



CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

LIZABETH M. MACDONALD  
JOHN J. RATIGAN  
DENISE A. POULOS  
ROBERT M. DEROSIER  
CHRISTOPHER L. BOLDT  
SHARON CUDDY SOMERS  
DOUGLAS M. MANSFIELD  
KATHERINE B. MILLER  
CHRISTOPHER T. HILSON  
HEIDI J. BARRETT-KITCHEN  
JUSTIN L. PASAY  
ERIC A. MAHER  
CHRISTOPHER D. HAWKINS  
BRENDAN A. O'DONNELL  
ELAINA L. HOEPPNER  
WILLIAM K. WARREN

27 August 2021

Juliet Walker, Planning Director  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

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RETIRED  
MICHAEL J. DONAHUE  
CHARLES F. TUCKER  
ROBERT D. CIANDELLA  
NICHOLAS R. AESCHLIMAN

Re: Conditional Use Permit Application Supplement, 230 Commerce Ave

Dear Juliet:

This letter supplements the Conditional Use Permit Application and corresponding materials previously filed by Gove Environmental, Inc. ("Gove Environmental") and our cover letter dated 5 May 2021, all regarding the inadvertent mowing, in August of 2020, of wetlands and the wetland buffer at property located at 230 Commerce Avenue which is further identified as City Assessor Map 217, Lot 2-1975 (the "Property") which Property is owned by 230 Commerce Way, LLC (Brora, LLC) (the "Applicant"). This letter also follows the Applicant's initial appearance before the Conservation Commission in June at which time a discussion ensued regarding plans for the long-term maintenance of the Property.

In response to that discussion and the sentiment expressed by the Commission, the Applicant worked with Halvorson, Tighe & Bond Studio ("Halvorson") to produce the enclosed Landscaping and Maintenance Plan to supplement its Conditional Use Permit Application (the "Plan"). The Plan details proposed restoration planting, a two-year oversight period, wetland placard signage, and a commitment for ongoing invasive species removal at the Property.

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Juliet Walker, Planning Director  
27 August 2021  
Page 2

This Plan, in conjunction with the remedial action already taken by the Applicant at the direction of Peter Britz to include fixing ruts caused by the inadvertent mowing, installing erosion control measures, and delineating the wetlands on the Property, confirms the Applicant's commitment to avoiding inadvertent mowing in the future, and should constitute the basis for a recommendation for approval from the Conservation Commission and an approved Conditional Use Permit from the Planning Board.

We look forward to discussing the Plan with the Conservation Commission at its 8 September meeting at which time the Applicant and representatives from Gove Environmental and Halvorson will be available to answer any questions.

Thank you for your time and attention.

Very truly yours,  
DONAHUE, TUCKER & CIANDELLA, PLLC

A handwritten signature in black ink, appearing to read 'Justin L. Pasay', with a stylized, cursive flourish at the end.

Justin L. Pasay  
JLP/sac  
Enclosures (1)

cc: 230 Commerce Ave, LLC  
Gove Environmental, Inc.  
Halvorson, Tighe & Bond Studio



CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

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WILLIAM K. WARREN

May 5, 2021

Juliet Walker, Planning Director  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

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

Re: Conditional Use Permit Application, 230 Commerce Ave

Dear Juliet:

This cover letter supplements the Conditional Use Permit Application and corresponding materials previously filed by Gove Environmental, Inc. ("Gove") regarding the inadvertent mowing, in August of 2020, of wetlands and the wetland buffer at property located at 230 Commerce Avenue which is further identified as City Assessor Map 217, Lot 2-1975 (the "Property") which Property is owned by 230 Commerce Way, LLC (Brora, LLC) (the "Applicant"). We look forward to appearing before the Conservation Commission at its 12 May 2021 meeting.

**Executive Summary**

In 2019, the Applicant coordinated with the City to define the scope of permitted work to remove invasive species within the jurisdictional wetland and wetland buffer on the Property. Extensive invasive species clearing took place on the Property in June of 2019 pursuant to that process, which work was viewed by the City's Environmental Planner, Peter Britz. In August of 2020, the Applicant's contractor inadvertently mowed portions of the wetlands and wetland buffer on the Property pursuant to the mistaken belief that cattails were on the invasive species list. The Applicant has since worked with and at the direction of Mr. Britz to remedy ruts caused by the mowing, install erosion control measures, and delineate the wetland and wetland buffer boundaries on the Property. The nature of the impacts to the

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Juliet Walker, Planning Director  
May 5, 2021  
Page 2

wetlands and wetland buffer on the Property, and to the functions and values of the same, are temporary and the area is currently regrowing. Nonetheless, the City has requested the Applicant file a Conditional Use Permit Application. By its application, the Applicant proposes a wetland boundary signage scheme to clearly delineate the wetlands and vegetated buffer strip.

### **Factual Context**

On 24 April 2019, the Applicant, via counsel, provided notice to the City's Planning Director of the Applicant's intent to remove invasive species located within the wetlands and wetland buffer on the Property pursuant to Section 10.1018.23<sup>1</sup> of the Zoning Ordinance (the "24 April 2019 Letter"). See Enclosure 1. That correspondence followed a 13 February 2019 site walk with the Chairman of the Conservation Commission and a follow-up site walk with the Conservation Commission (and one member of the Planning Board) on 17 April 2019. The City's Environmental Planner, Peter Britz, attended the site walks.

The 24 April 2019 Letter outlined the Applicant's plan to remove invasive species to include "cutting, mowing, brush hog mowing, hand and mechanical trimmers, chain saws, [and] chipping in place or grinding." Id. The 24 April 2019 Letter also included a copy of the Prohibited Invasive Plant Species Rules, AGR 3800, as published in the list form by the New Hampshire Department of Agricultural Markets & Food. Id.

