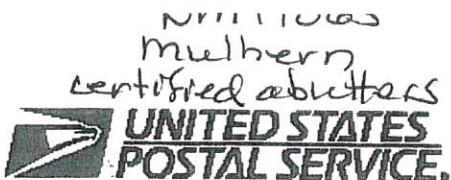
MAP OF LOTS
 PINE RIDGE
 WALTER W. CHENEY, INC.
 DURHAM, NEW HAMPSHIRE

G. L. DAVIS & ASSOCIATES
 CIVIL ENGINEERS
 18 FISHER STREET
 DORSET NEW HAMPSHIRE

Scale: 1" = 50'
 Date: NOV. 1971
 Job No. 152-60

LIST OF OWNERS OF ABUTTING PROPERTY Date: 12-14-21

<p>MAP 10/LOT 6-9 20 Ambler Way</p> <p>MICHAEL P. & MOLLY P. WHITE 20 AMBLER WAY DURHAM, NH 03824</p>	<p>MAP 10/LOT 8-7 95 Bagdad Road</p> <p>JUAN P. & AMANDA P. NIEVES 95 BAGDAD ROAD DURHAM, NH 03824</p>
<p>MAP 10/LOT 8-1 89 Bagdad Road</p> <p>TIMOTHY J. & DENISE R. DAY 89 BAGDAD ROAD DURHAM, NH 03824</p>	<p>MAP 10/LOT 8-9 103 Dover Rd.</p> <p>GEFFREY M DIXON & SUZANNE M. YOUNG 103 DOVER ROAD DURHAM, NH 03824</p>
<p>MAP 10/LOT 8-2 107 Dover Road</p> <p>MATTHEW J. ANCTIL MELANIE M. HARVEY 107 DOVER ROAD DURHAM, NH 03824</p>	<p>MAP 10/LOT 7-0 Open Space</p> <p>SOPHIE LANE HOMEOWNERS ASSOC. C/O SOPHIE LANE, LLC P.O. BOX 370 PORTSMOUTH, NH 03802</p>
<p>MAP 10/LOT 8-3 111 Dover Road</p> <p>DAVID BENSON ANHHONG BENSON 111 DOVER ROAD DURHAM, NH 03824</p>	<p>MAP 10/LOT 6-6 12 Ambler Way</p> <p>NICHOLAS B. & LINDSAY B. LANZER 12 AMBLER WAY DURHAM, NH 03824</p>
<p>MAP 10/LOT 8-4 115 Dover Road</p> <p>GOMBOSSY LIVING TRUST 115 DOVER ROAD DURHAM, NH 03824</p>	<p>MAP 10/LOT 6-61 14 Ambler Way</p> <p>DANIEL M. SHANK P.O. BOX 101321 FORT WORTH, TX 76185</p>
<p>MAP 10/LOT 8-5 121 Dover Road</p> <p>YING SHI 121 DOVER ROAD DURHAM, NH 03824</p>	<p>MAP 10/LOT 6-7 16 Ambler Way</p> <p>BRYAN M. & MARY B. OLIVIER 16 AMBLER WAY DURHAM, NH 03824</p>
<p>MAP 10/LOT 8- 8 93 Bagdad Road</p> <p>GREG A. IMBRIE 93 BAGDAD ROAD DURHAM, NH 03824</p>	<p>MAP 10/LOT 6-8 18 Ambler Way</p> <p>PETER M. & KIMBERLY SWEETMAN 18 AMBLER WAY DURHAM, NH 03824</p>
<p>MAP 10/LOT 6-10 11 Gerrish Drive MADBURY MAP 9/LOT 34A Durham Line</p> <p>GAIL J. KELLEY REV. TRUST 11 GERRISH DRIVE DURHAM, NH 03824</p>	<p>MADBURY MAP 9/LOT 33 123 Dover Road</p> <p>BERNDTSON FAMILY RE TRUST WE & NP BERNDTSON TRUSTEES 174 LEE HOOK ROAD LEE, NH 03824</p>
<p>MADBURY MAP 9/LOT 31A 359 Route 108</p> <p>DURHAM EVANGELICAL CHURCH 114 DOVER ROAD DURHAM, NH 03824</p>	<p>MADBURY MAP 9/LOT 34 Durham Line</p> <p>BALDWIN & SEXTON TRUSTS MK BALDWIN & EE SEXTON TTSS 60 CANNEY ROAD DURHAM, NH 03824</p>



Webland App
 NEWMARKET
 126 MAIN ST
 NEWMARKET, NH 03857-1643
 (800)275-8777

12/17/2021 03:47 PM

Product	Qty	Unit Price	Price
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Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 4571 16	1		\$0.00
Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 4576 97	1		\$0.00
Prepaid Mail Lee, NH 03861 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 4231 59	1		\$0.00
Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 4236 23	1		\$0.00
Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 4239 99	1		\$0.00
Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 4237 84	1		\$0.00
Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 4441 54	1		\$0.00
Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 4446 42	1		\$0.00

Prepaid Mail Fort Worth, TX 76185 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 4446 11	1		\$0.00
Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 4447 72	1		\$0.00
Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 1019 96	1		\$0.00
Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 1017 74	1		\$0.00
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Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 1018 73	1		\$0.00
Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 1896 97	1		\$0.00
Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 1899 56	1		\$0.00
Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 1899 70	1		\$0.00
Prepaid Mail Durham, NH 03824 Weight: 0 lb 0.40 oz Acceptance Date: Fri 12/17/2021 Tracking #: 9407 1116 9900 0524 1897 41	1		\$0.00

