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July 2, 2021

**VIA EMAIL:** [Dianne.h.martin@puc.nh.gov](mailto:Dianne.h.martin@puc.nh.gov)

Ms. Dianne Martin  
New Hampshire Site Evaluation Committee  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

**Re: SEC Docket No. 2021-01 Petition for Jurisdiction over Proposed Solar Energy Facility in Milford, NH**

Dear Chairwoman Martin:

On behalf of Brox Environmental Citizens and pursuant to an Assented to Motion for Deliberations submitted June 25, 2021, please find enclosed for filing in the above captioned matter a copy of a Supplemental Filing in Support of Petition for Jurisdiction. A copy of the enclosed filing has also been sent electronically to all persons listed on the Committee's official Service List for this docket. Please let me know if you have any questions regarding this filing.

Most Sincerely,

A. Eli Leino

AEL:rjj/4883616.1

Enclosures

cc: All Parties of Record on SEC Docket 2021-01 Service List  
Suzanne Fournier

**Petition for Jurisdiction Over Proposed solar Energy Facility in  
Milford, NH**

**SEC Docket 2021-01  
Service List**

**Subcommittee Members**

Chair, Public Utilities Commission Dianne Martin, Chair 21 South Fruit Street, Suite 10 Concord, NH 03301 <a href="mailto:Dianne.h.Martin@puc.nh.gov">Dianne.h.Martin@puc.nh.gov</a> Tel. (603) 271-2437	Department of Environmental Services Designee Michael Fitzgerald 29 Hazen Drive, PO Box 95 Concord, NH 03302-0095 <a href="mailto:william.m.fitzgerald@des.nh.gov">william.m.fitzgerald@des.nh.gov</a> Tel: (603) 271-2958 Cell: (603) 491-4142
Commissioner, Public Utilities Commission Kathryn M. Bailey 21 South Fruit Street, Suite 10 Concord, NH 03301 <a href="mailto:Kate.Bailey@puc.nh.gov">Kate.Bailey@puc.nh.gov</a> Tel: (603) 271-2437	State Librarian, Department of Natural and Cultural Resources Designee Michael C. York 172 Pembroke Road P.O. Box 1856 Concord, NH 03301 <a href="mailto:michael.york@dncr.nh.gov">michael.york@dncr.nh.gov</a> Tel: (603) 271-2397
Commissioner, Department of Transportation Victoria Sheehan 7 Hazen Drive, PO Box 483 Concord, NH 03302-0483 <a href="mailto:Victoria.Sheehan@dot.nh.gov">Victoria.Sheehan@dot.nh.gov</a> Tel. (603) 271-1484	Public Member Robert A. Baines Manchester, NH <a href="mailto:bobbaines@outlook.com">bobbaines@outlook.com</a> Term: September 20, 2018 - September 20, 2022
Public Member Lisa R. Noe Laconia, NH <a href="mailto:lnoe@metrocast.net">lnoe@metrocast.net</a> Term: :April 17, 2019 - March 27, 2023	

**Committee Staff**

SEC:Admin <a href="mailto:admin@sec.nh.gov">admin@sec.nh.gov</a>	Jody Carmody <a href="mailto:jody.m.carmody@puc.nh.gov">jody.m.carmody@puc.nh.gov</a>
Attorney Department of Justice JD Lavallee 33 Capitol Street Concord, NH 03301 <a href="mailto:jon.lavallee@doj.nh.gov">jon.lavallee@doj.nh.gov</a>	Chairwoman, Public Utilities Commission Dianne Martin <a href="mailto:dianne.h.martin@puc.nh.gov">dianne.h.martin@puc.nh.gov</a>

**Petition for Jurisdiction Over Proposed solar Energy Facility in  
Milford, NH**

**SEC Docket 2021-01  
Service List**

**Parties**

Brox Environmental Citizens c/o Suzanne Fournier, Coordinator 9 Woodward Drive Milford, NH 03055-3122 <a href="mailto:broxEnvironCitizens2@comcast.net">broxEnvironCitizens2@comcast.net</a>	Granite Apollo, LLC Olivewood Energy 114 N. Main Street, 4 <sup>th</sup> Floor Concord, NH 03301 <a href="mailto:dom@olivewoodenergy.com">dom@olivewoodenergy.com</a>
Michael Caplan Milford Spartan Solar, LLC c/o Olivewood Energy LLC 470 James St., Suite 7 New Haven, CT 06513 <a href="mailto:mike@olivewoodenergy.com">mike@olivewoodenergy.com</a>	Barry Needleman McLane Middleton 11 South Main St., Suite 500 Concord, NH 03301 <a href="mailto:Barry.needleman@mclane.com">Barry.needleman@mclane.com</a>
John J. Ratigan Town of Milford Donahue, Tucker & Ciandella, PLLC 16 Acadia Lane, P.O. Box 630 Exeter, NH 03833-4936 <a href="mailto:jratigan@dtclawyers.com">jratigan@dtclawyers.com</a>	Counsel Brox Environmental Citizens A Eli Leino Primmer Piper Eggleston & Crammer PC 900 Elm St., 19 <sup>th</sup> Floor PO Box 3600 Manchester, NH 03105 <a href="mailto:eleino@primmer.com">eleino@primmer.com</a>
Eli Leino, Esq. Primmer Piper Eggleston & Cramer 900 Elm St., 19 <sup>th</sup> Floor, P.O. Box 3600 Manchester, NH 03101 <a href="mailto:eleino@primmer.com">eleino@primmer.com</a>	

**Interested Persons**

Annie Ropeik New Hampshire Public Radio <a href="mailto:aropeik@nhpr.org">aropeik@nhpr.org</a>	Michael J. Iacopino Brennan Lenehan 85 Brook St. Manchester, NH 03104 <a href="mailto:miacopino@brennanlenehan.com">miacopino@brennanlenehan.com</a>
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**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2021-01**

**Petition for Jurisdiction  
Over Proposed Solar Energy Facility in Milford, NH**

**BROX ENVIRONMENTAL CITIZENS’  
SUPPLEMENTAL FILING IN SUPPORT OF PETITION**

NOW COMES Brox Environmental Citizens, an unincorporated association with an address of 9 Woodward Drive, Milford, New Hampshire (the “Petitioner”), by and through its attorneys, Primmer Piper Eggleston & Cramer PC, and submits the following Supplemental Filing in support of its Petition for Jurisdiction filed with the New Hampshire Site Evaluation Committee (“SEC” or “Committee”) on December 4, 2020.

**INTRODUCTION**

Brox Environmental Citizens respectfully requests this Committee assert jurisdiction, pursuant to RSA 162-H:2, XII, over the proposed 16 MW solar facility that Milford Spartan Solar, LLC (“Spartan Solar”) seeks to construct in the Town of Milford, Hillsborough County, New Hampshire (the “Facility”). Petitioner has previously submitted documents detailing the benefits of SEC review of the Spartan Solar project in light of the significant proposed environmental impact. This document is intended to supplement the Petitioner’s Petition (*Pro Se*) for Jurisdiction of Proposed Solar Energy in Milford, NH; Objection (*Pro Se*) to Milford Spartan Solar, LLC’s Motion to Dismiss Petition for Jurisdiction; and Motion (*Pro Se*) to Amend the Petition to Remedy Deficiencies.

In addition to the arguments set forth in the *pro se* filings referenced above, Petitioner further contends that SEC jurisdiction is necessary as the Facility is proposed to be constructed, in part, on land owned and leased by the Town of Milford (the “Town”) and, in part, on private land which enjoys Current Use taxation status. Without the Facility, the Town’s property tax income derives from the private land resulting in approximately \$16,000 over 40 years versus \$3.23 million in tax revenue generated by the Facility based on Spartan Solar estimates. From both lease and tax income, the Town would reap significant financial benefit from the Facility while serving

as its own permitting authority through its Zoning and Planning Boards. The clear potential of bias here is so significant that the SEC should take jurisdiction to insure the impartial consideration of RSA 162-H:16 and the potential issuance of a certificate.

### **STANDARD OF REVIEW**

RSA 162-H:2, XII provides that the Committee may assert jurisdiction over a renewable energy facility, which shall include electric generating station equipment powered by solar technologies, with a nameplate capacity from 5 MW to 30 MW that the SEC “determines requires a certificate, consistent with the findings and purposes of RSA 162-H:1.”

To assert jurisdiction, the Committee must determine whether a certificate is required to meet one of the following criteria:

(1) Maintain a balance between the environment and the need for new energy facilities in New Hampshire;

(2) Avoid undue delay in the construction of needed facilities and provide full and timely consideration of environmental consequences;

(3) Ensure that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and

(4) Ensure that the construction and operation of energy facilities are treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion.

*See* RSA 162-H:1; Brief of Timbertop Wind I, LLC, SEC Docket 2012-04 at 5.

### **ARGUMENT**

#### **1. Asserting jurisdiction over the Spartan Solar project is necessary to maintain a balance between the environment and the need for new energy facilities in New Hampshire.**

In its previous filings, Petitioner has suggested the following environmental benefits of SEC jurisdiction:

- Evaluate what impacts there might be to the recreational trail network and impacts to the trails themselves that fall within the 83-acre Site. [Spartan Solar] has noted that trails may need to be relocated.
- Evaluate the impacts to air and water quality from large-scale deforestation; that is, the loss of trees, shrubs and other vegetation that sequester carbon and cleanse water.
- Evaluate the effects on wetlands of solar panels that would be installed on both sides of Birch Brook and its associated wetlands. Birch Brook is designated as a second order stream in the Town's zoning ordinance that is given a 50-foot buffer.

- Evaluate the effects on vernal pools and vernal-pool-dependent wildlife, as well as the overall functioning of the wetland complex of interrelated and interdependent uplands and wetlands.
- Evaluate what impacts there would be to the sensitive habitat of populations of three documented significant wildlife species, state-listed, that inhabit the Site—the Blanding's Turtle, the Spotted Turtle, and the Eastern Hognose Snake.

