



**TOWN OF DURHAM**  
**ZONING BOARD OF ADJUSTMENT**  
8 NEWMARKET RD  
DURHAM, NH 03824  
PHONE: 603/868-8064  
www.ci.durham.nh.us

RECEIVED  
Town of Durham

MAY 21 2026

Planning, Zoning  
and Assessing

**APPEAL FROM AN ADMINISTRATIVE DECISION**

\$ 397 pd. 5/21  
Check # 4354

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. An appeal of Administrative Decision must be filed with the Board no later than **30 days** from the date of the original decision as per the Zoning Board Rules of Procedure Section D(1)(b).

Name of Applicant James and Carla McKiernan

Address: 2 Riverview Court, Durham, NH 03824

Phone # (603) 502-5303 Email: carla.gbah@gmail.com

Owner of Property Concerned Matching Donors Org Inc.  
(If same as above, write "Same")

Address: 766 Turnpike Street, Canton, MA 02021  
(If same as above, write "Same")

Location of Property: 1 Riverview Court, Durham, NH 03824  
(Street & Number)

Tax Map & Lot number Tax Map 214, Lot 13

Decision(s) of the enforcement officer to be reviewed: Email from Michael Behrendt, Town Planner, to

Gretchen Meisner, interpreting the Zoning Ordinance to decide that it does not apply to 1 Riverview Court because the lot is vested pursuant to state statute and therefore only a building permit is needed for their development, dated April 21, 2026 (included with attached letter)

Owner's Signature(s): Carla McKiernan Date: 5/21/2026

Owner's Signature(s): [Signature] Date: 5/21/2026

PRINTED NAME(S): James McKiernan Date: 5/21/2026

PRINTED NAME(S): Carla McKiernan Date: 5/21/2026

**RSA 676:5 Appeals to Board of Adjustment. --**

I. Appeals to the board of adjustment concerning any matter within the board's powers as set forth in RSA 674:33 may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

II. For the purposes of this section:

- (a) The "administrative officer" means any official or board who, in that municipality, has responsibility for issuing permits or certificates under the ordinance, or for enforcing the ordinance, and may include a building inspector, board of selectmen, or other official or board with such responsibility.
- (b) A "decision of the administrative officer" includes any decision involving construction, interpretation or application of the terms of the ordinance. It does not include a discretionary decision to commence formal or informal enforcement proceedings, but does include any construction, interpretation or application of the terms of the ordinance which is implicated in such enforcement proceedings.

III. If, in the exercise of subdivision or site plan review, the planning board makes any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance, which would be appealable to the board of adjustment if it had been made by the administrative officer, then such decision may be appealed to the board of adjustment under this section; provided, however, that if the zoning ordinance contains an innovative land use control adopted pursuant to RSA 674:21 which delegates administration, including the granting of conditional or special use permits, to the planning board, then the planning board's decision made pursuant to that delegation cannot be appealed to the board of adjustment, but may be appealed to the superior court as provided by RSA 677:15.

IV. The board of adjustment may impose reasonable fees to cover its administrative expenses and costs of special investigative studies, review of documents, and other matters which may be required by particular appeals or applications.

V.

- (a) A board of adjustment reviewing a land use application may require the applicant to reimburse the board for expenses reasonably incurred by obtaining third party review and consultation during the review process, provided that the review and consultation does not substantially replicate a review and consultation obtained by the planning board.
- (b) A board of adjustment retaining services under subparagraph (a) shall require detailed invoices with reasonable task descriptions for services rendered. Upon request of the applicant, the board of adjustment shall promptly provide a reasonably detailed accounting of expenses, or corresponding escrow deductions, with copies of supporting documentation.

*[Handwritten signatures and dates]*  
5-21-26  
Cuba 5-21-26

May 21, 2026

*Via Email & Hand Delivery*

Durham Zoning Board of Adjustment  
c/o Tracey Cutler, Administrative Assistant  
8 Newmarket Road  
Durham, NH 03824  
tcutler@ci.durham.nh.us

**Re: Appeal of April 21, 2026 Town Planner Decision Regarding Proposed Use of 1  
Riverview Court (Tax Map 214, Lot 13) Pursuant to RSA 676:5, I**

Dear Chair Niman and Esteemed Members of the Board:

I write in representation of James and Carla McKiernan, of 2 Riverview Court (Tax Map 214, Lot 10) ("Appellants or Abutters"). This letter serves as an appeal of Town Planner Michael Behrendt's administrative decision on April 21, 2026 that a building permit is the only municipal approval required for a proposed development of a single-family home and attendant structures ("Proposal") at 1 Riverview Court ("Decision"). The property of 1 Riverview Court is reflected in the Town's records as Lot 13 of Tax Map 214 ("Property"). The Decision was apparently based on advice from town counsel that the Property is vested pursuant to RSA 674:39 and can be developed in accordance with the Town's zoning ordinance that was in effect at the time the subdivision was approved circa 1960. For the reasons set forth in detail below, the Decision was incorrect as a matter of law and the Abutters respectfully request that the Board reverse it.

**I. Authority of the Board**

This appeal is filed pursuant to RSA 676:5, I which permits "[a]ppeals to the board of adjustment concerning any matter within the board's powers as set forth in RSA 674:33 ... by ... an abutter as defined by RSA 672:3 ... affected by any decision of the administrative officer." For purposes of this statute, an "administrative officer" is "any official ... who, in that municipality, has responsibility for issuing permits or certificates under the ordinance, or for enforcing the ordinance, and may include a building inspector ... or other official ... with such responsibility." RSA 676:5, II(a). A "decision of the administrative officer" includes "any decision involving construction, interpretation or application of the terms of the ordinance." RSA 676:5, II(b).

Mr. Behrendt is an official of the Town who has responsibility for enforcing the Town's zoning ordinance, so he qualifies as an "administrative officer" for purposes of RSA 676:5, I. Likewise, his Decision, attached as **Exhibit A**, involves construction, interpretation, and application of the zoning ordinance—specifically, the applicability of the Town's Shoreland Protection Overlay District (SPOD) and Wetland Conservation Overlay District (WCOD)—so the Decision qualifies as a "decision of the administrative officer" for purposes of RSA 676:5, I. Therefore, the Decision is eligible for appeal to the Board.

Appellants are permitted to make this appeal as abutters to the Property. RSA 676:5, I relies on RSA 672:3's definition of "abutter," which is "any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board." The Abutters' property is located directly across Riverview Court from the Property. The Abutters would be affected by the Proposal because their lot is within mere feet of the Property, and their entire northward view is the Property, which has remained vacant since the Property was created as a lot of record. Accordingly, the Proposal would be a significant change for the Abutters. In sum, the Appellants are abutters for purposes of RSA 672:3 and, by extension, are entitled to appeal the Decision under RSA 676:5, I.

## **II. Factual and Procedural Background**

The Decision is based on plans, attached as **Exhibit B**, prepared by Meisner Berm Corporation on behalf of East Wynfield Realty, LLC ("Applicant") that were submitted to the state. As shown on the plans, the Proposal calls for a four-bedroom dwelling, a garage, a farmer's porch, a porous paver driveway, a porous paver patio, and an individual well and septic system. The overall Property is approximately 61,898 square feet (1.42 acres), almost the entirety of which is in the important shoreland and wetland buffers. The undeveloped Property is located on the Oyster River, specifically, the tidal Johnson Creek tributary. The Property is in the Town's Residence Coastal (RC) District, Shoreland Protection Overlay District (SPOD), Wetland Conservation Overlay District (WCOD), and Flood Hazard Overlay District (FHOD). The proposed structures would create approximately 2,308 square feet of impervious area (1,176 square feet for the house, 120 square feet for the deck, 676 square feet for the garage, and 336 square feet for the farmer's porch). The driveway (817 square feet) and patio/walkway (493 square

feet) would create 1,310 square feet of pervious area, which may become impervious if not properly maintained. It is important to note that, to be the best of Abutters' knowledge as of the filing of this appeal, Applicant has not submitted anything related to the Proposal to the Town for approval; ~~Mr. Behrendt apparently made the Decision in anticipation of something being submitted.~~

The Decision concludes that, at the local level, Applicant will need to apply only for a building permit from the Durham Code Enforcement Office. While not reflected in the Decision, on information and belief, Mr. Behrendt has directed Audrey Cline, Code Enforcement Officer, to issue a building permit if Applicant applies. As noted in the Decision, Mr. Behrendt's original interpretation was that the Proposal would require a special exception under Section 175-29(B) of the zoning ordinance, applicable to individual nonconforming vacant lots in the WCOD and SPOD, because the bulk of the Property is within the buffer for the Town's SPOD and WCOD.<sup>1</sup> Indeed, his original position was that "[t]he Town's shoreland buffer is 125 feet and the wetland buffer is 100 feet so the buffer line would extend even further on this lot making it *definitely unbuildable* outside of the buffers." (Emphasis added.) This position was reflected in Mr. Behrendt's prior correspondence concerning the Proposal. *See, e.g.*, Email, attached as **Exhibit C**. However, Mr. Behrendt reversed course after consulting with town counsel, who advised that the Property had vested under RSA 674:39 and can be developed based on the zoning ordinance that was in effect when the subdivision was approved circa 1960.

### **III. Legal Analysis**

As explained above, Mr. Behrendt, relying on advice from town counsel, decided that the Town's SPOD and WCOD do not apply to the Property because the Property's vesting predates the Town's implementation of the SPOD and WCOD. More specifically, he concluded that the Property was eligible for statutory vesting under RSA 674:39. The Property does not qualify for such vesting, so, Abutters respectfully request the Board reverse the Decision.

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<sup>1</sup> Appellants may not agree the Property could be developed if a special exception was granted and reserve all rights. But, that issue is not an issue in this appeal.

**A. Law of Statutory Vesting**

Under RSA 674:39, I, “[e]very subdivision plat approved by the planning board and properly recorded in the registry of deeds ... shall be exempt from all subsequent changes in ... zoning ordinances adopted by any... town, ... except those regulations and ordinances which expressly protect public health standards, such as water quality and sewage treatment requirements, for a period of 7 years after the date of approval.” This is true provided that:

- (a) Active and substantial development or building has begun on the site by the owner or the owner's successor in interest in accordance with the approved subdivision plat within 3 years after the date of approval, or in accordance with the terms of the approval, and, if a bond or other security to cover the costs of roads, drains, or sewers is required in connection with such approval, such bond or other security is posted with the city, town, or county in which there are located unincorporated towns or unorganized places, at the time of commencement of such development;
- (b) Development remains in full compliance with the public health regulations and ordinances specified in this section; and
- (c) At the time of approval and recording, the subdivision plat or site plan conforms to the subdivision regulations, site plan review regulations, and zoning ordinances then in effect at the location of such subdivision plat or site plan.

