

# MCLANE MIDDLETON

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August 9, 2023

**VIA EMAIL ONLY** (Andrew.T.Koff@des.nh.gov)

Andrew T. Koff, P.G.

Department of Environmental Services, Drinking Water and Groundwater Bureau

23 Hazen Drive

Concord, NH 03302-0095

**Re: Objection by Abutters Bryan and Elena Murphy to Mark and Jacqueline Koss/Koss Construction LLC's Preliminary Well Siting Application and Request for Waivers**

Dear Mr. Koff:

I write on behalf of abutters Bryan and Elana Murphy to respectfully request that the New Hampshire Department of Environmental Services ("DES") deny the application of Mark and Jacqueline Koss and Koss Construction LLC's (collectively "Koss") Preliminary Well Siting Application ("PWSA"), and associated request for regulatory waivers, received by DES on or about July 10, 2023. I had requested via email on August 4, 2023 additional time to respond to this application, but did not hear back from the agency in response to that request, and so submit this preliminary objection to the PWSA, reserving all rights to provide additional comment as the matter proceeds. I request to be copied on all substantive correspondence from DES to Koss and its agents regarding the PWSA, and request to be notified of any meetings, public or otherwise, in which the PWSA will be addressed, so I may attend on behalf of my clients.

The DES finds itself being asked to approve a pump test with (inappropriate) waivers requested, and to approve pumping from two installed wells to serve as a community water supply well for a 42 unit condominium development that DES knows, based on information already in its possession, is likely to spread pre-existing PFAS, VOC, and gasoline contamination across the aquifer toward the development's wells, as well as toward the private, pre-existing wells along Bean Road (like the Murphys' drinking water well), all of which are within the pumping zone of influence of the Koss development's proposed wells. Remarkably, and despite DES's specific direction beginning in October 2021 to Koss's consultant, Edgewater Strategies, Inc., to develop a contaminant containment program, the July 2023 PWSA fails to propose any meaningful mitigation on Koss's part to prevent or even address the exacerbation of the contamination DES expects it will cause, and fails to provide any plan requiring Koss to take any action should its pumping cause harm to neighbors such as the Murphys. Moreover, Koss's application states it now seeks approval for enough water for 42, two bedroom condominiums (21 duplexes), even though its initial application in 2021 was for three bedroom condominiums and they represented to the Moultonborough Planning Board and obtained approval in 2023 was for three bedroom condominium units. Koss cannot undersize its units for purposes of determining its well

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pumping approval requirements when it has obtained Planning Board approval for residential units fifty percent larger than stated in its DES application. Koss's failure to explain to DES the difference in its Town approved unit size and the smaller size units it has informed DES it will build is quite telling. For these and other reasons set forth below, Koss's proposal is inadequate and inaccurate on its face, and asks DES to approve a pumping plan that will cause contamination to spread, will harm pre-existing well owners such as the Murphys, and will violate applicable New Hampshire statutes and regulations, as well as the common law doctrine of reasonable use. In addition, the approval by DES of this proposed community in these circumstances likely leads to a regulatory taking of the Murphys' private property in violation of the due process clauses of the New Hampshire Constitution, Art. I, Parts 12, 12-a, and 15, and the Federal Constitution, 5<sup>th</sup> and 14<sup>th</sup> Amendments. DES should deny the pump test and permit application.

### **THE MURPHYS ARE ABUTTERS WHO WILL BE DIRECTLY AND ADVERSELY AFFECTED BY THE PROPOSED CONDOMINIUM DEVELOPMENT**

The Murphys acquired their home at 36 Bean Road, Moultonborough, in 2016. The area along Bean Road where the Murphys live consists primarily of single family residences. Bryan Murphy works as a chef while Elana Murphy is a homemaker, and among other responsibilities, cares for their three children, ages 1 to 7. Since they bought their property, they have renovated both the interior and exterior of the home and made a substantial investment of time, effort and money to improve their property and create a suitable home to raise their family. They have enjoyed the benefits of being adjacent to the natural area where the proposed development is planned, and have enjoyed having uncontaminated water from their private well. According to DES's April 21, 2022 letter to Edgewater Strategies, the Murphys' drinking water well is within the 1000 foot cone of influence of the Koss development's proposed pumping. In fact, the Murphys' well is located only a few hundred feet from the two wells that Koss installed. There is no question that the Murphys will be directly and adversely affected by Koss's proposed development.

At the time they purchased their home in 2016, the property now owned by Mark and Jacqueline Koss was completely undeveloped and had not yet been zoned for residential development. The re-zoning and creation of the West Village Overlay District occurred in approximately 2019. Koss's property consists of approximately 17 acres, about 6 of which are undevelopable wetlands. There are streams crossing the property and it is located at the bottom of a hill, serving as a drainage sink for the area, before the water crosses Route 25 and drains into Lake Winnepesaukee. The property borders the access road to the municipal sewage treatment plant and is close by to its sewage lagoons.

The Kosses purchased the property in 2020 for about \$285,000, a price which reflected that more than a third of the property was not developable due to its wet condition. If all permits are approved, the sale price of each condominium is expected to meet or exceed the purchase price for all 17 acres, according to statements Koss and their representatives made to the Town of Moultonborough.

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The Murphys are not necessarily opposed to all development for this property, but they are adamantly opposed to this project, which simply seeks to cram as many market rate units as possible into a wooded wetland area, and threatens to deteriorate the water quantity and quality of the currently clean and ample water in the Murphys' well, as well as the wells of their neighbors. The developer has failed and refused to consider alternative, less dense developments for this property which will not require the volumes of water for a community water system that will adversely affect the aquifer in the area, including the Murphys' well, by spreading contamination, and by reducing the volume of water available to them. Koss is not entitled to approval for a community water system that is likely to cause or causes adverse harm to the aquifer in general and the Murphys in particular.

### **THE KOSSES FAILED TO FOLLOW DES DIRECTIVES AND REGULATIONS IN CONNECTION WITH THE WELL SITING PROCESS**

The DES file on this matter demonstrates that Koss and their consultants charged ahead in locating and installing the two wells that are the subject of their current PWSA, ignoring DES directives not to do so, and ignoring applicable regulations. On May 26, 2021, Brown Engineering, on behalf of Koss, submitted a Preliminary Well Siting Concept Review to DES, with related correspondence stating that the proposed wells would be located at 43.711731°, -71.461183°.<sup>1</sup> See Ex. 1, Brown Engineering Concept Review Correspondence with DES at p. 4 (hereinafter "Concept Review Correspondence"). The correspondence also included one site map in which the proposed wells met wetland buffer requirements, and one in which they did not. Compare Ex. 1, Concept Review Correspondence p. 6 (encircled in red) (where wells meet buffer requirements) with Ex. 2, Brown Engineering Concept Review p. 6 (encircled in red) (in which wells fail to meet wetland buffer requirements) (hereinafter "Concept Review"). DES apparently relied on the coordinates provided in the correspondence when providing Koss with a Groundwater Protection Area and Water Use Inventory Map. Ex. 3, Map Provided by DES Referencing Correspondence Coordinates (highlights added). At the time, the proposal was for 60 three-bedroom units or 30 duplexes. On July 26, 2021, DES issued a "preliminary approval" of the Concept Review. July 26, 2021 Concept Approval (emphasis in original). DES's preliminary concept approval stated in pertinent part: "A system of this size requires a minimum sanitary protection area ("SPA") which will be determined during the well siting process in accordance with Env-Dw 305. **The SPA, when determined, shall remain in "the natural state," and be maintained FREE of fuels, pesticides and other potential contaminant sources.**" July 26, 2021 Concept Approval (emphasis added). It is unclear which of the two site maps DES was granting approval for in their July 26, 2021 Concept Approval.

Then, on September 10, 2021, Edgewater Strategies, on behalf of Koss, submitted a PWSA – along with another site map that showed the wells to fall within the 50 foot wetland buffer. September 10, 2021 PWSA p. 35. DES replied to the PWSA on October 1, 2021, stating that

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<sup>1</sup> This firm converted all coordinates to Decimal Degrees for ease of comparison using <https://www.pgc.umn.edu/apps/convert/>, entering 43°42.694 N, 71°27.778 W for BRW1 and 43°42.697 N, 71°27.772 W for BRW2 as reported on their respective Well Completion Reports. This resulted in coordinates of 43.711567°, -71.462967° for BRW1 and 43.711617°, -71.462867° for BRW2.

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“the department is advising the applicant not to proceed further in the well siting process until additional work is done to establish a contamination control program and evaluate the water quality at the site.”

Koss proceeded to ignore DES’s October 1, 2021 directive “not to proceed further in the well siting process” and then installed them anyway, in a location that was materially different than the location Brown Engineering had proposed. Without establishing a contamination control program or evaluating the water quality at the site, Koss retained Gilford Well Company, which installed two wells on November 30, 2021 and December 1, 2021. Based on the absence of documents received from a public information request to DES, nothing in the DES file shows that DES approved the installation, or the location of the wells. In fact, the coordinates provided in the December 13, 2021 Well Completion Reports by the Gilford Well Company are 43.711567°, -71.462967° for BRW1 and 43.711617°, -71.462867° for BRW2. *See* Ex. 4.1, Gilford Well Company, Well Completion Report BRW1 (highlights added) *and* Ex. 4.2 Gilford Well Company, Well Completion Report BRW2 (highlights added). Notably, these locations are over 100 meters away from the coordinates Brown Engineering originally proposed to DES in its May 26, 2021 correspondence with DES.<sup>2</sup> According to the Well Completion Reports, neither BRW1 nor BRW2 are even located on property owned by the Kosses. The Well Completion Reports state that the wells are located on Tax Map 102, Lot 039 in Center Harbor, owned by Don T. Carey and Malissa Priestly-Carey. *Compare* Ex. 5, Town of Center Harbor Residential Property Assessment Record (highlights added) *with* Ex. 4.1, Gilford Well Company, Well Completion Report BRW1 (highlights added) *and* Ex. 4.2 Gilford Well Company, Well Completion Report BRW2 (highlights added). Thus, Koss brazenly installed the wells without approval, ignoring DES’s October 21 letter, and then filed inaccurate well completion reports. Koss has no lawful authority to use the wells it has installed based simply on its unlawful and inappropriate conduct up to the point of installation of the wells.

Then, on January 24, 2022, Koss engaged in a short-term pump test of wells BRW1 and BRW2. March 4, 2022 PWSA, p. 13-16. Over the course of 6 hours, “each well pumped just over 10,000 gallons.” March 4, 2022 PWSA, p. 2. The results of the short-term pump test showed that monitored off site wells “did fluctuate during the short-term test.” March 4, 2022 PWSA, p. 3. The Murphys’ well was not monitored during this test. This firm submitted a Right-to-Know request with DES dated July 26 2023 to determine if Koss obtained a Temporary Discharge Permit for the short term pump test as required by Env-Wq 402.29. DES did not include such a permit in its response, leading to the conclusion that the Kosses failed to apply for and obtain a Temporary Discharge Permit for the January 24, 2022 short-term pump test.

After the short term pump test, Edgewater submitted a revised PWSA, which included Gilford Well Company’s inaccurate Well Completion Reports, on March 4, 2022, followed by a Supplemental Information Submission & Waiver Request on April 13, 2022. March 4, 2022 PWSA, p. 13-16. On April 21, 2022, DES again refused to approve the PWSA due to

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<sup>2</sup> Distance calculated by entering the converted coordinates into <https://www.fcc.gov/media/radio/distance-and-azimuths>.

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contamination concerns, concluding that “[g]iven the nearby extent of contamination in bedrock and the potential spread of the contamination to other nearby private wells that may be caused by pumping at the proposed wells, at this time NHDES will not be able to approve these sources as new community water supply wells” as approving such wells would be unlawful. DES attached a map that highlighted MTBE, CVOC, and PFOA contamination in close proximity to the site. Ex. 6, April 2022 Contamination Map Provided by DES to Koss.

At the same time as it was submitting documents to DES, Koss was seeking approval for its project from the Moultonborough Planning Board. As set forth in documents that Koss submitted to Planning Board, Koss sought approval for three bedroom units. I attach a copy of Floor Plans Koss submitted to the Planning Board showing three bedroom condominiums. Ex. 8, Koss Floor Plans marked as received by Moultonborough on February 10, 2022 (showing three bedroom units). In contrast to its statements to DES (see July 8 PWSA, p. 6, seeking approval to pump water sufficient for “42, 2-bedroom townhouse condominiums”), at no time did Koss submit information to the Planning Board for two bedroom units. After a contested process before the Planning Board, including a successful appeal to Superior Court and to the ZBA by the Town of Center Harbor and the Murphys, the Moultonborough Planning Board granted conditional approval for the project on February 22, 2023 based on the three bedroom proposal.<sup>3</sup> One of the conditions is obtaining necessary DES approvals for its wells. See Ex. 7, Planning Board Approval (highlights added).

This record shows that Koss has designed and received approval to build townhouses containing three bedroom units. Simply calling them two bedroom units in the July 8 PWSA does nothing to change the design and intended use of the approved, three bedroom units. As a result, Koss’s pump test proposal is based on inaccurate information, to put it politely, and should be denied on that basis alone. In combination with Koss’s conduct in installing the wells over DES’s objection, and without complying with DES’s directives and regulations, it is clear that Koss has established an inappropriate pattern of conduct and hopes that DES either will not notice, or somehow countenance its misleading behavior.

To approve a PWSA, it is axiomatic that DES must determine that “[t]he report contains all information required by Env-Dw 305.05(a)” and that “the information contained in the report is complete and correct.” Env-Dw 305.16. It is also axiomatic that DES receive information from the applicant that is accurate and complies with applicable statutes and regulations. The record to date makes clear that Koss has not complied with these basic obligations. 305.05(a) requires the applicant to submit “the information and maps specified in Env-Dw 305.08” which includes a contamination source inventory, a USGS map, and a site map adhering to wetland buffer requirements.

A cursory review of the PWSA shows that it is incomplete and riddled with inaccuracies. The PWSA fails to provide a contamination source inventory that meets the requirements of Env-Dw 305.12(b)(2), because the applicant has never provided the names and daytime phone numbers of

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<sup>3</sup> Other abutters, Mark and Carla Taylor, have filed suit against the project in Carroll County Superior Court arising out of Town approvals. That matter is pending.

the owners of nearby contaminated properties such as the Red Hill Irving Station or the Thiftamat Laundromat, nor addressed what remedial measures have been taken at those properties. Nor does the applicant has include a USGS map, which clearly marks the well location, estimated wellhead protection area, the location of the contamination sources, water resources, water uses inventoried, and the title, scale, and date of the quadrangle as required by Env-Dw 305.08(e). Furthermore, site maps still show that the wells are located within 50 feet of wetlands. PWSA, p. 15. However, applicants must demonstrate in their site maps that a proposed “well will meet the setback requirements in Env-Dw 305.09.” Env-Dw 305.08(f)(4) (with Env-Dw 305.09 prohibiting wells from being “located closer than 50 feet from wetlands that are inundated with standing or flowing water for more than 30 continuous days”).

Given the state of the record described above, DES also should reject the waivers Koss has requested for their proposed pump test and system design. Koss asks DES to waive Env-Dw 405.12(a) (requiring the minimum total source capacity to be twice the design flow of a proposed system); Env-DW 305.14(b)(3) (requiring the pump test to demonstrate that a small CWS source capacity as twice the design flow of a proposed system); and Env-Dw 305.20(d) (requiring that the permitted production volume for all new sources of water shall equal at least the source capacity requirements). PWSA, p. 11. In essence, Koss asks DES to relieve it of its obligation to demonstrate the full effects their proposed community wells will have on the aquifer and the neighborhood wells, including the Murphys’ well.