In response to the 24 April 2019 Letter, Peter Britz sent a Memorandum to the Applicant which stated that the Planning Staff and Conservation Commission "support the work proposed to enhance the wetland and uplands adjacent to the 230 Commerce Way site" and which clarified the City's understanding of the limits of work to be performed. See Enclosure 2. Specifically, Mr. Britz's Memorandum stated that "[t]he work should take care not to create a disturbance and impacts not allowed by the ordinance" and stated that in particular, "the [24 April 2019 Letter] states that cutting mowing and brush hog mowing will be undertaken" and that "[h]opefully, that type of equipment would

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<sup>1</sup> Section 10.1018.23(2) of the Zoning ordinance permits the non-chemical removal or cutting of invasive species as designated by the State of New Hampshire, within the wetland or vegetative buffer strip (25' in this case). Section 10.1015 of the Zoning Ordinance requires that notice be provided to the Planning Director when such vegetation removal is proposed. We note that the City's Zoning Ordinance does not prohibit mechanized means of removing invasive species from the wetland or vegetated buffer strip.

not be utilized unless a strong case could be made that it was just clearing invasives." Id. In this context, the Applicant's agents indicated to Mr. Britz their belief that the invasive species clearing could take place without use of mechanized mowing, brush hogs or excavator work.

Mr. Britz's Memorandum also stated that "the chipping of material in the wetland and wetland buffer could be perceived as fill" and that wood chips used as mulch "should be part of a clear planting/mulching plan in order to avoid adverse impact on the wetland buffer." Id. Finally, Mr. Britz's Memorandum stated that if the City observes that work has gone beyond "that allowed by Section 10.1015 [the Applicant] will be ordered to cease work and apply for a wetland conditional use permit." Id.

In June of 2019, the Applicant's contractor began the clearing of invasive species on the Property. Despite their intention, clearing of the invasive species on the Property by hand-tools and chainsaws alone was not possible based on the density and dominance of the invasive species to include rugose rose, bittersweet and European buckthorn. Native woody shrubs had been shaded out by the sea of invasive species. Accordingly, the contractor used mechanized mowing and brush hogs to gain access to the area and clear out the invasive species as proposed by the 24 April 2019 Letter. Dead trees were removed as were truckloads of debris, appliances, mattresses, bottles/cans, building supplies, and even dog feces bags, greatly improving the viewshed of the Property by surrounding properties.

After the work was performed in June 2019, Jim Gove of Gove Environmental, Inc., the Applicant's Wetland Scientist, met with Peter Britz at the Property to review the work that had been conducted. Mr. Gove relayed to Mr. Britz that use of a brush hog and mechanized mowing to conduct the work was required due to the thicket of invasive species vegetation, as described above. During this meeting, Mr. Britz pointed out that chipping had occurred within the wetland area and that the woodchips had to be moved to the upland area of the Property. The Applicant complied with this instruction from Mr. Britz.

As a result of this work in June 2019, the Property is much more accessible by foot. Should additional clearing of invasive species within the wetlands or vegetated buffer strip be required, the Applicant believes that such additional work may

Juliet Walker, Planning Director

May 5, 2021

Page 4

very well be accomplished by hand-tools alone, given that the area can now be accessed.

More than a year later, in late August of 2020, the Applicant's contractor mistakenly mowed the central portion of the wetlands area on the Property, as well as portions of the vegetated buffer strip and limited cut area, all in an effort to remove cattails which the contractor incorrectly believed were on the invasive species list. More specifically, though the cattails are invasive, they are native, so are not on the State's list, and cannot be removed under the City's Zoning Ordinance. This was an unfortunate and inadvertent accident.

On 4 September 2020, Peter Britz sent a Wetland Violation Notice to the Applicant (the "Violation Notice") which stated, among other things, that upon viewing the Property via a site walk that same day, "there is extensive machine mowing of the wetland buffer and wetland area[,] " that "this work is well beyond what is allowed in the wetland and wetland buffer without the benefit of a wetland conditional use permit[,] " that the Applicant's wetland contractor assured Mr. Britz in May 2019 "that there would be no excavators and no brush hogs used on the site and only chipping will take place only in uplands and hand tools and chain saws will be used to complete the work." See Enclosure 3. Further, the Violation Notice stated that "there is cutting right up to the edge of some stream areas and in wetland areas on other parts of the property" and "it is important that erosion control measures [] be put in place to prevent erosion into the streams that traverse the sites." Id.

Upon receipt of the Violation Notice, the Applicant and its agents met with Mr. Britz at the site, and at Mr. Britz's direction, remedied minor ruts which were caused by the inadvertent mowing via use of erosion control silt soxx placed in and adjacent to the channel, the placement of erosion control mats on the sides of the stream, and the smoothing of other ruts. The Applicant also conducted wetland mapping of the Property and produced a Conditional Use Plan which depicts the mowing impact to the Property, which plan has been filed with the City by Gove with the Conditional Use Permit Application. Additionally, the Applicant's agents photographed the impact of the inadvertent mowing of the Property, which photographs have also been provided to the City with the Conditional Use Permit Application, as have more recent photographs, taken on 29 April 2021, which depict the regrowth occurring in impacted areas.

Juliet Walker, Planning Director

May 5, 2021

Page 5

### **Jurisdictional Wetlands and Wetlands Buffer Impact**

The impact to the wetlands and wetland buffers caused by the inadvertent mowing is temporary in nature, is growing back, or has otherwise been resolved.

The impact to the wetland and wetland buffer is depicted in the plans filed with the City by Gove. Specifically, of the total area of inland wetland on the Property, consisting of 485,740 sf, 58,800 sf of wetland area was inadvertently mowed, and 49,300 sf of wetland buffer area was mowed. Of the buffer-area mowed, 29,900 sf of mowing impact occurred in the applicable 0'-25' vegetated buffer strip, and 19,400 sf of mowing impact occurred in the applicable 25'-50' limited cut area.

As noted above, the areas mowed are currently growing back, as depicted in the new photographs provided to the City by Gove. Further, the minor ruts caused by the mowing which were identified by Mr. Britz have been resolved in accordance with Mr. Britz's direction, as described above.

The Applicant is committed to compliance with the terms of the Zoning Ordinance with regard to the future removal of invasive species and proposes to install wetland placards along the 25' vegetated buffer strip to ensure the delineation is clearly recognizable to contractors on the Property.

### **Conditional Use Permit Application**

The City's Planning Board is permitted to grant a conditional use permit for any use not specifically permitted in Section 10.1016.10 of the Zoning Ordinance. "Use" is defined by the Zoning Ordinance as "[a]ny purpose for which a lot, building or other structure or tract of land may be designed, arranged, intended, maintained or occupied; or any activity, occupation, business, or operation carried on or intended to be carried on or in an building or other structure or on a tract of land."

