

**Franklin Conservation Commission**  
**Regular Meeting Agenda**  
**January 9, 2018**  
**City Hall basement – 7:30 pm**

**Call to Order**

- Approval of the November 14, 2017 meeting minutes (note to Files: the December 12, 2017 was cancelled as per public notice)
- Election of Officers for 2018

**Old Business**

- NH DES Shoreland Impact Permit 2017-03140 for 140 Webster Ave, Franklin. Note of Conditions

**New Business**

- Informal discussion with property owner Marc Fortin regarding Salisbury Road land
- Copy of letter from NH Department of Natural and Cultural Resource, Division of Forest and Lands, regarding removal of trees from city-owned land on River Street
- NH Association of Conservation Commissions – Annual Survey 2018
- NH Association of Conservation Commission – Legislative Update
- Aquatic Resource Mitigation Workshops announcement
- Review of guidance on meeting quorums
- Review of Land Use and recreation, Open Space, and natural Resource section of the city updated Master Plan

**Adjournment**

## **FRANKLIN CONSERVATION COMMISSION**

Meeting Minutes

*November 14, 2017*

*Present:* Glenn Morrill, Nita Tomaszewski, Bob Morin, Roy Gilbreth

*Next meeting:* December 12, 2017 7:30 pm, City Hall Basement

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Meeting called to order by Nita at 7:35 PM

Minutes of the October 17, 2017 meeting were distributed for review. Glenn moved and Roy seconded the motion to approve the meeting minutes. The motion passed.

### **I Old Business**

Choose Franklin Request – Nita reported on the presentation of the Conservation Commission on November 2, 2017. Suggestion for tour of Great Gains – June was proposed.

### **II New Business**

Review of Wetland Permit by Notification for replacement retaining wall between 68 & 78 Webster Ave., submitted by Keach-Nordstrom Associates on behalf of Eric Hahn of 8 Shadow Land, Bedford, NH

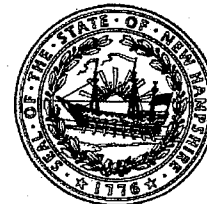
### **Adjournment**

Roy moved, Glenn seconded the motion to adjourn. Motion Passed

The meeting adjourned at 8:15 PM.



## Department of Environmental Services



Robert R. Scott, Commissioner

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**SHORELAND IMPACT PERMIT 2017-03140**

**Permittee:** BARBARA/GUS PAPPAJOHN  
SCOTT PAPPAJOHN  
19 ELK DR  
BEDFORD NH 03110

**Project Location:** 140 WEBSTER AVE, FRANKLIN  
TAX MAP/LOT NO: 072 / 036

**Waterbody:** Webster Lake

**NOTE CONDITIONS**

**APPROVAL DATE:** November 16, 2017

**EXPIRATION DATE:** November 16, 2022

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Based upon review of the above referenced application, in accordance with RSA 483-B, a Shoreland Impact Permit was issued. This permit shall not be considered valid unless signed as specified below.

**PERMIT DESCRIPTION:** Impact 1,146 square feet (SF) of protected shoreland in order to construct an addition, porch and install a new septic system.

**THIS APPROVAL IS SUBJECT TO THE FOLLOWING PROJECT SPECIFIC CONDITIONS:**

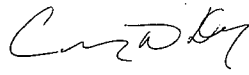
1. All work shall be in accordance with plans by Hinds Septic Design Services dated October 10, 2017 and received by the NH Department of Environmental Services (NHDES) on October 20, 2017.
2. Neither the new primary structure nor the proposed septic system may be constructed until the system is approved by the NHDES Subsurface Systems Bureau.
3. Orange construction fencing shall be installed at the limits of the temporary impact area as shown on the approved plans prior to the start of work and shall be maintained throughout the project in order to prevent accidental encroachment into areas in which impacts have not been approved.
4. No more than 25% of the area of the lot within the protected shoreland shall be covered by impervious surfaces unless additional approval is obtained from NHDES.
5. Native vegetation within an area of at least 84 SF within the Natural Woodland Buffer located between 50 and 150 feet landward of the reference line shall be retained in an unaltered state in order to comply with RSA 483-B:9, V, (b), (2).
6. Erosion and siltation control measures shall be installed prior to the start of work, be maintained throughout the project, and remain in place until all disturbed surfaces are stabilized.
7. Erosion and siltation controls shall be appropriate to the size and nature of the project and to the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to wetlands or surface waters.
8. No person undertaking any activity in the protected shoreland shall cause or contribute to, or allow the activity to cause or contribute to, any violations of the surface water quality standards established in Env-Wq 1700.
9. Any fill used shall be clean sand, gravel, rock, or other suitable material.

10. The individual responsible for completion of the work shall utilize techniques described in the New Hampshire Stormwater Manual, Volume 3, Erosion and Sediment Controls During Construction (December 2008).
11. This permit shall not preclude NHDES from taking any enforcement or revocation action if NHDES later determines that any of the structures depicted as "existing" on the plans submitted by the applicant were not previously permitted or grandfathered.

**GENERAL CONDITIONS THAT APPLY TO ALL NHDES SHORELAND IMPACT PERMITS:**

1. A copy of this permit shall be posted on site during construction in a prominent location visible to inspecting personnel;
2. This permit does not convey a property right, nor authorize any injury to property of others, nor invasion of rights of others;
3. The Wetlands Bureau shall be notified upon completion of work;
4. This permit does not relieve the applicant from the obligation to obtain other local, state or federal permits, and/or consult with other agencies as may be required (including US EPA, US Army Corps of Engineers, NH Department of Transportation, NH Division of Historical Resources (NH Department of Cultural Resources), NHDES-Alteration of Terrain, etc.);
5. Transfer of this permit to a new owner shall require notification to and approval by the Department;
6. This permit shall not be extended beyond the current expiration date.
7. This project has been screened for potential impacts to known occurrences of protected species and exemplary natural communities in the immediate area. Since many areas have never been surveyed, or have only received cursory inventories, unidentified sensitive species or communities may be present. This permit does not absolve the permittee from due diligence in regard to state, local or federal laws regarding such communities or species.