See Petition for Jurisdiction of Proposed Solar Energy in Milford, NH, SEC Docket 2021-01 at 4.

In furtherance of these assertions, the Petitioner files the following 19 exhibits for SEC consideration:

Exhibit 1	Aerial of the 83 acres—with and without the solar panels
Exhibit 2	Rare and Threatened and Endangered Species – Natural Heritage Bureau report
Exhibit 3a	Impacts to the 3 Threatened and Endangered species-threats described
Exhibit 3b	Dead Spotted Turtle on the private side 7/10/2019
Exhibit 4	Heron Pond's Great Blue Heron Colony
Exhibit 5	Map of hundreds of contiguous, undeveloped acres
Exhibit 6	Groundwater protection area
Exhibit 7	Highest ranked habitat – Wildlife Action Plan, map of Milford, NH
Exhibit 8	Trail network
Exhibit 9	Citizens engage in land-based activities
Exhibit 10	Haul road through site used by Lorden gravel operation
Exhibit 11	Private land is assessed as farmland
Exhibit 12	Birch Brook and Conservation Land—safe havens
Exhibit 13	NH Fish & Game's 3-year Threatened and Endangered Species study—no report
Exhibit 14	Visibility issue from the school's property
Exhibit 15	Local impacts to air and water quality
Exhibit 16	Wetlands, vernal pools and Birch Brook
Exhibit 17	Effects on vernal pools—400 foot buffers needed
Exhibit 18	Functioning of the wetland complex

**2. The Town of Milford through its various municipal permitting boards is not equipped or inclined to ensure that the construction and operation of the Facility are treated as significant aspects of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion.**

New Hampshire has abundant case law regarding the high standard of impartiality required of municipal permitting boards. The New Hampshire Supreme Court opined in *Winslow v. Town of Holderness Planning Board*, “Our State Constitution demands that all judges be ‘as impartial as the lot of humanity will admit.’ N.H. CONST. pt. I, art. 35. This applies similarly to members

of boards acting in a quasi-judicial capacity.” 125 N.H. 262, 266 (1984)(quoting *N.H. Milk Dealers' Ass'n v. Milk Control Board*, 107 N.H. 335, 338–39 (1966)). In *Winslow*, the court further reasoned that it would refer “to the action of a planning board as ‘quasi-judicial,’ because such boards need not provide all the procedural safeguards required in a court of law. At 267 (citations omitted).

In the present matter, Spartan Solar has partnered with the Town in a substantial economic venture, and the Town (through its quasi-judicial boards) cannot be trusted to act impartially. Furthermore, by his own admission, one member of the Milford Planning Board owned the private portion of the proposed development site, continues to receive certain mail for the current owner, and is employed to do work on site. In light of the perceived conflicts, it is unclear that the Town will fairly review the environmental, economic, and technical issues related to this application, and should cede jurisdiction to the Site Evaluation Committee.

**A) The apparent conflicts of interest are so significant that the SEC should take jurisdiction as a neutral party.**

In its position as landowner and future landlord, the Town of Milford is poised to earn \$6.3 million from the lease of the Brox Community Lands. *See* Testimony of Dominic Lebel, Milford Spartan Solar, Planning and Zoning Board Joint Hearing, May 19, 2020 (<http://gtm.milford.nh.gov/CablecastPublicSite/show/1596?channel=2>). The Town solicited proposals for solar development and is not unbiased about the development of the Facility.

The Town’s Planning and Zoning Boards should not be in a position of evaluating the Facility’s benefits and impacts because they cannot be expected to effectively balance the competing site evaluation and permitting criteria against the Town’s potential financial gain. At the Joint Hearing, Mr. Lebel noted that the Facility taxes would be “much, much greater” than are currently paid. *See* Joint Hearing at 38:10. Spartan Solar’s promise of a significant capital investment is understandably enticing, but the financial benefits depend on understanding energy markets, which the Town is not qualified to evaluate. Furthermore, the Facility could have a significant impact on the electric grid, something the Town is not qualified to evaluate. There would be large, unmitigated impacts if, due to its desire to realize the available financial gains, the Town fails to properly vet the project and applicant. An efficient, unbiased remedy is readily available in SEC jurisdiction.

**B) Planning Board Member Amato's connections to the subject property indicate pre-judgment of the application.**

In addition to codifying the lofty standard of impartiality for public officials, our courts have also detailed the disqualifying effect of even one municipal board member's failure to meet those standards. In fact, "mere participation by one disqualified member [is] sufficient to invalidate the tribunal's decision because it [is] impossible to estimate the influence one member might have on his associates." *Rollins v. Connor*, 74 N.H. 456, 459 (1908). In *Rollins*, a board member presented before the same board prior to his appointment, and participated in deliberation and voting on the same matter following appointment. *Id.* The New Hampshire Supreme Court has detailed multiple analogous occurrences where a board member demonstrated that he was "not indifferent" and, therefore, that he prejudged the application, and ruled ultimately that the decision must be set aside. *See e.g. City of Dover v. Kimball*, 136 N.H. 441 (1992), at 445. The SEC in the present matter could promote efficient process by taking jurisdiction and mooting any allegations of prejudgment.

Regarding the Spartan Solar application, Planning Board Member Amato has significant connection to the subject property. By his own admission at the May 19, 2020 public hearing, he is the former owner of the property, was still listed as the property's contact mailing address for the Town Tax Assessor's office, and performs haying of the subject property on an annual basis. *See* Testimony of Amato, Joint Hearing at 48:40. Allowing the Milford Planning Board to retain jurisdiction gives rise to a challenge of how Member Amato's influence has already colored the opinion of the Board at large. In an effort to avoid undue delay while fairly considering the environmental, economic, and technical issues of the Spartan Solar application, it is clear that the Site Evaluation Committee is the proper forum, and that the thresholds for SEC jurisdiction have been met. As such, the Petitioner respectfully requests that the SEC elects to assert jurisdiction pursuant to RSA 162-H:2, XII.



Respectfully submitted,

Brox Environmental Citizens  
By Its Attorneys  
Primmer Piper Eggleston & Cramer PC



Dated: July 2, 2021

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A. Eli Leino, Esq./NH Bar #269065  
900 Elm St., 19<sup>th</sup> FL  
Manchester, NH 03101  
603-626-3338  
[eleino@primmer.com](mailto:eleino@primmer.com)

**Exhibit #1 -- overview showing the 83 acres – forests, wetlands, vernal pools, wetland complex, open field – farm land – first image is without the solar panels, second image shows the solar panels covering forests and farm land with construction near wetlands and crossing wetlands.**

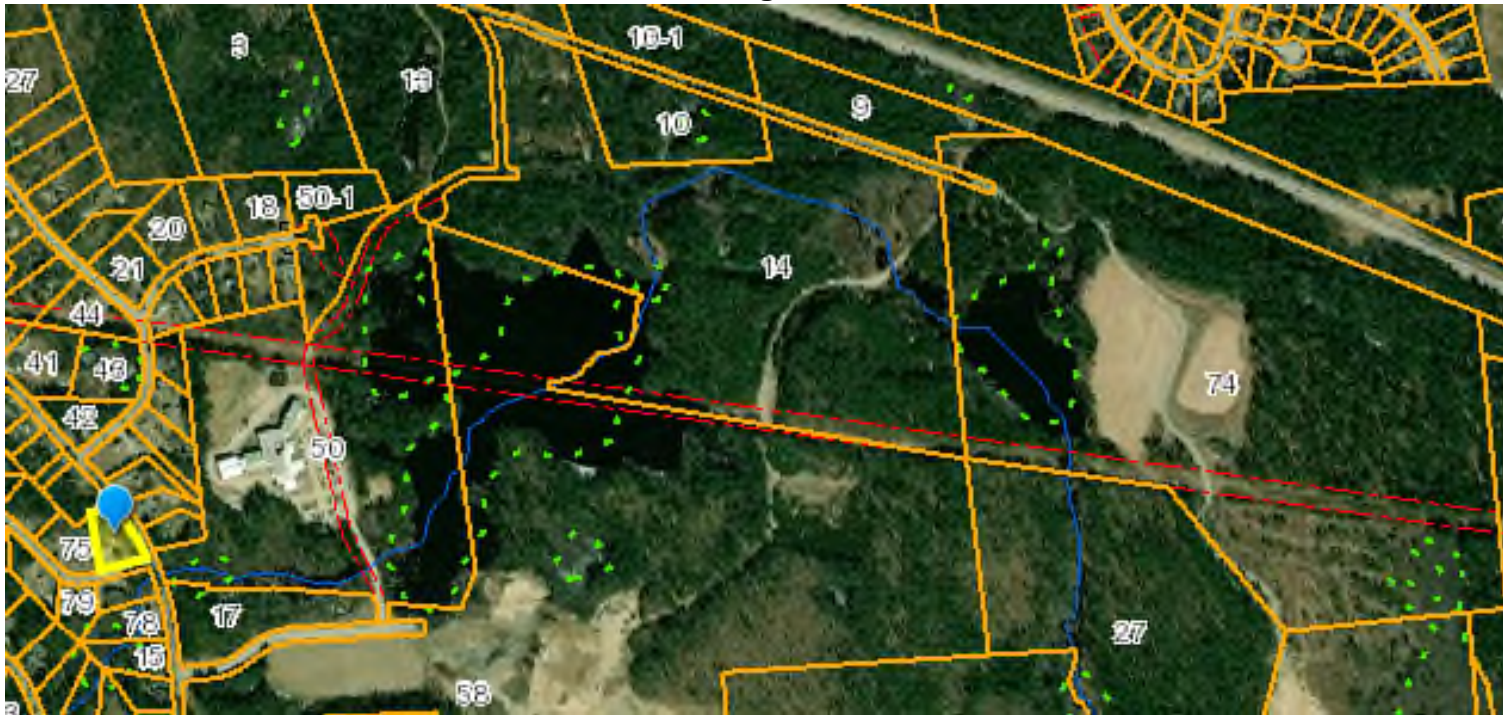


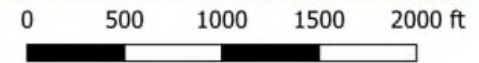
Image below is from the Town's GIS system – aerial date = 4/3/2019