Where a use, activity or alteration is not expressly permitted by Section 10.1016.10 of the Zoning Ordinance within the wetland or wetland buffer, such use may only occur upon receipt of a conditional use permit issued by the Planning Board. See Zoning Ordinance, Section 10.1017.10. Conditional use permit approval requires satisfaction of the criteria outlined in Section 10.1017.50 of the Zoning Ordinance, all of which generally revolve around the doctrine of avoidance and minimization.

Juliet Walker, Planning Director

May 5, 2021

Page 6

In this case, notwithstanding the temporary and resolving nature of the impacts caused by the Applicant's contractor's inadvertent mowing in August of 2020, we presume that that City has requested the Applicant apply for a conditional use permit pursuant to Section 10.1016.30 of the Zoning Ordinance, which states that when the Planning Director "reasonably believes that an existing or proposed use, activity or alteration that is not specifically permitted by Section 10.1016.10 is located in a wetland or wetland buffer, and a conditional use permit has not been granted for such use, activity or alteration, the Planning Director may require a wetland delineation in order to verify the location or absence of wetlands and determine whether the use, activity or alteration requires a conditional use permit."

While it is difficult to apply the criteria listed in Section 10.1017.50 of the Zoning Ordinance to an inadvertent and temporary mowing impact, we address here the impact to the wetland functions and values caused by the mowing. Specifically, while the wildlife habitat was disrupted by the mowing, the habitat will re-establish through regrowth of the area. The other functions of the wetland area, being water quality renovation and treatment, were not impacted by the mowing.

Despite these impacts, and as noted above, the work performed resulted in the removal of trash and discarded appliances, and the cleaning of the area, which improved the visual quality of the surrounding properties. Further, invasive species were, in fact, removed and, as indicated above and in the photographs provided, the native species that were cut are growing back and the wetlands' functions and values associated with same will return with the regrowth.

Further, the Applicant is committed to adherence to Sections 10.1015 and 10.1018.23 of the Zoning Ordinance regarding the future removal of invasive species. In this context, the Applicant proposes to install wetland boundary placards along the edge of the wetlands 25' vegetated buffer strip, or as otherwise directed by the Conservation Commission and Planning Board.

Juliet Walker, Planning Director

May 5, 2021

Page 7

**Conclusion**

The Applicant's contractor's inadvertent mowing in August 2020 of a portion of the wetlands and the wetland buffer on the Property in the mistaken belief that cattails could be removed, is most unfortunate. The Applicant hopes that its efforts to promptly comply with the direction of the City's Environmental Planner to remedy the impacts and its commitment to ensure future compliance with the City's Zoning Ordinance requirements pertaining to the removal of invasive species provide ample support for its request for a Condition Use Permit.

Please contact me with any comments or questions.

Very truly yours,

DONAHUE, TUCKER & CIANDELLA, PLLC

A handwritten signature in blue ink, appearing to read 'Justin L. Pasay', with a stylized, cursive flourish.

Justin L. Pasay

JLP/sac

Enclosures

cc: 230 Commerce Ave, LLC  
Gove Environmental, Inc.



CELEBRATING OVER 30 YEARS OF SERVICE TO OUR CLIENTS

April 24, 2019

Juliet T. H. Walker, AICP  
Planning Director  
Planning Department  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

Re: Notification to Planning Director under Section 10.1015 of Portsmouth Zoning Ordinance

Dear Juliet:

I write on behalf of 230 Commerce Way, LLC. This constitutes "Notification to Planning Director" as set forth at Section 10.1015 of Article 10, Environmental Protection Standards, of the City Zoning Ordinance. This notice is being provided prior to tree cutting, vegetation removal and other alteration, all associated with and limited to removal of invasive species located in the wetlands or wetlands buffer at 230 Commerce Way. The work is described more completely below.

Section 10.1018.23 of the Environmental Protection Standards Article of the City's Zoning Ordinance states in relevant part: "The removal or cutting of vegetation is prohibited in a wetland or vegetated buffer strip, except that non-chemical control of plants designated by the State of New Hampshire as 'New Hampshire Prohibited Invasive Species' is permitted." (emphasis supplied) This is the section of the City Ordinance under which we are proceeding. Our work and the plan described below is the product of a site walk with the Chairman of the Conservation Commission on 13 February and a follow up site walk by the Conservation Commission (including one member of the Planning Board) on 17 April. More specifically, Peter Britz, the City's Environmental Planner and Sustainability Coordinator, who attended the site walks, recommended to our team on the ground that we proceed in this fashion. I have copied Peter on this correspondence.

Our plan is to proceed as follows. We will conduct a preliminary meeting at the site with the landscape firm we have selected to complete the work. We will identify the invasive species which are to be removed. We will document preexisting conditions with a photo log and/or a

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SENIOR COUNSEL  
MICHAEL J. DONAHUE

RETIRED  
CHARLES F. TUCKER  
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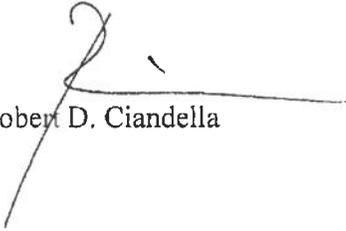
Juliet T.H. Walker  
Page 2  
April 24, 2019

drone view. The removal will be undertaken by the following techniques: cutting, mowing, brush hog mowing, hand and mechanical trimmers, chain saws, chipping in place or grinding. There will be no removal of vegetation off site. In addition to the invasives, we will remove surface trash and debris. We will document conditions following the work with a photo log and/or a drone view. We will remove only invasives which are registered on the "Prohibited Invasive Plant Species Rules, AGR 3800, as published in list form by the New Hampshire Department of Agricultural Markets & Food. I have attached for your information that list, which is marked to reflect the invasive species we have identified on site and which are to be removed.

Thank you for your attention. Please let me know if you have any questions or comments regarding the foregoing or the enclosed.

Yours truly,

**DONAHUE TUCKER & CIANDELLA, PLLC**



Robert D. Ciandella

RDC:lmh  
Enclosure

cc: Peter Britz  
230 Commerce Way, LLC  
Jim Gove, Gove Environmental Services

**Fact Sheet:**

**Prohibited Invasive Plant Species Rules, Agr 3800**

New Hampshire

Department of Agriculture,  
Markets & Food

**Updated 01/31/2017**

This fact sheet is a synopsis of the adopted rules on invasive plant species and is intended for general use by the nursery and landscape industry, plant growers, plant dealers, general public, State Agencies, and Municipalities. A complete copy of the rules can be accessed on the internet at [http://agriculture.nh.gov/topics/plants\\_insects.htm](http://agriculture.nh.gov/topics/plants_insects.htm).