As noted above, the PWSA is based on an erroneous premise—that the development is for two bedroom units, not the three that Koss represented to the Planning Board. As a result, the PWSA underestimates by at least 50% the amount of water that the community well must be evaluated to produces. Koss estimates a design flow of 12,600 gpd based on two bedrooms, instead of a design flow of 18,900 gpd (42 units x 3 bedroom x 150 gpd). The regulations require testing for more than the bare minimum required to properly evaluate the effect of pumping on the aquifer and neighborhood wells such as the Murphys’ well.<sup>4</sup> Moreover, this evaluation is even more pronounced because Koss proposes to install use new wells that DES knows are hydrologically connected to existing wells in the area, including the Murphys’ well, in and around an aquifer that is known to be polluted by all types of contamination. Simply, Koss has not sufficiently justified its waiver requests and cannot meet the stringent waiver standard set forth in Env-Dw 202.06. (identifying four factors DES must find to grant a waiver, including that “[g]ranteeing the waiver, with or without conditions, will be as protective of public health as complying with the requirement as written”).

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<sup>4</sup> DES should know that the Murphys agreed to have their well water quality tested and the well monitored during any pump test in exchange for Koss’s agreement to provide promptly the results of any information obtained about their wells promptly after it was obtained. Koss has failed to live up to its end of the bargain to provide the information about the testing of their well, forcing the Murphys to make public information requests to get that information.

**APPROVAL OF KOSS'S PROPOSED WELLS, KNOWN ALREADY TO BE CONNECTED HYDROLOGICALLY TO AREA WELLS, KNOWN TO EXACERBATE THE SPREAD OF EXISTING CONTAMINATION AND KNOWN TO THREATEN CLEAN WELLS LIKE THE MURPHYS' WELL, WOULD VIOLATE APPLICABLE LAW**

State law dictates that DES must deny the PWSA. The Groundwater Protection Act states that DES's duty is to:

Manage and preserve the state's groundwater on behalf of the citizens of the state, recognizing that any private use of groundwater and other public waters shall be reasonable in light of the protected interests of the general public in the use and enjoyment of groundwater and other public waters by ensuring that no unmitigated adverse impact, as defined in this chapter, occurs.

RSA 485-C:3. The Groundwater Protection Act further charges DES with ensuring that new community water systems pumping less than 57,600 gallons per day, such as the system that Koss proposes to operate, do "not cause an unmitigated impact to an existing private water supply well in accordance with RSA 485-C:21, V-c(a) or RSA 485-C:21, V-c(c)." RSA 485-C:26.<sup>5</sup>

Exacerbating the spread of existing contamination in this aquifer through the use of Koss's proposed wells (whether one or two of them), is not an impact that can be mitigated. DES's whole regulatory regime is premised on making sure that contamination on a property will not spread to other properties, and has a whole groundwater management permit scheme, for example, that is based on that premise. *See* Env-Or 607 (establishing groundwater permitting scheme for contaminant sites). DES has already determined, and Koss's consultants know, based on the testing done to date, that pumping at any material level (whether for 2 or 3 bedroom units) is likely to cause area contamination to move, and to affect other wells in the area. No point of delivery treatment at the well head will mitigate this harm to an entire area. The

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<sup>5</sup> RSA 485-C:21 V-c(a) and V-c(c) prohibit new wells from having adverse affects on the quantity of water available for pre-existing wells. As related to the spread of contamination, for large groundwater withdrawals (over 57,600 gallons or more per day), the groundwater protection act prohibits approval of wells which "[c]aus[e] the contamination of groundwater obtained from wells or surface waters from contaminated groundwater whose flow has been altered by the withdrawal, or causing the contamination of an aquifer or contributing to the spread of any existing contamination." RSA 485-C:21, V-c(j). In light of DES's duty to the citizens of the state to manage and preserve the groundwater in conjunction with the statute's declaration that contamination migration is an adverse impact, DES should not grant approval to a proposal which proposes an adverse impact, whether for large or small community well. At a minimum, such approval amounts to an unreasonable use of groundwater.

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proposed wells cannot be viewed in isolation, as if any adverse impact is only to the proposed wells. The adverse impact is to the Murphys' and other residents' wells which currently are clean.

The PWSA recognizes the harm that its proposed pumping is likely to cause. The PWSA acknowledges that PFAS and other contaminants surround the proposed wells. PWSA, p. 6. It also notes that the Murphys' well is uncontaminated. PWSA, p. 9. The PWSA also concludes that the proposed withdrawals have the potential to "increase groundwater flow rates" as well as "alter the groundwater flow direction." PWSA, p. 9. It remains clear that Koss's proposal would result in contaminants migrating from contaminated properties onto uncontaminated properties as a result of the proposed pump tests. Not only does Koss's proposal fail to address the concerns raised on April 21, 2022 about contamination migration, the data provided in the proposal provides evidence that DES's prior denials were soundly based and that contamination migration is likely to occur.

Koss's contamination control plan, to the extent it can be called a plan, is entirely inadequate. It is patently unreasonable that the PWSA's sole solution to address contamination migration caused by the proposed pump tests and withdrawals is that "[m]itigation measures may include existing public mitigation measures such as DES's existing rebate program which reimburses owners of private wells for the cost of installing PFAS treatment." PWSA, p. 11. In other words, Koss is asking for DES permission to spread contamination across multiple properties while at the same time asking to DES, the Murphys, and other neighbors to foot the bill to treat the contamination spread that the Koss wells will cause. In other words, Koss proposes to privatize the gain from its development, but socialize the costs to the State, the Murphys, and potentially others. Such a cavalier approach cannot be considered. Under no circumstances can a proposal to spread contamination across multiple properties be considered adequate mitigation. In the circumstances of this case, an "adequate contamination control program cannot be implemented to prevent degradation of water quality at the proposed well," Env-Dw 305.16, or degradation at neighboring wells, such as the Murphys'.

Furthermore, New Hampshire common law establishes that the use of groundwater is governed by the doctrine of reasonable use. *Bassett v. Salisbury Manufacturing Co.*, 43 N.H. 569 (1862). Under the reasonable use doctrine, each landowner is restricted to "a reasonable exercise of his own right, a reasonable use of his own property, in view of the similar rights of others." *Bassett* at 577. The reasonable use doctrine provides that "a man may exercise his own right on his own land as he pleases, provided he does not interfere with the rights of others." *Id.* In *Bassett*, the court held that "[e]very interference by one land-owner with the natural drainage, actually injurious to the land of another, would be unreasonable, if not made by the former in the reasonable use of his own property." *Bassett* at 577. A landowner's use is considered "reasonable" when it does not "unreasonably prejudice the rights of others." *Rindge v. Sargent*, 64 N.H. 294, 294 (1887).

The Murphys' have a common law right to have their property remain free of contamination as the result of another's injurious groundwater withdrawals. See *Anthony, et al. v. Hampstead Area*



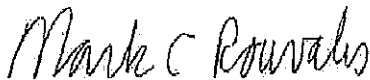
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*Water Company, Inc. and Lewis Builders Development, Inc.*, No. 218-2019-CV-01361, at 39-41 (N.H. Super. Jan 25, 2021) (finding that homeowners had a substantial likelihood for success on the merits in their common law claim that contamination caused by over pumping was unreasonable). Approval by DES of water withdrawals by Koss's wells, likely causing injury to the Murphys' and their neighbors, is the definition of unreasonable. The legislature, through the Groundwater Protection Act, has equipped DES to protect these citizens such as the Murphys. Therefore, in order to prevent injury to the Murphys and their neighbors through the unreasonable use proposed in the PWSA, DES must adhere to their duty to manage and preserve the State's groundwater by denying the PWSA.

One more important consideration DES should bear in mind as it considers the Koss application. Possessing clean drinking water is an important private property right, long recognized in this State. Approving a community water system that DES knows, or reasonably should know, is likely to cause contamination to drinking water well that do not have such contamination, amounts to the taking of private property without compensation. DES cannot give a license to another private property owner to cause pollution on his neighbors without exposing the State of New Hampshire for liability for a taking under the due process clauses of the New Hampshire Constitution, Art. I, Parts 12, 12-a, and 15, and the Federal Constitution, 5<sup>th</sup> and 14<sup>th</sup> Amendments, or for inverse condemnation (a regulatory taking). See *Kingston Place, LLC v. New Hampshire Dep't of Transportation*, 167 N.H. 694, 697 (2015) (“[g]overnmental action which substantially interferes with, or deprives a person of, the use of his property in whole or in part, may constitute a taking, even if the land itself is not taken”). For example, Article 12-a directly addresses the situation presented by this application. It states: “No part of a person's property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of the property.” Koss's proposal asks DES to approve the taking of the Murphys' clean water and provide it to them for their private development, replacing the clean water with contaminated water. That is unlawful, and inappropriate. It is also avoidable, if DES denies Koss's PWSA.

Please contact me if you have any questions.

Very truly yours,



Mark C. Rouvalis

EXHIBITS ATTACHED TO  
OBJECTION BY ABUTTERS BRYAN AND  
ELENA MURPHY TO MARK AND  
JACQUELINE KOSS/KOSS  
CONSTRUCTION LLC'S PRELIMINARY  
WELL SITING APPLICATION AND  
REQUEST FOR WAIVERS

**EXHIBIT 1:  
CONCEPT REVIEW CORRESPONDENCE**

## Vaughn, Kelsey

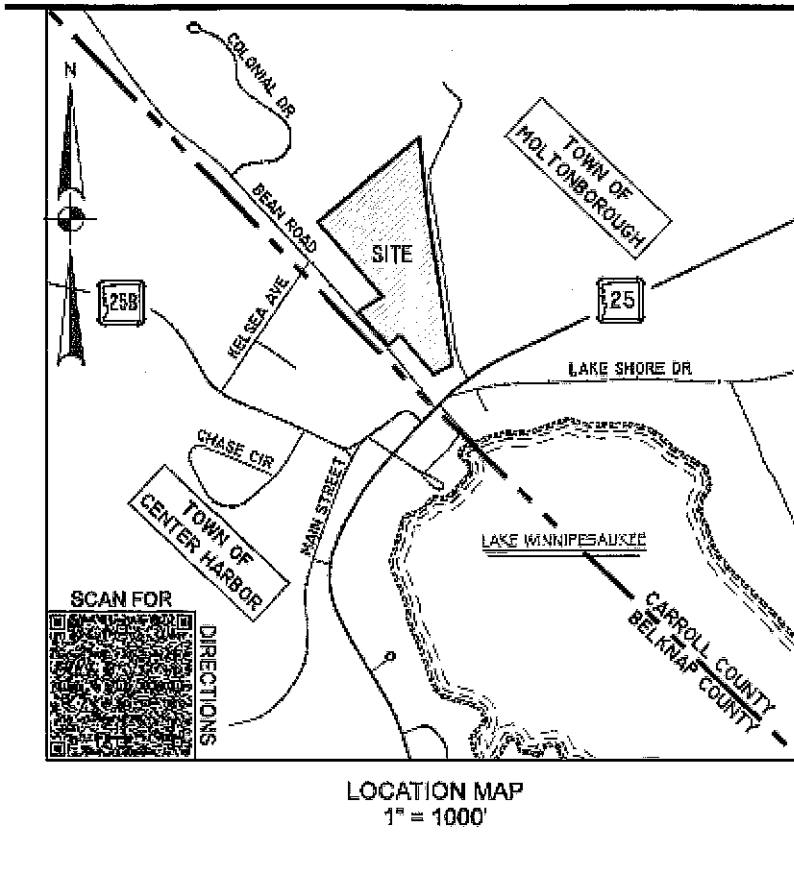
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**From:** Koff, Andrew  
**Sent:** Wednesday, May 26, 2021 3:10 PM  
**To:** Willis, Thomas; Vaughn, Kelsey  
**Cc:** Roy, Stephen J.; Kernen, Brandon  
**Subject:** Harbor Landing Development in Moultonborough - DR#006013  
**Attachments:** 5328-01 Koss Site Plan Existing Conditions5-26-21.pdf; 5328-01 Koss Site Plan water5-26-21.pdf

FYI- I just talked with Mario Focareto with Brown Engineering about a new development and small community water system called 'Harbor Landing' in Moultonborough near Center Harbor. I just realized that this site is adjacent to (and possibly down gradient of) the Bay District wastewater lagoons, which have an active discharge permit. This is another company that is new to well siting process but he seemed to be pretty up to speed on the requirements. Brandon is included as he lives nearby and I thought he would be interested.

Tom- I told him to reach out to you about the concept approval for the system. There are 60 2-bedroom units planned which translates to a DF of 18k gpd and source capacity of 36k gpd. Based on this, I told him to revise the SPA for the two planned bedrock wells from 175' to 200' and look into any irrigation plans for the development. Kelsey- I mentioned the WCP and he was aware of the requirements. I started a new design review DR#006013.

Thanks,  
Drew



LOCATION MAP  
1" = 1000'



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**From:** Mario Focareto <mario@brownengineeringllc.com>  
**Sent:** Wednesday, May 26, 2021 12:26 PM  
**To:** Koff, Andrew <Andrew.T.Koff@des.nh.gov>  
**Subject:** RE: Well Site Preliminary Application

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

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Hi Drew,

Attached is an existing conditions and site plan of the proposed project. I called and left you a message. I will try you again later unless you'd like to call me 603-530-4535. I also have a couple questions about the preliminary application.

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**From:** Koff, Andrew <Andrew.T.Koff@des.nh.gov>  
**Sent:** Wednesday, May 26, 2021 11:54 AM  
**To:** 'Mario Focareto' <mario@brownengineeringllc.com>  
**Subject:** RE: Well Site Preliminary Application

Hello Mario-

Thanks for the email and yes, I can get you those maps. We'll need one more piece of information first, the estimated wellhead protection radius which is based on the source capacity (or number and type of units) in the development.

Are you planning on doing the well siting/test for this project? If so, it would probably be worth our time to have a brief chat about the process and the project so we are all on the same page. If you want to give me a call today, we can discuss further. If you have a draft site plan, it might be helpful to also send that to me before you call. More information on small community well siting is available on our website:

[Community Well Siting | NH Department of Environmental Services](#)

Thanks,  
Drew

Andrew Koff, P.G.  
Hydrogeologist  
NHDES Drinking Water Groundwater Bureau  
[Andrew.Koff@des.nh.gov](mailto:Andrew.Koff@des.nh.gov)  
603-271-3918  
[Welcome | NH Department of Environmental Services](#)

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**From:** Mario Focareto <[mario@brownengineeringllc.com](mailto:mario@brownengineeringllc.com)>  
**Sent:** Wednesday, May 26, 2021 10:56 AM  
**To:** Koff, Andrew <[Andrew.T.Koff@des.nh.gov](mailto:Andrew.T.Koff@des.nh.gov)>  
**Subject:** Well Site Preliminary Application

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

Hi Andrew,

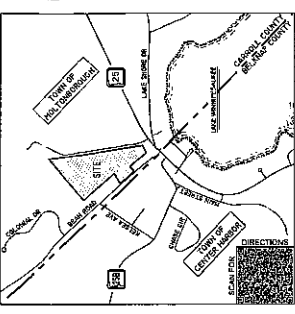
I'm not sure if you are the correct person to e-mail, but, I am looking for a GIS map and inventory of known and potential contamination sources and water users within our project area to incorporate into our preliminary application.

We are proposing two small community wells at 33 Bean Road, Moultonborough Tax Map 140 lot 16 and Tax Map 170 lot 12 (abutting sites, one owner). The coordinates from google are 43°42'42.2"N 71°27'40.3"W (43.711731, -71.461183) [google maps link](#).

If you are not the correct contact for this e-mail I apologize for the inconvenience and would appreciate the correct contact.