# Preliminary Layout: Feedback and Insights?



Milford Spartan Solar - Site Overview





**Exhibit #2: Rare, Threatened & Endangered Species, Natural Heritage Bureau Report provided to Dr. Ryan who conducted the Brox Property Natural Resources Inventory, report dated March 2015.**

**Memo**



NH NATURAL **HERITAGE** BUREAU  
NHB DATACHECK RESULTS LETTER

**To:** Kevin Ryan, FB Environmental  
97A Exchange Street, Suite 305  
Portland, ME 04101

**From:** Melissa Coppola, NH Natural **Heritage** Bureau

**Date:** 10/30/2014 (valid for one year from this date)

**Re:** Review by NH Natural **Heritage** Bureau

NHB File ID: NHB14-4162

Town: Milford

Location: Accessible via Heron Pond Road in  
Milford

Description: The property may have built upon it a school, athletic fields, and cemetery. Soil/Gravel extraction may also take place.

cc: Kim Tuttle

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

**Vertebrate species**

	State <sup>1</sup>	Federal	Notes
American Eel ( <i>Anguilla rostrata</i> )*	SC	--	Contact the NH Fish & Game Dept (see below).
Bald Eagle ( <i>Haliaeetus leucocephalus</i> )	T	--	Contact the NH Fish & Game Dept (see below).
Banded Sunfish ( <i>Enneacanthus obesus</i> )	SC	--	Contact the NH Fish & Game Dept (see below).
Blanding's Turtle ( <i>Emydoidea blandingii</i> )	E	--	Contact the NH Fish & Game Dept (see below).
Eastern Hognose Snake ( <i>Heterodon platirhinos</i> )	E	--	Contact the NH Fish & Game Dept (see below).
Spotted Turtle ( <i>Clemmys guttata</i> )*	T	--	Contact the NH Fish & Game Dept (see below).
Wood Turtle ( <i>Glyptemys insculpta</i> )	SC	--	Contact the NH Fish & Game Dept (see below).

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

Contact for all animal reviews: Kim Tuttle, NH F&G, (603) 271-6544.

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

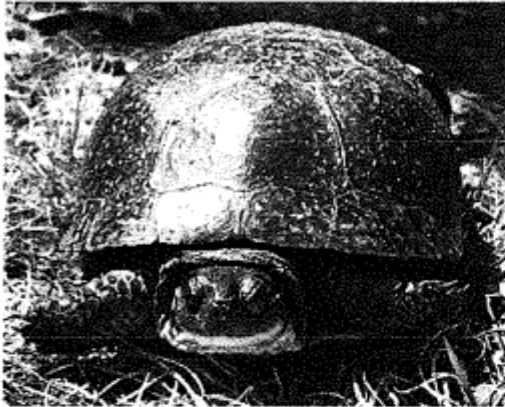
Department of Resources and Economic Development  
Division of Forests and Lands  
(603) 271-2214 fax: 271-6488

DRED/NHB  
PO Box 1856  
Concord NH 03302-1856

**Exhibit #3a: Impacts to Blanding's Turtle, Spotted turtle, and Hognose Snake – threats to existence as described by Fish & Game's Nongame & Endangered Wildlife Program.**

<https://www.wildlife.state.nh.us/wildlife/profiles/blandings-turtle.html>

## **Blanding's Turtle (*Emydoidea blandingii*)**



**NH Conservation Status:** State Endangered, Wildlife Action Plan Species in Greatest Need of Conservation. Legally protected in New Hampshire: possession, sale, import, and take (harm, harass, injuring, killing) is illegal.

**State Rank Status:** Critically imperiled (S1)

**Distribution:** Restricted to Southeastern NH

**Description:** A 7- to 9-inch turtle with yellow speckles that often run together to form streaks on the carapace. Easily identified when basking from its characteristic yellow throat and chin.

**Commonly Confused Species:** Spotted turtle; Box turtle

**Habitat:** Wetland habitats with permanent shallow water and emergent vegetation such as marshes, swamps, bogs, and ponds. Use vernal pools extensively in spring and while traveling through the landscape. May use slow rivers and streams as mechanisms for dispersal between wetlands. Extensive use of terrestrial habitats for nesting and travel among wetlands.

**Life History:** Eight to 10 eggs are deposited in sandy, loamy soils in upland areas in June. Nesting sites include disturbed soils, pastures, powerline corridors, roadsides, and yards. Hibernate in shrub swamps, ponds, and vernal pools. Blanding's turtles use a variety of wetland and terrestrial habitats and may travel extensively among them. Therefore, a key conservation strategy for the long-term survival of Blanding's turtles is the conservation of large undeveloped areas in southern New Hampshire.

**Conservation Threats:** Road mortality, Loss and/or alteration of wetland and terrestrial habitats, fragmentation, loss of nesting habitat, and increased abundance of subsidized predators.

## Spotted Turtle (*Clemmys guttata*)

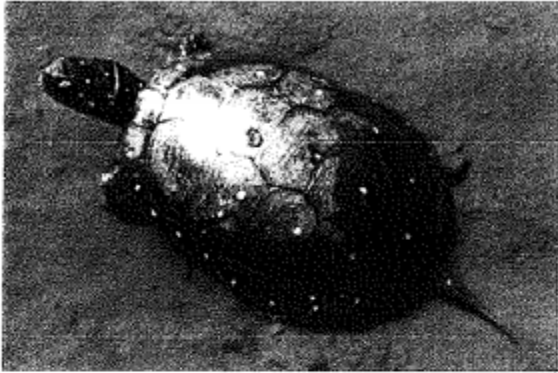


Photo © Kathy Davis

**NH Conservation Status:** State Threatened, Wildlife Action Plan Species in Greatest Need of Conservation. Legally protected in New Hampshire: possession, sale, import, and take (harm, harass, injuring, killing) is illegal.

**State Rank Status:** Imperiled (S2)

**Distribution:** Southeastern NH.

**Description:** A small 3-5 inch turtle recognized by numerous yellow spots covering a dark carapace. The number of spots is variable. Spots can also be found on the head and limbs.

**Commonly Confused Species:** Blanding's turtle.

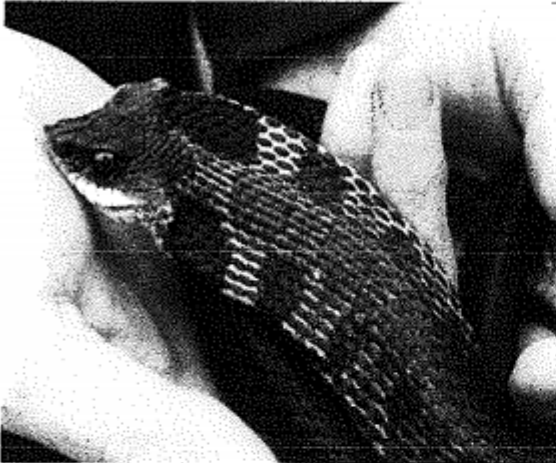
**Habitat:** Wetlands with shallow, permanent water bodies and emergent vegetation. Marshes, vernal pools, wet meadows, swamps, ponds, and slow-moving streams and rivers all provide suitable habitats for spotted turtles. Terrestrial habitat used extensively while searching for suitable nesting sites, traveling among wetland habitats, and periods of inactivity during high temperatures.

**Life History:** From June to July, 2-8 eggs are laid in open meadows, fields, or other disturbed habitats. Hibernates under tree or shrub roots in wetlands or vernal pools.

**Conservation Threats:** Terrestrial and wetland habitat loss and fragmentation, road mortality, collection by humans, and increases in the abundance of subsidized predators (e.g., raccoons)

<https://www.wildlife.state.nh.us/wildlife/profiles/hognose-snake.html>

## Eastern Hognose Snake (*Heterodon platirhinos*)



**NH Conservation Status:** State Endangered,  
Wildlife Action Plan Species in Greatest Need of Conservation

**State Rank Status:** Endangered.

**Distribution:** Southern NH along the Merrimack River, Concord to Massachusetts border.

**Description:** A thick-bodied snake measuring 20-35 inches. Has a characteristic upturned snout and keeled dorsal scales. Light and dark blotches vary in color from brown to red and orange. There is also a dark phase in which the body is almost uniform in and grayish-black color.

**Commonly Confused Species:** Garter snake; Timber rattlesnake

**Habitat:** Requires sandy, gravelly soils such as open fields, river valleys, pine forests, and upland hillsides. Feeds predominately on toads; therefore needs breeding habitat (e.g., wetlands, vernal pools) for amphibians.

**Life History:** During summer lays eggs a few inches underground or under woody debris. Hibernates in mammal burrows, under woody debris, or under trash piles. Has a dramatic defense display including hissing, mock striking, and playing dead.

**Conservation Threats:** Loss of habitat from rapidly developing southern New Hampshire; mortality on roadways, loss of amphibian populations; people killing individual snakes because of fear (hognose snakes are not dangerous to humans or pets!!...unless you are a toad).

**Exhibit #3b: Impacts to endangered turtles using the vernal pool on the private side of the project – a dead Spotted Turtle**

Photo below was taken by staff of F&G's Nongame & Endangered Wildlife Program July 10, 2019 along the gravel operation haul road near the vernal pool





**Exhibit #4: Heron Pond's Great Blue Heron Colony – photos taken June 16, 2021. In 2012 there were nine nests. Since then nature has taken down some of the dead trees resulting in there being three nests in 2021 according to reports by citizens.**

Photo by Suzanne Fournier show 2 of the 3 nests in the colony on 6/16/21



Photo by Suzanne Fournier shows the nest to the west closeup on 6/16/21.