APPROVED:



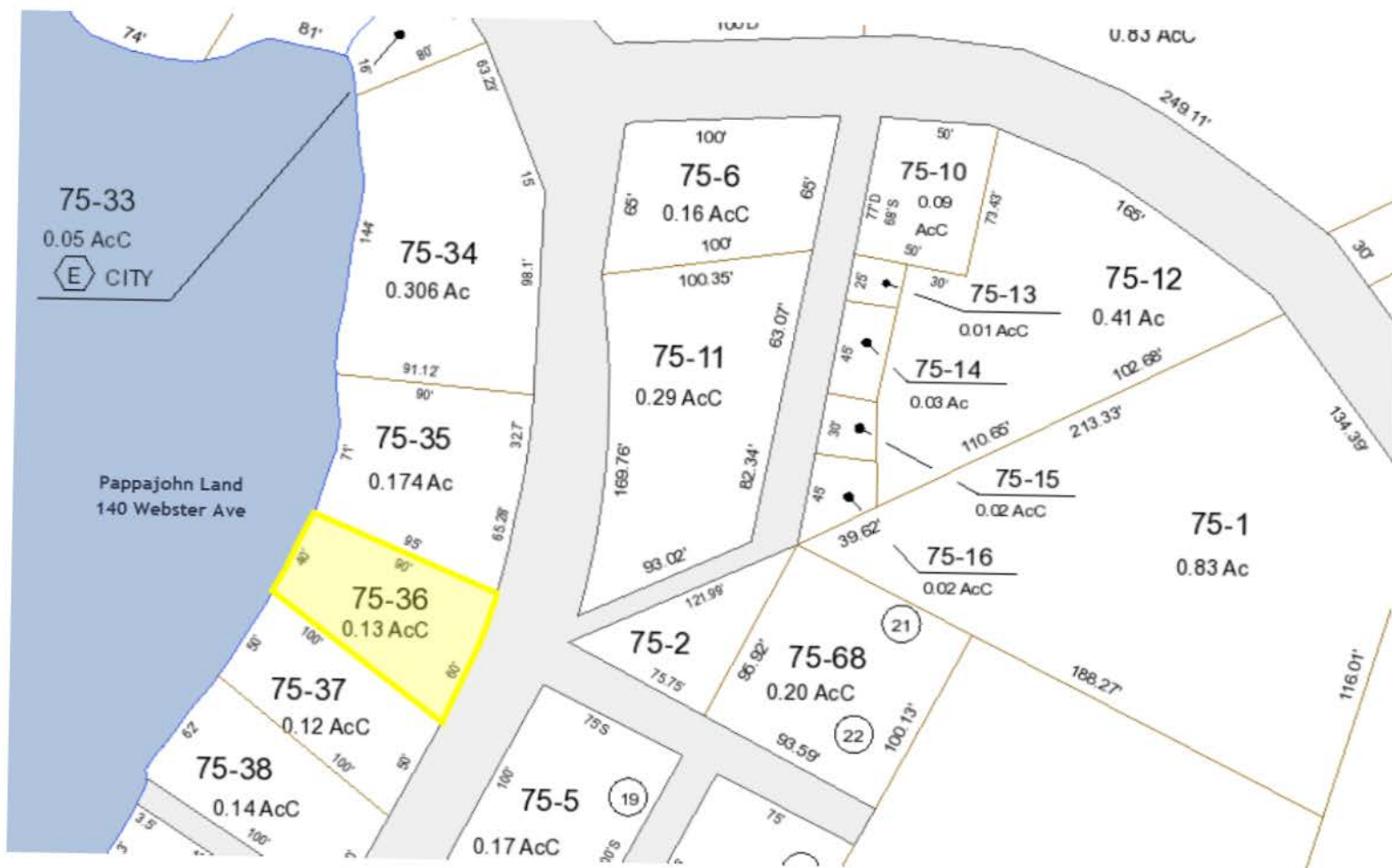
Craig W. Day  
NHDES Wetlands Bureau

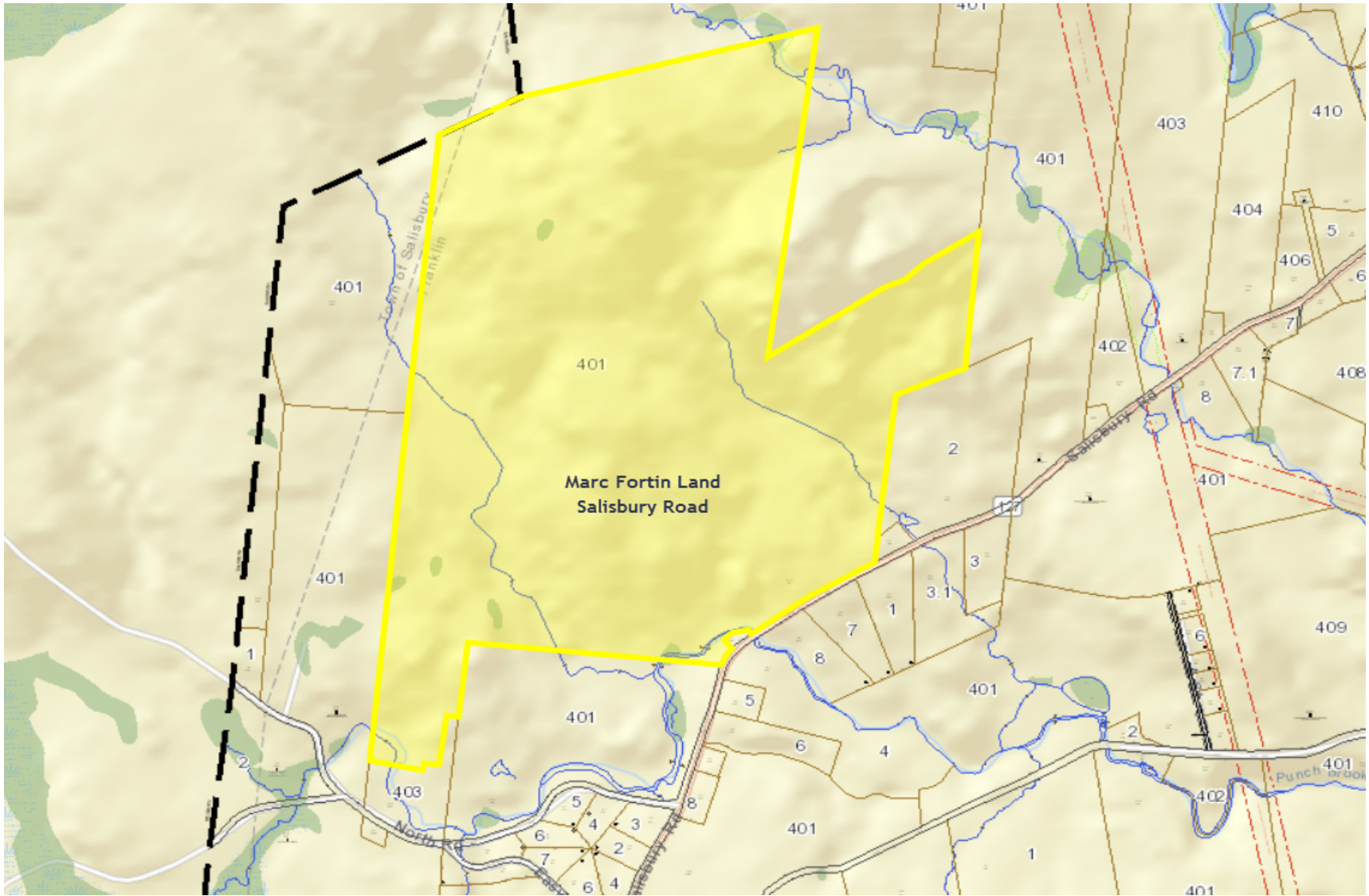
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**BY SIGNING BELOW I HEREBY CERTIFY THAT I HAVE FULLY READ THIS PERMIT AND AGREE TO ABIDE BY ALL PERMIT CONDITIONS.**

\_\_\_\_\_  
OWNER'S SIGNATURE (required)

\_\_\_\_\_  
CONTRACTOR'S SIGNATURE (required)







STATE OF NEW HAMPSHIRE  
DEPARTMENT of NATURAL and CULTURAL RESOURCES  
Division of FORESTS and LANDS

172 PEMBROKE ROAD CONCORD, NEW HAMPSHIRE 03301  
PHONE: 271-2214 FAX: 271-6488 WWW.NHDFL.ORG

December 1, 2017

Mr. Kenneth Noyes  
NHDES-WRBP  
PO Box 68  
Franklin, NH 03235

Dear Mr. Noyes:

I have reviewed your request for a variance from the provisions of the basal area law, RSA 227-J:9, to remove designated trees along approximately 3,796 feet of River Street because of safety concerns.

The "conditions required to exceed the 50 percent basal area "Public safety is of a prime consideration, due to heavy conifer cover on the south side of major travel routes causing serious icing conditions".

During my site visit on 12/1/17 you expressed concerns that trees coming down in the winter have resulted in significant delays to staff responding to afterhours emergencies to the Franklin Waste Water Treatment Plant. Therefore in the interest of public safety I am granting you a Basal Area Variance so these trees can be removed. The approval is conditional; 1) All non-leaning hardwood trees larger than 8" are left and 2) Only the trees marked in orange within approximately 50 feet of River Street are removed and not the entire 150 feet that applies to RSA 227-J:9.

Please remember that this does not absolve your logger from RSA 227 J:10 which is the slash law. No slash may be left within 50 feet of River Street and slash between 50 and 150 feet needs to be less than 4 feet from the ground.