Nm19063

Shank

Gombossy

Lanzer

Benson

Sophie Lane

Anetil + Harvey

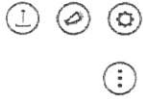
Dixon/Young

Nieves

Day

White

Grand Total: \$0.00



 Baldwin & Sexton Trusts



Delivered

Friday, January 7, 2022 12:20 PM
NEWMARKET, NH 03857

Tracking: [9407111699000524457116](#)

 [Email Tracking Info](#)

Addresses

Shipped To: Baldwin & Sexton Trusts
MK Baldwin & EE Sexton TTSS
60 Canney Road
Durham, NH 03824-3231
jbell@horizonsengineering.com

Shipped From: 03857

Return To: Janice Bell
Horizons Engineering, Inc.
5 Railroad Street
Newmarket, NH 03857

 **Services** **\$4.28**

Amount Paid **\$4.28**

Carrier: USPS

Service: First Class® **\$0.53**

Packaging: Envelope

Insurance: None

Extra Services: **Certified Mail** **\$3.75**

Weight: 0 lbs. 1 oz.



 Durham Evangelical Church



Delivered

Thursday, December 30, 2021 4:37 PM

DURHAM, NH 03824

Tracking: 9407111699000524457897

 [Email Tracking Info](#)

Addresses

Shipped To: Durham Evangelical Church
114 Dover Road
Durham, NH 03824-3318

Shipped From: 03857

Return To: Janice Bell
Horizons Engineering, Inc.
5 Railroad Street
Newmarket, NH 03857

 **Services** **\$4.28**

Amount Paid **\$4.28**

Carrier: USPS

Service: First Class ® **\$0.53**

Packaging: Envelope

Insurance: None

Extra Services: Certified Mail **\$3.75**

Weight: 0 lbs, 1 oz.

Quoted Amount **\$4.28**



Receipt

Print Date: Feb 18, 2022

RETURN TO

Janice Bell
5 Railroad Street
Newmarket, NH 03857

SHIP TO

Berndtson Family RE Trust
174 Lee Hook Road
Lee, NH 03861 US
jbell@horizonsengineering.com

REFERENCE

Ship Date: Dec 14, 2021
Ship from ZIP: 03857
Weight: 0 lbs. 1 oz.
User: mjseng359
Cost Code: <None>
Refund Type: E-refund
Reference #:
Printed on: Shipping label
Tracking #: 9407111699000524423159
Carrier Acceptance Date: Dec 17, 2021

SERVICE

First Class ® Envelope
Tracking
Insurance (N/A)
Certified Mail Cost

UNIT PRICE

\$0.53
\$0.00
\$3.75

Subtotal \$4.28
Label Quantity 1
Total Cost \$4.28



Receipt

Print Date: Feb 18, 2022

RETURN TO

Janice Bell
5 Railroad Street
Newmarket, NH 03857

SHIP TO

Gail J. Kelley Rev. Trust
11 Gerrish Drive
Durham, NH 03824 US
jbell@horizonsengineering.com

REFERENCE

Ship Date: Dec 14, 2021
Ship from ZIP: 03857
Weight: 0 lbs. 1 oz.
User: mjseng359
Cost Code: <None>
Refund Type: E-refund
Reference #:
Printed on: Shipping label
Tracking #: 9407111699000524423623
Carrier Acceptance Date: Dec 17, 2021

SERVICE

First Class ® Envelope
Tracking
Insurance (N/A)
Certified Mail Cost

UNIT PRICE

First Class ® Envelope	\$0.53
Tracking	\$0.00
Insurance (N/A)	
Certified Mail Cost	\$3.75
Subtotal	\$4.28
Label Quantity	1
Total Cost	\$4.28



Receipt

Print Date: Feb 18, 2022

RETURN TO

Janice Bell
5 Railroad Street
Newmarket, NH 03857

SHIP TO

Peter M. & Kimberly Sweetman
18 Ambler Way
Durham, NH 03824 US
jbell@horizonsengineering.com

REFERENCE

Ship Date: Dec 14, 2021
Ship from ZIP: 03857
Weight: 0 lbs. 1 oz.
User: mjseng359
Cost Code: <None>
Refund Type: E-refund
Reference #:
Printed on: Shipping label
Tracking #: 9407111699000524423999
Carrier Acceptance Date: Dec 17, 2021

SERVICE

First Class ® Envelope
Tracking
Insurance (N/A)
Certified Mail Cost

UNIT PRICE

First Class ® Envelope	\$0.53
Tracking	\$0.00
Insurance (N/A)	
Certified Mail Cost	\$3.75
Subtotal	\$4.28
Label Quantity	1
Total Cost	\$4.28



Receipt

Print Date: Feb 18, 2022

RETURN TO

Janice Bell
5 Railroad Street
Newmarket, NH 03857

SHIP TO

Greg A. Imbrie
93 Bagdad Road
Durham, NH 03824 US

REFERENCE

Ship Date: Dec 14, 2021
Ship from ZIP: 03857
Weight: 0 lbs. 1 oz.
User: mjseng359
Cost Code: <None>
Refund Type: E-refund
Reference #:
Printed on: Shipping label
Tracking #: 9407111699000524423784
Carrier Acceptance Date: Dec 17, 2021

SERVICE

First Class® Envelope
Tracking
Insurance (N/A)
Certified Mail Cost

UNIT PRICE

First Class® Envelope	\$0.53
Tracking	\$0.00
Insurance (N/A)	
Certified Mail Cost	\$3.75
Subtotal	\$4.28
Label Quantity	1
Total Cost	\$4.28

  Bryan M. & Mary B. Olivier



Delivered

Thursday, December 30, 2021 11:15 AM
DURHAM, NH 03824

Tracking: 940711169900052444154

 [Email Tracking Info](#)

Addresses

Shipped To: Bryan M. & Mary B. Olivier
16 Ambler Way
Durham, NH 03824-3217
jbell@horizonsengineering.com

Shipped From: 03857

Return To: Janice Bell
Horizons Engineering, Inc.
5 Railroad Street
Newmarket, NH 03857

Services \$4.28

Amount Paid **\$4.28**

Carrier: USPS

Service: First Class B **\$0.53**

Packaging: Envelope

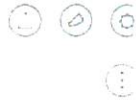
Insurance: None

Extra Services: Certified Mail **\$3.75**

Weight: 0 lbs. 1 oz.