RSA 674:39, I(a)–(c).

The owner or the owner's successor in interest gains vested rights “[o]nce substantial completion of the improvements as shown on the subdivision plat ... has occurred in compliance with the approved subdivision plat ... or the terms of said approval or unless otherwise stipulated by the planning board.” RSA 674:39, II. At that point, changes to zoning ordinances will not affect such improvements. *Id.*

**B. History of Oyster River Development Subdivision**

The Property was created as part of the second phase of Section II of the Oyster River Development, shown as Lot 14 on a plan entitled “Forrest S Emery Oyster River Development Section II Durham New Hampshire” prepared by Grant L. Davis of G.L. Davis and Associates Engineers and dated February 21, 1959, attached as **Exhibit D**. According to a handwritten notation on the plan, the Durham Planning Board granted approval on October 3, 1960. The plan

was recorded at the Strafford County Registry of Deeds on October 7, 1960 (Plan #30A, Pocket 4, Folder 3). An earlier phase of Section II of the Oyster River Development, which includes the Abutters' property (Lot 10), is shown on a plan also entitled "Forrest S. Emery Oyster River Development Section II Durham, New Hampshire" prepared by Grant L. Davis of G.L. Davis and Associates Engineers and dated October 30, 1958, attached as **Exhibit E**. This plan was recorded at the Strafford County Registry of Deeds on February 10, 1959 (Plan #30, Pocket 4, Folder 3), after being approved by the Planning Board on January 13, 1959. Phase one of the Oyster River Development is depicted on a plan entitled "Forrest S. Emery Oyster River Development Section I Durham New Hampshire" prepared by Grant L. Davis of G.L. Davis and Associates Engineers and dated June 19, 1958, attached as **Exhibit F**. This plan was recorded at the Strafford County Registry of Deeds on February 10, 1959 (Plan #31, Pocket 4, Folder 3), after being approved by the Planning Board on January 13, 1959.

**C. RSA 674:39 Does Not Apply Retroactively**

As a threshold matter, RSA 674:39 does not apply in this case because the subdivision at issue, the Oyster River Development, predates the statute. As set forth above, the Oyster River Development was planned and approved between 1958 and 1960. Meanwhile, the original version of RSA 674:39 was not even enacted until 1983. Therefore, the Oyster River Development predates the statute by more than two decades.

No New Hampshire law supports applying RSA 674:39 retroactively. Nothing in the text of RSA 674:39 suggests the legislature intended for it to be applied retroactively to subdivisions approved and recorded prior to the enactment of the law in 1983. Indeed, in New Hampshire, statutes are presumed to operate prospectively unless the legislature expresses an intent for the statute to apply retroactively. *State v. Fuller*, 169 N.H. 154, 159–60 (2016). Therefore, statutory vesting under RSA 674:39 cannot apply to the Oyster River Development and the Property by extension.

**D. Assuming Vesting, SPOD and WCOD Remain Enforceable**

Even assuming only for the sake of argument that RSA 674:39 does apply to the Oyster River Development and the Property, the statute makes it clear that the Town's SPOD and WCOD remain enforceable regardless. As explained above, even when an owner has acquired vested rights

pursuant to RSA 674:39, the statute explicitly does not insulate the owner from “regulations and ordinances which expressly protect public health standards, such as water quality and sewage treatment requirements.” RSA 674:39, I. Further, a development must remain “in full compliance with [] public health regulations and ordinances.” The Town’s SPOD and WCOD regulations fall squarely within the category of regulations meant to protect public health.

According to the purpose statement of the WCOD, the WCOD is “intended to *protect the quality and functioning of wetlands throughout the Town* by managing the use of the wetland and the upland buffer adjacent to the wetland in coordination with the state dredge and fill permit system.” Zoning Ordinance § 175-58 (emphasis added). The WCOD is also intended to:

- A. *Protect the water quality* of wetlands by appropriately managing stormwater runoff, siltation and sedimentation, and the construction or alteration of allowed or pre-existing buildings and structures;
- B. *Minimize flooding and flood damage* by preserving the flood storage capacity of wetlands;
- C. Protect wildlife and fisheries habitats and wetlands vegetation;
- D. Maintain stream flow and groundwater recharge;
- E. Conserve natural beauty and scenic quality; and
- F. Limit uses of the wetland and upland buffer to those that are consistent with the objectives listed in A-E.

*Id.* (Emphasis added.)

In the same vein, the broad purpose of the SPOD is “to *protect the quality of the Town’s surface waters in order to promote public health and safety*, maintain wildlife habitat, and conserve and protect shoreline and upland resources.” Zoning Ordinance § 175-69 (emphasis added). The more specific purposes of the SPOD are to:

- A. *Protect the water quality* of Great and Little Bays, the *Oyster* and *Lamprey* Rivers, and the Town’s other surface waters by managing stormwater runoff, siltation and sedimentation, and the construction or alteration of buildings and structures in proximity to these resources;

- B. *Minimize the potential for the pollution of these water bodies;*
- C. Protect wildlife and fisheries habitats and travel ways;
- D. Conserve the natural beauty and scenic quality of the shoreland; and
- E. Allow uses of the land adjacent to these water bodies that are consistent with these objectives.

*Id.* (Emphasis added.)

It is unequivocal based on these purpose statements that the SPOD and WCOD were enacted, at least in part, to protect and promote public health and safety. Indeed, aside from the word-for-word mention of “public health and safety,” the purpose statements highlight protection of water quality, and water quality (along with sewage treatment requirements) is one of the explicit examples given by RSA 674:39, I of the types of regulations/ordinances to which an owner is *not* exempt even if RSA 674:39 applies.

Therefore, even to the extent that the Property has vested pursuant to RSA 674:39 (which, for the reasons stated in Section III(c), *supra*, it has not), the Proposal would not be exempt from the Town’s SPOD and WCOD regulations because they fall within the carveout in RSA 674:39, for public health regulations. Regardless of vesting, the Town *must* apply its SPOD and WCOD regulations.

Ultimately, the Decision is unlawful on its face because, once due consideration is given to the Town’s SPOD and WCOD requirements, and the special exception requirements under Section 175-29(B) of the zoning ordinance; a mere building permit is not legally sufficient.

**E. The Property is Not Buildable**

While Applicant would at the very least need a special exception to develop the Property for the reasons set forth above, Abutters maintain their position that the Property is not a buildable lot for residential purposes, for the reasons set forth in a letter undersigned sent to Audrey Cline on March 27, 2024, attached as **Exhibit G**<sup>2</sup> To summarize the content of that letter, which Abutters

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<sup>2</sup> As a minor update to this letter, the zoning ordinance’s provision on calculating usable area is found at Section 175-56(F), not 175-56(G).

encourage the Board to review in full, the Property is not buildable because the zoning ordinance's more restrictive minimum lot size requirement for the RC District—150,000/120,000 square feet—applies, and the Property, at 61,898 square feet, is nowhere near that threshold. This is especially true because much of the Property likely cannot be counted towards the minimum lot area requirement due to how usable area is calculated under the zoning ordinance. Though this issue is not directly involved in this appeal, Abutters believe it is important for the ZBA to have a full and comprehensive awareness of the issues associated with the Property.

#### **IV. Conclusion**

For the reasons set forth above, the Decision is invalid and should be reversed. Thank you for your attention to this matter. Please let me know if you have any questions. I can be reached at the email address or phone number listed below.

Very truly yours,



Amy Manzelli, Esq.  
*Licensed in New Hampshire*  
(603) 225-2585  
manzelli@nhlandlaw.com

Cc:

- Michael Behrendt, Town Planner (mbehrendt@ci.durham.nh.us)
- Clients

Enclosure

- Appeal from Administrative Decision Application Form
- Application Fee in the form of a check made payable to Town of Durham
- Abutter List
- Email from Michael Behrendt, Town Planner, to Gretchen Meisner concerning development of 1 Riverview Court dated April 21, 2026

# EXHIBIT A

**From:** Michael Behrendt <mbehrendt@ci.durham.nh.us>  
**Subject:** Riverview Court #1 - vesting of lot  
**Date:** April 21, 2026 at 5:26:37 PM EDT  
**To:** "James Mckiernan, D.V.M." <drjim@greatbayah.com>,  
"carla.gbah@gmail.com" <carla.gbah@gmail.com>, "Nell Neal  
(nellneal3@gmail.com)" <nellneal3@gmail.com>, "Peter Wolfe  
(pywolfe@comcast.net)" <pywolfe@comcast.net>, "ahmad.etebari@unh.edu"  
<ahmad.etebari@unh.edu>, Arthur McManus <arthurlmcmanus@hotmail.com>

All,

In the interest of keeping you up to date on information that I receive about 1 Riverview Court, here is the email that I just sent to the applicant with a determination by the Durham Town Attorney.

**Michael Behrendt**

Durham Town Planner  
8 Newmarket Road  
Durham, NH 03824  
(603) 868-8064

**From:** Michael Behrendt  
**Sent:** Tuesday, April 21, 2026 5:14 PM  
**To:** GRETCHEN MEISNER <gretchenmeisner@comcast.net>  
**Cc:** Audrey Cline <acline@ci.durham.nh.us>; Tracey Cutler <tcutler@ci.durham.nh.us>  
**Subject:** Riverview Court #1 - vesting of lot

Hello Gretchen,

I am following up on my telephone call to you the other day about the vacant lot at 1 Riverview Court in Durham, NH. Because a great deal of the lot is taken up by the buffer for the

Town's Shoreland Protection Overlay District (SPOD) and Wetland Conservation Overlay District (WCOD) I believed that the proper way for you to pursue development of the lot was under Section 175-29 of the Town's Zoning Ordinance applicable to vacant lots in the SPOD and WCOD when the lot cannot be developed outside of those overlay zones. I attached your plans.

They show a 100-foot tidal buffer. The Town's shoreland buffer is 125 feet and the wetland buffer is 100 feet so the buffer line would extend even further on this lot making it definitely unbuildable outside of the buffers.

I checked with the Durham Town Attorney to clarify the proper procedure for the Town to consider your proposed construction on the lot and she conveyed to me that the lot is vested and can be developed in accordance with the Zoning Ordinance that was in place when the plan for the subdivision was approved in 1960. The SPOD and WCOD were enacted some time after 1960 so those two ordinances do not apply to the development of this lot. The Town Attorney made this determination based on RSA 674:39 shown at the bottom. The plat was recorded at the registry.