In accordance with the Invasive Species Act, HB 1258-FN, the NH Department of Agriculture, Markets & Food, Division of Plant Industry is the lead state agency responsible for the evaluation, publication and development of rules on invasive plant species for the purpose of protecting the health of native species, the environment, commercial agriculture, forest crop production, or human health. The rule, Agr 3800, states "No person shall collect, transport, import, export, move, buy, sell, distribute, propagate or transplant any living and viable portion of any plant species, which includes all of their cultivars and varieties, listed in Table 3800.1, New Hampshire prohibited invasive species list".

*New Hampshire Prohibited Invasive Plant Species List*

Scientific name	Synonyms	Common name
<i>Acer platanoides</i> L.	<i>Acer platanoides</i> var. <i>schwedleri</i> Nichols.	Norway maple
<i>Ailanthus altissima</i> (P. Mill.) Swingle	<i>Ailanthus glandulosa</i> Desv.	Tree of heaven
<i>Alliaria petiolata</i> (Bieb.) Cavara & Grande	<i>Alliaria alliaria</i> (L.) Britt.; <i>Alliaria officinalis</i> Andr. ex Bieb.; <i>Erysimum alliaria</i> L.; <i>Sisymbrium alliaria</i> (L.) Scop.	Garlic mustard
<i>Alnus glutinosa</i> (L.) Gaertn.	<i>Alnus alnus</i> (L.) Britt.; <i>Betula alnus</i> L. var. <i>glutinosa</i> L.	European black alder
* <i>Berberis thunbergii</i> DC.		Japanese barberry
* <i>Berberis vulgaris</i> L.		European barberry
* <i>Celastrus orbiculatus</i> Thunb.		Oriental bittersweet
<i>Centaurea stoebe</i> L. ssp. <i>micranthos</i> (Gugler) Hayek	<i>Centaurea biebersteinii</i> DC.; <i>Centaurea maculosa</i> Lam., misapplied; <i>Centaurea maculosa</i> Lam. ssp. <i>micranthos</i> Gugler	Spotted knapweed
<i>Cynanchum louiseae</i> Kartesz & Gandhi	<i>Cynanchum nigrum</i> (L.) Pers.; <i>Vincetoxicum nigrum</i> (L.) Pers.	Black swallow-wort
<i>Cynanchum rossicum</i> (Kleopow) Borhidi	<i>Cynanchum medium</i> , of authors not R. Br.; <i>Vincetoxicum medium</i> , of authors not (R. Br.) Dcne.; <i>Vincetoxicum rossicum</i> (Kleopow) Barbarich	Pale swallow-wort
* <i>Elaeagnus umbellata</i> Thunb. var. <i>parvifolia</i> (Royle) Schneid.	<i>Elaeagnus parvifolia</i> Royle	Autumn olive
* <i>Euonymus alatus</i> (Thunb.) Sieb.	<i>Celastrus alatus</i> Thunb.	Burning bush
* <i>Frangula alnus</i> P. Mill.	<i>Rhamnus frangula</i> L.	Glossy buckthorn
<i>Glyceria maxima</i> (Hartman) Holmb.	<i>Glyceria spectabilis</i> Mert. & Koch; <i>Molinia maxima</i> Hartman	Reed sweet grass
<i>Heracleum mantegazzianum</i> Sommier & Levier		Giant hogweed
<i>Hesperis matronalis</i>		Dames rocket

<i>Impatiens glandulifera</i> Royle	<i>Impatiens roylei</i> Walp.	Ornamental jewelweed
<i>Iris pseudacorus</i> L.		Water-flag
<i>Lepidium latifolium</i> L.	<i>Cardaria latifolia</i> (L.) Spach	Perennial pepperweed
<i>Ligustrum obtusifolium</i> Sieb. & Zucc. var. <i>obtusifolium</i>	<i>Ligustrum obtusifolium</i> var. <i>leiocalyx</i> (Nakai) H. Hara	Blunt-leaved privet
<i>Ligustrum vulgare</i> L.		Common privet
* <i>Lonicera japonica</i> Thunb.	<i>Nintooa japonica</i> (Thunb.) Sweet	Japanese honeysuckle
* <i>Lonicera maackii</i> (Rupr.) Herder*		Amur honeysuckle*
* <i>Lonicera morrowii</i> Gray*		Morrow's honeysuckle*
* <i>Lonicera tatarica</i> L.*		Tartarian honeysuckle*
* <i>Lonicera ×bella</i> Zabel*	<i>Lonicera morrowii</i> × <i>L. tatarica</i>	Bella honeysuckle*
<i>Lysimachia nummularia</i> L.		Moneywort
<i>Microstegium vimineum</i> (Trin.) A. Camus	<i>Andropogon vimineum</i> Trin.; <i>Eulalia viminea</i> (Trin.) Kuntze	Japanese stilt grass
<i>Persicaria perfoliata</i> (L.) H. Gross	<i>Ampelgynon perfoliatum</i> (L.) Roberty & Vautier; <i>Polygonum perfoliatum</i> L.	Mile-a-minute weed
<i>Pueraria montana</i> (Lour.) Merr. var. <i>lobata</i> (Willd.) Maesen & S. Almeida	<i>Dolichos lobatus</i> Willd.; <i>Pueraria lobata</i> (Willd.) Ohwi; <i>Pueraria thunbergiana</i> (Sieb. & Zucc.) Benth.	Kudzu
<i>Reynoutria japonica</i> Houtt. var. <i>japonica</i>	<i>Fallopia japonica</i> (Houtt.) R. Decr.; <i>Pleuropterus cuspidatus</i> (Sieb. & Zucc.) Moldenke; <i>Polygonum cuspidatum</i> Sieb. & Zucc.	Japanese knotweed
<i>Reynoutria sachalinensis</i> (F. Schmidt ex Maxim.) Nakai	<i>Fallopia sachalinensis</i> (F.S. Petrop. ex Maxim.) R. Decr.; <i>Polygonum sachalinense</i> F. Schmidt ex Maxim.	Giant knotweed
<i>Reynoutria ×bohemica</i> Chrtek & Chrtková	<i>Fallopia japonica</i> × <i>F. sachalinensis</i> ; <i>Fallopia ×bohemica</i> (Chrtek & Chrtková) J.P. Bailey; <i>Polygonum ×bohemicum</i> (Chrtek & Chrtková) P.F. Zika & A.L. Jacobson	Bohemia knotweed
* <i>Rhamnus cathartica</i> L.		Common buckthorn
* <i>Rosa multiflora</i> Thunb. ex Murr.		Multiflora rose

**Variance:** Persons conducting temporary scientific studies, which may include hybridization of seedless species may apply for a variance to do so by contacting the NH Department of Agriculture, Markets & Food, Division of Plant Industry.