Quoted Amount **\$4.28**

Ying Shi



Delivered

Friday, January 7, 2022 12:20 PM
NEWMARKET, NH 03857

Tracking: 940711169900052444642

[Email Tracking Info](#)

Addresses

Shipped To: Ying Shi

121 Dover Road
Durham, NH 03824-3320
jbell@horizonsengineering.com

Shipped From: 03857

Return To: Janice Bell
Horizons Engineering, Inc.
5 Railroad Street
Newmarket, NH 03857

Services **\$4.28**

Amount Paid **\$4.28**

Carrier: USPS

Service: First Class ® **\$0.53**

Packaging: Envelope

Insurance: None

✓ **Extra Services:** Certified Mail **\$3.75**

Weight: 0 lbs. 1 oz.

Quoted Amount **\$4.28**



 Daniel M. Shank



Printed

Saturday, February 5, 2022 8:05 AM
NEWMARKET, NH 03857

Tracking: 940711169900052444611

 [Email Tracking Info](#)

Addresses

Shipped To: Daniel M. Shank

P.O. Box 101321

Fort Worth, TX 76185-1321

jbell@horizonsengineering.com

Shipped From: 03857

Return To: Janice Bell

Horizons Engineering, Inc.

5 Railroad Street

Newmarket, NH 03857

 Services **\$4.28**


Amount Paid **\$4.28**

Carrier: USPS

Service: First Class  **\$0.53**

Packaging: Envelope

Insurance: None

Extra Services: Certified Mail  **\$3.75**

Weight: 0 lbs. 1 oz.

Quoted Amount **\$4.28**



Receipt

Print Date: Feb 18, 2022

RETURN TO

Janice Bell
5 Railroad Street
Newmarket, NH 03857

SHIP TO

Gombossy Living Trust
115 Dover Road
Durham, NH 03824 US

REFERENCE

Ship Date: Dec 14, 2021
Ship from ZIP: 03857
Weight: 0 lbs. 1 oz.
User: mjseng359
Cost Code: <None>
Refund Type: E-refund
Reference #:
Printed on: Shipping label
Tracking #: 9407111699000524444772
Carrier Acceptance Date: Dec 17, 2021

SERVICE

First Class® Envelope
Tracking
Insurance (N/A)
Certified Mail Cost

UNIT PRICE

\$0.53
\$0.00
\$3.75

Subtotal \$4.28
Label Quantity 1
Total Cost \$4.28



Receipt

Print Date: Feb 18, 2022

RETURN TO

Janice Bell
5 Railroad Street
Newmarket, NH 03857

SHIP TO

Nicholas B. & Lindsay B. Lanzer
12 Ambler Way
Durham, NH 03824 US
jbell@horizonsengineering.com

REFERENCE

Ship Date: Dec 14, 2021
Ship from ZIP: 03857
Weight: 0 lbs. 1 oz.
User: mjseng359
Cost Code: <None>
Refund Type: E-refund
Reference #:
Printed on: Shipping label
Tracking #: 9407111699000524101996
Carrier Acceptance Date: Dec 17, 2021

SERVICE

First Class ® Envelope
Tracking
Insurance (N/A)
Certified Mail Cost

UNIT PRICE

First Class ® Envelope	\$0.53
Tracking	\$0.00
Insurance (N/A)	
Certified Mail Cost	\$3.75
Subtotal	\$4.28
Label Quantity	1
Total Cost	\$4.28

David & Anhhong Benson

Delivered

Friday, January 7, 2022 12:20 PM
NEWMARKET, NH 03857

Tracking: 9407*1169900052-101774

[Email Tracking Info](#)

Addresses

Shipped To: David & Anhhong Benson
111 Dover Road
Durham, NH 03824-3320
jbell@horizonsengineering.com

Shipped From: 03857

Return To: Janice Bell
Horizons Engineering, Inc.
5 Railroad Street
Newmarket, NH 03857

Services **\$4.28**

Amount Paid **\$4.28**

Carrier: USPS

Service: First Class **\$0.53**

Packaging: Envelope



Insurance: None

Extra Services: Certified Mail **\$3.75**

Weight: 0 lbs, 1 oz.

Quoted Amount **\$4.28**



 Sophie Lane Homeowners Assoc. 

Delivered

Monday, January 10, 2022 1:51 PM
NEWMARKET, NH 03857

Tracking: 940711169900052-1017233

 [Email Tracking Info](#)

Addresses

Shipped To: Sophie Lane Homeowners Assoc.
c/o Sophie Lane
LLC
P.O. Box 267
Portsmouth, NH 03802-0267
jbell@horizonsengineering.com

Shipped From: 03857

Return To: Janice Bell
Horizons Engineering, Inc.
5 Railroad Street
Newmarket, NH 03857

 **Services** **\$4.28**

Amount Paid **\$4.28**

Carrier: USPS

Service: First Class ® **\$0.53**

Packaging: Envelope

Insurance: None

Extra Services: Certified Mail **\$3.75**



Receipt

Print Date: Feb 18, 2022

RETURN TO

Janice Bell
5 Railroad Street
Newmarket, NH 03857

SHIP TO

Matthew J. Anctil & Melanie M. Harvey
107 Dover Road
Durham, NH 03824 US

REFERENCE

Ship Date: Dec 14, 2021
Ship from ZIP: 03857
Weight: 0 lbs. 1 oz.
User: mjseng359
Cost Code: <None>
Refund Type: E-refund
Reference #:
Printed on: Shipping label
Tracking #: 9407111699000524101873
Carrier Acceptance Date: Dec 17, 2021