Photo by Suzanne Fournier shows the nest to the east closeup on 6/16/21.





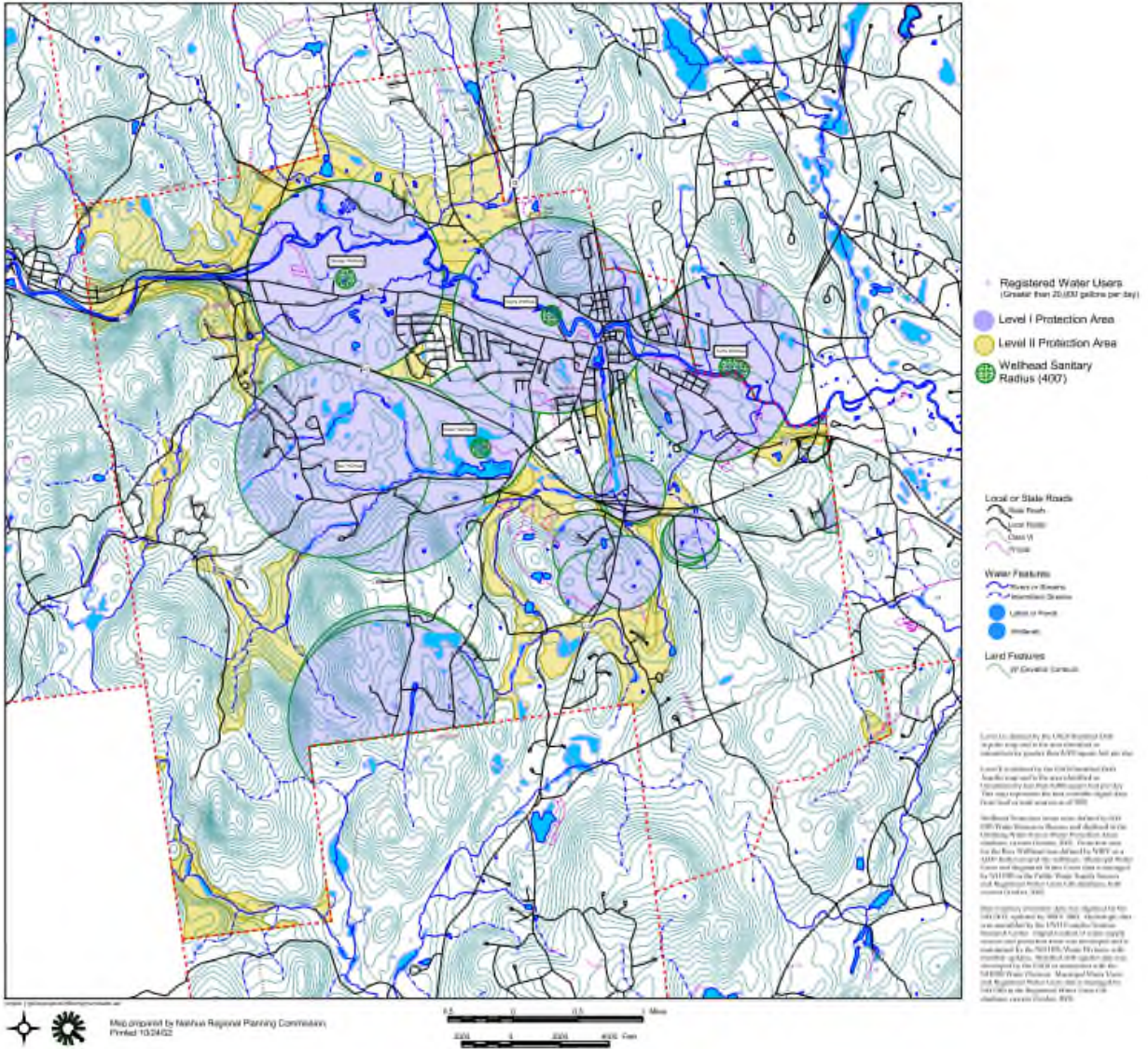
Exhibit #5: Hundreds of contiguous, undeveloped land, some of it shown below (it continues to almost 200 more acres owned by the Town of Milford – Hitchiner Forest).





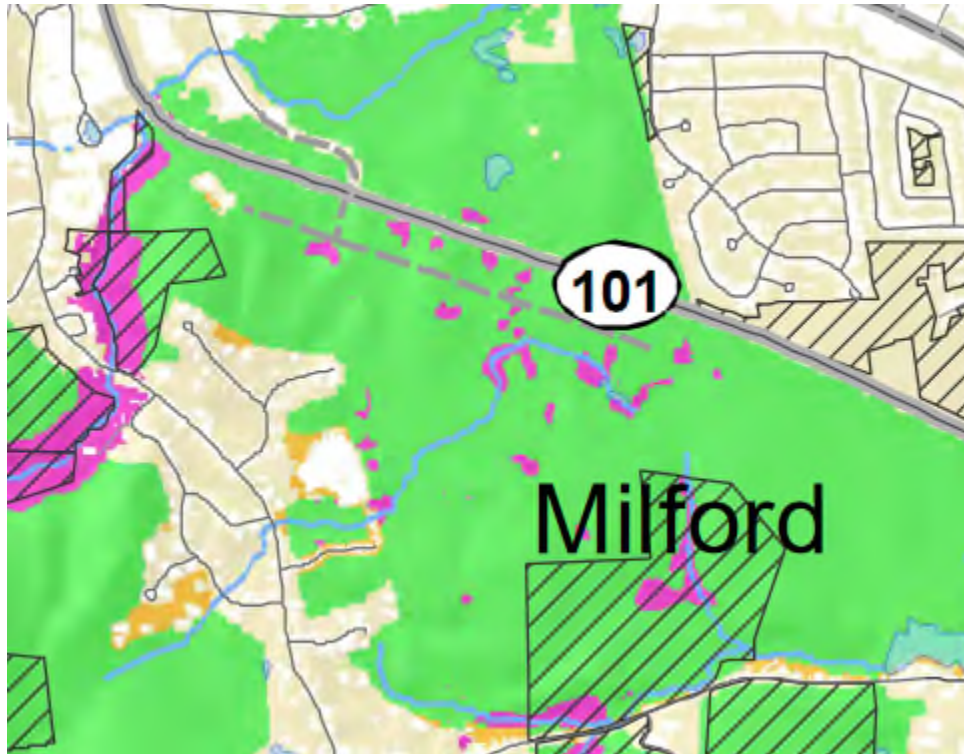
# Exhibit #6: Groundwater Protection Area Level I – NRPC map

## Groundwater Protection Area: Milford, NH



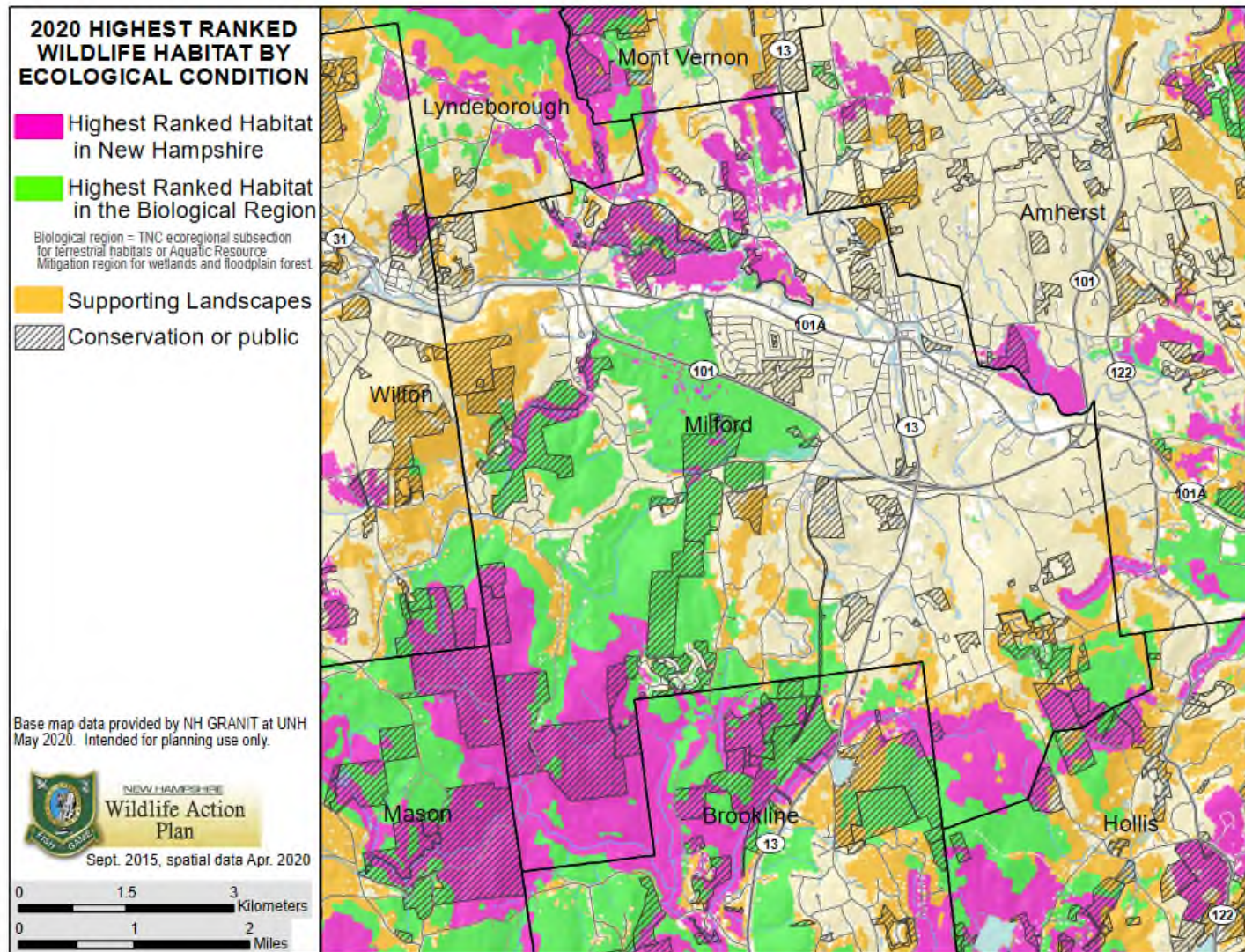
**Exhibit #7: The entire site is highest ranked habitat either in biological region (green color) or entire state (purple color) – Wildlife Action Plan <https://www.wildlife.state.nh.us/maps/wap/milford8x11scoring.pdf>**

For context, see full Milford map below this excerpt.