If you have any additional questions, you can contact me at the NH State Forest Nursery (796-2323) or your local forest ranger through our Concord office at 271-2214.

Sincerely,

Shaun Bresnahan, Regional Forester  
Forest Management Bureau

Enclosure

cc: Elizabeth Dragoon, Manager City of Franklin  
Brian Sullivan DPW and Conservation Commission City of Franklin ✓  
Doug Miner, Forest Ranger



STATE OF NEW HAMPSHIRE  
Department of Resources and Economic Development  
Division of Forests and Lands  
FORM 5302a



NOV 16 2017

Application for permission to exceed the limits established in the provisions of the 50 percent basal area law  
RSA 227-J:9 Cutting of Timber Near Certain Waters and Public Highways of the State; Penalty.

<http://gencourt.state.nh.us/rsa/html/XIX-A/227-I/227-J-9.htm>

Landowner Information

Name of Owner: City of Franklin, NH (Brian Sullivan)  
Mailing Address: 43 West Bow Street  
City, State, Zip: Franklin, NH 03235

Telephone #(Home):  
Telephone #(Work): (603) 934-4103  
Best Time To Contact: 8:00 AM to 3:00 PM

Authorized Agent if Other Than Owner  
Name of Agent: Kenneth Noyes/NHDES-WRBP  
Mailing Address: P.O. Box 68 (528 River Street)  
City, State, Zip: Franklin, NH 03235

Telephone #(Home):  
Telephone #(Work): (603) 934-4032  
Best Time To Contact: 7:00 AM to 3:00 PM

Location of Proposed Harvesting Operation

Town / City: Franklin, NH 03235

Physical Address: River Street Franklin

Tax Map and Lot Number: tax map T-7 lot # 103-10, tax map T-7 lot # 121-404, tax map S-7 lot # 121-404, T-7 lot # 121-402 tax map # S-7 lot # 121-402 tax map # S-8 lot # 121-402

You must attach a copy of a USGS Topographic Map or Town Tax Map with the proposed harvesting area and the area requiring permission clearly outlined. You may attach any other supporting documentation that you would like considered.