You will still need to obtain all of the state approvals for development. You conveyed to me I believe that you have applied for the shoreland permit, the wetlands permit, and the septic permit. You will need to apply for a building permit from the Durham Code Enforcement Office. Please check with Tracey and Audrey above about that process. Construction of a house will need to be in compliance with the zoning parameters in place from 1960. Audrey can go over this with you. Note that at such time as a house is built on the lot payment of the Town of Durham School Impact Fee will need to be paid (prior to the certificate of occupancy) in the amount of \$8,699.

My best regards to you.

**674:39 Seven-Year Exemption. –**

I. Every subdivision plat approved by the planning board and properly recorded in the registry of deeds and every site plan approved by the planning board and properly recorded in the registry of deeds, if recording of site plans is required by the planning board or by local regulation, shall be exempt from all subsequent changes in subdivision regulations, site plan review regulations, impact fee ordinances, and zoning ordinances adopted by any city, town, or county in which there are located unincorporated towns or unorganized places, except those regulations and ordinances which expressly protect public health standards, such as water quality and sewage treatment requirements, for a period of 7 years after the date of approval; provided that:

- (a) Active and substantial development or building has begun on the site by the owner or the owner's successor in interest in accordance with the approved subdivision plat within 3 years after the date of approval, or in accordance with the terms of the approval, and, if a bond or other security to cover the costs of roads, drains, or sewers is required in connection with such approval, such bond or other security is posted with the city, town, or county in which there are located unincorporated towns or unorganized places, at the time of commencement of such development;
- (b) Development remains in full compliance with the public health regulations and ordinances specified in this section; and
- (c) At the time of approval and recording, the subdivision plat or site plan conforms to the subdivision regulations, site plan review regulations, and zoning ordinances then in effect at the location of such subdivision plat or site plan.

II. Once substantial completion of the improvements as shown on the subdivision plat or site plan has occurred in compliance with the approved subdivision plat or site plan or the terms of said approval or unless otherwise stipulated by the planning board, the rights of the owner or the owner's successor in interest shall vest and no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect such improvements.

III. The planning board may, as part of its subdivision and site plan regulations or as a condition of subdivision plat or site plan approval,

specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project:

(a) "Substantial completion of the improvements as shown on the subdivision plat or site plan," for purposes of fulfilling paragraph II; and

(b) "Active and substantial development or building," for the purposes of fulfilling paragraph I.

IV. Failure of a planning board to specify by regulation or as a condition of subdivision plat or site plan approval what shall constitute "active and substantial development or building" shall entitle the subdivision plat or site plan approved by the planning board to the 7-year exemption described in paragraph I. The planning board may, for good cause, extend the 3-year period set forth in subparagraph I(a).

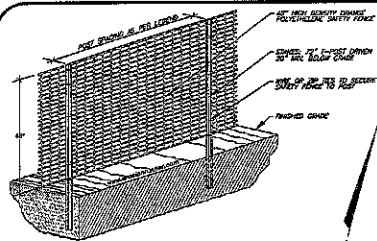
V. The 7-year period and 3-year exemption in this section shall apply to any approval granted on or after July 1, 2023.

**Source.** 1983, 447:1. 1989, 266:17, 18. 1991, 331:1, 2. 1995, 43:5; 291:7, 8. 2004, 199:1. 2009, 93:1. 2011, 215:1, eff. June 27, 2011. 2025, 186:1, eff. July 1, 2025.

**Michael Behrendt**

Durham Town Planner  
8 Newmarket Road  
Durham, NH 03824  
(603) 868-8064

# EXHIBIT B



ORANGE CONSTRUCTION FENCE DETAIL  
NOT TO SCALE

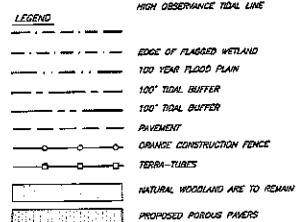
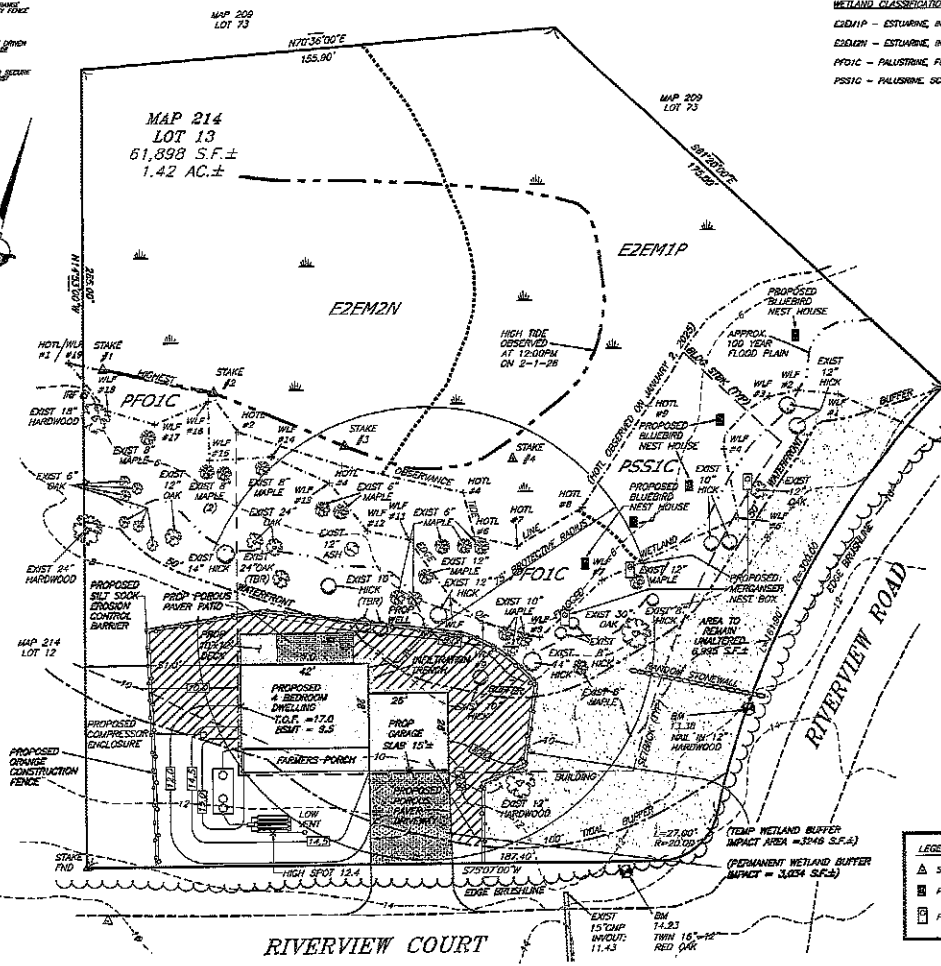
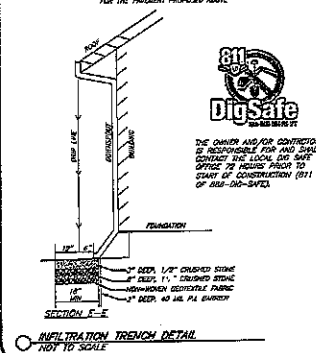
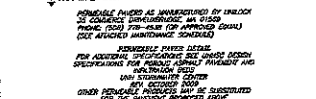
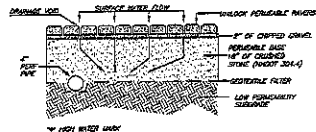
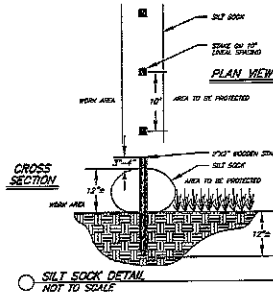


TABLE OF EXISTING IMPERVIOUS AREAS

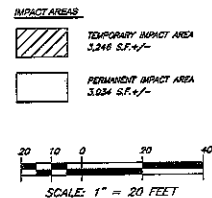
| EXISTING IMPERVIOUS AREAS ON LOT      | AREA (S.F.)         |
|---------------------------------------|---------------------|
| HOUSE                                 | 1,176 S.F. ±        |
| DECK                                  | 120 S.F. ±          |
| DRIVEWAY                              | 879 S.F. ±          |
| FARMERS PORCH                         | 336 S.F. ±          |
| <b>TOTAL PROPOSED IMPERVIOUS AREA</b> | <b>2,511 S.F. ±</b> |

TABLE OF PROPOSED PERVIOUS AREA

| PROPOSED PERVIOUS AREA              | AREA (S.F.)         |
|-------------------------------------|---------------------|
| DRIVEWAY                            | 817 S.F. ±          |
| PATIO                               | 483 S.F. ±          |
| <b>TOTAL PROPOSED PERVIOUS AREA</b> | <b>1,300 S.F. ±</b> |

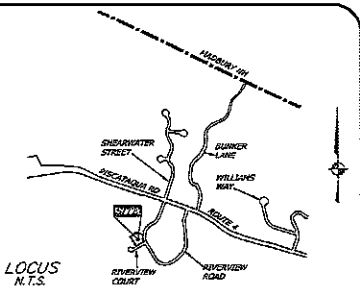
LEGEND

|                                  |                                  |
|----------------------------------|----------------------------------|
| STAKE SET WITH ORANGE PAINT      | PROPOSED BLUEBIRD NEST HOUSE (C) |
| PROPOSED BLUEBIRD NEST HOUSE (C) | PROPOSED MERGANSER NEST BOX (C)  |



WETLAND CLASSIFICATIONS:  
E2EM1P - ESTUARINE, INTERTIDAL, EMERGENT, PERSISTENT, IRREGULARLY FLOODED  
E2EM2N - ESTUARINE, INTERTIDAL, EMERGENT, NON-PERSISTENT, REGULARLY FLOODED  
PFOIC - PALUSTRINE, FORESTED, BROAD-LEAVED DECIDUOUS, SEASONALLY FLOODED  
PSSIC - PALUSTRINE, SCIRPUS-DWARF, BROAD-LEAVED DECIDUOUS, SEASONALLY FLOODED