Thank you for your time,

**Mario Focareto**  
Brown Engineering LLC  
345 NH Rte 104, Suite 7  
New Hampton, NH 03256  
603-744-1044



**SYMBOLS LEGEND**

(Symbol: Circle with cross)	UTILITY W/ILE (PW)
(Symbol: Circle with dot)	IRON PIPE FOUND (IPF)
(Symbol: Circle with vertical line)	STONE FOUND (SF)
(Symbol: Circle with horizontal line)	BOUNDARY
(Symbol: Circle with diagonal line)	EXISTING 2' CONTOUR
(Symbol: Circle with dashed line)	EXISTING 1' CONTOUR
(Symbol: Circle with solid line)	TRAILING
(Symbol: Circle with wavy line)	STONE RETAINING WALL
(Symbol: Circle with zig-zag line)	SETBACK LINE
(Symbol: Circle with horizontal wavy line)	EDGE OF WETLAND
(Symbol: Circle with vertical wavy line)	WETLAND FLAG
(Symbol: Circle with triangle)	TEST PIT LOCATION

**CONCEPT PLAN - 3**

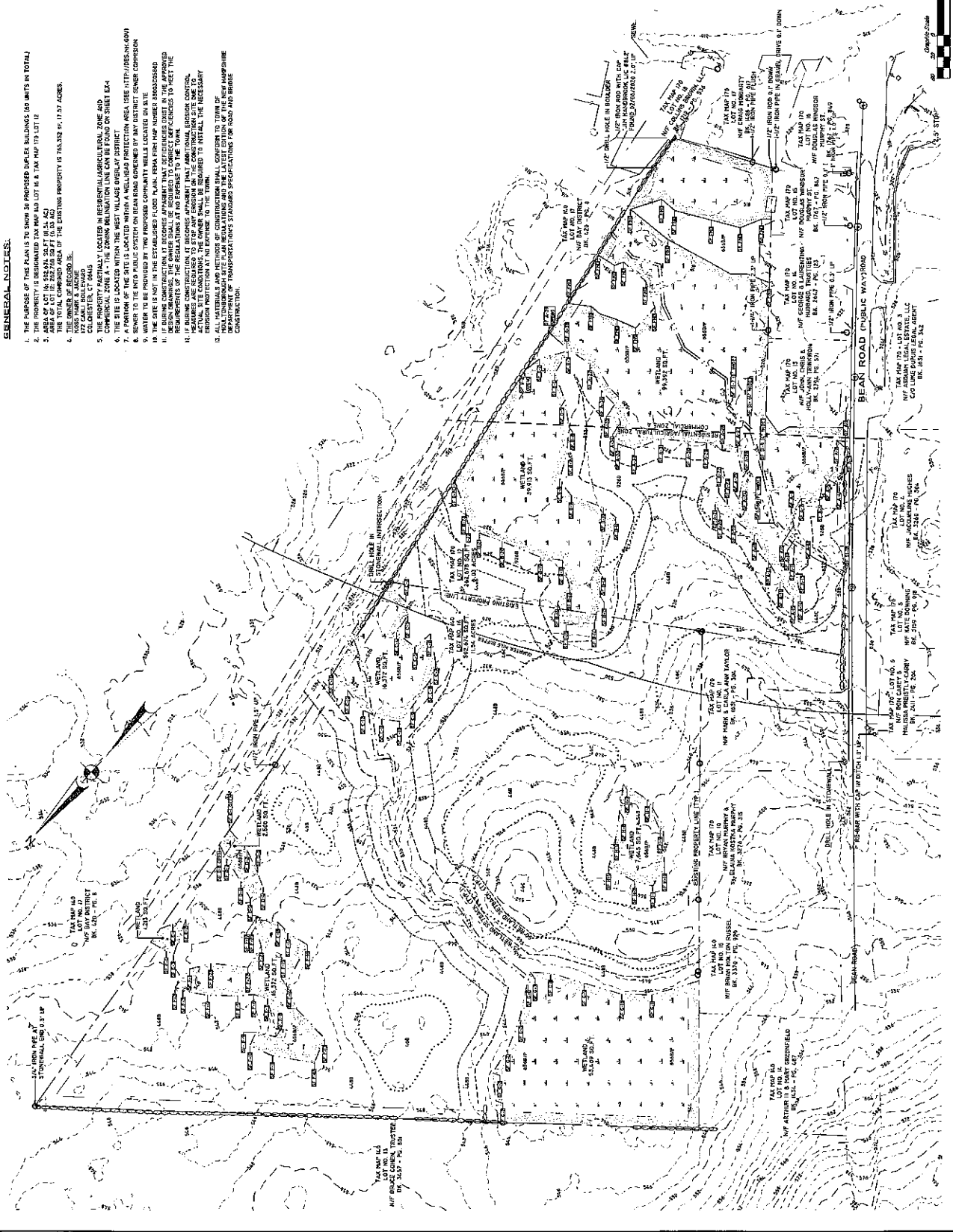
**TAX MAP 140 LOT 16**  
 BEAN ROAD, MILITONBOROUGH, NH 03254

**PREPARED BY:**  
 BROWN ENGINEERING LLC  
 177 Carl Dr. Mililtonborough, NH  
 603.748.2411  
 www.browneing.com

**DATE:** MARCH 3, 2021  
**JOB NO.:** 5926-01

**EC-1**  
OF

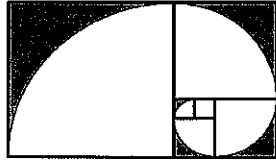
- GENERAL NOTES:**
- THE PURPOSE OF THIS PLAN IS TO SHOW 30 PROPOSED DUPLICATIONS (DU UNITS IN TOTAL)
  - THE PROPERTY IS DESIGNATED TAX MAP NO. 140 LOT 16 AS A TAX MAP 170 LOT 17
  - THE AREA OF THIS PLAN IS 1.33 ACRES
  - THE OWNER OF THE EXISTING PROPERTY IS 765.508 74 11.57 ACRES  
 JAMES W. AND JANE M. COLLETTIER, CT 06445
  - THE PROPERTY IS PARTIALLY LOCATED IN RESIDENTIAL/AGRICULTURAL ZONE AND PARTIALLY IN A WETLAND PROTECTION AREA (WPA) ON SHEET 15A
  - A PORTION OF THE SITE IS LOCATED WITHIN A WETLAND PROTECTION AREA (WPA) ON SHEET 15A
  - WATER TO BE PROVIDED BY TWO PROPOSED COMMUNITY WELLS LOCATED ON SITE
  - IN ORDER TO OBTAIN PERMITS FROM THE STATE OF NEW HAMPSHIRE, THE DESIGN SHALL BE REVISED TO CORRECT DEFICIENCIES TO MEET THE DESIGN REQUIREMENTS
  - IF DURING CONSTRUCTION IT BECOMES APPARENT THAT ADDITIONAL DESIGN CONTROL MEASURES ARE REQUIRED TO STOP ANY EROSION ON THE CONSTRUCTION SITE DUE TO EROSION PROTECTION AT NO EXPENSE TO THE TOWN
  - ALL UTILITIES AND WETLANDS SHALL BE IDENTIFIED AND SHOWN TO THE TOWN OF MILITONBOROUGH AND THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION'S STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION







**EXHIBIT 2:  
CONCEPT REVIEW**



# **BROWN ENGINEERING**

345 NH Route 104, Suite 7 New Hampton, NH 03256  
Phone (603) 744-1044  
[www.browngineeringllc.com](http://www.browngineeringllc.com)

## **Community Well Concept Review**

Harbor Landing  
Moultonborough, New Hampshire  
Date: May 26, 2021

**Applicant:**

Kent Brown  
Brown Engineering LLC.  
345 NH Route 104, Suite 7  
New Hampton, NH 03256  
PH: 603-744-1044  
Email: [Kent@Brownengineeringllc.com](mailto:Kent@Brownengineeringllc.com)  
Website: [www.BrownEngineeringLLC.com](http://www.BrownEngineeringLLC.com)

**Property Owner:**

Mark Koss  
Koss Construction LLC.  
172 Carli Boulevard  
Colchester, CT 06415  
PH: 860-933-4557  
Email: [Kossconstructionllc@gmail.com](mailto:Kossconstructionllc@gmail.com)

Community Well Concept Review  
Harbor Landing  
Tax Map 140 Lot 16, Map 170 Lot 12  
Moultonborough, New Hampshire

#### PROJECT OVERVIEW:

The site consists of 2 abutting parcels located on Bean Road in Moultonborough and are labeled by the town as Tax Map 140 Lot 16 and Tax Map 170 Lot 12. The current condition of the site is wooded with wetlands scattered throughout the site.

The proposed project, to be known as "Harbor Landing", consists of 30 duplex buildings (60 units) with associated drives and parking areas. The units will be a mix of 2 bedroom and 3 bedroom homes. Conservatively, we have designed the water system assuming every unit will be 3 bedrooms. There are no anticipated age restrictions for residence of this development.

#### DESIGN PARAMETERS:

Design Volume = 60 units x 3 bedrooms x 150 gpd = 27,000 gpd  
Source Control Volume = 27,000 gpd x 2 = 54,000 gpd  
Sanitary Protective Radius Required: 200'

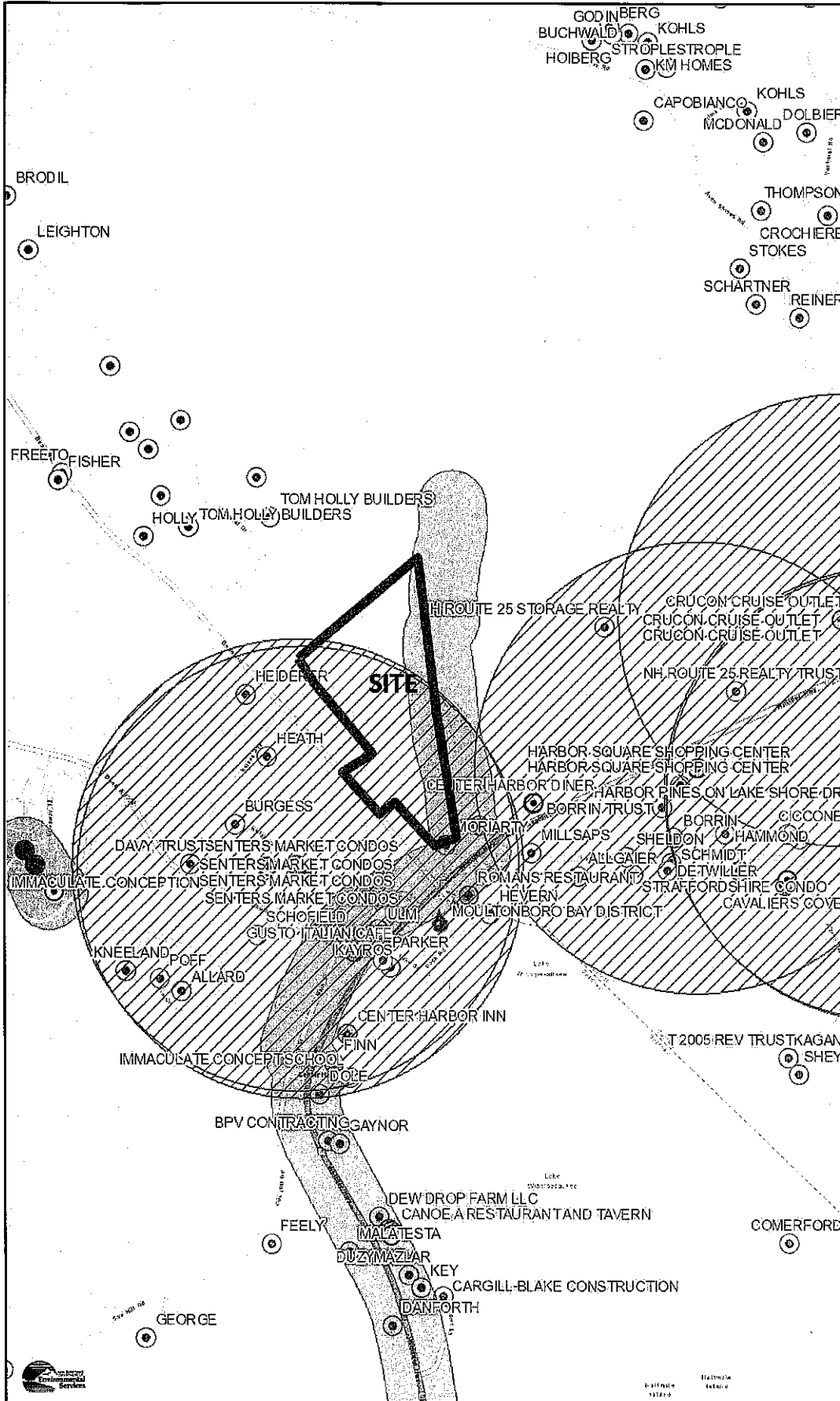
#### PROXIMITY OF NEARBY COMMUNITY WELLS:

To our knowledge, there is no access to a public water supply. According to NHDES OneStop Data Mapper, there are 3 community wells in the vicinity of the site. The closest of the three wells would be Romans Restaurant which is located approximately 1,200 feet from the entrance of the property. This well is privately owned and would require permission / easements to tie into. Tying into this well doesn't appear to be a viable option as it would entail trenching through Route 25, and running along Bean Road for approximately 900 ft. Beyond the costs of installing this waterline, I anticipate the well design for Romans Restaurant will be inadequate for the additional 54,000 gallons per day required by our site.

#### CONCLUSION:

A community well situated on site is the best option for this project.

# OneStop Map



- ### Legend
- Surface Waters with Impairment 2016 with Quarter Mile Buffer
  - Wellhead Protection Areas
  - Public Water Supply Entity Water and Sewer Lines
    - Both
    - Sewer
    - Water
  - Public Water Supply Wells
  - Registered Water Users
  - Water Supply Intake Protection Areas
  - Water Well Inventory

Map Scale  
1: 10,000

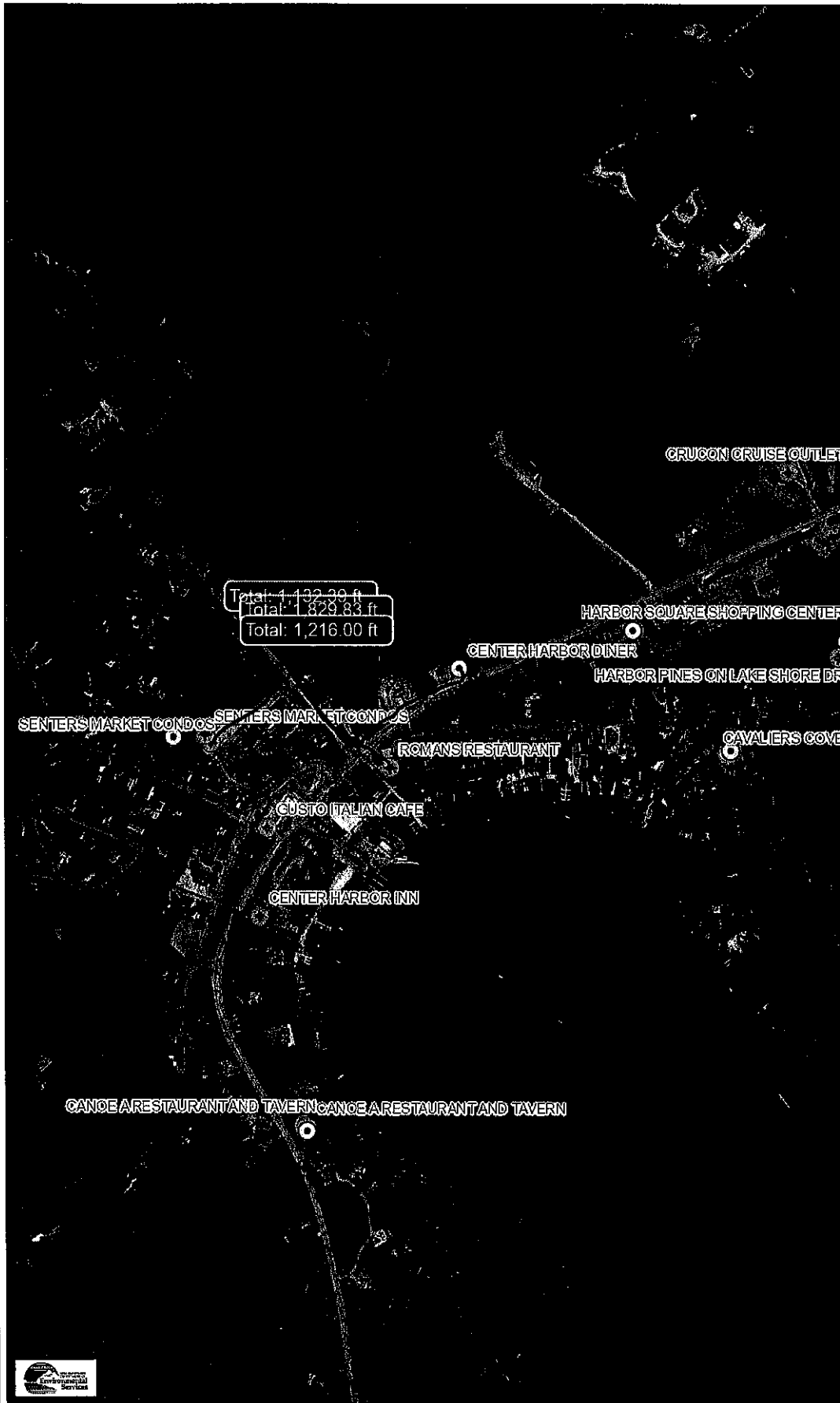
© NH DES, <http://des.nh.gov>  
Map Generated: 5/27/2021