Describe The Proposed Operation

The first 0.1 miles on both sides of the road will be cut starting at the road to about 15 to 20 feet off the road.

The right side of the road when leaving the treatment plant and after the first 0.1 miles will be cut 50 feet +/- in from the road. We would like to selective cut all the tall trees leaning towards the road and selective cut the tall trees that block the road from the sunlight in the winter. The location of the cutting is on a paved road (still considered a class VI road) that is 2 1/2 miles long with one house on it and provides access to the NHDES - WRBP wastewater treatment plant. The cutting would start about 2 miles in from the pump station and end close to the front gate.

- ◆ Total distance along road, stream or water body: 3,696 Feet
- ◆ Total acreage of harvesting operation: 9 (±4.2) Acres

Operation Check List

- |    |   | Check Only 1 Per Category               |  |
|----|---|---|--|
| 1. | Does the proposed harvesting area abut a scenic road? . . . . .   | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> |
| 2. | Have all required local permits been applied for and approved? . . . . .  | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> |
| 3. | Is the proposed harvesting operation a land conversion? . . . . .   | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> |
| 4. | Is the proposed harvesting operation near or adjacent to a great pond or standing body of water 10 acres or more in area? . . . . . | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> |
| 5. | Does the proposed harvesting area abut a fourth order stream or stream of higher classification? . . . . .                          | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            |

Be sure to complete and sign the back of this form!



Describe why it is necessary to exceed the limits of the 50 Percent Basal Area Law (RSA 227-J):

Some of the trees next to the road are leaning towards the road. In past years during heavy wet snow or high winds trees have fallen across the road and blocked the access to the NHDES-Winnepesaukee River Basin Program (WRBP) Franklin Wastewater Treatment Plant. The tall trees also block the sunlight in the winter causing severe ice problems along that stretch of road. The road provides the sole access to this critical wastewater infrastructure and safe, unrestricted access is necessary. The wastewater treatment plant receives wastewater from 10 cities and towns in the lakes region.

Describe how the proposed action(s) is/are consistent with RSA 227-J:1  
Declaration of Purpose.

Specifically, how the action(s) will: 1. conserve the amount and quality of surface waters and groundwaters of the state; 2. reduce the incidence and severity of forest fires; promote healthy surroundings, recreational opportunities, and scenic values; ensure future forest productivity; improve conditions for wildlife;

The left side of the road will only be cut back 15 to 20 feet from the road with no impact to the Merrimack River. By cutting down the proposed trees, it should promote the growth of smaller trees.

- ♦ Is the proposed project on a certified tree farm? ..... Yes ☐ No ☒
- ♦ If the property is a tree farm, what is the tree farm number? .....
- ♦ Is the property managed under a forest stewardship plan as defined in the NH Current Use Criteria Booklet Cub 304.03 FOREST LAND? ..... Yes ☐ No ☒
- ♦ Is the proposed project on land enrolled in current use as defined in RSA79-A? ..... Yes ☐ No ☒
- ♦ What is the expected start date of the harvesting operation? ..... *December 1st*
- ♦ What is the expected completion date of the harvesting operation? ..... *then will get logged*
- ♦ Is this harvesting operation associated with a land conversion? ..... Yes ☐ No ☒
- ♦ If yes, what is the anticipated completion date of the conversion? .....

This Application Must Be Submitted and Received by the Division of Forests and Lands at Least 30 Days Prior to Commencing the Harvesting Operation.