SERVICE

First Class® Envelope
Tracking
Insurance (N/A)
Certified Mail Cost

UNIT PRICE

First Class® Envelope	\$0.53
Tracking	\$0.00
Insurance (N/A)	
Certified Mail Cost	\$3.75
Subtotal	\$4.28
Label Quantity	1
Total Cost	\$4.28



Receipt

Print Date: Feb 18, 2022

RETURN TO

Janice Bell
5 Railroad Street
Newmarket, NH 03857

SHIP TO

Geffrey M. Dixon & Suzanne M. Young
103 Dover Road
Durham, NH 03824 US
jbell@horizonsengineering.com

REFERENCE

Ship Date: Dec 14, 2021
Ship from ZIP: 03857
Weight: 0 lbs. 1 oz.
User: mjseng359
Cost Code: <None>
Refund Type: E-refund
Reference #:
Printed on: Shipping label
Tracking #: 9407111699000524189697
Carrier Acceptance Date: Dec 17, 2021

SERVICE

First Class ® Envelope
Tracking
Insurance (N/A)
Certified Mail Cost

UNIT PRICE

\$0.53
\$0.00
\$3.75

Subtotal \$4.28
Label Quantity 1
Total Cost \$4.28



Receipt

Print Date: Feb 18, 2022

RETURN TO

Janice Bell
5 Railroad Street
Newmarket, NH 03857

SHIP TO

Juan P. & Amanda P. Nieves
95 Bagdad Road
Durham, NH 03824 US
jbell@horizonsengineering.com

REFERENCE

Ship Date: Dec 14, 2021
Ship from ZIP: 03857
Weight: 0 lbs. 1 oz.
User: mjseng359
Cost Code: <None>
Refund Type: E-refund
Reference #:
Printed on: Shipping label
Tracking #: 9407111699000524189956
Carrier Acceptance Date: Dec 17, 2021

SERVICE

UNIT PRICE

First Class ® Envelope	\$0.53
Tracking	\$0.00
Insurance (N/A)	
Certified Mail Cost	\$3.75
Subtotal	\$4.28
Label Quantity	1
Total Cost	\$4.28



Receipt

Print Date: Feb 18, 2022

RETURN TO

Janice Bell
5 Railroad Street
Newmarket, NH 03857

SHIP TO

Timothy J. Denise R. Day
89 Bagdad Road
Durham, NH 03824 US
jbell@horizonsengineering.com

REFERENCE

Ship Date: Dec 14, 2021
Ship from ZIP: 03857
Weight: 0 lbs. 1 oz.
User: mjseng359
Cost Code: <None>
Refund Type: E-refund
Reference #:
Printed on: Shipping label
Tracking #: 9407111699000524189970
Carrier Acceptance Date: Dec 17, 2021

SERVICE

UNIT PRICE

First Class ® Envelope	\$0.53
Tracking	\$0.00
Insurance (N/A)	
Certified Mail Cost	\$3.75

Subtotal	\$4.28
Label Quantity	1
Total Cost	\$4.28

Molly P. & Michael P. White

Delivered

Friday, January 7, 2022 12:20 PM
NEWMARKET, NH 03857

Tracking: 9407111699000534189741

[Email Tracking Info](#)

Addresses

Shipped To: Molly P. & Michael P. White
20 Ambler Way
Durham, NH 03824-3217
jbell@horizonsengineering.com

Shipped From: 03857

Return To: Janice Bell
Horizons Engineering, Inc.
5 Railroad Street
Newmarket, NH 03857

Services **\$4.28**

Amount Paid **\$4.28**

Carrier: USPS

Service: First Class ® **\$0.53**

Packaging: Envelope

Insurance: None

Extra Services: **Certified Mail** **\$3.75**

Weight: 0 lbs. 1 oz.

Quoted Amount **\$4.28**



Michael Behrendt
Durham Town Planner
Town of Durham
8 Newmarket Road
Durham, NH 03824-2898
Phone (603) 868-8064
mbehrendt@ci.durham.nh.us
www.ci.durham.nh.us

August 5, 2022

Wetland Bureau
New Hampshire Division of Environmental Services
29 Hazen Drive, P.O. Box 95
Concord, NH 03302

Re: Gerrish Drive/Mulhern Subdivision Application Right of Way – File 2021-03763

Dear NHDES Wetland Bureau,

Please accept this letter as a clarification of the right-of-way (or “spur” or “stub”) currently owned by the Town of Durham leading to the Gerrish Drive subdivision. The right-of-way will provide access to the parcel of land owned by Michael and Marti Mulhern for their development. Mike Sievert, the design engineer, designed a crossing for the new road through the right of way which includes a wetland and stream.

The Durham Town Council voted at the outset of the subdivision review to allow for use of the right of way for the road leading to the project. Later, on November 15, 2021 the Town Council voted to convey the right of way to the Mulherns so that they will own this strip of land leading from Gerrish Drive to their property and it will be integrated into the parcel being developed.

The right of way will be conveyed for one dollar at an appropriate time determined by the Durham Town Administrator, i.e. once the project is underway. The applicant will be able to use the right of way for construction and to make improvements to the right of way as needed in accordance with their construction schedule.

Please feel free to contact me with any questions or if I can clarify this issue further.