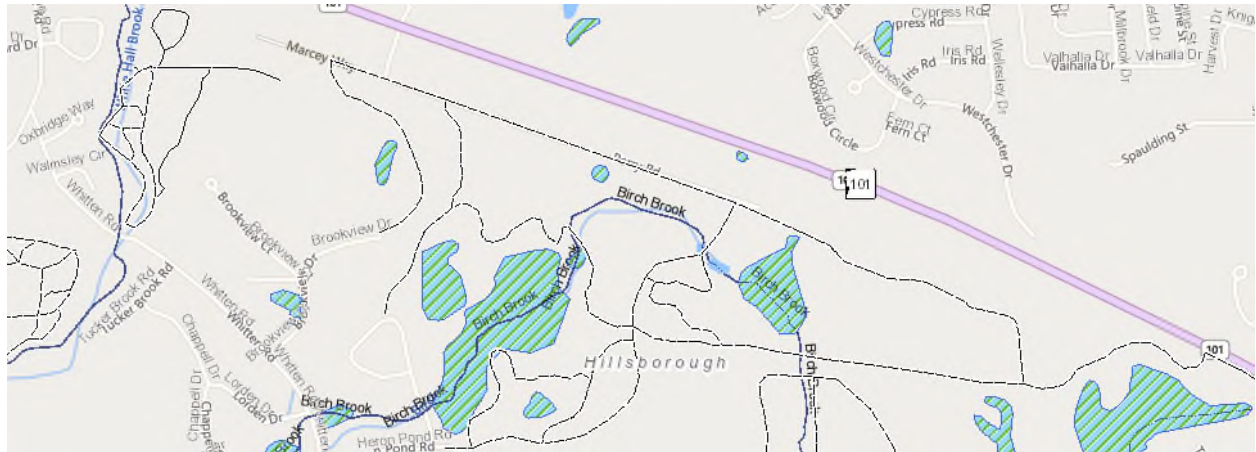
Below is the full Milford map. The project site is located where 101 is shown above the name of Milford.



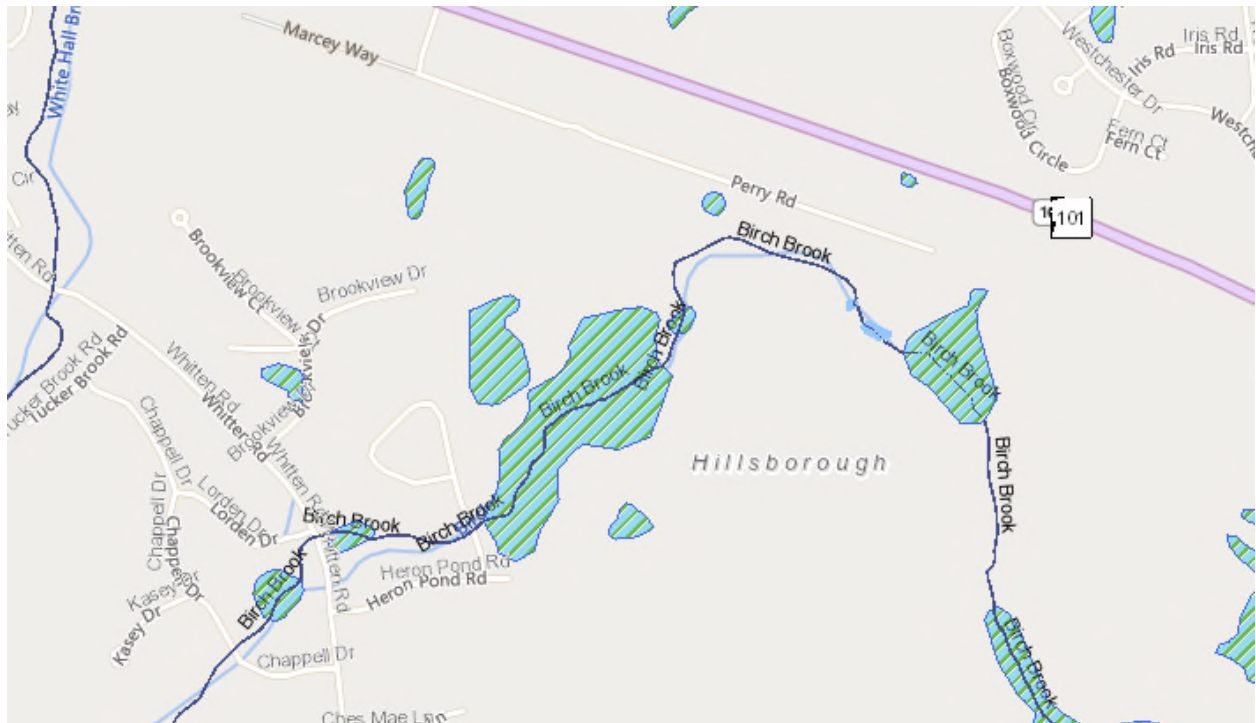
## Exhibit #8: Trail network – three pieces of evidence

Trail network as shown on NH GranitView -- dashed line

[https://granitview.unh.edu/html5viewer/index.html?viewer=granit\\_view](https://granitview.unh.edu/html5viewer/index.html?viewer=granit_view)



For comparison, the trails are not shown below:



Excerpted from May 19, 2019 Minutes of Planning Board meeting



110 Chamberlain said they are working on some visual simulations to anticipate visual impact to motorists. P.  
111 Basiliere asked about the view from Heron Pond? D. Lebel said it is likely that as this moves forward there

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Joint Planning Board and ZBA meeting minutes 5.19.20

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112 might be some easement re-orienting from trails in response to how close the trails might be to the panels. L.  
113 Daley said he sees this as an opportunity to work together with Conservation to design trails that work for all  
114 parties.

115  
116 Audrey Fraizier, speaking on behalf of Milford Conservation Commission, said her company has been  
117 working on the environmental impact studies, since there are many requests for them regarding solar farms.  
118 This gets scientists out there to know the impact of the project to the environment. This impact would look at  
119 the wetlands, acreage, etc. P. Basiliere asked what impact does a solar farm have on aircraft or helicopters in  
120 the area? B. Chamberlain said it is something that we study with glare of the panels. D. Lebel said there are  
121 airport solar projects around airports in different areas. There might be some glare, but at this point it is not  
122 something the FAA has complained about. We expect no issues with this. P. Amato has flown over at least  
123 50 solar farms in NH and MA and has never had an issue with glare. P. Amato noted the private land owner  
124 still shows Paul's address and Paul forwards it to the actual land owner but he no longer has a stake in the  
125 land. P. Basiliere said in conjunction with the Conservation Commission the town should keep this in mind  
126 and the environmental impact as well.

127  
128 D. Knott asked for comments from the ZBA. J. Plourde said his questions were already addressed. J. Dargie  
129 joined the meeting. R. Costantino said on the map it appears that the road is being blocked (Perry Road). D.  
130 Lebel said that is not the intent. R. Costantino said if there was an area where you do not want the panels in,  
131 would you reduce the farm by that amount of panels? B. Chamberlain said if an area was not good to place  
132 the panels, they would find another area in which to place them. The panels have a 30 year life span.

133  
134 A. Fraizier asked if there is a 25' distance from the wetlands, will that buffer be treed? D. Lebel said we are  
135 hoping to do as minimal tree cutting as possible, on the north side, the tree clearing will be minimal in the  
136 buffer zones. Seeing no further questions from the Boards, D. Knott opened the meeting to the public, noting  
137 that comments are limited to three minutes. There were no members of the public waiting to speak. D. Knott  
138 closed the public hearing.

139  
140 P. Amato asked how this will be handled at the ZBA meeting? L. Daley said this solar farm ZBA application  
141 is being heard June 4 via Zoom or live streamed on Granite Town Media

142  
143 3. **Discussion / possible action regarding other items of concern-**

144  
145 4. **Upcoming Meetings:**

146  
147 5. **Adjournment.** P. Amato moved to adjourn the joint meeting at 7:40 p.m. P. Basiliere seconded. All were  
148 in favor. The Board was polled: L. Dudziak yes in favor; P. Amato yes in favor; J. Langdell yes in favor; S.  
149 Robinson yes in favor, P. Basiliere yes in favor; D. Knott yes in favor and T. Finan yes in favor.

150  
151  
152  
153

The Conservation Commission leads hikes at the Brox Property, as follows:

<https://www.milford.nh.gov/conservation-commission/events/11733>

## MCC 4th Saturday Hike Series

Hike trails on the Brox Community Land at 9:00am



Event Date:

Saturday, March 24, 2018 - 9:00am to 11:00am

Please join the Milford Conservation Commission for our January “4th Saturday Hike” series. The hike on January 28th will be at the Brox Property. Parking is available at the Heron Pond School on Heron Pond Road. We may need to make last minute alterations due to weather conditions. Please monitor the commission website at [www.milford.nh.gov/conservation](http://www.milford.nh.gov/conservation). We suggest that you bring a hiking pole and crampons.