Notes

Proposed Community Well



# Distances to Nearby Wells



## Legend

- Public Water Supply Entiti
- Public Water Supply Wells

Map Scale

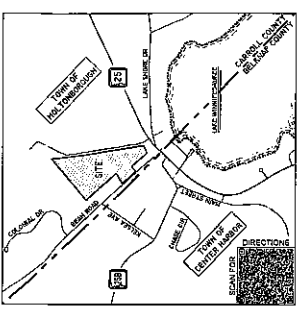
1: 9,349

© NH DES, <http://des.nh.gov>

Map Generated: 6/1/2021



## Notes



**SYMBOLS LEGEND**

○	UTILITY POLE (PP)
○	IRON PIPE FOUND (PPF)
○	STONE FOUND FOUND
—	PROPERTY LINE
—	EXISTING CONSTRUCTION
—	EXISTING OF CONTOUR
—	TIE LINE
—	STONE RETAINING WALL
—	SETBACK LINE
—	EDGE OF WETLAND
—	WETLAND FLAG
—	TEST PIT LOCATION

**CONCEPT PLAN - 3**  
**TAX MAP 140 LOT 16**  
 BEAN ROAD, MOULTONBOROUGH, NH 03254

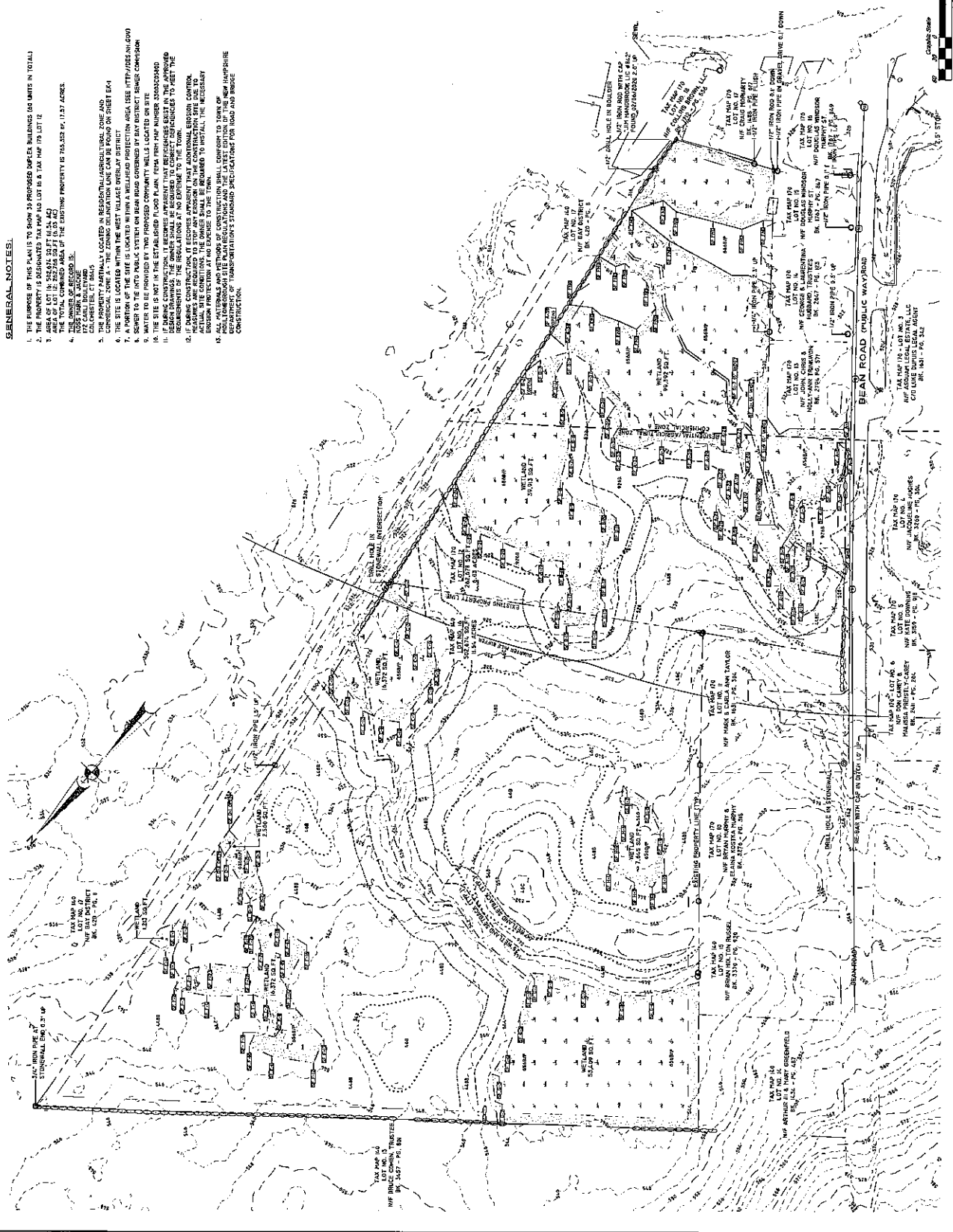
PREPARED FOR:  
 BEAN ROAD CONSTRUCTION LLC  
 172 Elm Street  
 Moultonborough, NH 03254  
 PHONE: 603.856.8200

DRAWN BY:  
**BROWN ENGINEERING LLC.**  
 24 N. ROUTE 164, SUITE 7  
 Moultonborough, NH 03254  
 PH: 603.856.8200  
 www.browngineering.com

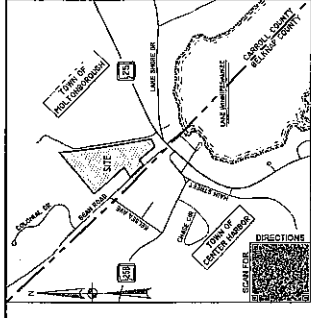
**BROWN ENGINEERING**  
 civil engineers

DATE: MARCH 3, 2021  
 JOB NO: 8328-01  
 EC-1  
 1 OF 1

- GENERAL NOTES:**
1. THE PURPOSE OF THIS PLAN IS TO SHOW 25 PROPOSED DEPLEX BUILDINGS (60 UNITS IN TOTAL)
  2. THE PROPERTY IS DESIGNATED TAX MAP 140 LOT 16 IN A TAX MAP 179 LOT 12
  3. AREA OF LOT 12: 252,745.20 SQ. FT. (5.80 AC)
  4. THE TOTAL COMBINED AREA OF THE EXISTING PROPERTY IS 743,532 SQ. FT. (17.07 ACRES)
  5. THE PROPERTY IS PARTIALLY LOCATED IN A RESIDENTIAL/AGRICULTURAL ZONE AND A COMMERCIAL ZONE. THE ZONING REGULATION ONE CAN BE FOUND ON SHEET 1541
  6. A PORTION OF THE SITE IS LOCATED WITHIN A WETLAND PROTECTION AREA (USE UPTP/USE/IN/OW)
  7. A PORTION OF THE SITE IS LOCATED WITHIN A WETLAND PROTECTION AREA (USE UPTP/USE/IN/OW)
  8. SEWER TO BE PROVIDED BY TWO PROPOSED COMMUNITY WELLS LOCATED ON SITE
  9. THE SITE IS NOT IN THE ESTABLISHED FLOOD PLAIN. FEMA FIRM MAP NUMBER 330400400D
  10. BEFORE CONSTRUCTION, THE OWNER SHALL BE REQUIRED TO CONDUCT INVESTIGATIONS TO MEET THE NEPA REQUIREMENTS. THE OWNER SHALL BE REQUIRED TO CONDUCT INVESTIGATIONS TO MEET THE NEPA REQUIREMENTS. THE OWNER SHALL BE REQUIRED TO CONDUCT INVESTIGATIONS TO MEET THE NEPA REQUIREMENTS.
  11. ALL MATERIALS AND METHODS OF CONSTRUCTION SHALL CONFORM TO TOWN OF MOULTONBOROUGH SPECIFICATIONS AND THE DEPARTMENT OF TRANSPORTATION'S STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION.



30 DUPLEX BUILDINGS, 60 UNITS, 3 BEDS/ UNIT  
 60X3X150GPD = 27,000GPD DESIGN VOLUME  
 27,000GPD X 2 = 54,000GPD SOURCE CONTROL VOLUME  
 2 WELLS @ 27,000GPD, 18.75GPM (EACH)  
 WELL RADIUS 28,801'-57,600GPD REQ. S 200' PWS



**SYMBOLS LEGEND**

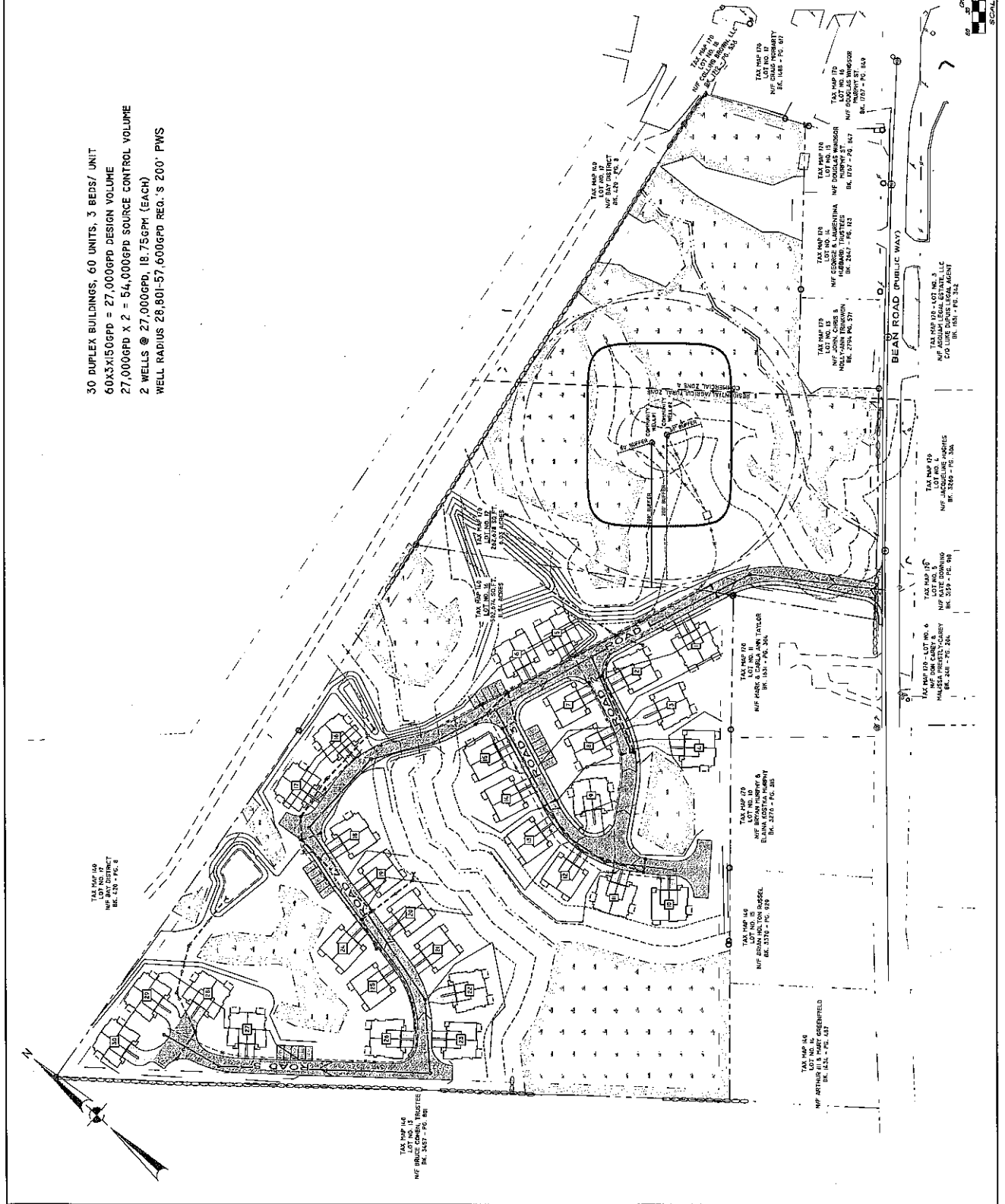
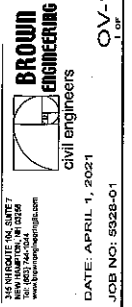
○	UTILITY POLE (PP)
⊕	NON-HAMPSHIRE HIGHWAY (INDICATED BY HWY)
—	PROPERTY LINE
—	SETBACK PROPERTY LINE
—	BOUNDARY OF CONTOUR
—	BOUNDARY OF CONTOUR
—	TREELINE
—	STONE RETAINING WALL
—	SETBACK LINE
—	EDGE OF WETLAND
—	WETLAND FLAG

**PROPOSED OVERVIEW PLAN**  
**TAX MAP 140 LOT 16**  
 BEAN ROAD, MOUTONSBOROUGH, NH 03254

PREPARED FOR:  
 BEAN ROAD CONSTRUCTION LLC  
 122 GARDEN AVENUE  
 ANDOVER, NH 03801

DESIGNED BY:  
**BROWN ENGINEERING LLC.**  
 26 NICHOLE LN. SUITE 7  
 BEAN ROAD, MOUTONSBOROUGH, NH 03254  
 TEL: (603) 443-4424  
 WWW.BROWNEENGINEERING.COM