Sincerely yours,

Michael Behrendt
Durham Town Planner



July 27, 2022

Mike and Marti Mulhern

91 Bagdad Road

Durham, NH 03824

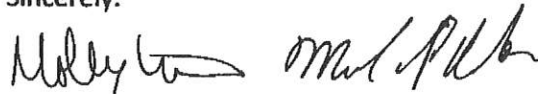
Re: Permission letter for impacts within 10' of an abutting property line Map 10, Lot 6-9

Dear Mike & Marti,

We are the current owners of the subject property referenced above. We have been notified of the proposed wetland application and have reviewed the plans for the proposed design. Based on this information, we grant permission for the proposed wetlands impacts within 10' of our property line, for construction of the roadway within the right-of-way pending Town of Durham Planning Board approval and as may be permitted in accordance with all applicable laws and regulations. In consideration of granting such permission we will require an indemnification from the property owner of the abutting right-of-way (ROW) on which the construction will take place, indemnifying us for any damages or losses arising out of or resulting from the work, as well as Certification of Insurance from the property owner and any contractor naming us as additional insured. It must be understood that this does not grant permission for access over or through our property if required in the future.

If you need additional information, please do not hesitate to contact us.

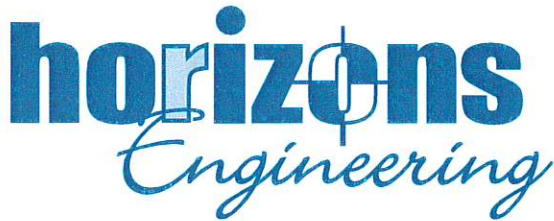
Sincerely,



Mike & Molly White

20 Ambler way

Durham, NH 03824



5 Railroad Street, Newmarket, NH 03857 • Ph 603-659-4979 • Fax 603-659-4627 • www.horizonsengineering.com

August 5, 2022

Ms. Kristin Duclos
NHDES Wetlands Bureau
PO Box 95
Concord, NH 03302-0095

Re: RFMI NHDES File Number 2021-03763 ; Subject property 91 Bagdad Rd, Durham Tax Map #10, Lot #8-8 and Madbury Tax Map #9 Lot 32, Waiver Request

Dear Kristin:

A waiver is requested from Env-Wt 307.13(d), which requires the written consent from an abutter to perform construction activity within a jurisdictional area within 10 feet of their abutting property. Due to the nature of this project, the access road must disturb within 10 feet of the northerly abutting property (Tax Map 206, Lot 17). The current owner of this property, Gail Kelley, is opposed to the project and will not give permission to work within 10 feet of Lot 17.

I believe this waiver should be granted for the following reasons:

1. Granting it will not result in avoidable adverse impacts to the environment or natural resources of the state, or the public health and safety. The only access to the site is through this existing 50 foot wide ROW. The access road must accommodate two-way traffic and is 26 feet wide (20 ft paver with 3 ft shoulders) with retaining walls on both sides to limit the need for wetland fill. Shifting the road towards one abutter or the other will not measurably change the impacts to the environment or natural resources.
2. Granting it will not impact abutting properties more significantly than fully complying with the rule. Even if the road was shifted away from the Lot 17, the driveway could not be connected back to the public way without disturbing within 10 feet of this property, as the toe of the existing driveway embankment is flagged as wetlands. To my knowledge no easement was granted to construct this existing driveway, nor was a wetlands permit ever granted by NHDES.
3. No statutory requirement is being waived.

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4. The benefit to the public is outweighed by the operational and economic costs to the applicant. By not granting this waiver, it will prevent access to the lot for any future development. The design of the access road has minimized impacts to abutters and the wetlands by using retaining walls to minimize the footprint of the wetland fill. The project has taken into account the hydrological impacts that this project poses to the properties abutting the proposed road and does not estimate an increase flooding risk to either property abutting the ROW.

For all the reasons listed above, I believe this waiver should be granted. If you have any questions related to this wavier, please contact me at (603) 444-4111.

Sincerely;



Michael J. Sievert, PE
VP Structural Engineering

Horizons Engineering, Inc.

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Max Schrader

From: DNCR: NHB Review <nhbreview@dncr.nh.gov>
Sent: 14 July, 2022 16:30
To: Max Schrader
Cc: Mike Sievert; mark@westenv.net; Severance, Madeline
Subject: RE: NHB Review: NHB22-1834

Max,

Thank you for providing some images and the composition of the upland woodland plant communities for our review.

Based on aerials and the community types provided, it appears that the majority of the project footprint will occur within the White pine-Hemlock woodland community, with impacts to narrow wetland segments. These habitat types are not expected to support Blue sedge.

NHB has no additional concerns regarding the project.

Thank you,

Jessica Bouchard (she/her/hers)
Ecologist
New Hampshire Natural Heritage Bureau (NHB)
Division of Forests & Lands
NH Dept. of Natural & Cultural Resources
172 Pembroke Rd
Concord, NH 03301
(603) 568-1804 (cell)

[NHB DataCheck Tool](#)

From: Max Schrader <mschrader@horizonsengineering.com>
Sent: Wednesday, July 6, 2022 9:21 AM
To: DNCR: NHB Review <nhbreview@dncr.nh.gov>
Cc: Mike Sievert <msievert@horizonsengineering.com>; mark@westenv.net
Subject: RE: NHB Review: NHB22-1834

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Jessica,

Attached are is the upland woodland plant community information and pictures prepared by Mark West. Please let me know if you need any additional information for your review.