Coordinates for the parking area: **Lat: 42°49'32.00"N Lon: 71°41'34.88"W**

Rt 101 Bypass to the first light. Turn left onto Phelan Rd. Continue onto Savage Rd. At the "y", take the left arm onto Whitten Rd. Approximately 2 miles, turn left onto Heron Pond Rd (signs for school are very present). Follow the road to the school parking area. Dogs on leashes are welcome. For additional information, please contact the Milford Conservation Commission at 249-0628.



**Exhibit #9: B.E.Citizens and other citizens engage in land-based activities. Some are hunters, others are hikers, cyclists, wildlife watchers & photographers, among other activities.**

**Evidence from the photographers in recent years is below.**

Photo by Sharon Harvell of two Blanding's Turtles with three Painted Turtles on a log in Heron Pond on May 10, 2021



Photo by Sharon Harvell of an Osprey in flight over Heron Pond on April 24, 2021





Photo by Marcia Vanolinda of a Scarlet Tanager at Heron Pond on May 16, 2019





Exhibit #10: The Lorden gravel operation uses the haul road through the site as shown below in red line.



**Exhibit #11: Private land is assessed as farmland – hay field and forests – portions of the property card are below.**



**MILFORD, NH**



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**RTE 101 BYPASS #OFF**

[Q Sales](#) [Print](#) [Map It](#)

**Location** RTE 101 BYPASS #OFF **Mblu** 39/ 74/ 11  
**Owner** NOT TOO DUSTY, LLC **Assessment** \$14,292  
**Appraisal** \$273,900 **PID** 2729  
**Building Count** 1

**Current Value**

Appraisal			
Valuation Year	Improvements	Land	Total
2016	\$0	\$273,900	\$273,900

Assessment			
Valuation Year	Improvements	Land	Total
2016	\$0	\$14,292	\$14,292

**Owner of Record**

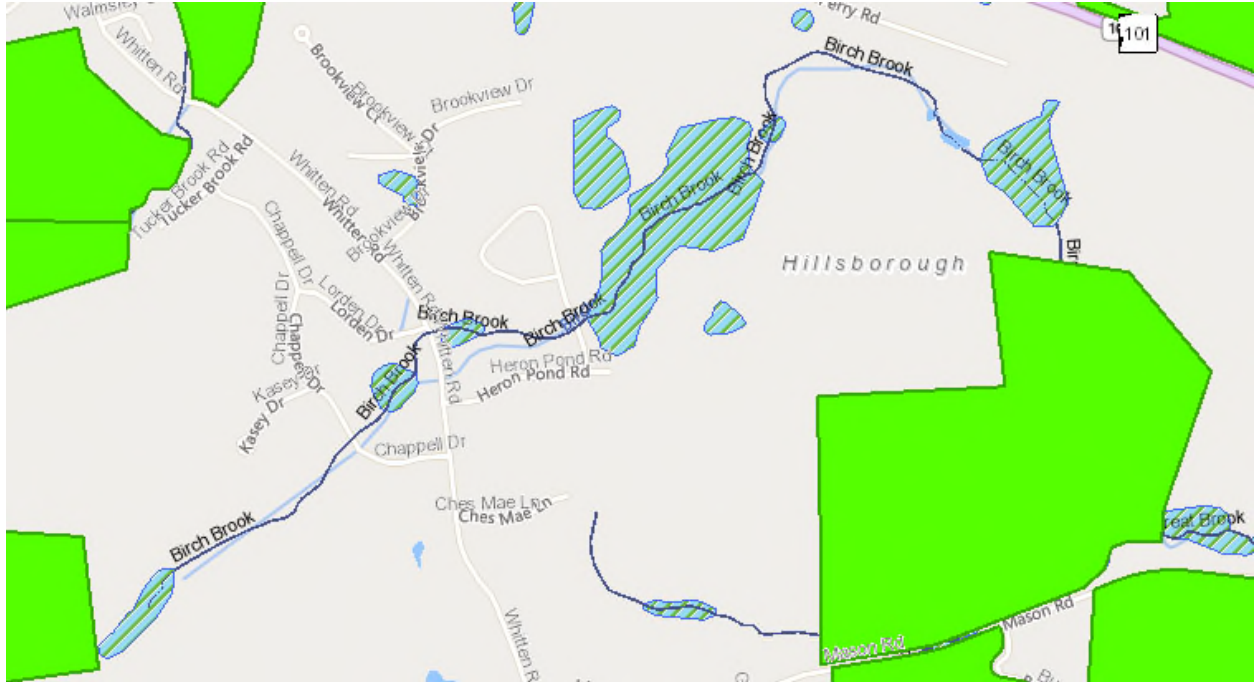
**Owner** NOT TOO DUSTY, LLC **Sale Price** \$150,000  
**Co-Owner** **Certificate**  
**Address** 27 ADAMS RD **Book & Page** 8568/0598  
KITTEERY, ME 03904 **Sale Date** 06/06/2013  
**Instrument** 24

**Land**

Land Use		Land Line Valuation	
<b>Use Code</b>	6000	<b>Size (Acres)</b>	101
<b>Description</b>	FARM ⓘ	<b>Frontage</b>	
<b>Zone</b>	R	<b>Depth</b>	
<b>Neighborhood</b>	R05	<b>Assessed Value</b>	\$14,292
<b>Alt Land Appr Category</b>	No	<b>Appraised Value</b>	\$273,900

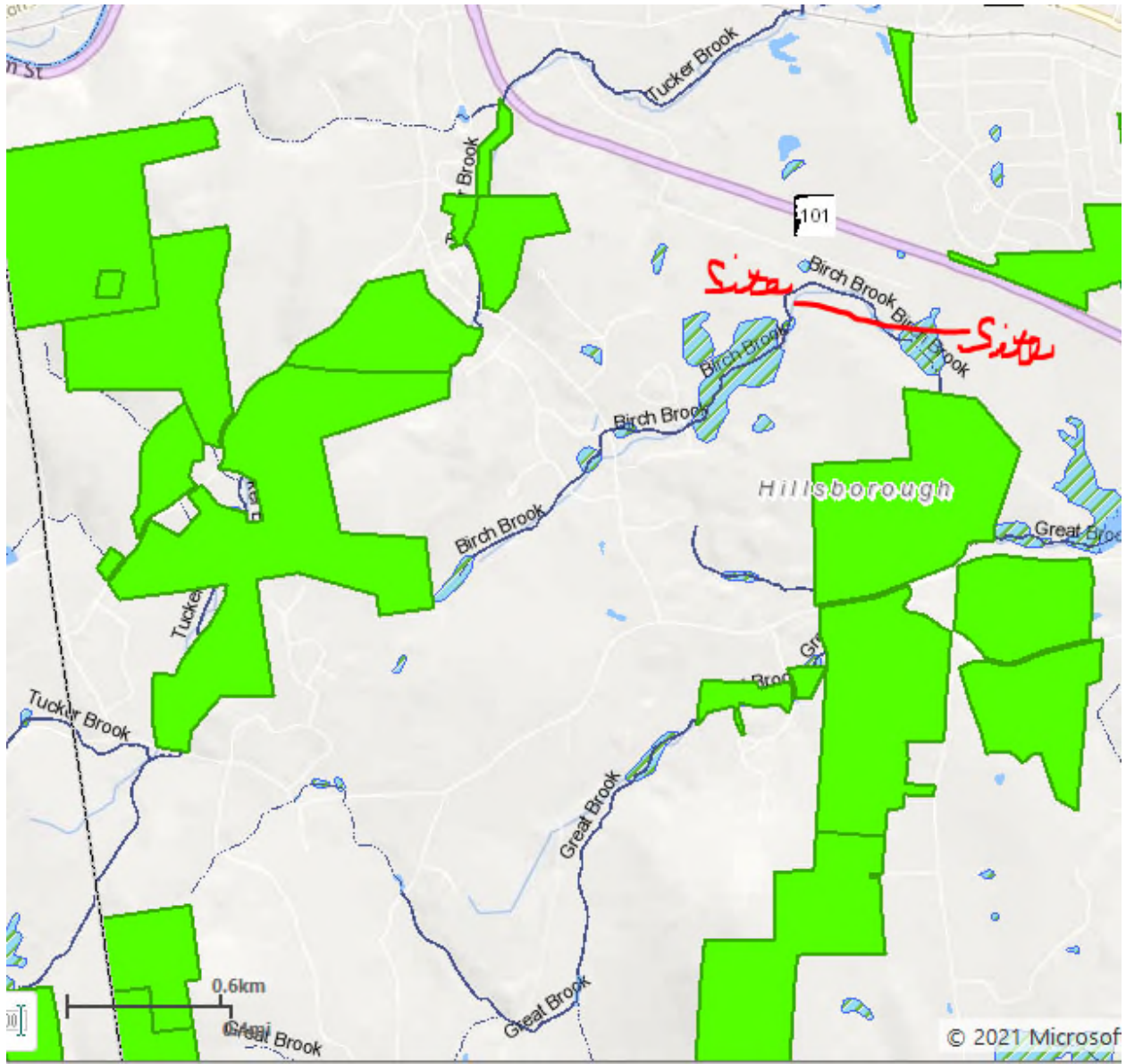
**Exhibit #12: Birch Brook & Conservation Land – safe havens. Birch Brook runs east and south through the site and out to contiguous conservation land (owned by Beaver Brook Association), and connects to Great Brook, then Osgood Pond. Such waterways provide safe haven and safe passage for wildlife through the landscape.**

NH GranitView – wetlands layer (blue) on as well as conservation land layer (green).