**For additional information**



**Douglas Cygan, Invasive Species Coordinator**  
**New Hampshire Department of Agriculture**  
**Division of Plant Industry**  
**State Lab Building, Lab D**  
**29 Hazen Drive**  
**Concord, NH 03301**  
**(603) 271-3488**  
**[douglas.cygan@agr.nh.gov](mailto:douglas.cygan@agr.nh.gov)**

**<http://www.agriculture.nh.gov/divisions/plant-industry/invasive-plants.htm>**



## Memorandum

To: Mr. Robert Ciandella  
From: Peter Britz, Environmental Planner  
CC: Juliet Walker, Planning Director  
Date: May 1, 2019

A handwritten signature in blue ink, appearing to read "Peter Britz", written over the "From:" line of the memorandum header.

**Subject: 230 Commerce Way vegetation clearing debris removal**

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This memo is in response to the letter sent to the Planning Director on April 24, 2019 specific to proposed work as allowed under section 10.1015. In general, Planning staff and the Conservation Commission support the work proposed to enhance the wetland and uplands adjacent to the 230 Commerce Way site. By way of this memo I am clarifying our understanding of the limits of work so there is no misunderstanding once the project is underway.

Removal of invasive plants is allowed in wetlands and wetland buffer areas. The work should take care not to create a disturbance and impacts not allowed by the ordinance. In particular, the letter states that cutting mowing and brush hog mowing will be undertaken. It is not clear to me how a brush hog or mower can be used in a discriminate way only removing invasive plants. Hopefully, that type equipment would not be utilized unless a strong case could be made that it was just clearing invasives.

Along those lines the chipping of material in the wetland and wetland buffer could be perceived as fill. Understandably, wood chips can be used as mulch, however any such mulch should be part of a clear planting/mulching plan in order to avoid an adverse impact on the wetland buffer. Furthermore, if at any point we observe that your work has gone beyond that allowed by Section 10.1015 you will be ordered to cease work and apply for a wetland conditional use permit.

Finally, please notify me at [pbritz@comcast.net](mailto:pbritz@comcast.net) or 610-7215 when you plan to begin the work so that I can both be prepared from calls about the project from neighbors and so I can notify the Conservation Commission of the project.

If you have questions or need additional information please do not hesitate to contact me.



## Memo

TO: Eric Nelson, The Kane Company  
FROM: Peter Britz, Environmental Planner  
DATE: September 4, 2020  
SUBJ: Wetland Violation  
CC: Juliet Walker, Planning Director  
Robert Sullivan, City Attorney

This memo is to notify you of a wetland violation on your property along Portsmouth Boulevard. It was pointed out by a member of the community through the City's SeeClickFix program on August 20th that vegetation clearing was taking place in a wetland and wetland buffer along Portsmouth Boulevard.

In a site visit to the site on September 4, 2020 there is extensive machine mowing of the wetland buffer and wetland area. According to the City of Portsmouth Zoning Ordinance Article 10 Environmental Protection Standards this work is well beyond what is allowed in the wetland and wetland buffer without the benefit of a wetland conditional use permit. Your wetland contractor in May of 2019 assured me that there would be no excavators and no brush hogs used on the site and only chipping will take place only in uplands and hand tools and chain saws will be used to complete the work.

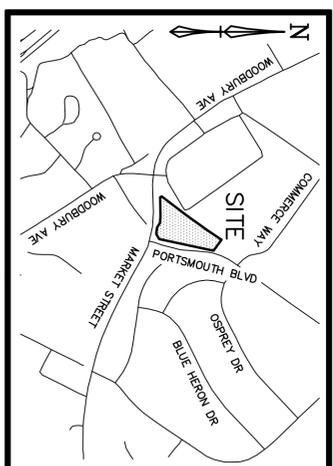
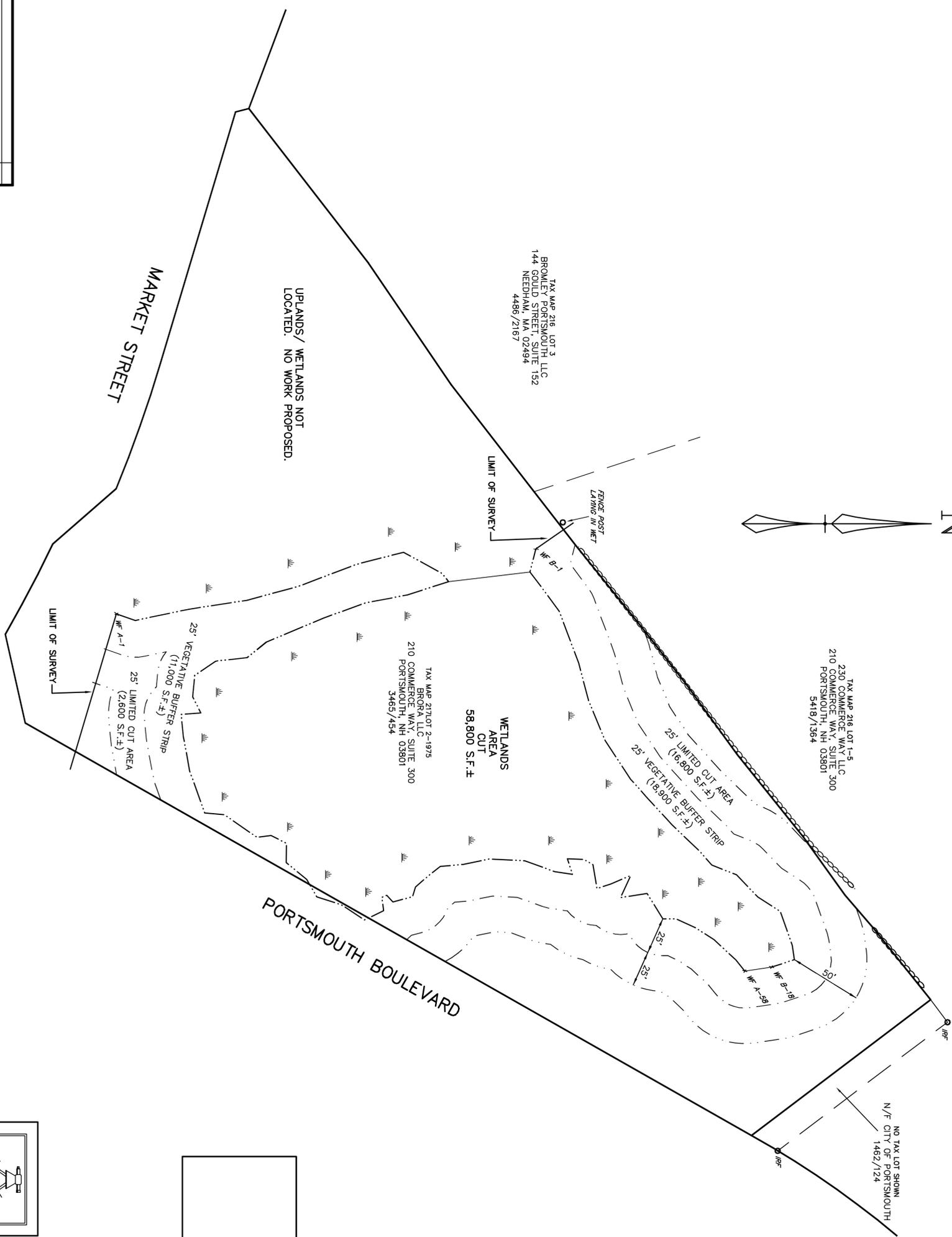
The work is clearly beyond what was described as this amount of mowing would only be possible with a brush hog or other large size mower. While the City has a 25' no cut wetland buffer (i.e. no cutting within 25' of a wetland edge or within a wetland) there is cutting right up to the edge of some stream areas and in wetland areas on other parts of the property. At this time it is important that erosion control measures must be put in place to prevent erosion into the streams that traverse the sites.