Best regards,
Max Schrader, EIT
[Horizons Engineering, Inc.](#)

P. 603 200 4185

From: DNCR: NHB Review <nhbreview@dncr.nh.gov>
Sent: Thursday, 23 June, 2022 16:22
To: Max Schrader <mschrader@horizonsengineering.com>
Cc: Mike Sievert <msievert@horizonsengineering.com>; mark@westenv.net
Subject: RE: NHB Review: NHB22-1834

Hi Max,

Thank you for providing supplemental information on this project. There are only two non-historic records of Blue sedge in NH, and we don't have much information on the habitat of this species in the state. I'm trying to assess if a survey is warranted.

Can you please provide a list of the dominant tree species on the site and provide representative photos that you may have of the uplands on the property?

This species is described as having variable habitats – meadows, disturbed open soil, wetland borders, woodlands, and is described as occurring in rich, oak-hickory woodlands in non-human disturbed habitats. However, the nearby occurrence is in moist woods dominated by sugar maple and white ash.

Thank you,

Jessica Bouchard (she/her/hers)
Ecologist
New Hampshire Natural Heritage Bureau (NHB)
Division of Forests & Lands
NH Dept. of Natural & Cultural Resources
172 Pembroke Rd
Concord, NH 03301
(603) 568-1804 (cell)

[NHB DataCheck Tool](#)

From: Max Schrader <mschrader@horizonsengineering.com>
Sent: Tuesday, June 7, 2022 10:18 AM
To: DNCR: NHB Review <nhbreview@dncr.nh.gov>
Cc: Mike Sievert <msievert@horizonsengineering.com>
Subject: Re: NHB Review: NHB22-1834

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Jessica,

See the attached functional assessment report that was prepared by Mark West, and the preliminary design plans showing the impact areas. Mark's report includes his assessment of the impacted wetlands and includes photographs of the proposed impact areas.

Please let me know if there is any additional information you need from me to determine if NHB requires any modifications to the design.

Best regards,
Max Schrader, EIT
Project Engineer
5 Railroad St., Newmarket, NH 03857
P. 603 200 4185 F. 603 659 4627
[Horizons Engineering, Inc.](http://www.horizonsengineering.com)

From: DNCR: NHB Review <nhbreview@dncr.nh.gov>
Sent: Friday, June 3, 2022 10:11 AM
To: Max Schrader <mschrader@horizonsengineering.com>
Cc: mmulhern@comcast.net <mmulhern@comcast.net>
Subject: NHB Review: NHB22-1834

Attached, please find the review we have completed. If your review memo includes potential impacts to plants or natural communities please contact me for further information. If your project had potential impacts to wildlife, please contact NH Fish and Game at the phone number listed on the review.

Best,
Jessica

Jessica Bouchard
Environmental Reviewer / Ecological Information Specialist

NH Natural Heritage Bureau
DNCR - Forests & Lands
172 Pembroke Rd
Concord, NH 03301
603-271-2834

Memo

NH Natural Heritage Bureau
NHB DataCheck Results Letter

Please note: portions of this document are confidential.
Maps and NHB record pages are confidential and should be redacted from public documents.

To: Max Schrader, Horizons Engineering Inc.
5 Railroad St
Newmarket, NH 03857

From: NHB Review, NH Natural Heritage Bureau
Date: 6/1/2022 (valid until 06/01/2023)
Re: Review by NH Natural Heritage Bureau
Permits: NHDES - Alteration of Terrain Permit, NHDES - Wetland Standard Dredge & Fill - Major, NHDES - Wetland Standard Dredge & Fill - Minor, USEPA - Stormwater Pollution Prevention

NHB ID: NHB22-1834 **Town:** Durham **Location:** 91 Bagdad Road
Description: Development of seventeen (17) small homes that will be part of a condominium association. The project will include three wetlands crossings for the construction of a private road to access the the homes. The project will disturb about 8000+/- sq ft of wetlands for the crossings and a total of about 180,000+/- sq ft of total area for the road, houses, interior paths, landscaping, and stormwater controls.

As requested, I have searched our database for records of rare species and exemplary natural communities, with the following results.

Comments **NHB: Please provide an aerial outlining the proposed limits of disturbance, and representative site photos. NHB may recommend surveys for the Blue sedge.**
F&G: No comments at this time.

Plant species	State ¹	Federal	Notes
blue sedge (<i>Carex glaucoidea</i>)	E	--	

¹Codes: "E" = Endangered, "T" = Threatened, "SC" = Special Concern, "--" = an exemplary natural community, or a rare species tracked by NH Natural Heritage that has not yet been added to the official state list. An asterisk (*) indicates that the most recent report for that occurrence was more than 20 years ago.

Disclaimer: A negative result (no record in our database) does not mean that a sensitive species is not present. Our data can only tell you of known occurrences, based on information gathered by qualified biologists and reported to our office. However, many areas have never been surveyed, or have only been surveyed for certain species. An on-site survey would provide better information on what species and communities are indeed present.

Memo

NH Natural Heritage Bureau NHB DataCheck Results Letter

Please note: portions of this document are confidential.
Maps and NHB record pages are confidential and should be redacted from public documents.

IMPORTANT: NHFG Consultation

If this NHB Datacheck letter DOES NOT include ANY wildlife species records, then, based on the information submitted, no further consultation with the NH Fish and Game Department pursuant to Fis 1004 is required.