- CONSTRUCTION SEQUENCE:
1. THE CONTRACTOR SHALL SET UP A PRE-CONSTRUCTION ALLEYS WITH THE TOWN ENGINEER TO DETERMINE PROJECT SEQUENCE AND SCHEDULE.
  2. THE LIMIT OF TREE CLOSURE SHALL BE MARKED BY THE OWNER/PROPERTY OWNER BEFORE ANY TREE REMOVAL IS TO TAKE PLACE. ALL CLEARING OPERATIONS FOR BUILDING, DRIVEWAY, QUAYS, SEWER, DRAINAGE AND UTILITIES SHALL BE PERFORMED AT ONE TIME.
  3. ALL BRUSH CONTROLS SUCH AS SILT SOCK AND SILT FENCE SHALL BE INSTALLED AS SHOWN ON THE PLANS PRIOR TO ANY GRADING OPERATIONS. GRASS CONTROLS SHALL BE MAINTAINED, MONITORED AND REPAIRED WHEN NECESSARY THROUGHOUT THE COURSE OF CONSTRUCTION.
  4. TOPSOIL SHALL BE STRIPPED, STOCKPILED AND STABILIZED WITH TEMPORARY SEEDING. SEED SHALL BE APPLIED PRIOR TO GRADING OF THE SITE. SOILS GRADING OF THE BUILDING SITE SHALL THEN BEGIN.
  5. DRAIN ALL TEMPORARY AND/OR PERMANENT SEEDING WHETHER POSSIBLE, AND ON ALL CUT AND FILL SLOPES AS THEY ARE CONSTRUCTED.
  6. AS SECTIONS OF THE PROJECT ARE COMPLETED (BUILDING, FENCE, DRIVEWAY, ETC.), COMPLETE FINAL DRAINAGE, PERMANENT SEEDING AND LANDSCAPING. GRASSING CONTROLS MEASURES ARE TO BE REMOVED ONLY AFTER PERMANENT VEGETATION IS ESTABLISHED.



- NOTES:
1. THE PURPOSE OF THIS PLAN IS TO ACCOMPANY A STANDARD DREDGE AND FILL WETLAND PERMIT APPLICATION.
  2. OWNER OF RECORD: MATTHEW DODDSON & SONS INC. 708 TURNPIKE STREET CANTON, MA 02021 PHONE: 508/847-7777 FAX: 508/847-7777
  3. LOT SIZE: 61,898 S.F. ± OR 1.42 AC. ±
  4. PRESENT ZONING DISTRICT: RESIDENCE (RC)
  5. MINIMUM BUILDING SETBACKS: FRONT = 30 FEET, SIDE = 50 FEET REAR = 50 FEET WATER BODY = 50 FEET
  6. LOT TO BE SERVED BY INDIVIDUAL WELL AND SEPTIC SYSTEM.
  7. A PORTION OF THIS PARCEL IS NOT WITHIN THE 100 YEAR FLOOD PLAIN, AS INTERPOLATED FROM THE FLOOD INSURANCE RATE MAP (FIRM) OF NEW HAMPSHIRE COUNTY, N.H. MAP NO. 35017003002, EFFECTIVE: 6/30/2015.
  8. BOUNDARY INFORMATION WAS COMPILED FROM FIELD SURVEY BY THIS OFFICE AND REFERENCE PLANS.
  9. ELEVATIONS DEPICTED HEREON ARE BASED ON NAVD83 PER GPS OBSERVATIONS BY THIS OFFICE ON MAY 15, 2024, BEING TIED TO "MASSCON" USING BASE STATION "WES2" WITH AN ELEVATION LISTED AT 374.18' (CONVERTED TO MVD USING VERTCON).
  10. ALL TECHNICAL WORK BY ANY INDIVIDUAL FOR PREPARATION OF THIS PLAN IS THE RESPONSIBILITY OF MESNER BISHOP CORPORATION AND NOT THE INDIVIDUAL.

PLAN REFERENCE:  
OYSTER RIVER DEVELOPMENT SECTION 8, G.L. DAVIS & ASSOCIATES, OCT. 3, 1990, FILE 47-59 SCRD PLAN (JON POCKET, #4, FOLDER #3).

| NO. | DATE     | REVISION         | BY      |
|-----|----------|------------------|---------|
| 1   | 2-4-2026 | PER TRUPP LETTER | KDM/ANW |

WETLAND PERMIT PLAN - PROPOSED CONDITIONS  
1 RIVERVIEW COURT, DURHAM, NEW HAMPSHIRE  
PREPARED FOR: EAST WYNFIELD REALTY, LLC.  
P.O. BOX 4  
SALEM, NH 03079  
PREPARED BY: MEISNER BREM CORPORATION  
100 MAIN STREET, SALEM, NH 03079 (PH) 603-883-3301  
100 WILSON AVE, SUITE 10, WESTON, MA 02457 (PH) 617-891-1101

SCALE: 1"=20'  
SHEET: 2 OF 2  
OCTOBER 27, 2025  
OWNER OF RECORD: MATTHEW DODDSON & SONS INC. 708 TURNPIKE STREET CANTON, MA 02021 PHONE: 508/847-7777 FAX: 508/847-7777  
ZONING CLASS: RESIDENCE (RC)  
JOB NO.: 8708

# EXHIBIT C

**From:** Michael Behrendt <mbehrendt@ci.durham.nh.us>  
**Subject:** Riverview Court #1 - NH Shoreland application  
**Date:** April 22, 2025 at 2:48:51 PM EDT  
**To:** "Peter Wolfe (pywolfe@comcast.net)" <pywolfe@comcast.net>  
**Cc:** "Nell Neal (nellneal3@gmail.com)" <nellneal3@gmail.com>, "James Mckiernan, D.V.M." <drjim@greatbayah.com>, Audrey Cline <acline@ci.durham.nh.us>

Hello Peter,

We received this notice today about an application to NHDES for 1 Riverview Court. You had asked me to let you know if we received any applications for the site. Nothing has been submitted to the Town of Durham. We believe that a special exception application would be required from the Town. My best regards.

**Michael Behrendt**

Durham Town Planner  
8 Newmarket Road  
Durham, NH 03824  
(603) 868-8064

---

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

# **ABUTTER NOTIFICATION FOR SHORELAND PERMIT APPLICATION**

VIA CERTIFIED MAIL

February 10, 2025

**RE: Shoreland Permit Application**

Dear Sir or Madam:

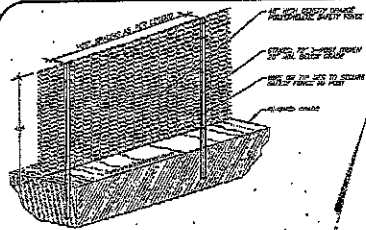
This letter is to inform you that a permit application will be filed with the NH Department of Environmental Services for a shoreland impact permit associated with the above referenced project. Under state law RSA 483-B:5-b, iv-a I am required to notify you about the application, which proposes work abutting your property.

Once it is filed, the permit application, including plans that show the proposed project will be available for viewing at the City or Town Clerk's Office in the town where the proposed project is located.

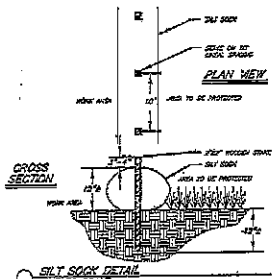
Sincerely,

Jeanne Warren, CAD Technician  
Meisner Brem Corp.  
202 Main St., Suite 104  
Salem, NH 03079  
603-893-3301

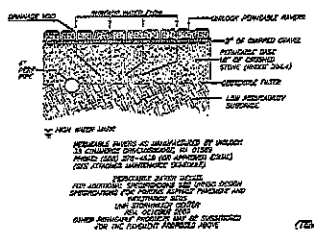
Agent For:  
Matchingdonors Org. Inc.  
1 Riverview Court  
Durham, NH 03824  
Map 214 Lot 13



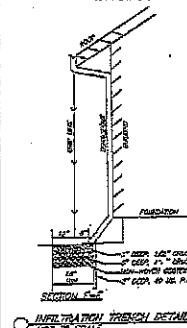
ORANGE CONSTRUCTION FENCE DETAIL  
NOT TO SCALE



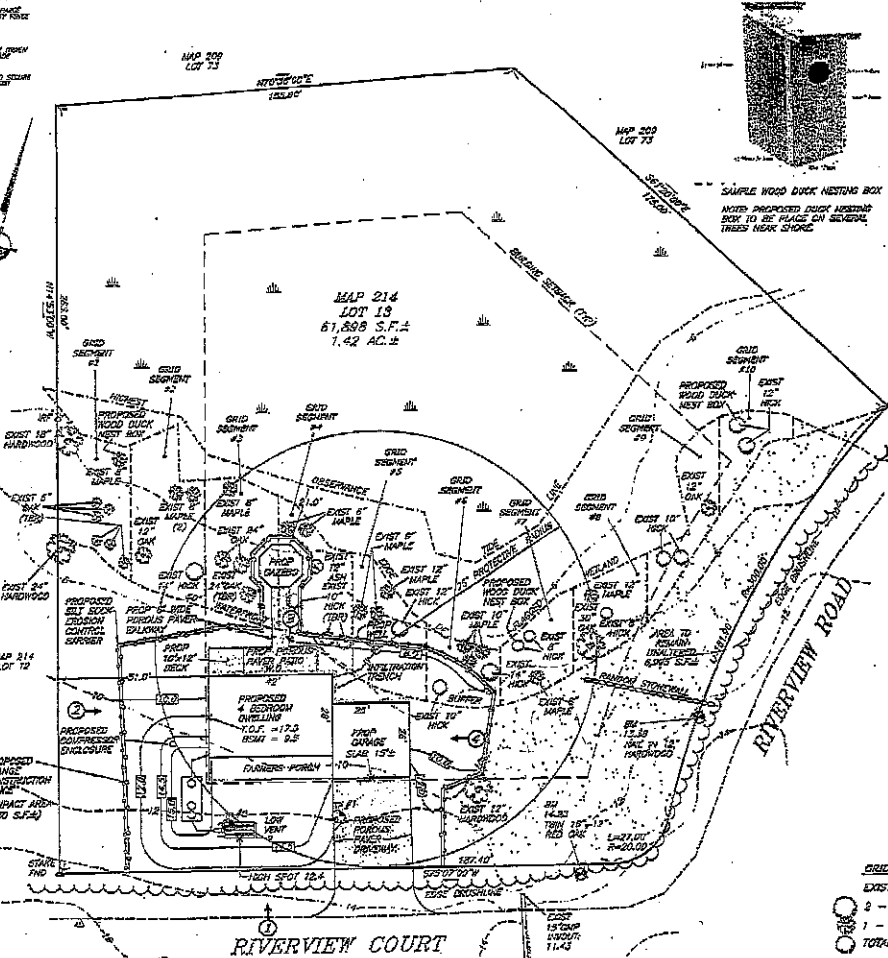
SILT SOCK DETAIL  
NOT TO SCALE



THE OWNER AND/OR CONTRACTOR IS RESPONSIBLE FOR AND SHALL OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AND STATE OFFICE OF CONSTRUCTION (SIT) OF THE STATE OF NEW HAMPSHIRE.