»A Signature is required. Incomplete Applications Will be Returned.«

*Kenneth Noyes*  
Owner or Authorized Agent Signature

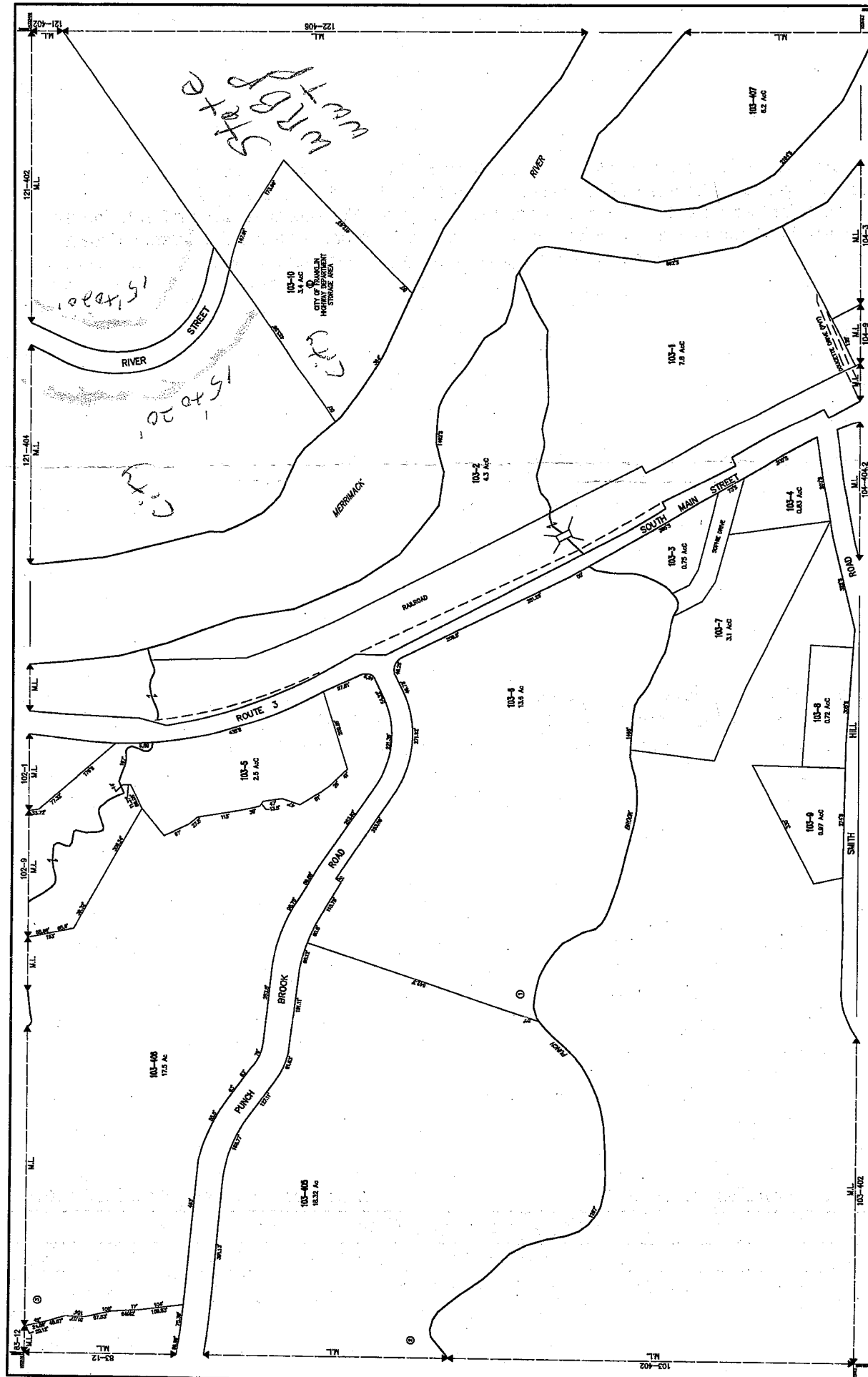
*11-14-17*  
Date

Return The Completed Application To:

Director, Division of Forests and Lands  
172 Pembroke Road  
Concord, New Hampshire 03301

(use this address for requests in Coos County)  
Regional Forester  
OR 629B Main Street  
Lancaster, New Hampshire 03584-3612

For Agency Use Only		
Approved	Approved with conditions	Denied
	<i>[Signature]</i> 12/1/17 -leave non-leaning hardwood -only trees marked in orange to be cut.	Revised 2/05 RMB



INDEX DIAGRAM

MAP NO. T7

FRANKLIN  
NEW HAMPSHIRE

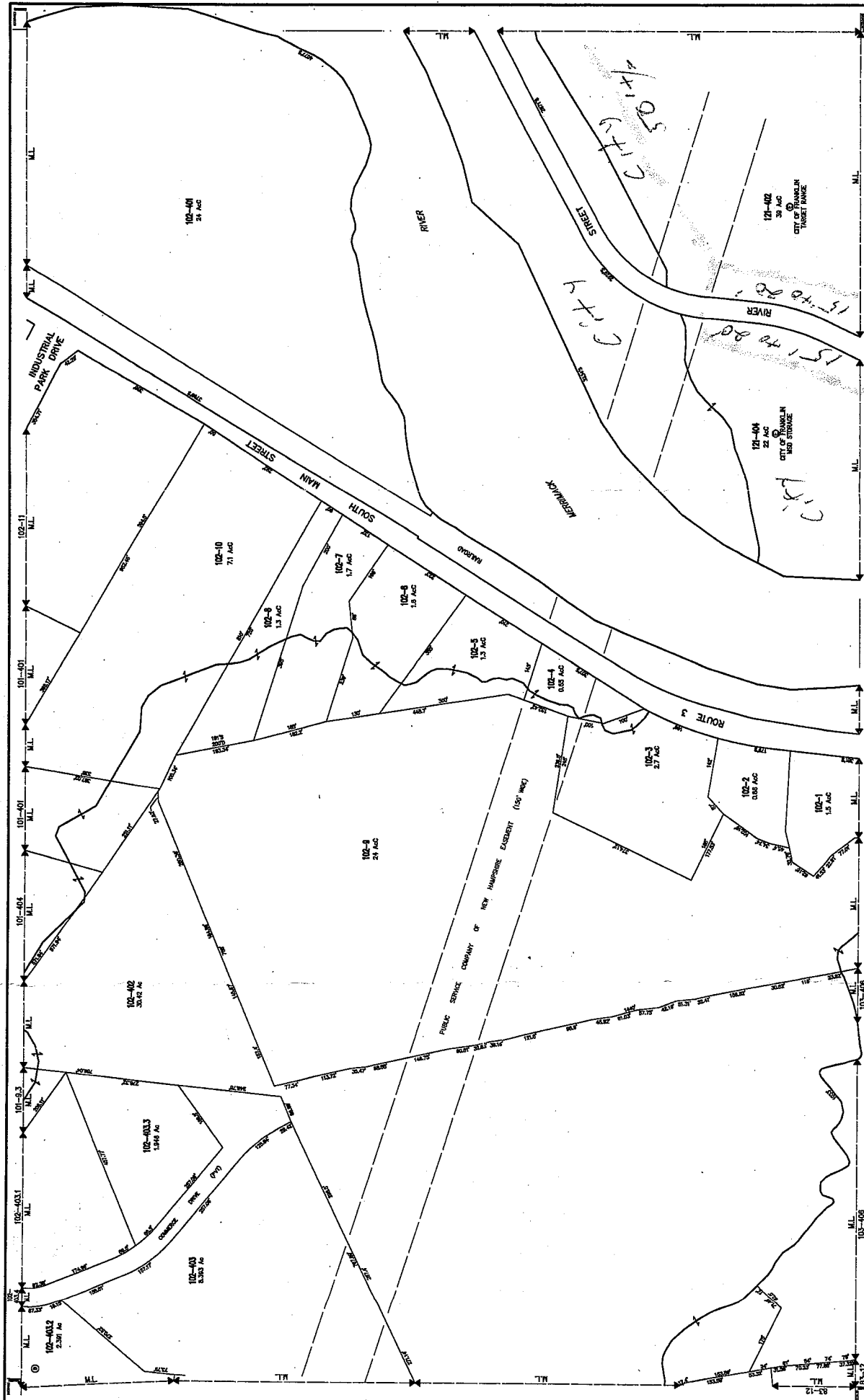
PROPERTY MAPS

SCALE 1" = 100'