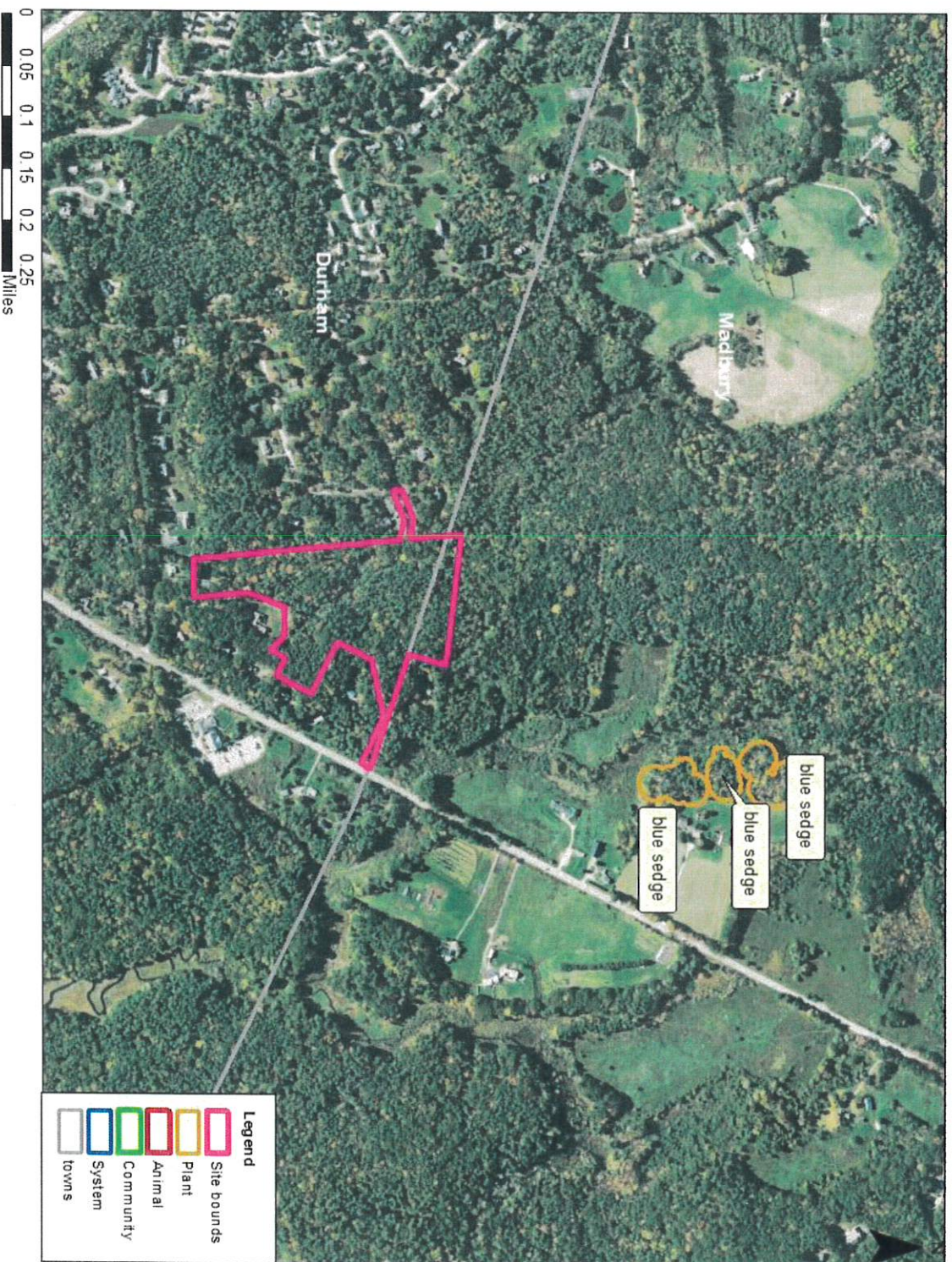
If this NHB Datacheck letter includes a record for a threatened (T) or endangered (E) wildlife species, consultation with the New Hampshire Fish and Game Department under Fis 1004 may be required. To review the Fis 1000 rules (effective February 3, 2022), please go to <https://wildlife.state.nh.us/wildlife/environmental-review.html>. All requests for consultation and submittals should be sent via email to NHFGreview@wildlife.nh.gov or can be sent by mail, and **must include the NHB Datacheck results letter number and “Fis 1004 consultation request” in the subject line.**

If the NHB DataCheck response letter does not include a threatened or endangered wildlife species but includes other wildlife species (e.g., Species of Special Concern), consultation under Fis 1004 is not required; however, some species are protected under other state laws or rules, so coordination with NH Fish & Game is highly recommended or may be required for certain permits. While some permitting processes are exempt from required consultation under Fis 1004 (e.g., *statutory permit by notification, permit by rule, permit by notification, routine roadway registration, docking structure registration, or conditional authorization by rule*), coordination with NH Fish & Game may still be required under the rules governing those specific permitting processes, and it is recommended you contact the applicable permitting agency. For projects not requiring consultation under Fis 1004, but where additional coordination with NH Fish and Game is requested, please email: Kim Tuttle kim.tuttle@wildlife.nh.gov with a copy to NHFGreview@wildlife.nh.gov, and include the NHB Datacheck results letter number and “review request” in the email subject line.

Contact NH Fish & Game at (603) 271-0467 with questions.

CONFIDENTIAL – NH Dept. of Environmental Services review

NHB22-1834



New Hampshire Natural Heritage Bureau - Plant Record

blue sedge (*Carex glaucoidea*)**Legal Status**

Federal: Not listed
 State: Listed Endangered

Conservation Status

Global: Demonstrably widespread, abundant, and secure
 State: Critically imperiled due to rarity or vulnerability

Description at this Location

Conservation Rank: Not ranked
 Comments on Rank: --

Detailed Description: 2020: 379 stems scattered across 15 observation points. 90% in fruit, 10% vegetative. 2011: 280 stems concentrated in three areas. 50% with mature fruit.