DATE: APRIL 1, 2021  
 JOB NO: 9528-01



TAX MAP 140  
 LOT NO. 15  
 NH PARCEL NO. 15  
 BK. 1437 - PG. 18

TAX MAP 140  
 LOT NO. 16  
 NH PARCEL NO. 16  
 BK. 1437 - PG. 18

TAX MAP 140  
 LOT NO. 17  
 NH PARCEL NO. 17  
 BK. 1437 - PG. 18

TAX MAP 140  
 LOT NO. 18  
 NH PARCEL NO. 18  
 BK. 1437 - PG. 18

TAX MAP 140  
 LOT NO. 19  
 NH PARCEL NO. 19  
 BK. 1437 - PG. 18

TAX MAP 140  
 LOT NO. 20  
 NH PARCEL NO. 20  
 BK. 1437 - PG. 18

TAX MAP 140  
 LOT NO. 21  
 NH PARCEL NO. 21  
 BK. 1437 - PG. 18

TAX MAP 140  
 LOT NO. 22  
 NH PARCEL NO. 22  
 BK. 1437 - PG. 18

TAX MAP 140  
 LOT NO. 23  
 NH PARCEL NO. 23  
 BK. 1437 - PG. 18

TAX MAP 140  
 LOT NO. 24  
 NH PARCEL NO. 24  
 BK. 1437 - PG. 18

TAX MAP 140  
 LOT NO. 25  
 NH PARCEL NO. 25  
 BK. 1437 - PG. 18

TAX MAP 140  
 LOT NO. 26  
 NH PARCEL NO. 26  
 BK. 1437 - PG. 18

TAX MAP 140  
 LOT NO. 27  
 NH PARCEL NO. 27  
 BK. 1437 - PG. 18

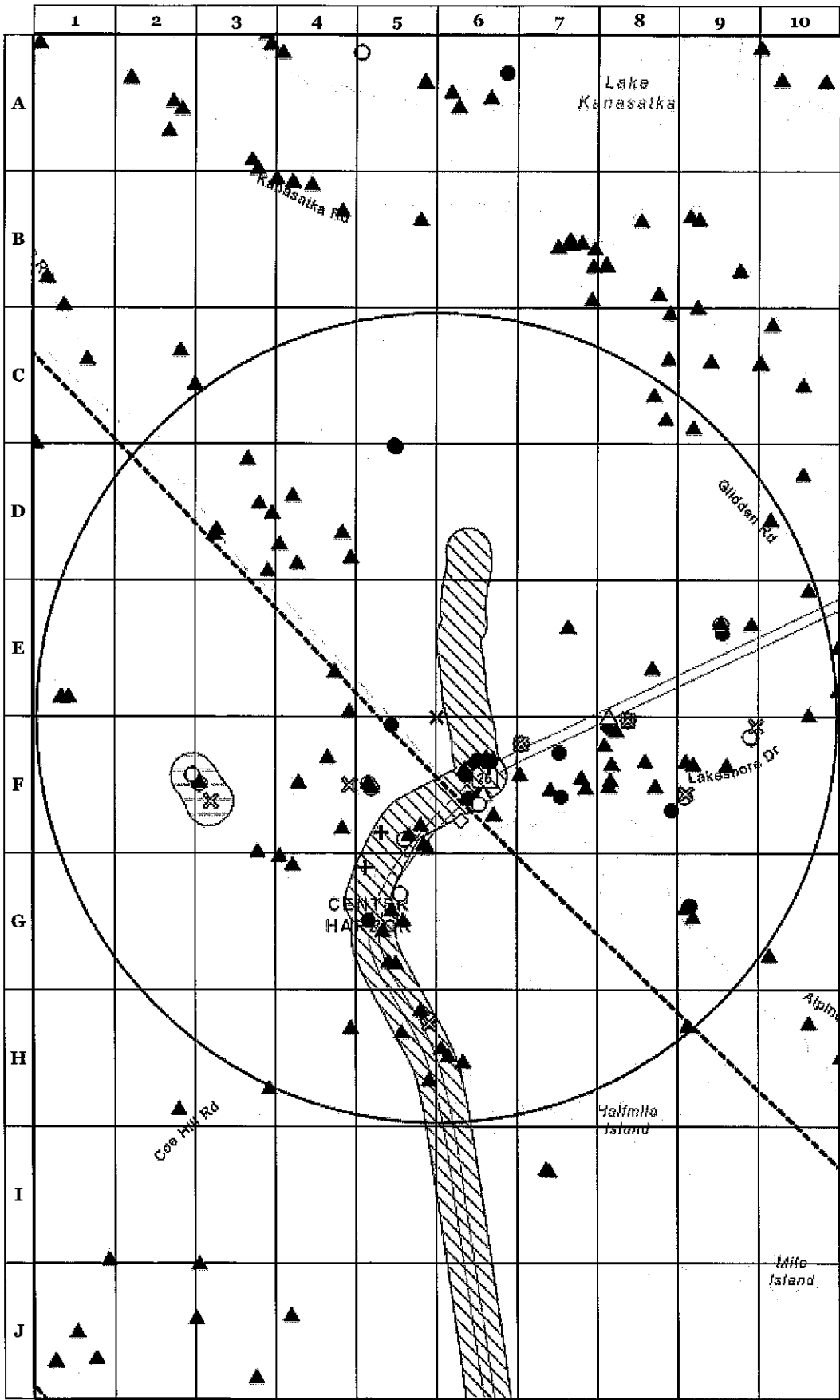
TAX MAP 140  
 LOT NO. 28  
 NH PARCEL NO. 28  
 BK. 1437 - PG. 18

TAX MAP 140  
 LOT NO. 29  
 NH PARCEL NO. 29  
 BK. 1437 - PG. 18

TAX MAP 140  
 LOT NO. 30  
 NH PARCEL NO. 30  
 BK. 1437 - PG. 18



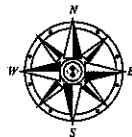
**EXHIBIT 3:  
MAP PROVIDED BY DES REFERENCING  
CORRESPONDENCE COORDINATES**



**GROUND WATER PROTECTION AREA AND WATER USE INVENTORY MAP**

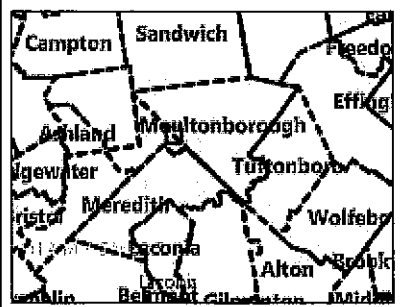
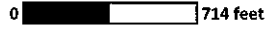
WELL SITING  
 CENTER HARBOR, MOULTONBOROUGH  
 (-71.4612, 43.7117 - 3600 FEET)

- ✕ Well Siting Location
- Approximate Delineation Boundary
- ⊕ Aboveground Storage Tank Facilities
- Automobile Salvage Yard Facilities
- △ Local Potential Contamination Source Inventory Sites
- ✕ National Pollutant Discharge System (NPDES) Outfalls
- ▲ Private Water Well Inventory
- ⊗ Public Water Supply Facilities
- Public Water Supply Sources
- ◇ Registered Water Users
- ◆ Resource Conservation and Recovery Act (RCRA) Sites
- Solid Waste Facilities
- Source Water Hazard Inventory Sites
- ⊕ Underground Storage Tank Facilities
- - - Town Boundaries
- - - Railroad Lines
- - - Transmission Lines
- ▨ Water Line Distribution
- ▩ Sewer Line Distribution
- ▧ Water and Sewer Line Distribution



Map prepared on 6/4/2021

Scale = 1 : 68,500 Feet



Esri Community Maps Contributors, NHDES, NHDES and U.S. EPA, NHDES and US EPA, NHDES, USEPA, NHGS, New Hampshire Department of Environmental Services, VCGI, Esri Canada, Esri, HERE, Garmin, SafeGraph, INCREMENT P, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

**EXHIBIT 4.1:  
GILFORD WELL COMPANY, WELL  
COMPLETION REPORT BRW1**

Well Number

113021-1

(FOR CONTRACTOR'S USE)

This report must be submitted to the N.H. Water Well Board no later than 90 days after the completion of the well.

State of New Hampshire Water Well Board PO Box 95 Concord, NH 03302-0095

Staff Use Only

WRB# 040.0433

LOCACC

Well Completion Report

Special Notes on Back

1. Well Owner/Home Owner: and/or Name Permanent Mailing Address Building Contractor: MOUNTAIN VIEW CONTRACTING LLC PO BOX 1746 MEREDITH NH

2. Location of Well: Town CENTER HARBOR Address 35 BEAN RD Street No Road Name

Town: Tax Map No. 102 Lot No. 039

Latitude N 43 42 694 GPS Manufacturer: [x] Garmin [ ] Magellan

Longitude W 71 27 778 [ ] Other

Please Report Coordinates in: Map Datum: WGS 84 Position Format: hddd°mm.mmm

3. Non-Conforming Well Location Form Required: [ ] Yes [x] No [ ] Property Line [ ] Road [ ] Septic System [ ] Surface Water

4. Date Well was Completed: 11/30/2021

5. Proposed Use of Well: DOMESTIC DRINKING WATER [ ] Other (Explain) NEW COMMUNITY

6. Reason for Constructing Well: [ ] Other WELL #1 OF 2

7. Type of Well: BEDROCK (DRILLED) [ ] Other

8. Total Depth of Well 200 feet below land surface.

9. Depth to Bedrock 43 feet below land surface.

10. Casing Details: Length 60 ft., Dia. 6 in., Material STEEL, Wt. 17 lb./ft.

11. Method(s) of Sealing Casing to Bedrock: [x] Drive Shoe [ ] Drillings [x] Grout [ ] Other

12. Measured Yield: [ ] Bailed [ ] Pumped [x] Compressed Air, for 1 Hours, at 60 GPM

13. Static Water Level: 20 feet below land surface. Date Measured 11/30/2021

14. Water Analysis: Has the water been analyzed? [ ] Yes [ ] No If yes, where

15. Stratigraphic and Lithologic Log:

Table with columns: Depth in Feet From To, Water Bearing, Surficial Material Description, Texture, Type. Includes rows for surficial materials and bedrock types.

Suggested Descriptors: Texture: Fine Medium Coarse

Color: White = 1, Gray = 2, Black = 3, Blue = 4, Green = 5, Yellow = 6, Brown = 7, Pink = 8, Rusty=9

Please Complete Additional Information on Reverse Side

16. **Yield Log:** If the yield was tested at different depths during drilling, list below.

Feet	GPM	Feet	GPM	Feet	GPM
200	60				

17. **Additional Well Development Methods Used:**

**Hydro-Fracturing Information:**     Standard     Zone    No. of Settings \_\_\_\_\_

Packer Settings (Ft)    1<sup>st</sup> Set \_\_\_\_\_ 2<sup>nd</sup> Set \_\_\_\_\_ 3<sup>rd</sup> Set \_\_\_\_\_ 4<sup>th</sup> Set \_\_\_\_\_

High Pressure (PSI)    \_\_\_\_\_

Low Pressure (PSI)    \_\_\_\_\_

**Surging Depths:**    1<sup>st</sup> Set \_\_\_\_\_ 2<sup>nd</sup> Set \_\_\_\_\_ 3<sup>rd</sup> Set \_\_\_\_\_ 4<sup>th</sup> Set \_\_\_\_\_

**Other Methods (Explain)** \_\_\_\_\_

18. **Date Well was Developed:** \_\_\_\_\_ / / \_\_\_\_\_

19. **Measured Yield After Development** \_\_\_\_\_ GPM,    Before Development \_\_\_\_\_ GPM

20. **Additional Well Seals Installed Inside of Well:**

Jaswell Type Seal     Shale Packer    Depth Setting \_\_\_\_\_ feet below land surface.

Other (Explain) \_\_\_\_\_

**Drop Pipe Used:**     Steel     PVC     Grouted Between Liner and Outer Casing

21. **Screen Details:** Make & Type \_\_\_\_\_, Material \_\_\_\_\_, Length \_\_\_\_\_ ft.

Diameter \_\_\_\_\_ in.,    Slot Size \_\_\_\_\_,    Depth to top of screen from land surface \_\_\_\_\_ ft.

Gravel Pack, if used: Gravel Size or Type \_\_\_\_\_

22. A water well contractor must provide a drawing indicating the position of each well, if more than one well is located within the lot, relative to significant permanent man-made features. Provide this information in the space below, or as an attachment to this form. Additional information attached:     Yes     No

23. A technical driller must submit a separate well completion report for every monitoring well installed into bedrock at a single property or place of business. A technical driller also must submit a well completion report for the deepest monitoring well it installs at a property or place of business. If the technical driller has not completed a separate well completion form for each monitoring well they installed in unconsolidated material at a single property or place of business, then it must prepare and submit a map showing the location of each monitoring well installed by the technical driller relative to significant man-made or natural features at a given site, and relative to well(s) located with GPS. Please provide this sketch below, or as an attachment to this Well Completion Form. Additional information attached:     Yes     No

24. Please attach results of drawdown test if performed.

25. Please provide any additional or unusual information about the well in the space below, or as an attachment to this form.

Additional Notes:

Doing Business as \_\_\_\_\_ **GILFORD WELL COMPANY** \_\_\_\_\_  
Company or Business Name

Report Filed by \_\_\_\_\_ **DONNA BARTLETT** \_\_\_\_\_  
Licensee Signature

**EXHIBIT 4.2:  
GILFORD WELL COMPANY, WELL  
COMPLETION REPORT BRW2**

**Well Number**  
12121-2  
 (FOR CONTRACTOR'S USE)

State of New Hampshire  
 Water Well Board  
 PO Box 95  
 Concord, NH 03302-0095

Staff Use Only  
**WRB#** 040.0431

This report must be submitted to the N.H.  
 Water Well Board no later than 90 days after  
 the completion of the well.

**Well Completion Report**  
 Special Notes on Back

**LOCACC** \_\_\_\_\_

1. **Well Owner/Home Owner:** \_\_\_\_\_  
 and/or \_\_\_\_\_  
 Name Permanent Mailing Address  
**Building Contractor:** MOUNTAIN VIEW CONTRACTING LLC PO BOX 1746 MEREDITH **NH**  
 Name Permanent Mailing Address

2. **Location of Well:** Town CENTER HARBOR Address 35 BEAN RD  
 Street No Road Name

Town: Tax Map No. 102 Lot No. 039

Latitude N 43 ° 42 ' 697 GPS Manufacturer:  Garmin  Magellan

Longitude W 71 ° 27 ' 772  Other \_\_\_\_\_

Please Report Coordinates in: Map Datum: WGS 84 Position Format: hddd°mm.mmm

3. **Non-Conforming Well Location Form Required:**  Yes  No  Property Line  Road  
 If Yes, please attach form to this report.  Septic System  Surface Water

4. **Date Well was Completed:** 12/01/2021

5. **Proposed Use of Well:** DOMESTIC DRINKING WATER  Other (Explain) NEW COMMUNITY

6. **Reason for Constructing Well:**  Other WELL #2 OF 2

7. **Type of Well:** BEDROCK (DRILLED)  Other \_\_\_\_\_

8. **Total Depth of Well** 200 feet below land surface.

9. **Depth to Bedrock** 40 feet below land surface.

10. **Casing Details:** Length 60 ft., Dia. 6 in., Material STEEL, Wt. 17 lb./ft.

11. **Method(s) of Sealing Casing to Bedrock:**  Drive Shoe  Drillings  Grout  Other \_\_\_\_\_

12. **Measured Yield:**  Bailed  Pumped  Compressed Air, for 1 Hours, at 60 GPM

13. **Static Water Level:** 20 feet below land surface. Date Measured 12/01/2021

14. **Water Analysis:** Has the water been analyzed?  Yes  No If yes, where \_\_\_\_\_

15. **Stratigraphic and Lithologic Log:**

Depth in Feet		Water Bearing	Surficial Material Description				Texture	Type	
From	To		<input checked="" type="checkbox"/> Sand	<input type="checkbox"/> Gravel	<input checked="" type="checkbox"/> Till	<input type="checkbox"/> Clay/Silt			
Ground Surface	40	YES	<input checked="" type="checkbox"/> Sand	<input type="checkbox"/> Gravel	<input checked="" type="checkbox"/> Till	<input type="checkbox"/> Clay/Silt			
			<input type="checkbox"/> Sand	<input type="checkbox"/> Gravel	<input type="checkbox"/> Till	<input type="checkbox"/> Clay/Silt			
			<input type="checkbox"/> Sand	<input type="checkbox"/> Gravel	<input type="checkbox"/> Till	<input type="checkbox"/> Clay/Silt			
			<input type="checkbox"/> Sand	<input type="checkbox"/> Gravel	<input type="checkbox"/> Till	<input type="checkbox"/> Clay/Silt			
			<input type="checkbox"/> Sand	<input type="checkbox"/> Gravel	<input type="checkbox"/> Till	<input type="checkbox"/> Clay/Silt			
Competent Bedrock		Water Bearing	Bedrock Type				Texture	Color(s)	
From	To		<input type="checkbox"/> Competent	<input type="checkbox"/> Weathered	<input checked="" type="checkbox"/> Granite	<input type="checkbox"/> Basalt			<input type="checkbox"/> Schist
40	200	YES	<input type="checkbox"/> Competent	<input type="checkbox"/> Weathered	<input checked="" type="checkbox"/> Granite	<input type="checkbox"/> Basalt	<input type="checkbox"/> Schist	<input type="checkbox"/> Gneiss	<input type="checkbox"/> Other
			<input type="checkbox"/> Competent	<input type="checkbox"/> Weathered	<input type="checkbox"/> Granite	<input type="checkbox"/> Basalt	<input type="checkbox"/> Schist	<input type="checkbox"/> Gneiss	<input type="checkbox"/> Other
			<input type="checkbox"/> Competent	<input type="checkbox"/> Weathered	<input type="checkbox"/> Granite	<input type="checkbox"/> Basalt	<input type="checkbox"/> Schist	<input type="checkbox"/> Gneiss	<input type="checkbox"/> Other
			<input type="checkbox"/> Competent	<input type="checkbox"/> Weathered	<input type="checkbox"/> Granite	<input type="checkbox"/> Basalt	<input type="checkbox"/> Schist	<input type="checkbox"/> Gneiss	<input type="checkbox"/> Other

**Suggested Descriptors:** Texture: Fine Medium Coarse  
 Color: White = 1, Gray = 2, Black = 3, Blue = 4, Green = 5, Yellow = 6, Brown = 7, Pink = 8, Rusty=9

**Please Complete Additional Information on Reverse Side**

16. **Yield Log:** If the yield was tested at different depths during drilling, list below.