SECTION LINE  
NOT TO SCALE



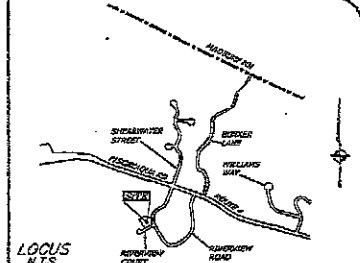
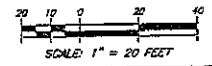
| LEGEND                         | PROPOSED                       | EXISTING                       |
|--------------------------------|--------------------------------|--------------------------------|
| ORANGE CONSTRUCTION FENCE      | ORANGE CONSTRUCTION FENCE      | ORANGE CONSTRUCTION FENCE      |
| TERMINAL                       | TERMINAL                       | TERMINAL                       |
| TO BE REMOVED                  | TO BE REMOVED                  | TO BE REMOVED                  |
| PHOTO LOCATION & DIRECTION     | PHOTO LOCATION & DIRECTION     | PHOTO LOCATION & DIRECTION     |
| NATURAL WOODLAND ARE TO REMAIN | NATURAL WOODLAND ARE TO REMAIN | NATURAL WOODLAND ARE TO REMAIN |
| PROPOSED FENCE LINE            | PROPOSED FENCE LINE            | PROPOSED FENCE LINE            |

| TITLE OF EXISTING IMPERVIOUS AREAS | NO EXISTING IMPERVIOUS AREAS ON LOT |
|------------------------------------|-------------------------------------|
| HOUSE                              | 1,176 S.F.                          |
| DRIVEWAY                           | 1,176 S.F.                          |
| PATIO/PORCH                        | 1,176 S.F.                          |
| SCREENED PORCH                     | 1,176 S.F.                          |
| TOTAL PROPOSED IMPERVIOUS AREA     | 3,482 S.F.                          |

| TITLE OF PROPOSED IMPERVIOUS AREAS | NO EXISTING IMPERVIOUS AREAS ON LOT |
|------------------------------------|-------------------------------------|
| DRIVEWAY                           | 817 S.F.                            |
| PATIO/PORCH                        | 413 S.F.                            |
| TOTAL PROPOSED IMPERVIOUS AREA     | 1,230 S.F.                          |

| GRID SEGMENT 1                         | EXISTING TREES/SHRUBS |
|----------------------------------------|-----------------------|
| 1 - 18" HARDWOOD (15 PTS)              |                       |
| 1 - 24" HARDWOOD (15 PTS)              |                       |
| 1 - 8" MAPLE (10 PTS)                  |                       |
| TOTAL POINTS = 40 PTS                  |                       |
| GRID SEGMENT 2                         | EXISTING TREES/SHRUBS |
| 1 - 12" OAK (15 PTS)                   |                       |
| 1 - 14" HICKORY (15 PTS)               |                       |
| 2 - 8" MAPLE @10 PNTS/EACH (20 PTS)    |                       |
| TOTAL POINTS = 50 PTS                  |                       |
| GRID SEGMENT 3                         | EXISTING TREES/SHRUBS |
| 2 - 24" OAK @10 PNTS/EACH (30 PTS)     |                       |
| 1 - 8" MAPLE (10 PTS)                  |                       |
| TOTAL POINTS = 40 PTS                  |                       |
| GRID SEGMENT 4                         | EXISTING TREES/SHRUBS |
| 1 - 12" ASH (15 PTS)                   |                       |
| 2 - 8" MAPLE @10 PNTS/EACH (20 PTS)    |                       |
| TOTAL POINTS = 35 PTS                  |                       |
| GRID SEGMENT 5                         | EXISTING TREES/SHRUBS |
| 1 - 12" HICKORY (15 PTS)               |                       |
| 2 - 8" MAPLE @10 PNTS/EACH (20 PTS)    |                       |
| 1 - 12" MAPLE (15 PTS)                 |                       |
| TOTAL POINTS = 50 PTS                  |                       |
| GRID SEGMENT 6                         | EXISTING TREES/SHRUBS |
| 1 - 12" HICKORY (15 PTS)               |                       |
| 2 - 8" MAPLE @10 PNTS/EACH (20 PTS)    |                       |
| 1 - 12" MAPLE (15 PTS)                 |                       |
| TOTAL POINTS = 50 PTS                  |                       |
| GRID SEGMENT 7                         | EXISTING TREES/SHRUBS |
| 1 - 8" OAK (10 PTS)                    |                       |
| 1 - 30" OAK (15 PTS)                   |                       |
| 1 - 12" MAPLE (15 PTS)                 |                       |
| TOTAL POINTS = 40 PTS                  |                       |
| GRID SEGMENT 8                         | EXISTING TREES/SHRUBS |
| 1 - 8" HICKORY (10 PTS)                |                       |
| 1 - 8" MAPLE (10 PTS)                  |                       |
| 1 - 30" OAK (15)                       |                       |
| TOTAL POINTS = 35 PTS                  |                       |
| GRID SEGMENT 9                         | EXISTING TREES/SHRUBS |
| 2 - 10" HICKORY @10 PNTS/EACH (20 PTS) |                       |
| 1 - 12" OAK (15 PTS)                   |                       |
| TOTAL POINTS = 35 PTS                  |                       |
| GRID SEGMENT 10                        | EXISTING TREES/SHRUBS |
| 2 - 12" HICKORY @15 PNTS/EACH (30 PTS) |                       |
| TOTAL POINTS = 35 PTS                  |                       |

NOTE: OWNER TO PLANT SPECIFIED PLANTINGS ABOVE OR EQUIVALENT PLANTINGS.



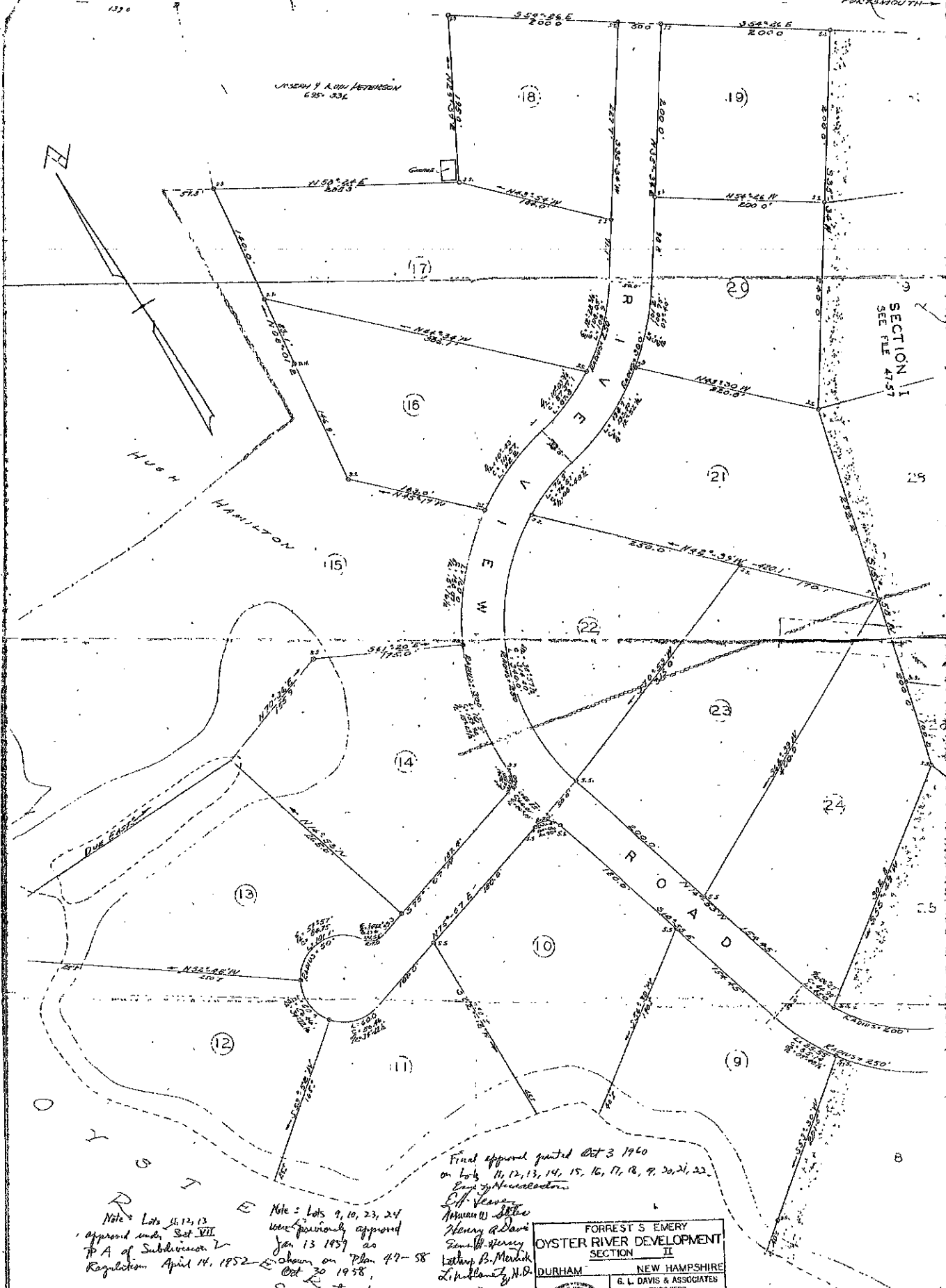
- NOTES:**
- THE PURPOSE OF THIS PLAN IS TO ACCOMPANY AN APPLICATION FOR A SHORELAND IMPACT PERMIT.
  - OWNER OF RECORD: HANCOCKSHIRE GOLF INC. 100 TURNING STREET CHATHAM, NH 02021 (NO. 2004-1477 PAGES 346)
  - LOT SIZE: 61,898 S.F. OR 1.42 AC.±
  - PRESENT ZONING DISTRICT: RESIDENCE (R2)
  - UNLAWFUL BUILDING SETBACKS: FROM = 30 FEET; SIDE = 30 FEET NEAR = 50 FEET WATER BODY = 50 FEET
  - LOT TO BE SERVED BY INDIVIDUAL WELL AND SEPTIC SYSTEM.
  - A PORTION OF THIS MAP IS NOT WITHIN THE 100 YEAR FLOOD PLAIN AS INTERPOLATED FROM THE FLOOD INSURANCE RATE MAP (FIRM) OF HANCOCKSHIRE COUNTY, NH, MAP NO. 3301000300, EFFECTIVE 4/24/2015.
  - NO. 10. INFORMATION NOTED WAS COMPILED FROM FIELD SURVEY BY THIS OFFICE AND REFERENCE PLAN.
  - PLANTINGS NOTED WERE BASED ON INQUIRY FOR GPS OBSERVATIONS BY THIS OFFICE ON MAY 15, 2024, BEING TIED TO "HANCOCKSHIRE" USING BASE STATION "TERRY" WITH AN ELEVATION LISTED AT 524.18' (CONVERTED TO NAD 83 USING HORIZONTAL).
  - ALL TECHNICAL WORK BY ANY INDIVIDUAL FOR PREPARATION OF THIS PLAN IS THE RESPONSIBILITY OF HANCOCKSHIRE GOLF INC. AND NOT THE INDIVIDUAL.