The 83 acre site is between conservation land as depicted below at NH GranitView



**Exhibit #13: NH Fish & Game's 3-year wildlife study of Blanding's Turtle, Spotted Turtle, and Hognose Snake – no report, only data. Study occurred in 2018, 2019, partially in 2020.**

**From:** Lincoln Daley  
**Sent:** Friday, May 21, 2021 4:52 PM  
**To:** Doperalski, Melissa  
**Cc:** John Shannon; Chris Costantino; Chad Branon; Kevin Brown; Jason Cleghorn; Marchand, Michael; ridgely.mauck@des.nh.gov  
**Subject:** Milford Brox Sand & Gravel AOT Permit Discussion

Good Afternoon Melissa,

John Shannon and I spoke with Ridge Mauck yesterday regarding the status of the AOT permit application and subsequently received a two month extension.

Recapping our last meeting with NHF&G, we collectively discussed a number of topics including, but not limited to the general preferred operations of the pit, continued monitoring, and the extent/level/type of onsite mitigation. We concluded the meeting with an initial understanding of several NHF&G's discussion points that required further vetting between the parties and/or more information. Prior to the next meeting (To be scheduled by the Town), the Town would provide the following:

- 1) Community Development would provide NHF&G information regarding the installation and repair of the existing silt fence within the site. *(Submitted previously 5.4.21)*
- 2) Fieldstone would verify/fieldcheck the information forwarded from NHF&G staff involving a potential vernal pool within the proposed project area. The assessment/report would be provided to NHF&G staff. *(Analysis completed and report being generated)*
- 3) Fieldstone to provide NHF&G an updated shape file of the delineated wetlands. *(To be provided)*
- 4) Fieldstone to provide an aerial photograph showing existing site conditions overlaid by the gravel extraction plan. *(Project area was recently flown and photographs are being assembled)*

Prior to the next scheduled meeting, the NHF&G would provide the following to the Town and Fieldstone:

- 1) Any/all field data collected and associated with the Wildlife Study.
- 2) Provide an example(s) of a deed restriction accepted by NHF&G.

Since that meeting, the Town and Northeast Sand & Gravel have been working towards responding to the general information request and we are in a position to schedule our next work session. Would you and Michael be available later next week (Thursday/Friday) or the following week to continue our discussion? If so, what days work for your both.

Thank you in advance and have a great weekend.

Regards,

Lincoln Daley  
Director of Community Development  
Town of Milford, NH  
1 Union Square, Milford, NH 03055  
603-249-0620  
[ldaley@milford.nh.gov](mailto:ldaley@milford.nh.gov)

**Excerpt from Plan Set sheet 1 – Gravel Operation Brox Community Land – requiring a 3-year study of T&E wildlife.**

**NHFG ADDITIONAL CONDITIONS:**

NHFG REQUESTS THE FOLLOWING ADDITIONAL CONDITIONS FOR THE PROPOSED AOT EXCAVATION PERMIT AT THE BROX PROPERTY, MILFORD (AOT 170214-020). THESE CONDITIONS ARE IN ADDITION TO WHAT THE TOWN HAS PROVIDED IN THEIR APPLICATION AND SUBSEQUENT MATERIALS.

**CONDITION #1**

NHFG SHALL HAVE FREE ACCESS TO THE BROX PROPERTY CONSISTENT WITH THEIR STATUTORY AUTHORITIES FOR THE PURPOSE OF THREATENED AND ENDANGERED WILDLIFE STUDIES.

**CONDITION #2**

THE TOWN OF MILFORD WILL CONTRIBUTE \$18,300 TO THE NHFG NONGAME & ENDANGERED WILDLIFE PROGRAM FOR THE PURPOSE OF A MULTI-YEAR STUDY EVALUATING THE HABITAT USE OF ENDANGERED WILDLIFE (E.G., EASTERN HOGNOSE SNAKE, BLANDING'S AND SPOTTED TURTLE) ON THE BROX PROPERTY. TOWN PORTION OF THE STUDY WILL BE PAID IN THREE (3) ANNUAL INSTALLMENTS STARTING IN JANUARY 2018. STUDY WILL BE COORDINATED BY NHFG STAFF. THE STUDY WILL EVALUATE WILDLIFE USE OF CHANGING LANDSCAPE, AS WELL AS MITIGATION LANDS FOR THEIR PROTECTION. INFORMATION GAINED FROM THE STUDY COULD HELP INFORM FUTURE DEVELOPMENT DESIGN TO REDUCE IMPACTS ON THESE SPECIES.



**Exhibit 14: Visibility issue from the school's property. The Milford School District owns the entire west side of Heron Pond. Teachers use the property for outdoor nature walks and classes with access to the pond and its view. Photos of one outdoor classroom on April 19, 2021 are below. The second photo also shows the view across Heron Pond in the direction of the proposed solar site from the School's property.**

Photo taken April 19, 2021 shows a class returning after taking a nature walk at Heron Pond. The photographer was Suzanne Fournier who was standing at the Great Blue Heron lookout over Heron Pond (see next photo).



Photo taken April 19, 2021 shows the view of Heron Pond from the Great Blue Heron lookout where Suzanne Fournier was standing and took photos of the class as they were exiting their nature walk. This view looks towards the locations of the proposed solar array.





Photo taken April 19, 2021 shows a class walking back towards Heron Pond School after a nature walk at Heron Pond.



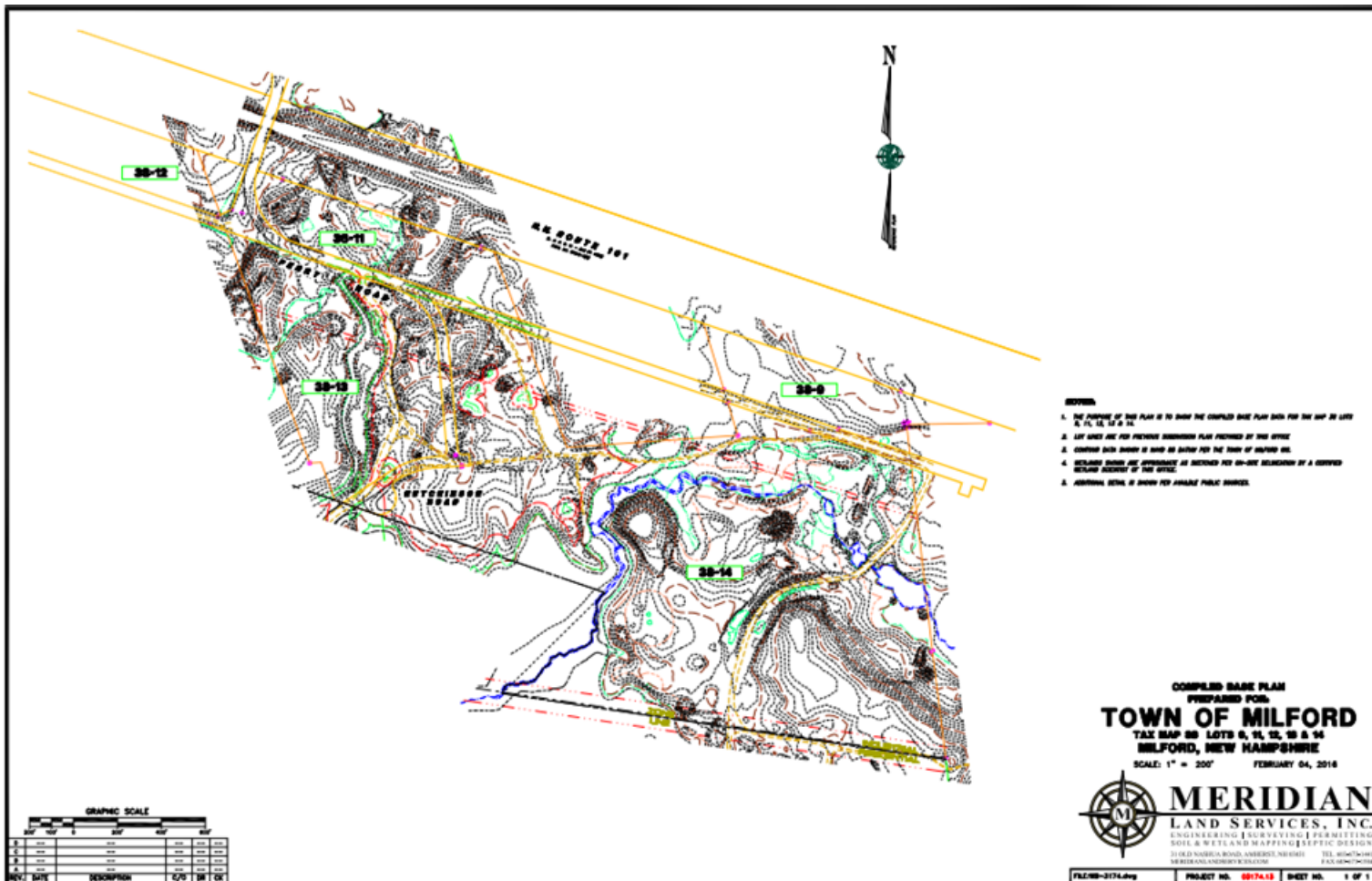
**Exhibit #15: Local impacts to air and water quality. A large residential neighborhood as well as Heron Pond School are situated to the west of the proposed solar site. A large amount of forest would be cleared as the site is forested except for the hay field on the private side, resulting in the loss of air purification services that forests provide as a benefit to the public. Forests trees and other vegetation also help to cleanse water.**

Excerpt from the Town's GIS map of properties shows the residential neighborhood in relation to the proposed solar site's vegetation clearing.





Exhibit #16: The site has wetlands, including 15 vernal pools and Birch Brook. Prior delineations and vernal pool identification were conducted by Meridian Land Services on the Town's Brox Property and more recently by TRC (Olivewood Energy's contractor) for the project site, but B.E.C. does not have access to the TRC report. Meridian's wetland map dated February 4, 2014 is below. TRC discussed the wetlands and vernal pools at the Milford Board of Selectmen's meeting of September 23, 2019 and noted that they confirmed 15 vernal pools. The excerpt from the meeting minutes is below.