Feet	GPM	Feet	GPM	Feet	GPM
200	60				

17. **Additional Well Development Methods Used:**

**Hydro-Fracturing Information:**     Standard     Zone    No. of Settings \_\_\_\_\_

Packer Settings (Ft)    1<sup>st</sup> Set \_\_\_\_\_ 2<sup>nd</sup> Set \_\_\_\_\_ 3<sup>rd</sup> Set \_\_\_\_\_ 4<sup>th</sup> Set \_\_\_\_\_

High Pressure (PSI)    \_\_\_\_\_

Low Pressure (PSI)    \_\_\_\_\_

**Surging Depths:**    1<sup>st</sup> Set \_\_\_\_\_ 2<sup>nd</sup> Set \_\_\_\_\_ 3<sup>rd</sup> Set \_\_\_\_\_ 4<sup>th</sup> Set \_\_\_\_\_

**Other Methods (Explain)** \_\_\_\_\_

18. **Date Well was Developed:** \_\_\_\_\_ / / \_\_\_\_\_

19. **Measured Yield After Development** \_\_\_\_\_ GPM,    Before Development \_\_\_\_\_ GPM

20. **Additional Well Seals Installed Inside of Well:**

Jaswell Type Seal     Shale Packer    Depth Setting \_\_\_\_\_ feet below land surface.

Other (Explain) \_\_\_\_\_

**Drop Pipe Used:**     Steel     PVC     Grouted Between Liner and Outer Casing

21. **Screen Details:** Make & Type \_\_\_\_\_, Material \_\_\_\_\_, Length \_\_\_\_\_ ft.

Diameter \_\_\_\_\_ in.,    Slot Size \_\_\_\_\_,    Depth to top of screen from land surface \_\_\_\_\_ ft.

Gravel Pack, if used: Gravel Size or Type \_\_\_\_\_

22. A water well contractor must provide a drawing indicating the position of each well, if more than one well is located within the lot, relative to significant permanent man-made features. Provide this information in the space below, or as an attachment to this form. Additional information attached:     Yes     No

23. A technical driller must submit a separate well completion report for every monitoring well installed into bedrock at a single property or place of business. A technical driller also must submit a well completion report for the deepest monitoring well it installs at a property or place of business. If the technical driller has not completed a separate well completion form for each monitoring well they installed in unconsolidated material at a single property or place of business, then it must prepare and submit a map showing the location of each monitoring well installed by the technical driller relative to significant man-made or natural features at a given site, and relative to well(s) located with GPS. Please provide this sketch below, or as an attachment to this Well Completion Form. Additional information attached:     Yes     No

24. Please attach results of drawdown test if performed.

25. Please provide any additional or unusual information about the well in the space below, or as an attachment to this form.

Additional Notes:

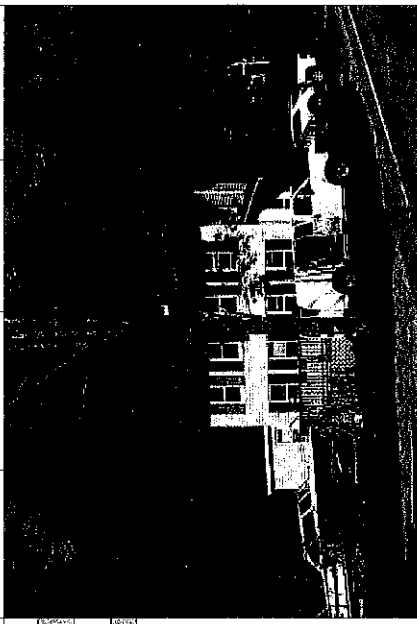
Doing Business as GILFORD WELL COMPANY  
Company or Business Name

Report Filed by DONNA BARTLETT  
Licensee Signature



**EXHIBIT 5:  
TOWN OF CENTER HARBOR  
RESIDENTIAL PROPERTY ASSESSMENT  
RECORD**

**Map & Lot:** 102-039-000 **Location:** 35 BEAN ROAD

Owner Information		Current Assessment Summary		Parcel Data	
CAREY, DON T PRIESTLY-CAREY, MALISSA PO BOX 1251 CENTER HARBOR, NH 03226		NICU Acres	0.2100	Neighborhood	RESID-1
		CU Acres		Property Class	Residential
		Total Acres	0.2100	Prime Use	One Family
		Living Area Sq. Ft.	1,505	Zone	Residential
		<b>Assessed Values</b>		Topography	Level
		NICU Land	\$97,400	Road Surface	Paved
		Current Use		Special District	Sewer District
		Total Land	\$97,400		
		Improvements	\$77,270		
		Total Assessment	\$174,670		
		Total Market Value	\$174,670		

Sale History			Assessed Values	
Date	Grantor	Q/U/Class	Sale Price	Bk/Page
4/29/2005	LACERTE, JASON N	U/ Invalid	\$149,000	2166/ 938
11/18/2004	JTR REALTY LLC	U/ Invalid	\$190,000	2166/ 937
3/23/2001	BEAUMONT, STEPHEN D & BARBARA A	Q/ Valid Arms Length	\$57,000	1637/ 093
10/18/1996	GRAY, RICHARD & STELLA A	U/ Invalid		1395/ 865
10/26/1986	GRAY, IRVING	U/ Invalid		376/ 261
9/22/1954	BLACKKEY, LLOYD & AGNES I	U/ Invalid		357/ 480

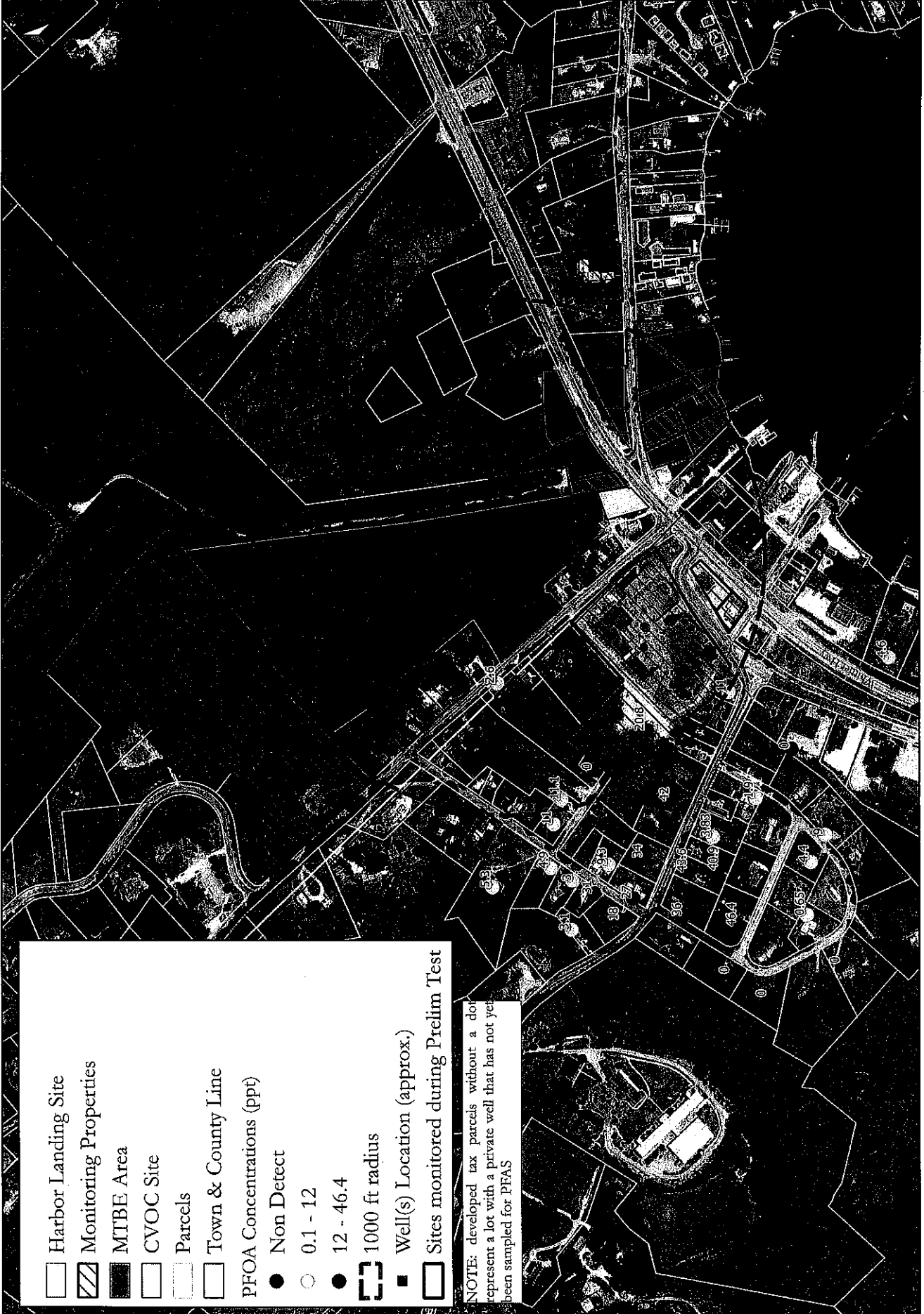
**Notes**  
TOWN LINE SPLIT - PROPERTY IN MOULTONBOROUGH AND CENTER HARBOR - CH=LAND 87%-BLDG 54%  
2023 pickup - \*\*CP\*\* FOLLOW UP WITH MOULTONBOROUGH - T/L SPLIT OVERRIDE JUSTIFICATION - Bldg. override - Justification is TOWN LINE SPLIT - 54%IN CH  
2021 PICK-UP - COMPLETION OF UC - NO RESPONSE FROM TAPXER - ASSUMED COMPLETE  
2020 M&L RW FOR 2022 REVAL - ADJD 6X9 WDK TO 5X22  
2019 PICK-UP - CP - COMPL OF UC - NO RESPONSE FROM OWNER - REFLAGGED 2021  
2018 PICK-UP - COMPL OF UC - SPOKE WITH TAXPAYER - HE WILL CALL TO SET UP AN APPOINTMENT BEFORE 2ND HALF BILLS BUILDING - CRAWL SPACE = LOW POSTED 3' HIGH BASEMENT  
2016 PICK-UP - PUL16: UNBLE TO VERIFY COMPL  
2016 M&L RW FOR 2017 REVAL - 16 M&L: ADDED SHED  
2015 PICK-UP - PUL15: N/C TO BARN - INT INSP ADJ'D FOR ROTTED SILLS, ROLLING FLRS; LACKS SOME FLR/CEIL/WALL CVR; LOW CEIL; LACKS CABS 1/2 BTH RMVD. ADJD FD  
OLD PICK-UP NOTES - PUL10:RMVD GAR & LNT,ADD BARN PULL:PER CALL W/ H/O SID COMP ON BARN ADJD COND  
2012 PICK-UP - PUL12: N/C; PUL13: N/C PUL14: N/C

Assessed Land Valuation			Visit History	
Land Type	Area	#Units	Frontage	By
HOMESITE IMPROV	0.210			
	Base Value	Adjustments	Adj. Factor	Final Value
	111,900	Twn Ln Sp -	0.87	\$97,400

Assessment History			
Date	Land	Curr. Use	Improvements
12/31/22	97,400		77,270
11/12/22	97,400		77,270
12/03/21	61,400		26,525
12/31/20	61,400		26,525
12/13/19	61,400		26,525
			<b>Total</b>
			174,670

Building Permits			
Date	Type	Number	Status
11/05/2009	Building	2191	BLDG
11/28/2006	Building	1950	BLDG
3/07/2002	Building	1505A	BLDG

**EXHIBIT 6:  
APRIL 2022 CONTAMINATION MAP  
PROVIDED BY DES TO KOSS**



- Harbor Landing Site
- Monitoring Properties
- MTBE Area
- CVOC Site
- Parcels
- Town & County Line
- PFOA Concentrations (ppt)
  - Non Detect
  - 0.1 - 12
  - 12 - 46.4
  - 1000 ft radius
- Well(s) Location (approx.)
- Sites monitored during Prelim Test

NOTE: developed tax parcels without a dot represent a lot with a private well that has not yet been sampled for PEAS

**EXHIBIT 7:  
PLANNING BOARD APPROVAL**



***Town of Moultonborough  
Planning Board***

6 Holland Street – P. O. Box 139  
Moultonborough, NH 03254  
(603) 476-2347 - Fax (603) 476-5835  
e-mail: dsassan@moultonboroughnh.gov

**Notice of Decision  
Site Plan Review Permit, Conditional Use Permit and  
Subdivision (Condominium form of Ownership)  
Koss Construction, LLC  
Tax Map 140 Lot 16 & Tax Map 170 Lot 12**

February 22, 2023

**Applicant: Koss Construction, LLC  
172 Carli Boulevard  
Colchester, CT 06415**

**Location: Bean Road (Tax Map 140 Lot 16 & Tax Map 170 Lot 12)**

**Owner of Record: Mark and Jackie Koss**

On November 11, 2021 the Planning Board of the Town of Moultonborough opened a public hearing on the application of Koss Construction, LLC, 172 Cari Boulevard, Colchester, CT 06415 (hereinafter referred to as the "Applicant" and/or "Owner") to allow for a proposed 60-unit condominium development, with a Boundary Line Adjustment to site all the dwelling units onto a single lot, with subdivision and site plan review, and associated site improvements, for the lots located in the Residential/Agricultural district and Commercial Zone A, within the West Village Overlay District (hereinafter referred to as the WVOD) and the Ground Water Protection Overlay District.

On November 11, 2021, prior to acceptance of the application as being complete, the Planning Board voted six (6) in favor (Bartlett, Larson, Kelly, Quinlan, Claypoole, Hoch) that the proposal did present a potential regional impact because of the relatively large number of dwelling units that were proposed in comparison to existing stock, because of the very close proximity to the Town of Center Harbor, and because of the potential impact to existing transportation networks.

The public hearing was continued to December 8, 2021, January 26, 2022, February 9, 2022, March 9, 2022, March 23, 2022, April 13, 2022, April 27, 2022, June 8, 2022, July 13, 2022, August 10, 2022, September 14, 2022, November 9, 2022, December 14, 2022, January 11, 2023, January 25, 2023, February 8, 2023, and closed on February 22, 2023.

At the regularly scheduled Planning Board meeting on February 22, 2023, the Board discussed the request for a **Conditional Use Permit (CUP)** to Article 9.1.7.1 of the Moultonborough Zoning Ordinance and noted the following Findings of Fact:

- a) As designed, this is a reasonable request for the applicant's use of his land for the stated purpose.
- b) The total area of Wetland impact for the Box culvert is approximately 448 sf. for dredge and fill.