**PLAN REFERENCE:**  
CHATHAM RIVER DEVELOPMENT SECTION II, G.L. DAVIS & ASSOCIATES, OCT. 3, 1982, FILE 47-89 SORD PLAN #304 P0001, #4, FOLDER #3.

| 3                                                                                           |      |               |    |
|---------------------------------------------------------------------------------------------|------|---------------|----|
| 2                                                                                           |      |               |    |
| 1                                                                                           |      |               |    |
| NO.                                                                                         | DATE | REVISION      | BY |
| SHORELAND IMPACT PERMIT PLAN                                                                |      |               |    |
| 1 RIVERVIEW COURT, DORHAM, NEW HAMPSHIRE                                                    |      |               |    |
| MAP 214 - LOT 13                                                                            |      |               |    |
| PREPARED FOR: EAST WINFIELD REALTY, LLC.                                                    |      |               |    |
| P.O. BOX 4                                                                                  |      |               |    |
| SULLY, NH 03079                                                                             |      |               |    |
| PREPARED BY:                                                                                |      |               |    |
|                                                                                             |      |               |    |
| 300 MAIN STREET, SUITE 100, DORHAM, NH 03824                                                |      |               |    |
| NO. 10. INFORMATION NOTED WAS COMPILED FROM FIELD SURVEY BY THIS OFFICE AND REFERENCE PLAN. |      |               |    |
| SCALE: 1"=20'                                                                               |      | SHEET 1 OF 1  |    |
| APRIL 16, 2025                                                                              |      |               |    |
|                                                                                             |      |               |    |
| ZONING CLASS: RESIDENCE (R2)                                                                |      | JOB NO.: 8708 |    |
|                                                                                             |      | 1             |    |

# EXHIBIT D

U. S. ROUTE 4



SECTION II  
 SEE FILE 47-57

Note: Lots 11, 12, 13  
 approved under Set VII  
 P.A. of Subdivision L  
 Regulation April 14, 1952

Note: Lots 9, 10, 23, 24  
 were previously approved  
 Jan 13 1959 as  
 shown on Plan 47-58  
 Oct 30 1958  
 See minutes of  
 Durham Planning Board  
 Jan 13 1959

Final approval granted Oct 3 1960  
 on Lots 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22.  
 By the New Hampshire  
 Dept. of Resources  
 Edmund W. Stiles  
 Henry A. Davis  
 Samuel W. Hickey  
 Kenneth B. Merrill  
 L. H. Lamont, N.D.

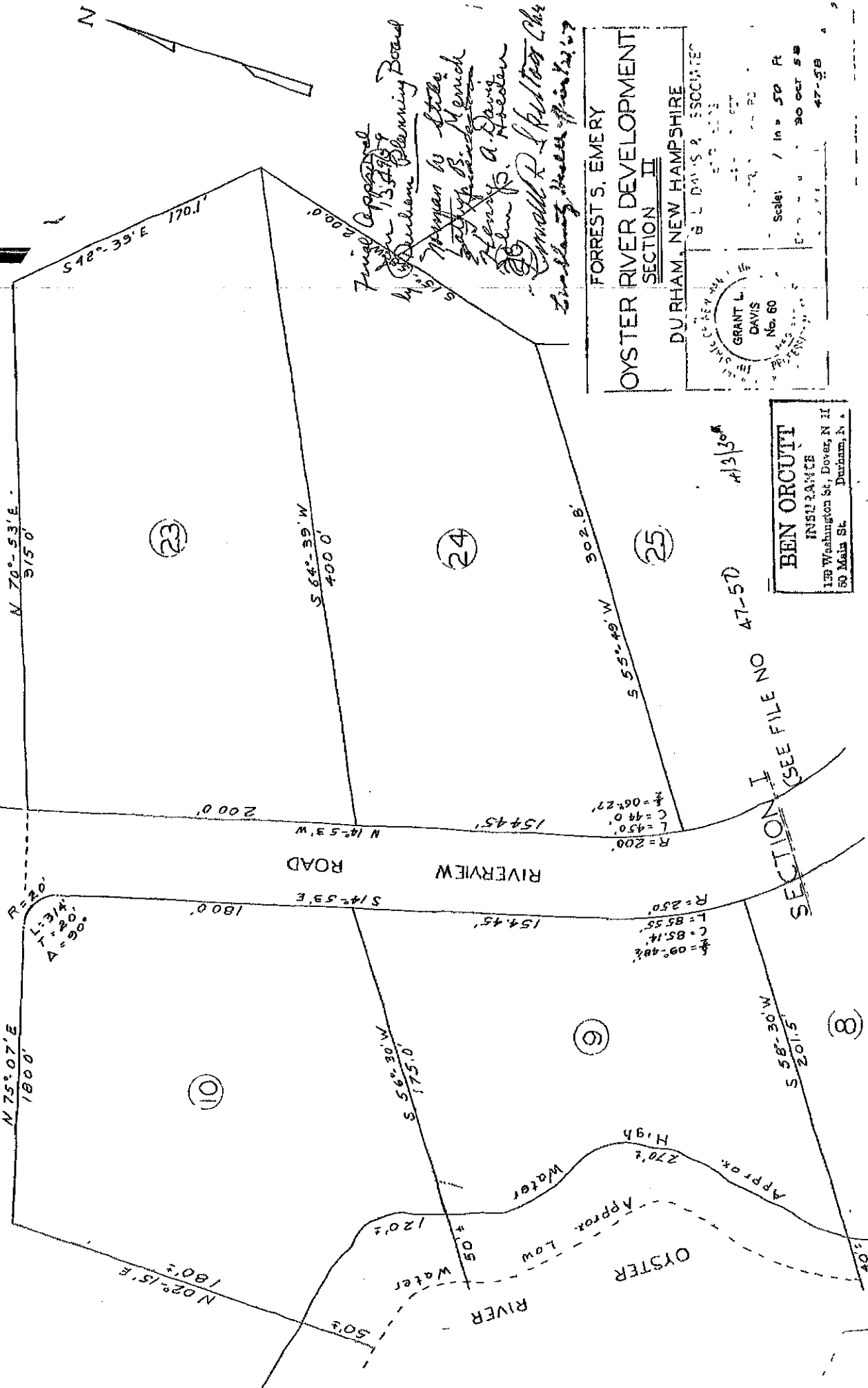
|                                                                                |                        |
|--------------------------------------------------------------------------------|------------------------|
| FORREST S. EMERY<br>OYSTER RIVER DEVELOPMENT<br>SECTION II                     |                        |
| DURHAM                                                                         | NEW HAMPSHIRE          |
| G. L. DAVIS & ASSOCIATES<br>ENGINEERS<br>44 ELM STREET<br>DOVER, NEW HAMPSHIRE |                        |
| Scale 1" = 50' PL.                                                             | DATE: JANUARY 15, 1959 |
| By 743                                                                         | 100 ft. 47-57          |