Please contact me at [plbritz@cityofportsmouth.com](mailto:plbritz@cityofportsmouth.com) or by phone at (603)610-7215 to discuss how this violation can be rectified. If no response is received this violation will be passed on to our legal department to begin legal proceedings.



**PLAN REFERENCES**

1. "LOT LINE ADJUSTMENT PLAN TAX MAP R-17, LOT 2-1975 SHEARWATER DRIVE / DOVECKIE WAY / MARKET STREET PORTSMOUTH, NH SCALE: 1"=40' DATE: AUG. 1999" PREPARED BY GLD CONSULTING ENGINEERS, MANCHESTER, NH R.C.I.D. PLAN #D-28384.



**WETLAND BUFFERS**  
 0' - 25' VEGETATED BUFFER STRIP  
 25' - 50' LIMITED CUT AREA

**LEGEND**  
 ○ IRP IRON ROD FOUND  
 ○ STONEMALL  
 --- LIMIT OF WETLANDS  
 --- APPROXIMATE BOUNDARY LINE PER PLAN REF.  
 --- VEGETATED BUFFER STRIP  
 --- LIMITED CUT AREA

**AREAS**  
 WETLAND AREA CUT = 58,800 S.F.±  
 VEGETATED BUFFER STRIP AREA = 29,900 S.F.±  
 LIMITED CUT AREA = 19,400 S.F.±

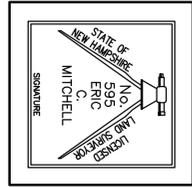
**NOTES**  
 1. THE PURPOSE OF THIS PLAN IS TO SHOW THE WETLAG LINES A-1 THROUGH A-58 AND B-1 THROUGH B-18 ON TAX MAP 217 LOT 2-1975. THE WETLANDS HAVE BEEN PREVIOUSLY CUT AND THIS PLAN IS TO BE USED IN CONDUCTION AS PART OF A CONDITIONAL USE APPLICATION.

**WETLAND NOTES**  
 1. JAMES GOVE, CERTIFIED WETLAND SCIENTIST #51, OF GOVE ENVIRONMENTAL CONSULTANTS, INC. OF EXETER, NH, PERFORMED THE WETLAND MAPPING FOR FLAGS A-1 THROUGH A-58 AND B-1 THROUGH B-18 ON SEPTEMBER 23, 2020 ACCORDING TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL AND THE REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTH-CENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012, US ARMY CORPS OF ENGINEERS.

**CONDITIONAL USE PLAN**  
 TAX MAP 217 \* LOT 2-1975  
 PORTSMOUTH BOULEVARD  
 PORTSMOUTH, NH  
 OWNER OF RECORD:  
**230 COMMERCE WAY LLC (BROA LLC)**  
 210 COMMERCE WAY, SUITE 300, PORTSMOUTH, NH 03801  
 PREPARED FOR:  
**THE KANE COMPANY, INC.**  
 210 COMMERCE WAY, SUITE 300, PORTSMOUTH, NH 03801  
 DECEMBER 18, 2020  
 PREPARED BY:  
**ERIC C. MITCHELL & ASSOC. INC.**  
 SURVEYING - SITE DESIGN - LAND PLANNING - ENVIRONMENTAL  
 P.O. BOX 10298, 38 SO. RIVER RD., BEDFORD NH, 03110-0298  
 PH. (603) 627-1181  
 SCALE: 1" = 40'  
 0 20 40 80 120 160 FEET

REV.	DATE	DESCRIPTION	CHK	BY
A	2/03/21	MINOR PLAN EDITS		
<b>REVISIONS</b>				

I HEREBY CERTIFY THAT THE WETLAGS SHOWN HEREON ARE ACCORDING TO THE FIELD SURVEY BY THIS OFFICE ON DECEMBER 18, 2020.  
 ERIC C. MITCHELL LLS NO 595 \_\_\_\_\_ DATE \_\_\_\_\_