APPROVED MINUTES OF BOARD OF SELECTMEN MEETING - 9/23/2019

352 Suzanne said the property is an ecological gem. Selectman Dudziak said that isn't the point. They will have to go  
353 through permitting processes and they will deal with those issues at that time. We are going through a lease and if you  
354 have something to say specifically about the lease, then say it. Suzanne didn't appreciate Selectman Dudziak's com-  
355 ment. Selectman Putnam said Suzanne makes it sound like we are not doing anything out there about the wildlife. Fish  
356 and Game is out there every day and when we have special things going on they have approved those things as well. We  
357 also have wildlife scientists, hired by our engineers working out there. Don't make it sound like we are not doing any-  
358 thing because we are! Chairman Daniels told Suzanne to continue her questioning to Mark and Dominic.

359

- 360 • What is the Board doing to prepare themselves with knowledge for this contract you're considering jumping  
361 into tonight. Chairman Daniels said they have been brief by our legal counsel, Suzanne interrupted to respond  
362 and Chairman Daniels said he wasn't asked for her response, he is asking if she has any questions.
- 363 • In your document, you are leasing 120 acres. Mark said they are not leasing 120 acres. Prior to commence-  
364 ment of construction they will have completed their survey to define the acres they want to use the remaining  
365 acres will be excluded. Suzanne wants them to remove the lots not being used from the lease.
- 366 • What does the Board know about the private portion of the project and how will it affect this project. Has it  
367 been signed, it's a joint project. Mark said the entire project will be going before the town for the permitting  
368 approval as well as the relevant committees. The PILOT would be for the whole project.

369

370 Administrator Bender said that is correct from a permitting process but this Board will not be involved in the lease  
371 agreement on the private property. It's private property, it isn't our concern. Suzanne wants them to present the private  
372 property owners contract to the Board. Chairman Daniels said we are responsible for town property. What they do on  
373 the private property is their arrangement with the private land owner. We don't have control over that; we control the  
374 30 acres that they are looking at. Suzanne asked what will happen if the private portion of the project runs into their  
375 own trouble. The Board should not be blind to the other 65% of the project.

376

- 377 • Do you consider that the vernal pool study is finished, will there be more studies and will you be providing the  
378 data to the town? Mark said it's complete and yes it will be part of the permitting application. Suzanne said  
379 there are other vernal pools that they didn't look at; she proceeded to tell everyone where they were. Chairman  
380 Daniels asked Suzanne to ask her question.
- 381 • Suzanne asked if they will relook at the vernal pools, the state has records of the vernal pools. Mark said a re-  
382 view of the existing records is part of the process and that information will be considered.

382

383 Vicky Chase, TRC said they looked at part of BROX's property using a map that had vernal pools on it. They docu-  
384 mented a total of 15. It was a thorough review and made two visits this spring. The whole project will go through a  
385 permitting process where they may be additional review of the information. They will also be delineating wetlands.  
386 Chairman Daniels asked it was safe to say this will all be part of the permitting process. Vicky said yes. Chairman  
387 Daniels asked Suzanne again to concentrate on the lease.

388

389 Suzanne asked if Vicky said she identified 15 vernal pools? Chairman Daniels said Suzanne's point is out of order.  
390 The question was will these be looked at again, the answer was yes, it's part of the permitting process. Regardless of  
391 how many pools there are out there, it will be looked at as part of the permitting process. Attorney Drescher said every-  
392 thing the solar people makes sense but it doesn't belong in this meeting and it doesn't belong on that preliminary docu-  
393 ment. The solar people will be going before the Planning and Zoning Boards as well as some Conservation involve-  
394 ment. Their engineers will get into these issues in great detail and put to the test because we have a very capable and  
395 sophisticated Planning Board.

396

**Exhibit #17: Effects on vernal pools and the vernal-pool-dependent wildlife and for T&E species who utilize vernal pools, e.g., Blanding’s Turtles. Buffers need to be large, according to NH DES – 400 feet.**

Excerpt below from New Hampshire Wildlife Action Plan Appendix BAquatics-161

<https://www.wildlife.state.nh.us/wildlife/documents/wap/appendixb-habitats.pdf>

*Appendix B: Habitats*

**Specific Threat (IUCN Threat Levels):** Residential & commercial development

**Objective:**

The objective is to reduce impacts to vernal pools and vernal pool wildlife from other land uses, including development, transportation, and agriculture.

**General Strategy:**

“Innovative Land Use Planning Techniques” is a document developed by the Department of Environmental Services to present ideas on land use planning to New Hampshire municipalities. Included among these ideas are suggestions for protecting wetlands from various forms of human disturbance, focusing on the creation of local ordinances to establish buffers around wetlands and watercourses. The document specifically recommends a buffer of 400 feet around existing vernal pools and maintaining a mostly closed canopy of trees within 100 feet of any vernal pool. NHFG should work with the NH Association of Conservation Commissions to emphasize the value of such protections to wildlife resources.

**Exhibit #18 – Functioning of the wetland complex. Dr. Kevin Ryan of FB Environmental wrote in the Natural Resources Inventory he conducted for the Brox Property about the problems with severing the terrestrial habitats within the wetland complex. Two documents are below.**

Document #1 is an excerpt from Dr. Ryan's NRI report pages 20-21. Dr. Ryan warns against developing to the north of Heron Pond Road because of the effects that severing would have on the functioning of the wetland complex for wildlife.

***4.4 Development and Conservation Recommendations***

As proposed, the Conceptual Plan for the Brox property (Appendix A) will likely have severe deleterious effects on development-sensitive wildlife present at the Brox property. Specifically, the extension of

20

---

*Brox Property Natural Resources Inventory*

*March 2015*

Heron Pond Road past the intersection with the school access road just to the south of the peatland complex just south of Heron Pond and the **development proposed to the north and east of the road** will reduce the amount of habitat available to development-sensitive species, and sever terrestrial connections between individual wetlands. Hopefully the town can reach a compromise for the property that includes some needed town development along with a substantial amount of land being permanently protected.

***Specific Recommendations:***

- a) Reduce the potential effects to development-sensitive species by concentrating development within the existing open sand pit and the forested areas immediately south and east of it. That is, **do not develop past the intersection with the school access road** just to the south of the peatland complex just south of Heron Pond this would ultimately reduce the overall amount of development at the site, but would still provide enough space for some municipal and/or sports facilities, and allow the Town to generate revenue through sand and gravel extraction. Keeping development concentrated in the open gravel pit will maintain terrestrial connections between wetlands at the site and allow wildlife to move throughout much of the site.
- b) Consider working with a local conservation organization, such as the New Hampshire Chapter of the Nature Conservancy, the Society for the Protection of New Hampshire forests, or a local land trust to put undeveloped portions of the land in a conservation easement.
- c) Find a local champion to facilitate the permanent conservation of the Brox property, and pursue funding from the New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau's Aquatic Resource Mitigation Fund Program to purchase the undeveloped portion of the property. The Brox property meets the eligibility criteria in that rare resources (i.e., threatened/endangered wildlife) will benefit, and aquatic resources and their associated terrestrial connections will be protected.



### 3.2.2 Wetlands

Wetland delineations were conducted on the Community Lands in 2013. A total of ten wetland areas were identified and delineated. The report contains detailed descriptions of each of these areas. It is unknown whether formal wetland delineations have been conducted on the commercial lands.

Field surveys indicate that wetlands at the Brox property are numerous and diverse, and largely associated with streams on the property including Tucker Brook, Birch Brook, and Cold Brook (Figure 3). Tucker Brook is a tributary to the Souhegan River, and Birch Brook and Cold Brook flow into Great Brook which feeds Osgood Pond. These systems form a vast **wetland complex** consisting of numerous wetland types ranging from open canopy marshes to forested riparian systems, to scrub-shrub wetlands; all of which may contain areas functioning as vernal pools. Beaver activity is highly prevalent within these systems, notably Heron Pond, which is the most well-known wetland on the property due to its large size (approximately 37 acres) and the presence of a Heron Rookery.

Numerous "isolated" wetlands (i.e., not hydrologically connected to the other systems) are present throughout the property as well. Some of these wetlands are "classic" vernal pools (i.e., those that look like large puddles in the woods during the spring), although a peatland complex (approximately 2 acres in size) is present in-between Heron Pond and the sand pit area; the southern edge of the peatland is separated from the open sand pit by an earthen berm.

Many of the wetlands observed during the field survey were quite pristine, though manmade (due to previous excavation activity) or altered wetlands were also observed. Several of the human-created wetlands are present in the open sand pit area; these areas appear to be functioning as short-hydroperiod vernal pools. Excavation has altered natural wetlands particularly within the Commercial Lands.

Although the Brox Property (and the wetlands it contains) has been altered by human activity, water quality is likely very good for most of the wetlands, streams, and waterbodies on the property. This is due to the fact that with the exception of Cold Brook and the western end of Heron Pond, there is not much development immediately in the vicinity of these areas.

Though the Town of Milford does not currently have any designated Prime Wetlands, it is likely that a significant portion of the wetlands at the Brox property would be designated as Prime, due to their large size and that they support rare species (e.g., Blanding's and Spotted Turtles), provide critical wildlife habitat to a wide range of wildlife species, provide recreational and educational opportunities, flood control, and more. Prime Wetland designation is based on the relative quality of wetlands to one another within an entire town. Town-wide inventories are a big undertaking and therefore may not be feasible within the timeframe of this project.

If a town-wide wetland survey were to be conducted, wetlands associated with Tucker, Birch, and Cold Brooks would likely be considered prime due to the reasons stated above and to their importance for storing large amounts of flood water. These areas also support fish and aquatic life habitat and water-based recreation in the form of fishing, bird watching, and paddling/kayaking.