NOTE: This plan superseded a plan of  
 same title, dated January 15, 1959

# EXHIBIT E

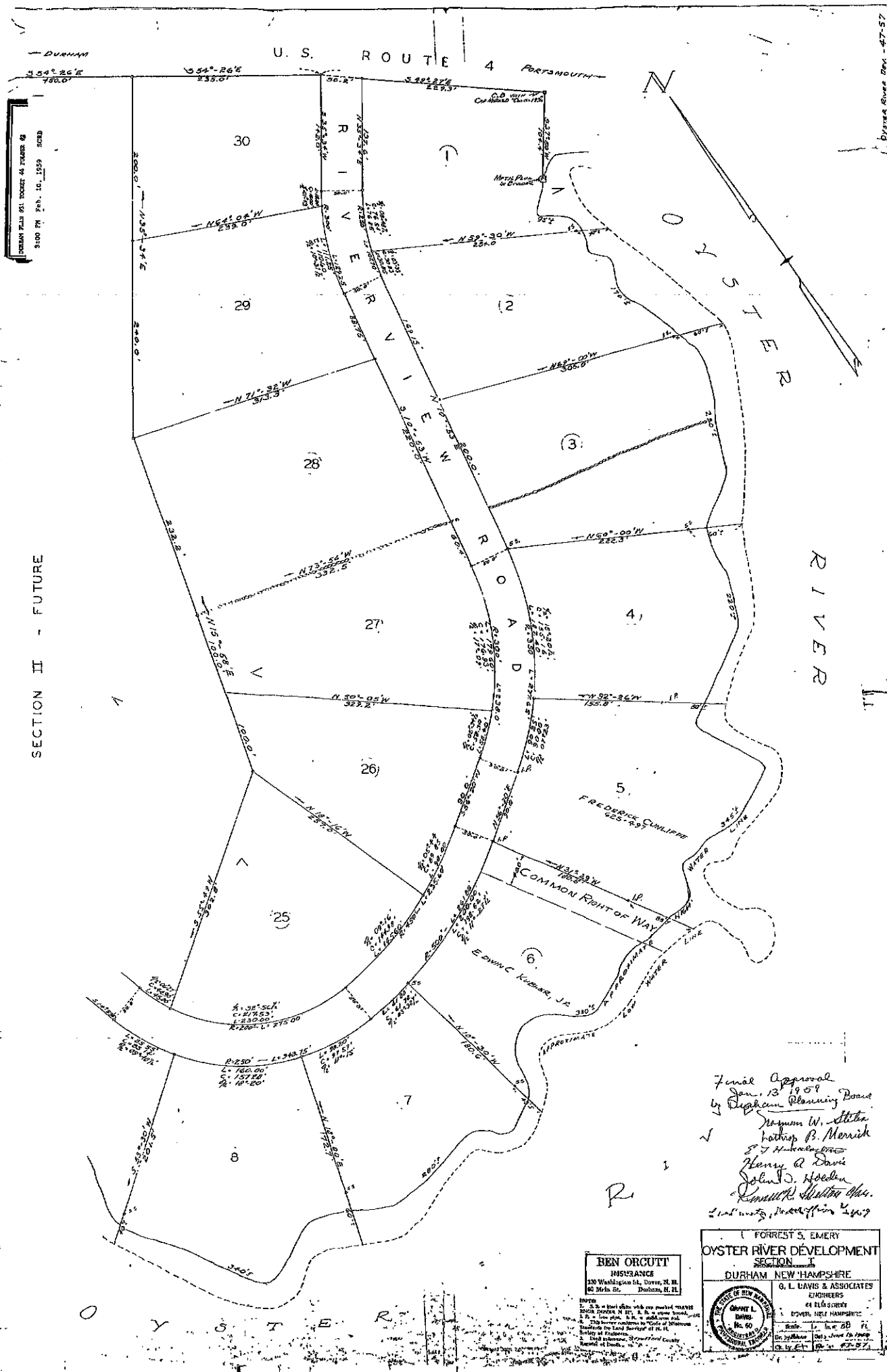
3:00 PM Feb. 10, 1959

SGRD



# EXHIBIT F

SECTION II - FUTURE



# EXHIBIT G

March 27, 2024

*Via Email Only*

Audrey Cline, CBO

Code Enforcement Officer/Health Officer

[acline@ci.durham.nh.us](mailto:acline@ci.durham.nh.us)

**Re: 1 Riverview Court – Request for Administrative Decision**

Dear Ms. Cline:

Our firm was hired to determine whether the unimproved lot located at 1 Riverview Court (the “Property”) is buildable for residential purposes under the Durham Zoning Ordinance (the “Ordinance”). The Property is also identified as Map 214, Lot 13, and is located in the Town’s Residence Coastal (“RC”) District, Shoreland Protection Overlay District (“SPOD”), Wetland Conservation Overlay District (“WCOD”), and Flood Hazard Overlay District (“FHOD”). The Property is approximately 1.42 acres (61,855.2 square feet). Based on our review of the Ordinance, detailed below, the Property is *not* buildable for residential purposes. As such, we request that you render an administrative decision declaring the lot unbuildable.

***More Restrictive Minimum Lot Size***

Single-family residences are permitted in the RC District. Ordinance § 175-53. The minimum lot size for a single-family residence in the RC District is typically 150,000 square feet. But, the Ordinance provides a carve out for lots in the RC District existing as of July 1, 2003, which need be only 120,000 square feet to be considered conforming. *Id.* § 175-54. Either way, however, the Property is nonconforming because its area (61,855.2 square feet) is still well below both the typical lot area requirement (150,000 square feet) and the carve out (120,000 square feet).

The Ordinance purports to provide another carve out for nonconforming unimproved lots in the RC District. Specifically, a nonconforming unimproved lot in the RC District may be used for a single-family dwelling if certain conditions are met: (1) the lot must be in a district where the proposed use is permitted; (2) setback, yard, and height requirements must be met; (3) the Code Enforcement Officer must approve arrangements for water and sewer; and (4) *the lot must contain at least 5,000 square feet of area.* *Id.* § 175-29(A) (emphasis added). Reading this provision in isolation, it might appear the Property would be buildable for residential purposes because it exceeds the minimum lot size requirements (61,855.2 square feet against 5,000 square feet).

However, the Ordinance notes in several places the most restrictive limitations/standards apply when there is a conflict/inconsistency between provisions. For example, the Ordinance provides that “[w]here a provision of this [Ordinance] differs from that prescribed by any other applicable statute, ordinance or regulation, that provision which imposes the *greater restriction* or the *higher standard* shall govern.” *Id.* § 175-11 (emphasis added). Further, “[w]hen a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall

be resolved by applying the *most restrictive regulation*.” *Id.* § 175-37(F)(7) (emphasis added). This is also spelled out for each district, with the Ordinance explaining that all uses of land within the WCOD, SPOD, and FHOD “shall be in compliance with the standards and requirements of that district in addition to the provisions of the specific base zoning district.” *Id.* § 175-37(F)(1)–(3).

It may have been the case that Section § 175-29(A) was intended to make properties such as this Property buildable for residential purposes. But, without adding that section into the Ordinance and at the same time adding in language to expressly remove these types of pre-existing nonconforming lots from the portions of the Ordinance requiring application of the most restrictive requirements in the case of internal inconsistencies (including the above-referenced Sections 175-11, 175-37(F)(7), and 175-37(F)(1)–(3)), the Ordinance must be read as a whole.

As between the base 150,000/120,000 square foot minimum lot size requirement for the RC District (Section 175-54) and the 5,000 square foot minimum lot size requirement for a nonconforming vacant lot (Section 175-29(A)(4)), the base RC District requirement is clearly the higher standard/greater restriction. This creates an internal inconsistency within the Ordinance, because one cannot apply the 5,000 square foot minimum lot size requirement of Section 175-29(A)(4) without violating the Ordinance’s mandate that the most restrictive regulations (i.e., the 150,000/120,000 square foot requirement) be applied.

In other words, the only way to apply the 5,000 square foot minimum lot size requirement of Section 175-29(A)(4) would be to ignore the provisions of the Ordinance (e.g., §§ 175-11, 175-37(F)) that require that the stricter provision always be applied. This is illegal and impermissible under New Hampshire law, which observes that every word of a statute—such as the Ordinance—be given effect whenever possible. *See White v. Auger*, 171 N.H. 660, 666 (2019). In sum, the various provisions of the Ordinance calling for the highest standards to be applied cannot be ignored, so the more-restrictive 150,000/120,000 square foot minimum lot size requirement for the RC District likewise cannot be ignored in this case.

As such, the Property is not buildable for residential purposes. Applying the more-restrictive 150,000/120,000 square foot minimum lot size requirement for single-family residences—as required by the Ordinance and New Hampshire law—the Property’s 61,855.2 square feet fall well short.

### ***Insufficient Usable Area***

What is more, much of the Property likely cannot be counted towards the minimum lot area requirement due to the way usable area is calculated. Per the Ordinance, “[t]he usable area of a parcel of land shall be determined by subtracting . . . unsuitable areas from the gross area of the parcel.” *Id.* § 175-56(G). “Unsuitable areas” include (1) all very poorly drained, poorly drained, and somewhat poorly drained soils (identified on a High Intensity Soil Survey (HISS)) and (2) all floodways and all non-wetland portions of the 100-year floodplain. *Id.* § (G)(1)–(2).

According to the Town's soils map (attached as **Exhibit A**), at least part of the Property has very poorly drained soils, and a HISS could reveal that the extent is even greater. Additionally, the FEMA flood map (attached as **Exhibit B**) shows a significant swath of the Property in the floodplain. Indeed, much of the Property is often flooded. Once all unsuitable areas are subtracted from the Property's total area, the Property's usable area would fall well below 1.42 acres, perhaps to even less than 5,000 square feet (which, as explained above, is not even the appropriate minimum standard to be applied). The Property's lack of usable area also forecloses development.

### ***Conclusion***

The Property is not buildable for residential purposes because it does not meet the RC District's 150,000/120,000 square foot minimum lot size requirement. This is especially true because the actual usable area of the Property is likely well below its 1.42-acre size once unsuitable areas are subtracted. Therefore, we request that you issue an administrative decision declaring the Property unbuildable.

If you determine that the Property *is* buildable for residential uses, though we hope you will not, our clients may exercise their right to appeal the decision to the Town of Durham's Zoning Board of Adjustment ("ZBA") as state laws RSA 674:33, I(a)(1) and RSA 676:5 require. The deadline is within thirty (30) days, as section D(1)(b) of the ZBA's Rules of Procedure prescribes. If the ZBA also determines that the Property is buildable, my clients may request a rehearing within thirty (30) days of that determination as state law RSA 677:2 requires. If the ZBA denies the request for rehearing or upholds its decision on rehearing, my clients may have me file an appeal to the Superior Court within the thirty (30) day deadline set forth in state law RSA 677:4 to start the court appeal process, which lasts several months. To be clear, my clients' goal throughout this potentially year-long appellate process would be to seek a court order that any determination that the lot is buildable would be unlawful or unreasonable.

Please let me know if you have any questions or concerns.

Very truly yours,



Amy Manzelli, Esq.  
Licensed in New Hampshire  
(603) 225-2585  
manzelli@nhlandlaw.com

Cc: Clients  
Fred Attalla email only to fredattalla@gamil.com; attalla@comcast.net