# Aerial



## Legend

- State
- County
- City/Town

Map Scale

1: 25,000

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Map Generated: 2/12/2021



## Notes



# Aerial



## Legend

- State
- County
- City/Town
- WAP 2020: Highest Ranked Wildlife Habitat
  - 1 Highest Ranked Habitat in NH
  - 2 Highest Ranked Habitat in Region
  - 3 Supporting Landscape

Map Scale

1: 5,000

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Map Generated: 2/12/2021



## Notes



# Aerial



## Legend

- State
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Map Scale

1: 5,000

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Map Generated: 2/12/2021



## Notes



# Wildlife Action Plan



## Legend

- State
- County
- City/Town
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  - 1 Highest Ranked Habitat in NH
  - 2 Highest Ranked Habitat in Region
  - 3 Supporting Landscape

Map Scale

1: 25,000

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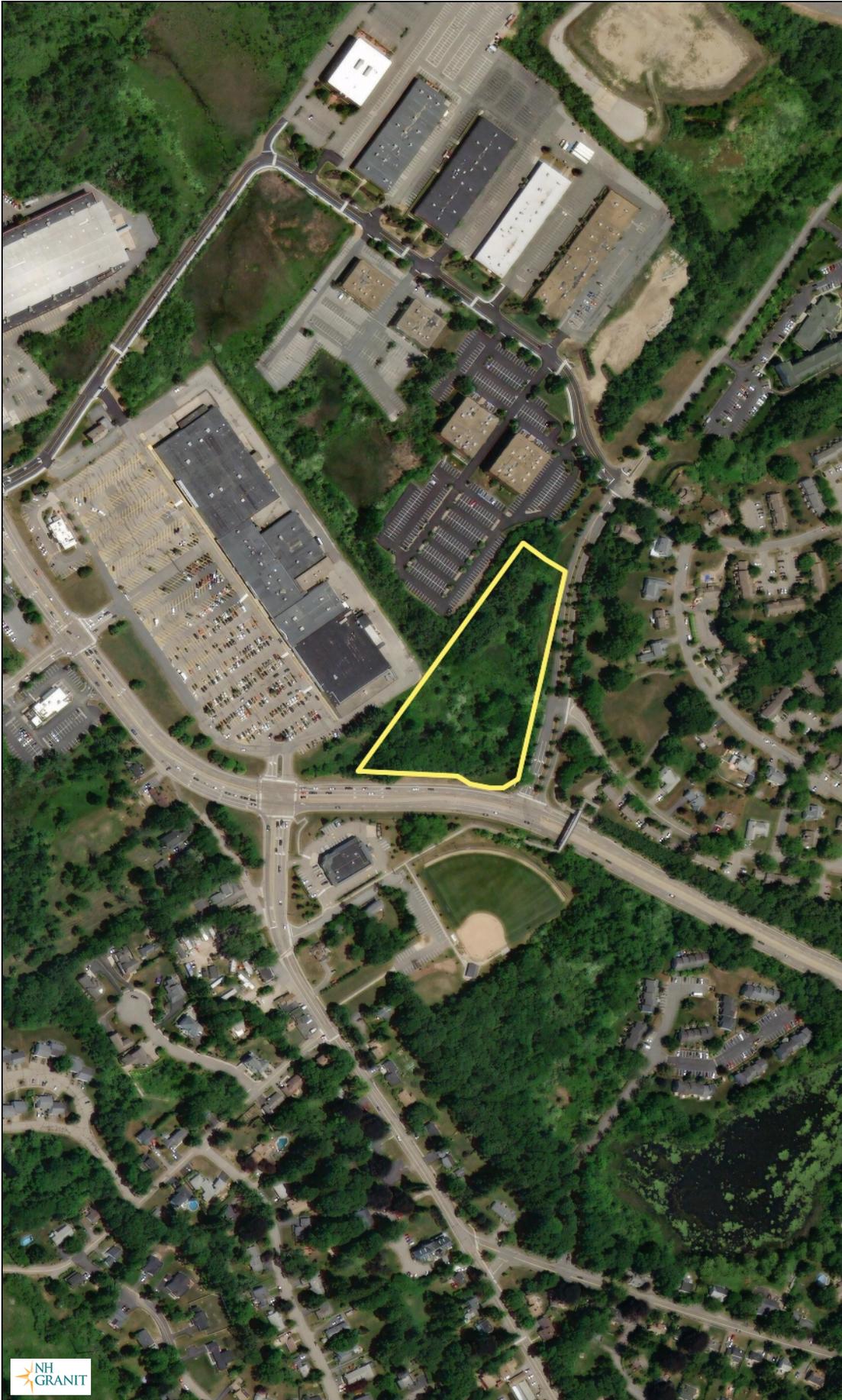
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## Notes



# Wildlife Action Plan



## Legend

- State
- County
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- WAP 2020: Highest Ranked Wildlife Habitat
  - 1 Highest Ranked Habitat in NH
  - 2 Highest Ranked Habitat in Region
  - 3 Supporting Landscape

Map Scale

1: 5,000

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Map Generated: 2/12/2021



## Notes







LOCATION A



LOCATION B



LOCATION C



LOCATION D



LOCATION E



LOCATION F



LOCATION G



LOCATION H



LOCATION I



LOCATION J



LOCATION K



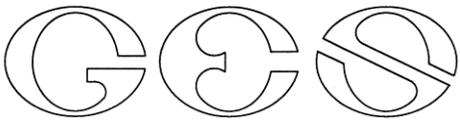
LOCATION L



Photo-log

230 Commerce Way- Portsmouth, NH





GOVE ENVIRONMENTAL SERVICES, INC.

Photo 1

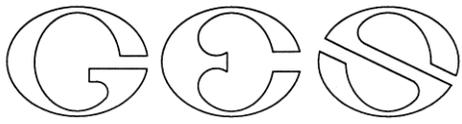


View from parking lot looking out into large Phragmites/ cattail marsh.

Photo 2



Southeast view from parking lot into marsh. This depicts the density of invasive autumn olive, rugosa & multiflora rose.



GOVE ENVIRONMENTAL SERVICES, INC.

Photo 3

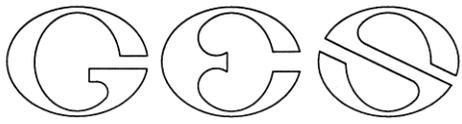


View from parking lot depicting drainage ditch flowing into marsh on west side of parking lot.

Photo 4



View of wetland on west side of the parking lot. This depicts garbage in the upland area.