LEGEND

PRODUCED IN 2014 BY  
**CAT Technologies**  
CITY OF FRANKLIN  
11 FRANKLIN ST., SUITE 200  
FRANKLIN, NH 03043

THIS MAP IS FOR ASSESSMENT PURPOSES. IT IS NOT VALID FOR  
LEGAL DESCRIPTION OR CONVEYANCE.  
THE HORIZONTAL DATUM IS THE NEW HAMPSHIRE STATE PLANE  
COORDINATE SYSTEM, NAD 83.  
PHOTOGRAPHY DATES: FALL 2010 COLOR ORTHOPHOTOGRAPHY  
COMPLETION DATE: DECEMBER 31, 2014



THIS MAP IS FOR ASSESSMENT PURPOSES. IT IS NOT VALID FOR LEGAL DESCRIPTION OR CONVEYANCE.

THE HORIZONTAL DATUM IS THE NEW HAMPSHIRE STATE PLANE

COORDINATE SYSTEM, NAD 83

PHOTOGRAPHY DATE: MAY 2000 COLOR ORTHOPHOTOGRAPHY

COMPLETION DATE: DECEMBER 31, 2014

PRODUCED IN 2014 BY

**CAI Technologies**

11100 ROUTE 101, SUITE 200, FRANKLIN, NH 03043

TEL: 603.883.1234 FAX: 603.883.1235

WWW.CAITECHNOLOGIES.COM

LEGEND

..... DRAFT PROPERTY

..... SUBDIVISION LOT NO.

..... PART OF LOT/ACRES

..... COMBINED OWNERSHIP

..... WETLANDS

..... AREA SURVEYED

..... AREA CALCULATED

..... PART OF LOT/ACRES

..... ROAD CENTERLINE

..... WATER

SCALE 1" = 100'

0 50 100 FEET

0 25 50 METERS

REVISED TO:

PROPERTY MAPS

**FRANKLIN**

NEW HAMPSHIRE

INDEX DIAGRAM

16	17	18
17	18	19
18	19	20

MAP NO. **S7**





# New Hampshire Association of Conservation Commissions

SERVING NEW HAMPSHIRE'S COMMUNITIES SINCE 1970

54 Portsmouth Street, Concord, NH 03301 | (603) 224-7867 | [www.nhacc.org](http://www.nhacc.org)

## Annual Survey 2018

The NHACC is surveying its members so that we may find out what you are doing and so we may better serve you. Please discuss these questions at your next conservation commission meeting and return your answers to us by mail, email or scanned copy via email as soon as you are able. The more feedback we get from our members, the more responsive we can be to your needs. Thank you for your time and all that you do for conservation in NH.

1. What are the top 2 most important goals for your conservation commission?
  - a. How have you been successful in meeting your goals?
  - b. How can NHACC help you reach your goals?
2. What are the principal means or activities by which your conservation commission contributes to your Town?
3. Do other town boards seek the guidance of the conservation commission in natural resource protection?
4. Does your commission have a voice in issues related to: Natural Resource Inventories, mapping, conservation easements, Shoreland Protection, Steep Slopes, Wetlands, Lake Host, logging permits, and fundraising? Please let us know where you feel you have the most positive effect.
5. Are you proud of something you have done in the last few years that you would be willing to share on the Resource pages of our website Members section or in our E-news? If yes, please let us know what project you are working on and how it has been successful.
6. Do you have any specific suggestions for topics, resources for our website NHACC.org?
7. Which additional topics you would like to see covered in our E-newsletter?
8. NHACC regularly monitors legislation related to conservation on the state level and provides legislative updates for you. Is this activity helpful to you?
  - a. What legislative or state priorities would you like us to focus on?

9. What are you struggling with that you'd like us to help with?

10. What topics would you like NHACC to provide more regional training?

Please provide current contact information of your conservation commission members so that we may keep you informed with annual meeting mailers and E-news.

Town/City:\_\_\_\_\_

Member Name:\_\_\_\_\_

Address:\_\_\_\_\_

Town/Zip:\_\_\_\_\_

Email:\_\_\_\_\_ Can we add you to our E-news list? Yes/No

Member Name:\_\_\_\_\_

Address:\_\_\_\_\_

Town/Zip:\_\_\_\_\_

Email:\_\_\_\_\_ Can we add you to our E-news list? Yes/No

Member Name:\_\_\_\_\_

Address:\_\_\_\_\_

Town/Zip:\_\_\_\_\_

Email:\_\_\_\_\_ Can we add you to our E-news list? Yes/No

Member Name:\_\_\_\_\_

Address:\_\_\_\_\_

Town/Zip:\_\_\_\_\_

Email:\_\_\_\_\_ Can we add you to our E-news list? Yes/No

Member Name:\_\_\_\_\_

Address:\_\_\_\_\_

Town/Zip:\_\_\_\_\_

Email:\_\_\_\_\_ Can we add you to our E-news list? Yes/No

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## Legislative and Rulemaking Update

### Bills to Watch in 2018

We work in the legislature and on state committees to ensure that your conservation commission is informed. We are keeping an eye on the legislature and tracking proposed bills that would affect conservation commissions or natural resources in NH. Please review the links to the general court website and let me know if you have any concerns, suggestions or comments on these proposed bills.

[HB 1585](#) AN ACT requiring conservation commission to keep a natural resource inventory has been assigned to the Resources, Recreation and Development Committee. We are watching this bill closely since it changes RSA 36-A, the conservation commission enabling legislation. This bill is sponsored by Senator Martha Fuller Clark and Rep. Graham.