- c) The Storm water management and mitigation design enhances the absorption on the entire site.
- d) Moultonborough has granted CUPs to allow driveways to cross wetlands on numerous prior applications.
- e) The Con Com found no issue with this request provided best practices are observed.

The Board then voted by a vote of seven (7) in favor (Larson, Bartlett, Kelly, Annaian, Connolly, Quinlan, Hoch) and none opposed to **approve** the Conditional Use Permit pursuant to Article 9.1.7.1 of the Moultonborough Zoning Ordinance for the construction of roads/driveways within the 50-ft Wetlands buffer subject to the following conditions:

1. Construction within the Wetlands buffer shall be limited to improvements presented on the plan entitled "Conditional Use Permit" (CUP 1 of 1), dated 9/28/2021 and site plan dated 1/31/2023.
2. Soil disturbance and other detrimental impact shall be minimized to only that which is necessary for construction and operation.
3. Following construction, the buffer shall be restored as nearly as possible to its pre-disturbance condition.
4. Habitat for rare, threatened, or endangered species, as determined by the NH Natural Heritage Bureau, shall not be disturbed.
5. Applicant shall comply with all conditions of DES AoT approval.

The Board discussed the request for the Condominium Subdivision and noted the following Findings of Fact:

- a) Condominium use for this property is a reasonable productive use.
- b) The multi-family use is an approved use in the WVOD (MZO 9.3)
- c) The use supports the goals of our Master Plan for increased housing density.
- d) The public sewer connection to the Bay District Sewer Commission allows increased density.
- e) In establishing the WVOD, the voters of Moultonborough voted that the density would be greater, being four times as dense with connection to Bay District Sewer with 10,000 square feet versus 40,000 square feet.
- f) The setbacks were also reduced from other ordinances to promote greater density.
- g) Besides the Bay District Sewer, there are two association wells, fire protection provided by the cistern system and storm water management plan per the plan set.

The Board voted by a vote of seven (7) in favor (Larson, Bartlett, Kelly, Annaian, Connolly, Quinlan, Hoch) and none opposed to **approve** the revised application for a 21 building/42 unit Condominium Subdivision of Lots 140-16 and 170-12, which shall be merged, subject to the following conditions:

Conditions precedent; to be completed prior to signature of condominium plan by the Planning Board Chair:

1. Add the following plan notes/revisions prior to submission of condominium subdivision plan for Planning Board signature.
2. All condominium instruments shall be subject to review and approval by Town Counsel, and any deletions, additions, or revisions recommended by Town Counsel shall be incorporated into the final condominium instruments prior to final Town approval, Planning Board Chair signature, and County recording.
3. All third-party review costs, including legal review shall be paid in full.
4. All required federal, state, and local approvals shall be obtained.
5. Approval is contingent upon the recording of the merger of the two lots.
6. Conditions precedent to be completed by 2/22/2025.

Conditions subsequent; to be continually complied with:

7. All construction phases and permanent drainage structures and stormwater management facilities shall be maintained to perform as represented and intended.
8. All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval.
9. Minimum short-term rentals to be 30 days.

The Board discussed the request for Site Plan Review and noted the following Findings of Fact:

- a) The project supports the goals of our Master Plan for increased housing density in appropriate areas.
- b) Condominium use is a reasonable productive use for the property in this mixed use neighborhood.
- c) This multi-family use is an approved use in the WVOD, as adopted by the voters.
- d) The stormwater management and mitigation design has been verified by a third party engineer.
- e) The Moultonborough Conservation Commission found no issue with this project provided best practices are observed.
- f) The public sewer connection to the Bay Sewer District Commission can support this increased density.
- g) DES will have the final say in the creation and operation of a community water system for this project.
- h) The applicant has complied with all our ordinances.

The Board voted by a vote of six (6) in favor (Larson, Bartlett, Kelly, Connolly, Quinlan, Hoch) and one (1) opposed (Annaian) to **approve** the application for Site Plan Review for a multi-family, 42-unit condominium subdivision, subject to the following conditions:

Conditions precedent; to be completed prior to signature of final plans by the Planning Board Chairman:

1. Add the following plan notes/revisions prior to submission of final plan for Planning Board Chair's signature.

- a. Revise note 16 under Dimensional Standards to 42 units (multiple pages)
- b. Update phasing notes to reflect new number of units (Sheet 8).
- c. All conditions subsequent shall be added as plan notes.
- d. Site density calculations shall be provided on drawing OV-1.

2. All federal, state, and local permits shall be obtained, including necessary approvals for the sewer and water systems.

3. Approval is contingent upon the recording of the merger of the two subject parcels.

4. The applicant, or his successors or assigns, shall file security with the Town of Moultonborough Land Use Office with surety conditions satisfactory in an amount to be determined by the Town's Consultant Engineer to guarantee completion of the utilities and roadway construction for the subdivision namely; the finish course of paving for the street and all stormwater and utility infrastructure, including infrastructure necessary for provision of water, sewer, and electric supply, as well as security to provide for all necessary inspections and tests to be conducted by the Clerk of the Works. Said security shall be in the form of a surety bond issued by a surety company authorized to do business in New Hampshire, cash, or savings bank passbook properly endorsed to the Town, or a Letter of Credit in a form acceptable to the Town. The Planning Board may from time to time, at their discretion, and upon request by the applicant, its successors or assigns, reduce the amount of such security to an amount sufficient to ensure that any and all remaining utility or roadway construction shall be able to be completed by the Town in the event that the developer does not complete the improvements. The security shall be approved by the Planning Board and submitted



to the Town of Moultonborough prior to the commencement of any construction activities on the project site.

5. Any remaining recommendations and revisions previously provided by the Town Engineer shall be addressed to the Engineer's satisfaction, and all utility and infrastructure systems shall obtain final approval of the Town Engineer.

6. Conditions precedent to be completed by 2/22/2025.

Conditions subsequent; to be continually complied with:

7. The site developer contractor for the drainage and stormwater protection systems shall meet on-site with the Town's Consultant Engineer prior to commencing any work.

8. All construction shall conform to the Design Standards, Guidelines and Principles of the WVOD Ordinance to include appropriate building construction standards and multi-modal transportation accommodations.

9. All lighting shall comply with the requirements of the Moultonborough Zoning Ordinance Section 6.6.5.

10. Annual stormwater operation and maintenance inspection report shall be submitted to the Land Use Department July 1st annually and shall be an on-going approval of this site plan approval.

11. All construction-phase and permanent drainage structures and stormwater management facilities shall be maintained to perform as represented and intended.

12. Neighboring properties shall be allowed to attach to the community water system at their own expense, provided the system has the capacity to serve the additional properties.

13. Conformance with Plan Work shall conform with the plans entitled, "Site Plan – Harbor Landing (Tax Map 140-16 & 170-12)", prepared by Brown Engineering, dated September 28, 2021, and revised January 31, 2023.

14. Amendments

Any modification to the approved plans and any modification of any condition of this approval, together with previous approvals unless otherwise specified in this decision, must receive the prior approval of the Planning Board, unless deemed insignificant by the Town Planner. In such case the applicant shall submit to the Planner the requested changes who shall seek Board approval of the changes. The applicant will not proceed unless the Planner first provides written approval of the requested insignificant changes.

15. Endorsement of Plan

Following the vote of approval by the Planning Board, the satisfaction of all conditions precedent, and the statutory thirty (30) day appeal period in accordance with RSA 677:15, the Planning Board Chairman shall sign the approved site plan, subject to conditions of this approval. The conditions of approval of this site plan review shall be placed on the final plans, and this decision shall be recorded at the Carroll County Registry of Deeds, in accordance with RSA 676:3 (I), within ninety (90) days of signing of the plans by the Planning Board Chair and prior to any construction commencing.

16. Construction Practices

All construction shall be carried out in accordance with Town of Moultonborough ordinances and the Site Plan Regulations, as well as all other pertinent rules and regulations. Additionally, all staging of materials and equipment shall be on-site, and no equipment or materials not directly used in the construction of the site shall be located on site.

**17. Construction Requirements**

- a. All construction will occur on site; no construction will occur or be staged within Moultonborough, Center Harbor or State of New Hampshire rights of way.
- b. Any roadways, driveways, or sidewalks damaged during construction shall be restored to their original condition by the Owner at the end of construction.
- c. All construction shall occur between the hours of 6:00 am and 9:00 pm as required by the Town of Moultonborough Unnecessary Noise Ordinance (Section 10.2(6)).
- d. The applicant shall clean construction vehicles before they exit the construction site, and clean and sweep all streets affected by their construction truck traffic as necessary.

**18. Site Plan Regulations**

The Site shall be constructed in accordance with the requirements of the Site Plan Regulations and any other applicable rules and regulations as affected by this decision.

**19. Subdivision Regulations**

All construction shall be in accordance with the requirements of the Subdivision Regulations and any other applicable rules and regulations as affected by this decision.

**20. Fire Department**

All work shall comply with the requirements of the Moultonborough Fire Department as affected by this decision.

**21. Office of the Building Inspector**

All work shall comply with the requirements of the office of the Moultonborough Building Inspector as affected by this decision.

**22. Utilities**

Any utility installation shall be reviewed and approved by the Moultonborough Building Inspector prior to the issuance of a Building Permit.

**23. Lighting**

All lighting shall be in conformance with the Town of Moultonborough Zoning Ordinance and Site Plan Regulations.

**24. Flagging of Wetlands**

Flagging of the 50-foot buffer shall be required before and during any construction.

**25. Wetlands Impacts**

- a. Soil disturbance will be minimum necessary for construction and operation through the use of BMPs.
- b. Detrimental impacts will be minimized.
- c. Temporary barriers shall be placed between wetlands and buildings to reduce litter and construction materials from entering wetlands. Barriers to be removed upon completion.
- d. Restoration activities will leave site as nearly as possible in its pre-disturbance condition.
- e. Construction work will not disturb habitat for rare, threatened or endangered species as determined by the NH Natural Heritage Bureau.
- f. All work shall be in conformance with NH DES Permits.

**26. Best Management Practices**

Applicable industry Best Management Practices shall be employed for all construction activities on the site.

**27. Maintenance**

A signed Maintenance Agreement shall be submitted to the Land Use Office for acceptance prior to endorsement of the plans. Said Maintenance Agreement shall include schedules for cleaning of all drainage infrastructure and other similar infrastructure maintenance items to ensure their proper functioning and shall include the following:

- a. Refuse removal, ground maintenance and snow removal shall be the responsibility of the applicant.
- b. Winter snow in excess of snow storage areas on the site shall be removed off site.
- c. Paved areas shall be swept at least twice a year to remove sand and debris. Said sand and debris shall be removed off site and properly disposed of.
- d. Where necessary, and in compliance with wetland buffer requirements, vegetation on the site shall be trimmed and maintained to ensure visibility of all signs and to ensure proper functioning of stormwater structures.
- e. Garbage and litter shall be removed in and around wetlands twice a year.
- f. Invasive species shall be removed in and around wetlands twice a year.
- g. Only native species shall be planted per Mr. Koss 1/11/2023.
- h. A schedule for cleaning of catch basins, culverts, and other stormwater infrastructure for the site.

**28. Signage**

Any proposed signage shall be in compliance with the Town of Moultonborough Zoning Ordinance, Article 5, and shall be reviewed and approved by the Code Enforcement Officer prior to the issuance of the Certificate of Occupancy for the site.

**29. E-911 Numbering**

The site shall conform with the Town of Moultonborough Building Numbering System Ordinance (Section 20), prior to the issuance of a Certificate of Occupancy for the site.

**30. As-Built Plans**

As-Built plans, stamped by a NH Licensed Professional Engineer, shall be submitted to the Land Use Department and the Road Agent prior to the issuance of a Certificate of Occupancy for each unit.

**31. Testimony and Representation at Public Meetings**

All testimony and representations made by the applicant or their representatives during the Public Hearing(s) and Public Meeting(s) shall be incorporated into this approval and are part of the Notice of Decision.

**32. Right to Amend Decision**

The Planning Board reserves the right to modify or amend this approval on application of the owner, lessee, or mortgagee of the premises, or upon its own motion, as permitted by the Town of Moultonborough Site Plan Regulations, Section 6, and RSA 676:4.

**33. Violations**

Violations of any condition of this decision shall result in placement of a Stop-Work Order or a Cease and Desist Order, as appropriate, on the property by the Building Inspector and/or the Select Board, unless the violation of such condition is cured within fourteen (14) days or waived by a majority vote of the Select Board. Outstanding violations of the approved plans or conditions of approval may result in the revocation of this approval by the Planning Board under RSA 676:4-a.

**34. Legal Fees for Review**

The applicant shall pay all legal fees for the review of project documents during the permitting process, as detailed in invoices from the Town's legal counsel prior to the issuance of any residential Building Permits for the site.

**35. Clerk of the Works**

The services of a consultant to serve as a Clerk of the Works shall be provided by the Town, at the applicant's, or his successor's or assign's, expense, to review the remaining infrastructure work. All previous inspections of infrastructure shall be detailed in written inspection forms and shall be turned in to the Town for the use of the Clerk of the Works prior to any further infrastructure work being done. In the event that the previous inspection reports are not sufficient, the Clerk of the Works may order any necessary tests to be conducted, at the applicant's expense, to verify previous work.

**36. Inspections**

The developer shall pay all costs associated with periodic on-site inspections by the Town's Consultant Engineer during the construction phase of all drainage and stormwater protection systems prior to any unit being occupied. See RSA 676:4-b, II.

**37. Unit Owners Association**

All roadway rights-of-way and utility infrastructure shall be owned by the Unit Owners Association for the subdivision. It shall be the responsibility of the Unit Owners Association to maintain these areas and infrastructure. All internal roads will remain private unless accepted as public, and the Town of Moultonborough is not responsible for maintaining these roads.

**38. Right to Enter**

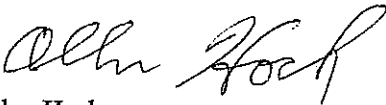
The Town of Moultonborough, its employees, agents, or representatives shall have the right to enter all common areas for the purpose of providing emergency services, including, but not limited to police, fire, and ambulance service to unit owners and for the purpose of inspection of the installation, maintenance, repair, and replacement of the water supply, sewerage, and drainage systems and any other utilities servicing the condominium, together with the inspection of all structures and other improvements on the land.

**39. No Site Work or Logging**

No site work or logging can occur until all necessary State and Federal approvals are obtained, including but not limited to DES approval of the two proposed community wells.

**40. Condominium Documents** should include provision for abutters experiencing new well contamination to tie into the community well for the first seven (7) years of operation of the community well. Expense of this tie-in shall be shared 50/50 between the abutter and the condominium association. A surety in an amount determined by the Town Engineer, shall be maintained for seven (7) years. Community water system shall be designed to serve a minimum of six (6) abutters in addition to all units on site.

This decision shall not take effect until thirty (30) days have elapsed and no appeal has been filed or that if such appeal has been filed, and it has been dismissed or denied, it is recorded in the Carroll County Registry of Deeds, in accordance with RSA 677:15.



Allen Hoch  
Chairman

cc.