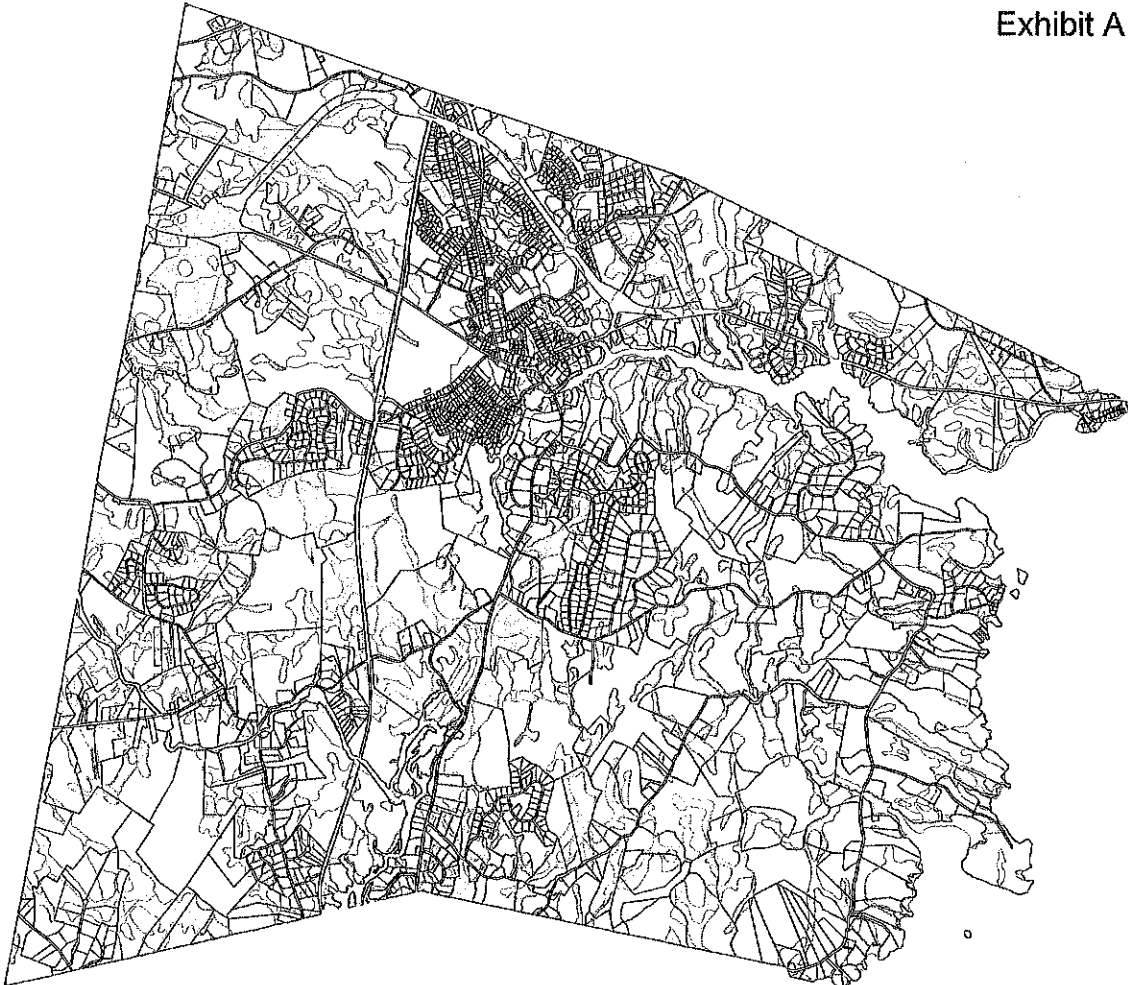
Exhibit A

## Town of Durham Soils Map

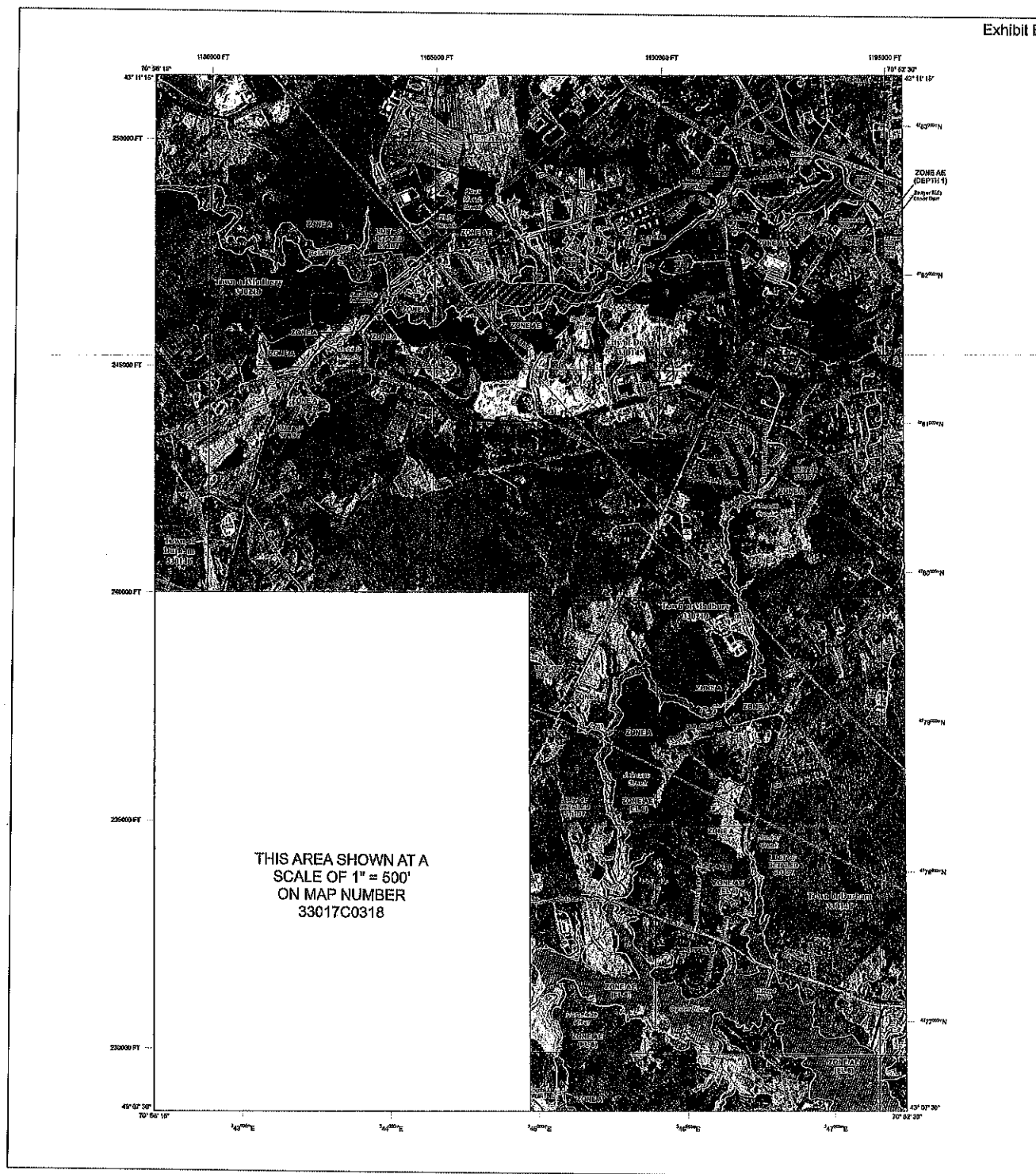


### Soil Types

-  Moderately well drained
-  Poorly drained
-  Very poorly drained



Map produced October 15, 2007 by Karen Edwards and updated  
September 2015. Data dated 2008 and taken from NH GRANIT  
Database. All GIS data used to create this map  
was georeferenced to New Hampshire State Plane  
Coordinate System, North American Datum "NAD83/B6," feet as units.



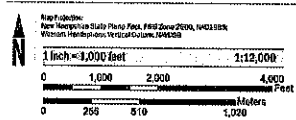
## FLOOD HAZARD INFORMATION

| SEEHS REPORT FOR ZONE DESCRIPTIONS                                                                                                                              |                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| THE INFORMATION DEPICTED ON THIS MAP AND SUPPORTING DOCUMENTATION ARE ALSO AVAILABLE IN DIGITAL FORMAT AT <a href="http://msc.fema.gov">HTTP://MSC.FEMA.GOV</a> |                                                                                                                                                                    |
| <b>SPECIAL FLOOD HAZARD AREAS</b>                                                                                                                               | Without these Flood Deviation (OFF) Zone A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z                                              |
| <b>OTHER AREAS OF FLOOD HAZARD</b>                                                                                                                              | Regulatory Floodway                                                                                                                                                |
| <b>OTHER AREAS</b>                                                                                                                                              | 0.2% Annual Chance Flood Hazard, Areas of 1% Annual Chance Flood with average depth less than one foot or with discharge areas of less than one square mile Zone X |
| <b>GENERAL STRUCTURES</b>                                                                                                                                       | Future Conditions 1% Annual Chance Flood Hazard Zone X                                                                                                             |
| <b>OTHER FEATURES</b>                                                                                                                                           | Area with Reduced Flood Risk due to Levee                                                                                                                          |
|                                                                                                                                                                 | Coastal Zone X                                                                                                                                                     |
|                                                                                                                                                                 | Areas Determined to be Outside the 0.2% Annual Chance Floodplain Zone X                                                                                            |
|                                                                                                                                                                 | Area of Undetermined Flood Hazard Zone D                                                                                                                           |
|                                                                                                                                                                 | Channel, Culvert, or Storm Sewer Accredited or Flood/Seawall Accredited Levee, Dike, or Floodwall                                                                  |
|                                                                                                                                                                 | Non-consulted Levee, Dike, or Floodwall                                                                                                                            |
|                                                                                                                                                                 | Cross Sections with 1% Annual Chance Wholer Surface Elevation (BFE)                                                                                                |
|                                                                                                                                                                 | Coastal Trenchcut                                                                                                                                                  |
|                                                                                                                                                                 | Coastal Trenchcut Baseline                                                                                                                                         |
|                                                                                                                                                                 | Profile Baseline                                                                                                                                                   |
|                                                                                                                                                                 | Hydrographic Feature                                                                                                                                               |
|                                                                                                                                                                 | Base Flood Elevation Line (BFE)                                                                                                                                    |
|                                                                                                                                                                 | Coast of Study                                                                                                                                                     |
|                                                                                                                                                                 | Jurisdiction Boundary                                                                                                                                              |

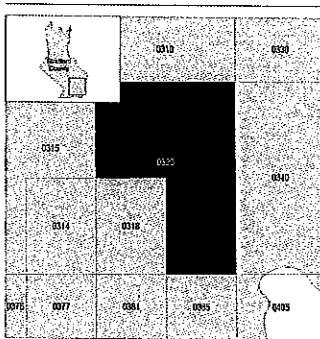
## NOTES TO USERS

For information and questions about this report, including product assistance with the digital product, contact the FEMA Flood Insurance Study (FIS) at 1-800-358-2247 or visit the FEMA Flood Insurance Study website at [www.fema.gov/floodinsurance](http://www.fema.gov/floodinsurance). For more information, contact the FEMA Flood Insurance Study at 1-800-358-2247 or visit the FEMA Flood Insurance Study website at [www.fema.gov/floodinsurance](http://www.fema.gov/floodinsurance). For more information, contact the FEMA Flood Insurance Study at 1-800-358-2247 or visit the FEMA Flood Insurance Study website at [www.fema.gov/floodinsurance](http://www.fema.gov/floodinsurance).

## SCALE



## PANEL LOCATOR



## NATIONAL FLOOD INSURANCE PROGRAM FLOOD INSURANCE RATE MAP

STRAFFORD COUNTY, NEW HAMPSHIRE  
FIRM 320-405



| COMMUNITY        | NUMBER | PANEL | SUFFIX |
|------------------|--------|-------|--------|
| STRAFFORD COUNTY | 33018  | 0320  | E      |
| STRAFFORD COUNTY | 33018  | 0320  | F      |
| STRAFFORD COUNTY | 33018  | 0320  | G      |

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