Another bill to keep an close eye on is [HB 1210](#): AN ACT establishing a committee to study the effect of current use taxation on small and rural communities. This bill would not introduce any legislation for 2018, but the study committee could have a big impact on current use.

We are also tracking [HB 1233](#), it's been assigned to the House Environment & Agriculture Committee. Several commissions are concerned about the bill preempting local regs to control the use of fertilizers. This bill is a request of the department of agriculture, markets, and food as a more effective way to control use of fertilizers.

We know that many commissions have concerns over the protection of beavers and plan to support [HB 1343](#) this session. This bill adds provisions for the protection of beavers and beaver dams and requires the executive director of the fish and game department to include advice on beaver control on its public website.

## CCs in the News

### Rochester Conservation Commission helps to protects Local Farm

Working with the Southeast Land Trust of NH, the Rochester Conservation Commission helped to protect the Gauthier family farm with a 163-acre conservation easement at Gauthier's Farm on Bernard Road. "We're thrilled to see Gauthier's Farm finally conserved. Working alongside SELT, this has been the Conservation Commission's top priority over the last several years," exclaimed Mike Dionne, chair of the Rochester Conservation Commission. "It's truly been a group effort between SELT, the Rochester Conservation Commission and City Council, and the Gauthier family. One thing is certain: the people of Rochester will benefit from this important project long into the future!" [Learn More](#)

### The Meredith Conservation Commission

The Meredith Conservation Commission recently completed a two-year project, spearheaded by the Trust for Public Land, to purchase 200 acres of conservation land along Barnard Ridge/Meredith Neck Road, known as the Page Pond Community Forest Expansion Project. [Learn More](#)

## Education & Training Opportunities



The NHDES **Aquatic Resources Mitigation (ARM) Fund**, in partnership with the New Hampshire Department of Transportation, is hosting three informational sessions relative to improving stream resources.

Topics covered include:

- Available ARM funding in the 2018 grant cycle;
- Updated tools to submit applications, and
- The State Stream Crossing Initiative.

Workshops are designed to provide stakeholders with information to move projects from conceptual ideas to candidate projects for mitigation funding.

*We hope your participation enables your community to discover meaningful restoration projects that will be competitive for ARM funds and meet your town's needs in terms of flood resiliency and infrastructure updates!*

*Please attend one of our regional workshops in your community!*

**Central Merrimack January 18<sup>th</sup> 2018**

Department of Environmental Services  
Conference Room 208C  
29 Hazen Drive, Concord

**Lower Merrimack January 24<sup>th</sup> 2018**

Londonderry Town Hall  
Moose Hill Council Chambers  
268B Mammoth Rd, Londonderry

**Salmon Falls February 6<sup>th</sup> 2018**

Rochester Community Center  
150 Wakefield Street, Rochester

**Potential ARM Fund grant applicants from all service areas including: municipalities (conservation commissions, road agents, and town engineers), regional planning commissions, non-profit groups, land trusts, and consultants are encouraged to attend!**

**4:00-4:15**     **Registration:** participants sign in, collect information packets, and grab a snack.

**4:15-4:30**     **Welcome and Introductions**  
*Lori Sommer, NHDES, Wetlands Bureau*

**4:30-5:00**     **Aquatic Resource Mitigation Program**  
*Melinda Bubier, NHDES, Wetlands Bureau* will give an overview of the ARM program including available funds, project eligibility, and updated application materials to provide guidance for potential applicants.

**5:00-5:30**     **State Stream Crossing Initiative and Interactive Web Mapper**  
*Cheryl Bondi, NHDES, Geological Survey* will introduce a multiagency program tasked with assessing stream crossings across the state. Topics covered will include infrastructure vulnerability, geomorphic compatibility, and aquatic organism passage, and how this information can be used to prioritize culvert replacement projects.

**5:30-5:45**     **Stream Passage Improvement Program (SPIP)**  
*Kevin Nyhan, NHDOT*, will introduce a developing program that will help towns update outdated culverts to fulfill mitigation obligations.

**5:45-6:00**     **Questions & Answers**  
Participants will have the opportunity to engage with presenters and other attendees to develop ideas on potential projects in their community that may be eligible for ARM or SPIP.



**For more information and to RSVP please visit the workshop web page at**

**[www.arm-workshop-concord.eventbrite.com](http://www.arm-workshop-concord.eventbrite.com)**

**or email Lori Sommer, Mitigation Program Coordinator at [lori.sommer@des.nh.gov](mailto:lori.sommer@des.nh.gov)**



**Vacancies and quorums.**

Assume a public body of nine members. Two members have resigned recently and have not been replaced, so there are seven active members. (It is not a land use board, so there are no alternates.) If four members show up for a meeting, is a quorum present? Is a quorum a majority of the authorized nine-person membership (five), or a majority of the seven members currently serving (four)?

Unfortunately, there appears to be no clear answer to this question in New Hampshire. No statute addresses it, and the New Hampshire Supreme Court does not appear to have had occasion to address the question directly.

The court did make a passing comment on the issue in one case, but its statement is of questionable significance. In *Appeal of Net Realty Holding Trust*, 127 N.H. 276 (1985), an appeal from a decision of the Board of Tax and Land Appeals, the supreme court stated, “When there is a vacancy [in a public body], unless a special provision is applicable, a quorum will consist of the majority of the members remaining qualified.” See 127 N.H. at 277 (quoting P. Mason, *Manual of Legislative Procedure* § 501, at 337 (1970)).

If that is the law, the answer to our hypothetical question is that four of the seven remaining members will constitute a quorum. However, the court’s statement was a mere *dictum*—a statement by the court that was not necessary to its decision. A *dictum* ordinarily is not considered to establish any precedent, so the question may still be considered unsettled in New Hampshire.

Still, it never hurts to be able to quote the supreme court in support of one’s position. Thus, if a public body has

one or more vacancies, it is probably safe to take the position that a majority of the remaining members constitutes a quorum—at least until the court, or the legislature, decides otherwise.