- o Ethan Wood, (by email only at [ewood@nco-law.com](mailto:ewood@nco-law.com))
- o Mario Focareto (by email only at [mario@brownengineeringllc.com](mailto:mario@brownengineeringllc.com))
- o Scott Dvorak (by email only at [sdvorak@moultonboroughnh.gov](mailto:sdvorak@moultonboroughnh.gov))
- o Tom Hughes, Town Assessor (by email only at [thughes@moultonboroughnh.gov](mailto:thughes@moultonboroughnh.gov))
- o Map Lot Document File

**EXHIBIT 8:  
KOSS FLOOR PLANS**

dana ortis kelling • architect  
 planning, design, architect  
 59 prescott road  
 brentwood, new hampshire 03883-6902  
 603 • 680 • 4184

Koss Construction  
 Mountain View Contracting, LLC  
 100 Main Street  
 Montpelier, Vermont 05602

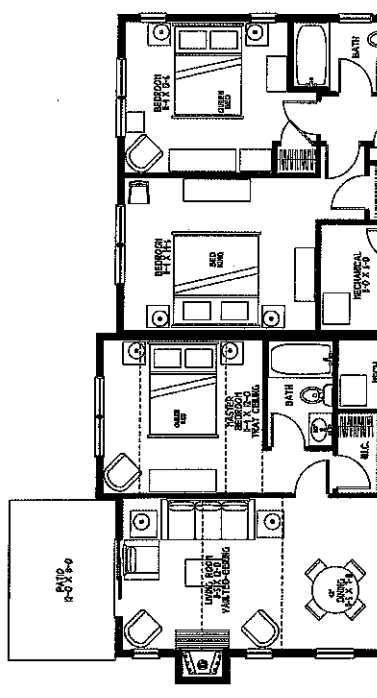
1ST & 2ND FLOOR PLAN  
 CONDO UNIT A-B  
 Scale: 1/4" = 1'-0"  
 Title: Cedar Square Package  
 Field: 0500

REV: \_\_\_\_\_  
 SHEET: 404-  
 DATE: 3/20/20

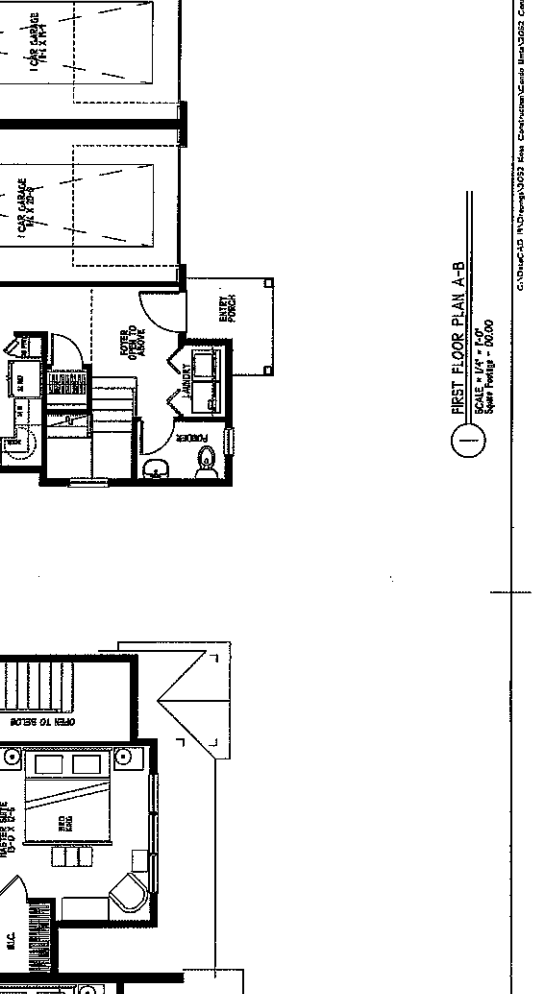
1  
 Job No. 2052

dnb

RECEIVED  
 FEB 10 2022  
 TOWN OF  
 MOULTONBOROUGH



1 FIRST FLOOR PLAN A-B  
 SCALE: 1/4" = 1'-0"  
 Sheet Height: 1800



2 SECOND FLOOR PLAN A-B  
 SCALE: 1/4" = 1'-0"  
 Sheet Height: 1800

C:\Users\jcs\OneDrive\Documents\Cedar Square\2022 Cedar Unit Plans - A-B.dwg  
 PRINTED: 1/10/2022

*Anthony, et al.v. Hampstead Area Water  
Company, Inc. and Lewis Builders  
Development, Inc.*

# The State of New Hampshire

ROCKINGHAM COUNTY

SUPERIOR COURT

Deanna Anthony, et al.

v.

Hampstead Area Water Company, Inc.  
and  
Lewis Builders Development, Inc.

Docket No.: 218-2019-CV-01361

## **ORDER ON PLAINTIFFS' REQUEST FOR A PRELIMINARY INJUNCTION**

The plaintiffs,<sup>1</sup> a group of owners and tenants of single-family houses in Hampstead, brought suit against the defendants, Hampstead Area Water Company, Inc. ("HAWC") and Lewis Builders Development, Inc. ("Lewis Builders"). Compl. (Doc. 1). The suit arises out of the defendants' alleged interference with the plaintiffs' groundwater. The plaintiffs bring claims for negligence, nuisance, negligence *per se*, and unjust enrichment. *Id.* The plaintiffs also seek preliminary and permanent injunctive relief. *Id.* Currently before the Court is the plaintiffs' request for preliminary injunctive relief. The Court held a multi-day hearing on this request on February 7, March 13, August 20, and September 3, 2020. The parties also submitted pre-hearing and post-hearing memoranda and proposed orders to the Court. *See* Pls.' Pre-Hr'g Mem. (Doc. 15); Pls.' Post-Hr'g Mem. (Doc. 47); Pls.' Proposed Order (Doc. 48); Defs.' Pre-Hr'g Mem. (Doc. 14); Defs.' Post-Hr'g Mem. (Doc. 50); Defs.' Proposed Order (Doc.

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<sup>1</sup> The plaintiffs in this case are Deana Anthony, David Anthony, Scott Skafas, Exacusti Skafas, Michael Hanides, Karen Hanides, the Hanides Family Revocable Trust, Thomas Farhadian, Carolyn Farhadian, the Thomas and Carolyn Farhadian Revocable Trust, Rachel Neri, Graig Neri, Deborah Fairchild, Kenneth Fairchild, Daniel MacDonald, Dennis Silva, Cindy Silva, and Howell Steadman.



quo in cases of potential environmental contamination is not a 'condition of rest,' but one of action which, if allowed to continue or proceed unchecked and unrestrained, will inflict serious irreparable injury." Francisco Sanchez v. Esso Standard Oil Co., 572 F.3d 1, 20–21 (1st Cir. 2009). "Thus, the fact that an injunction may require the payment or expenditure of money does not foreclose the possibility of equitable relief." Id. at 21 (quotations omitted); see also id. (holding that "the funding of a diagnostic study, though it would require monetary payments, would be preventive rather than compensatory[,] and courts may therefore issue such relief in a preliminary injunction (quotations, brackets, and ellipses omitted). In this case, the Court finds that the appropriate "status quo" is for the plaintiffs to have access to uncontaminated water. Accordingly, the Court concludes it can grant affirmative injunctive relief necessary to attain this status quo if the plaintiffs otherwise satisfy the criteria for a preliminary injunction.

A. Likelihood of success on the merits

The plaintiffs contend they are likely to succeed on the merits of this request because, in the opinion of their expert, Sharma, HAWC's excessive pumping of BRW-4 resulted in the contamination of Well 4 by reducing water levels in the aquifer and exposing minerals in the bedrock to air, which oxidized these minerals and ultimately led to increased acidity within the well water. Doc. 47 at 17–22. As a result, the plaintiffs contend that, even though Well 4 provides sufficient water, the water is not potable and thus HAWC has still interfered with the Anthonys' right to a reasonable use of their groundwater. Id. For their part, the defendants concede that the water in Well 4 is unsafe for consumption. Doc. 50 ¶ 79. The defendants argue, however, that the plaintiffs cannot show that HAWC's actions were the proximate cause of the contamination. Id. ¶¶ 79–80. Relying on the testimony of expert Emery, the defendants

contend that the cause of Well 4's contamination was the addition of chlorinated water into Well 4 in the fall of 2018, which Emery testified was not a normal or recognized practice. Id. ¶ 82. The defendants maintain that this act was the direct cause of contamination in Well 4 and that it was a superseding cause cutting off liability for whatever impact BRW-4's pumping had on Well 4's water levels because it was unforeseeable that the Anthonys would add chlorinated water to their well. Id. ¶ 82. As such, the defendants contend the plaintiffs cannot establish that BRW-4 proximately caused the water quality issues in Well 4. Id. In response, the plaintiffs argue that, even assuming adding chlorine to Well 4 was the cause of the contamination, it was not a superseding cause because the Anthonys only added water to Well 4 as a remedy for the well going dry. Doc. 47 at 20–22.<sup>21</sup>

In analyzing this dispute, the Court notes the Anthonys' common law right to be free from unreasonable interferences with their use of their groundwater extends to interferences in the quality of the groundwater caused by unreasonable withdrawals. See Restatement (Second) of Torts § 858, ill. 3 (1979) (city that installs a wellfield on coastal property and withdraws water at a rate that lowers the water table to the extent that nearby ocean water flows into the aquifer is liable to property owners for the presence of salt in their groundwater). Thus, the Anthonys may be entitled to a preliminary injunction if they can show likely success on their claim that HAWC's over pumping caused Well 4 to become contaminated. The Court concludes that the plaintiffs have met their burden to show that they are likely to succeed on the merits of

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<sup>21</sup> The plaintiffs argue that adding outside sources of water to groundwater wells is a reasonable method and provided a website link they claimed was to a DES factsheet on safely doing so. See Doc. 47 at 21 n. 6. When the Court attempted to access that link, however, the Court was directed to a DES website page reading "Page Not Found."

this injunction request. As an initial matter, there is no dispute that, prior to the summer of 2018, Well 4 was producing water safe for consumption. In addition, there is no dispute that after Well 4 ran dry and water returned in December 2018, its water quality became unusually poor and unsafe for consumption. The only question in this case is thus what happened between the summer of 2018 and December 2018 that caused the water in Well 4 to become contaminated. Both of the parties have put forward conflicting, irreconcilable theories on this issue supported by expert opinion. See Facts Section, supra. Notably, both experts testified that their respective theories were the most likely causes of the contamination and discounted other potential causes of Well 4's contamination.

In the Court's view, it is not necessary to resolve which expert's theory is correct in order to rule on the plaintiffs' instant request because the Court concludes that, regardless of which theory is correct, the plaintiffs are likely to succeed on their claim that HAWC's depletion of the water levels was the proximate cause of Well 4's contamination. Proximate cause "involves both cause-in-fact and legal cause." Estate of Joshua T. v. State, 150 N.H. 405, 407 (2003) (quotations omitted). "Cause-in-fact requires the plaintiff to establish that the injury would not have occurred without the negligent conduct." Id. (quotations omitted). "The plaintiff must produce evidence sufficient to warrant a reasonable juror's conclusion that the causal link between the negligence and the injury probably existed." Id. at 407–08 (quotations omitted). "Further, legal cause requires a plaintiff to establish that the negligent conduct was a substantial factor in bringing about the harm." Id. at 408. "Although the negligent conduct need not be the sole cause of the injury, to establish proximate cause a plaintiff

must prove that the defendant's conduct caused or contributed to cause the harm." Id.

"The question of proximate cause is generally for the trier of fact to resolve." Id.

The chain of causation between a defendant's act and the plaintiff's injury may be cut off, however, when an "intervening force" which contributes to the plaintiff's injury becomes a superseding cause. "An intervening force is one which actively operates in producing harm to another after the actor's negligent act or omission has been committed." Restatement (Second) of Torts § 441 (1965). "A superseding cause is an act of a third person or other force which by its intervention prevents the actor from being liable for harm to another which his antecedent negligence is a substantial factor in bringing about." Restatement (Second) of Torts § 440 (1965). "A superseding cause relieves the actor from liability, irrespective of whether his antecedent negligence was or was not a substantial factor in bringing about the harm." Id., cmt. b. Significantly, not all intervening forces are superseding causes. Id., cmt. a. In particular, "an independent intervening cause will not interfere with the connection between the original act and the injury if the intervention was probable or foreseeable." Marcotte v. Timberlane/Hampstead Sch. Dist., 143 N.H. 331, 348 (1999).

In this case, if Sharma's theory proves correct, the plaintiffs would likely prevail on their claim that HAWC's operation of BRW-4 was the proximate cause of Well 4's contamination because it would have directly resulted in that contamination. In addition, if Emery's theory is correct, the Court concludes the plaintiffs would still be likely to show that HAWC's actions were the proximate cause of Well 4's contamination. As an initial matter, HAWC's actions resulting in Well 4 running dry were the cause-in-fact of the contamination because the Anthonys would not have added water to Well 4 if the

well had not gone dry. Further, unless there was a superseding cause cutting off liability, it was also the legal cause because the dry state of Well 4 was a substantial factor in the Anthonys' decision to add water to Well 4.)

Thus, the issue is whether the Anthonys' addition of water was a superseding cause. As a starting point in this analysis, the Court concludes it was foreseeable that individuals with dry wells would take actions to secure alternative sources of water while their wells were dry. In addition, based on the evidence in the record, the Court concludes the plaintiffs' will likely show that it was foreseeable that individuals in such a position might resort to adding water to their private wells. The Court acknowledges that evidence before this Court as to whether adding outside sources of water to private wells is safe or advisable is unclear. Emery testified that this practice was against the policy of the DES and was not safe. Deanna Anthony testified, however, that the DES approved adding potable water to Well 4 prior to the Anthonys doing so. Further, at the February 20, 2020, hearing, defense counsel noted that the EPA and the DES had certain requirements for adding outside water to private wells and asked Deanna Anthony if she followed those requirements. Deanna Anthony testified that she did not know of these requirements, and that her understanding was that the DES approved of adding water as long as it was potable. While defense counsel did not introduce evidence of either the DES or EPA's specific requirements, the Court gleaned from her questioning that both agencies have at least contemplated that individuals might attempt to add water to their wells to remedy water quantity issues. Finally, in the April 2019 DES report, the DES noted that the Anthonys added water to their wells and then discussed how effective this method would be in providing water to the Anthonys'

residence. Defs.' Ex. E at 6. Notably, the DES does not state that this action violated its policies or was dangerous to the Anthonys' well water quality. Id. At the very least, this record reflects that adding outside water to wells to remedy water quantity issues is a method individuals and government agencies have contemplated and, thus, even if inadvisable, is a foreseeable response to a private well running dry.

In light of this analysis, the Court cannot make any conclusions as to whether it was safe or consistent with DES policy for the Anthonys to add water to Well 4. At the same time, the Court concludes that the plaintiffs are likely to succeed in showing that it was reasonably foreseeable to HAWC that individuals, like the Anthonys, whose wells run dry, would take self-help measures including adding outside sources of water to their wells. As such, the plaintiffs are likely to show that the addition of water to Well 4 was not a superseding cause that cut off liability to HAWC. Therefore, the Court finds that, even assuming adding water to Well 4 resulted in the contamination, the plaintiffs are still likely to succeed in showing that HAWC's overpumping of BRW-4 was the proximate cause of the contamination. See Marcotte, 143 N.H. at 348.

**B. Immediate, irreparable harm**

The next question is whether the Anthonys will suffer immediate, irreparable harm if HAWC does not supply them with an alternative water source for the remainder of this litigation. Neither party expressly argues whether the Anthonys would suffer an immediate, irreparable harm in the absence of an alternative supply of water.<sup>22</sup> As the Court understands, the Anthonys do not have a permanent source of water safe for

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<sup>22</sup> The defendants argue that the Anthonys' alleged injuries are not irreparable because the Anthonys themselves can find an alternative source of water and seek to recover these expenses in the form of damages at the end of this litigation. Doc. 50 ¶ 73. The Court will evaluate whether damages would "repair" the Anthonys' injuries in its analysis of whether the Anthonys have an adequate remedy at law.

HAWC from adding new customers would provide any relief to the plaintiffs. For this reason, the Court DENIES this request.

Conclusion

For the foregoing reasons, the Court GRANTS in part and DENIES in part the plaintiffs' request for preliminary injunctive relief, and issues the following injunctions:

- A. HAWC may not pump BRW-4 at a rate above 35 gpm until otherwise ordered by this Court; and
- B. HAWC must provide water safe for human consumption to the Anthonys for the remainder of this litigation in a manner consistent with the requirements the Court laid out in Section II(E) of this Order.

SO ORDERED.



January 25, 2021

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Judge Daniel I. St. Hilaire

Clerk's Notice of Decision  
Document Sent to Parties  
on 01/25/2021