GOVE ENVIRONMENTAL SERVICES, INC.

Photo 5



View into wetland looking towards Portsmouth Boulevard showing density of wetland and invasive plants.

Photo 6



Depicts density of invasive green briar in upland, looking towards parking lot.

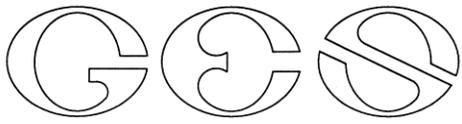


Photo 7



View into wetland looking towards Portsmouth Boulevard showing density of wetland and invasive plants.

Photo 8



View into wetland looking with Portsmouth Boulevard on the left, showing density of wetland and invasive plants.

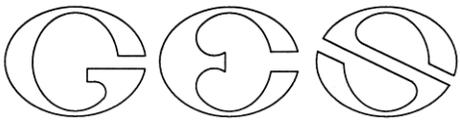


Photo 9



Depicts plant density looking toward parking lot.

Photo 10



Observed several areas with dog waste bags thrown into forested area.

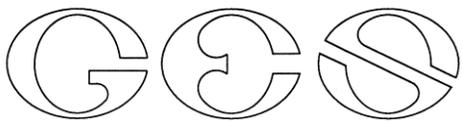


Photo 11

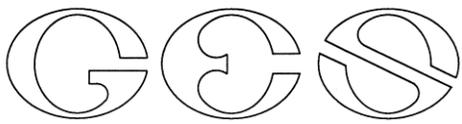


Depicts large pieces of garbage such as old refrigerators and sinks within wetland boundary near the large culvert flowing from under Portsmouth Boulevard.

Photo 12



Another view showing larger pieces of garbage as well as wetland and invasive plant density.



GOVE ENVIRONMENTAL SERVICES, INC.

Photo 13

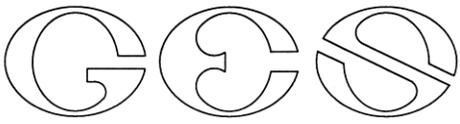


Depicts density of multiflora and rugosa as well as other invasive plants in and on the border of the wetland boundary. (Market Basket in background).

Photo 14



Depicts area with large amounts of garbage. Looking into wetland from Portsmouth Boulevard.



GOVE ENVIRONMENTAL SERVICES, INC.

Photo 15

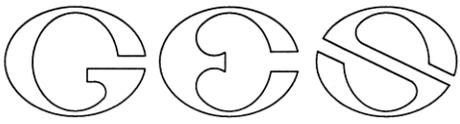


Trail was found behind fence bordering Portsmouth Boulevard and Market Street. Large amounts of trash were found off this trail as depicted.

Photo 16



Trash near trail off of Market Street.



GOVE ENVIRONMENTAL SERVICES, INC.

Photo 17

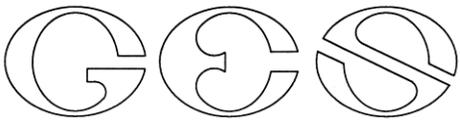


Depicts trash as well as density of invasive species on wetland boundary.

Photo 18



Shows larger trash objects such as shopping cart.



GOVE ENVIRONMENTAL SERVICES, INC.

Photo 19



Shows trash and invasive plant density.

Photo 20



Depicts large amounts of garbage. Market Basket parking lot in background.

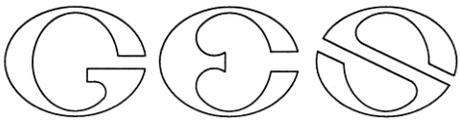


Photo 21



Depicts garbage most likely blown into wetland from commercial/ Market Basket parking lot (picture taken from parking lot).

Invasive Species Observed

Honey suckle

Japanese barberry

Bittersweet

Buckthorn

Autumn olive

Phragmites

Green briar

Burning bush

Rugosa rose

Multiflora rose

Compiled by: Shelby Hall

Gove Environmental Services, Inc.

May 1<sup>st</sup>, 2018

Photo Log  
230 Commerce Way  
Taken: 4/29/21



Photo #1: Looking to the east at some of the area that was impacted by the cutting on site noting that the area is stable and vegetation is growing back.



Photo #2: Looking to the south at the buffer area that was impacted by the cutting on site. Noting that most species in this area were invasive.



Photo #3: Looking to the south of the site where the vegetation was cut within the wetland noting that the area is stable and the vegetation is growing back.



Photo #4: Looking to the southwest of the site looking at the area that had vegetation cleared noting that the area is stable and vegetation is beginning to grow back.



Photo #5: Looking to the south at the wetland area where vegetation was cut, noting that the area is stable and the vegetation is beginning to grow back.



Photo #6: Looking to the west at the wetland area where vegetation was cut noting that the area is stable and that vegetation is starting to grow back.



Photo #7: Looking to the north at the wetland area where the vegetation was cut noting that the area is stable and the vegetation is starting to grow back.



Photo #8: Looking to the north at the wetland area where the vegetation was cut, noting that the area is stable and the vegetation is starting to grow back.

**230 Commerce Way, LLC**

c/o The Kane Company, Inc.  
210 Commerce Way, Ste. 300  
Portsmouth, NH 03801  
Phone: 603 430 4000; Fax: 603 430 8940  
www.netkane.com

**Via Email Only – jgove@gesinc.biz**

February 16, 2021

GOVE Environmental Services, Inc.  
Attn: Jim Gove  
8 Continental Drive  
Building 2, Unit H  
Exeter, NH 03833-7507

**RE: 230 Commerce Way – Portsmouth, NH  
Authorization Letter / Submittal of Conditional Use Application**

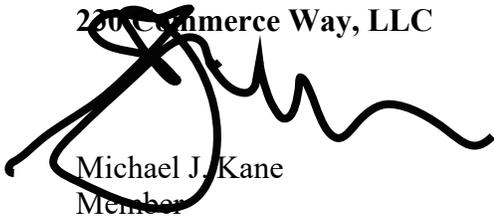
Dear Jim,

This Letter shall authorize GOVE Environmental Services, Inc. to file a conditional use permit with the City of Portsmouth on behalf of 230 Commerce Way, LLC.

If you have any question or concerns, please contact Eric Nelson at 617-733-9248.

Sincerely,

~~230 Commerce Way, LLC~~



Michael J. Kane  
Member

Cc: Eric Nelson