However, an even better approach is to get those vacancies filled as soon as possible, so there is no need to worry about the question. For most public bodies, there is a clear method for filling vacancies, and there should be no reason for significant delay (unless no one can be found to fill the vacancy—an all-too-common situation, unfortunately). Further, because most public bodies consist of an odd number of members, the question will not arise unless there are at least two vacancies. (A majority of nine is five. If one resigns, leaving eight, a majority is still five. This works with any odd-numbered membership.)

The question might also be avoided by having clear definitions in the governing document. As noted above, the Durham town charter defines a quorum of the council as “two-thirds of the members currently in office.” That is clear. There are nine seats on the council, so a quorum ordinarily is six; but if there are only six members currently in office, a quorum is four. If a different rule were preferred, the charter could define a quorum as “two-thirds of the authorized membership of the council.”

**Do you need a quorum to create a quorum?**

Let’s assume the court’s statement in *Net Realty Trust* does not prevail, and in fact a quorum is deemed to be a majority of the total number of positions, not merely a majority of the members currently serving. Now assume a five-person board of selectmen. A quorum is three members, but three mem-

bers, it is now impossible to assemble a quorum. Since vacancies on a board of selectmen are filled (until the next election) by vote of the remaining selectmen, is it impossible for the two remaining selectmen to fill the vacancies, and therefore impossible for them to do anything?

No. The applicable statute, RSA 669:63, states that vacancies on the board of selectmen shall be filled “by appointment made by the remaining selectmen.” It does not say “by action of the board.” In this case, there are two remaining selectmen, and they are authorized to fill the vacancies, regardless of whether they are considered a quorum of the board.

The same applies to elected land use boards, which have a similar provision for filling vacancies. RSA 673:12, I, states that vacancies on an elected board shall be filled “by appointment by the remaining board members.” Thus, if an elected seven-person planning board finds itself with only three members left because of resignations or deaths (or because nobody wanted to run), the three remaining members may fill the vacancies, regardless of whether a quorum is three or four.

For most other boards, the question does not arise, because vacancies are filled either by election or by an appointing authority external to the board. For example, with an *appointed* land use board, the governing body is responsible for filling vacancies; and most (not all) city charters provide that vacancies on the council or board of aldermen are filled by special election.

**Can alternate members be counted to make a quorum?**

The use of alternate members depends on the particular statute that authorizes them. The most common use of alternate members is on land use boards, so let’s consider a

From New Hampshire Town and City,  
November-December 2017

**Land Use and Recreation, Open Space, and Natural Resources**

**Background:** The City of Franklin is uniquely situated in relationship to important and valuable resources and recreational opportunities which can work together to help build a revitalized community. Some of the opportunities center around the rivers.

As pointed out elsewhere in this document, the rivers, once industrial dumping grounds, are now being recognized as resources to be appreciated, enjoyed, and utilized for different activities. The re-development projects occurring in the downtown are working to better embrace the Winnepesaukee River. The proposal for the white water park will create a brand new type of recreational activity for an urban area in the State. The depth of opportunities is not limited to just that one river:

- ✓ The Winnepesaukee River Trail starts in downtown Franklin and extends to Tilton, with plans to connect to trails leading to Laconia. This is a walking and biking trail that is easily accessible.
- ✓ The Northern Rail Trail extends from Lebanon to Concord, and runs through the City by Webster Lake and adjacent to South Main Street; this trail is used for snowmobiling in the winter months and for biking and walking the rest of the year.
- ✓ Not far from downtown Franklin is the Highland Mountain Bike Park, with trails for different skill sets.
- ✓ The extensive bike [and walking] trail system at the Franklin Falls Flood Control Dam [operated by the US Army Corps] is used by riders from across the State and the region.
- ✓ The biking and hiking trails in the City's Great Gains Forest and the areas adjacent to the Veterans Memorial Ski Area on Flaghole Road.
- ✓ On the Pemigewasset River there are two public boat ramps [off of Tannery Street and behind the High School] that provide water access.

All of these collective recreational opportunities can contribute to the creation of an "outdoor economy" for the City. It is also important to remember that new connections between some of these areas can enhance the available outdoor experiences for residents and visitors.

The goals and objectives that can advance our recreational opportunities and help to utilize or protect all of our natural resources include the follow:

- a. Work to create new definitions for "outdoor recreation" to take advantage of the different resources that exist in or near the City.
- b. Establish the appropriate permitting or review procedures for these land uses so that public interests are protected.
- c. Explore the projects and assistance programs [the State 10-year Transportation Plan, TIGER grants, cooperative work with Lakes Region Planning Commission, the implementation of a "Complete Streets" or "Safe Route" project, other grant or loan

programs [either public or private] all of which can better facilitate walking and biking connections that will benefit residents and encourage a more healthy life style.

- d. Explore options and opportunities for improved stormwater management in the core downtown area. This can work to encourage recreational on the rivers and help improve water quality for our downstream neighbors.
- e. Continue the efforts of the Recreation Department to upgrade and expand our many City parks and the recreational programs that are available to residents and neighboring communities.
- f. Continue the work of the Conservation Commission as they manage the Great Gains Forest and other city forest lands through selective timber harvests.
- g. Support the efforts of the groups such as the volunteer Outing Club as they add to the recreational opportunities at the Veteran's Memorial Ski Area.
- h. Move forward with the creation of parking area on the City-owned former Macosko Foundry [and revitalized brownfields] property on Chance Pond Road in order to provide good public access [with a bridge over the brook] to the Northern Rail Trail. The Lakes Region Snowmobile Club could be a potential source of assistance for this work.
- i. Continue the partnership with the Webster Lake Association on the important work of protecting the Lake which is an important and valuable resource of the City's. Stormwater management, to prevent erosion and protect overall water quality, is a key task for the future.

**Responsible Parties:** The items above will be accomplished through the efforts of the following: the City Council; Recreation & Conservation Commissions; Volunteer civic organizations; and, the Planning Board