General Area: 2020: Description similar to 2011. Invasive species appear to have increased since 2011, including European buckthorn (*Rhamnus cathartica*), glossy false buckthorn (*Frangula alnus*), winged spindle-tree (*Euonymus alatus*), and Japanese barberry (*Berberis thunbergii*). 2011: Plants are in moist woods dominated by sugar maple (*Acer saccharum*) and white ash (*Fraxinus americana*). Associated species include black cherry (*Prunus serotina*), graceful sedge (*Carex gracillima*), field horsetail (*Equisetum arvense*), and kidney-leaved crowfoot (*Ranunculus abortivus*). European buckthorn (*Rhamnus cathartica*) is frequent in the understory.

General Comments: --

Management Comments: 2020: Avoid significant direct damage by expansion / excessive use of road. Invasives have expanded significantly since 2011, especially in the woods roads. Control invasives in forested population area. 2011: European buckthorn (*Rhamnus cathartica*) should be controlled at site. One area is distributed along woods road which is occasionally used. Well house sub-population has significant earthworm activity, exposing subsoil.

Location

Survey Site Name: Gerrish Brook
 Managed By: Johnson and Bunker Creeks

County: Strafford
 Town(s): Madbury
 Size: 4.1 acres

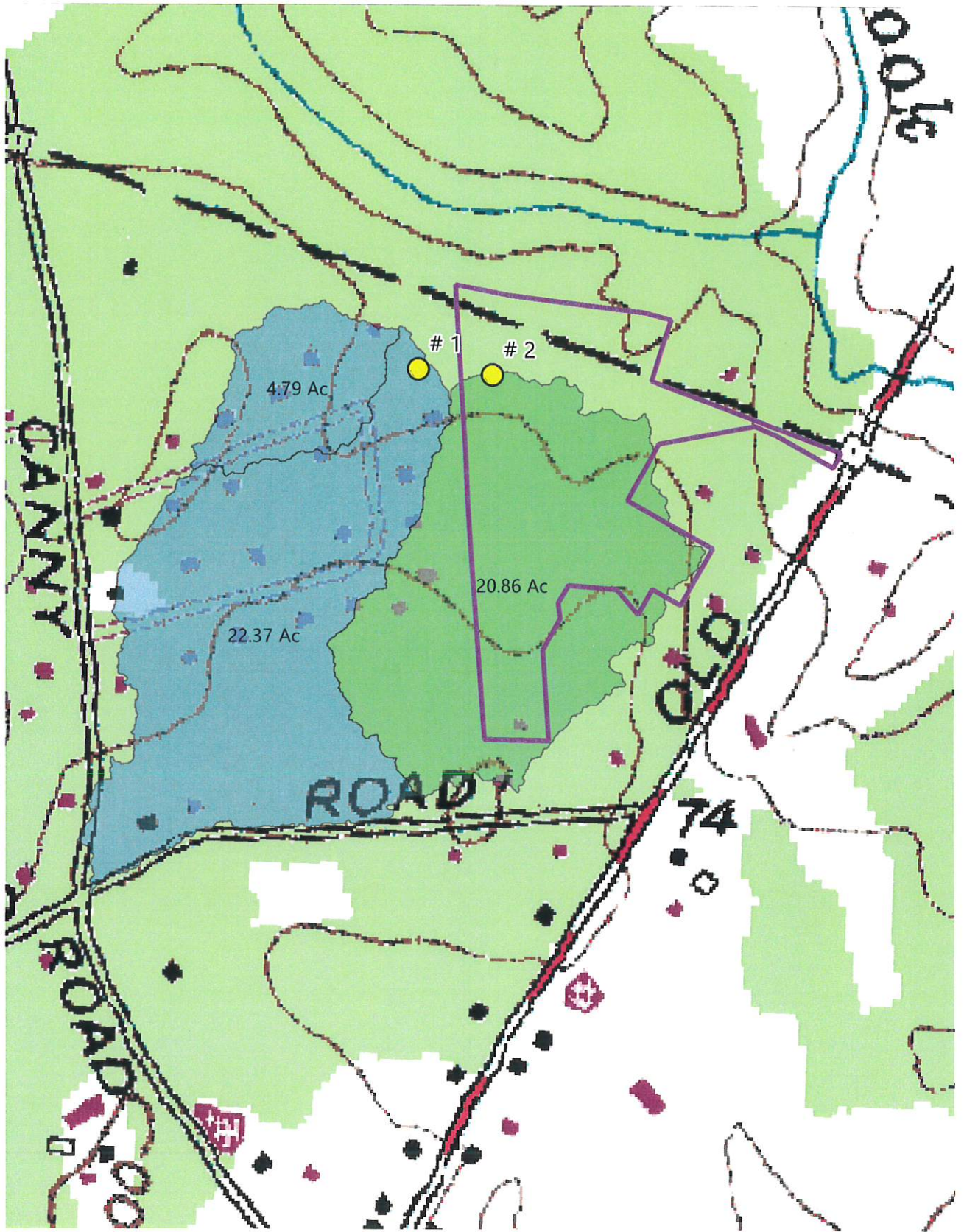
Elevation:

Precision: Within (but not necessarily restricted to) the area indicated on the map.

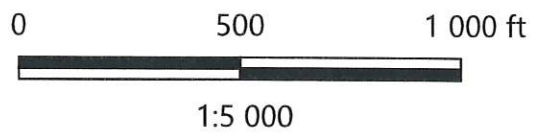
Directions: 2011: North on Route 108 from NH Route 4. Property driveway is on left 0.35 miles past Durham/Madbury town line. Park at house, enter woods to SW of house. Carex is on slope between old pump house and well.

Dates documented

First reported: 2011-07-21
 Last reported: 2020-07-21



Note:
The contributing area of both stream crossings are
<200 Ac and qualify as Tier 1 by size.



Note:
The contributing area of both stream crossings are <200 Ac and qualify as Tier 1 by size.

