



# Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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## MERRIMACK CONSERVATION COMMISSION

SEPTEMBER 14, 2015

### MEETING MINUTES

A regular meeting of the Merrimack Conservation Commission was held on Monday, September 14, 2015 at 6:34 p.m. in the Merrimack Memorial Conference Room.

Chairman Tim Tenhave presided:

Members of the Commission Present: Matt Caron, Vice Chairman  
Michael Boisvert  
Cynthia Glenn  
Councilor Jody Vaillancourt

Members of the Commission Absent: Gage Perry  
Kristi Bradshaw, Alternate

Also in Attendance: Mike Powers, Bay State Forestry Service  
Tom Zajac, Civil Engineer, Hayner Swanson, Inc.  
Alastair Millns, Secretary, Merrimack Planning Board  
Kevin Walker, John Flatley Company

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Commissioner Perry was excused.

There are currently open positions on the Commission. Individuals interested in serving in this capacity should contact Becky Thompson in the Town Manager's Office.

PUBLIC COMMENT - None

### APPOINTMENTS

#### **1. Informational session**

Commission to hold an informational session to discuss and take questions from the public related to invasive species control using an herbicide spraying at its property on 10 Brookside Drive. This is a continuation of what the Commission did last year on this property.

Chairman Tenhave spoke of the spraying that occurred last year at 10 Brookside Drive. As was the case previously, the Commission wished to provide the public an opportunity to voice questions/concerns. The Forester, Mike Powers, is a licensed applicator of herbicides, and will conduct the spraying as he did last year.

As was done last year, the intent is for an application of herbicides on the Commission's property located at 10 Brookside Drive and the area that borders 8 Brookside Drive. As some of the invasives have worked their way along the sides of Baboosic Brook, a permit was obtained from the New Hampshire Department of Environmental Services (NHDES) to allow spraying to the edge of the brook.

Chairman Tenhave noted he has not received any feedback from the public. The information session conducted prior to the last application was well attended and generated public feedback. The minutes of that meeting were provided to the Forester.

Mr. Powers stated the same materials used last year will be used in this application. As a result of last year's application, quite a bit of Japanese Knotweed was taken out along with some Burning Bush and Multiflora Rose. The herbicides that will be utilized are registered for use in and around wetland areas. Mr. Powers stated his belief the Commission can expect to see good results after two consecutive years of spraying. Weather permitting, the work will be conducted on Wednesday, September 16<sup>th</sup>.

Councilor Vaillancourt questioned how abutters would be notified, and was told those who had requested 24 hours' notice would have to be contacted the following morning. The letter that was sent did identify spraying could occur any time after today's date. Mr. Powers agreed to post signs at the start of his work. Commissioner Boisvert will remove the signs late in the day. Chairman Tenhave requested work not begin prior to 8:30 a.m.

Vice Chairman Caron questioned if a different approach would be utilized or if it is believed greater success would be achieved with the second application given the time of year, etc. Mr. Powers responded Japanese Knotweed, in general, is difficult to kill. Last year the area was a little on the damp side, which may have been part of the issue. A lot of the vegetation has already been killed, and if the day of the application is dry, he is of the belief the second application will be pretty successful. Typically if you spray for two consecutive years you knock it back pretty well.

When asked, Mr. Powers stated he spoke with the property owner at 8 Brookside Drive a few weeks prior. She was told the back side of her home would be sprayed in conjunction with the project at 10 Brookside Drive. Chairman Tenhave spoke of the work the property owner has done removing a good deal of issues she had along her side property. He stated he would contact the property owner via email.

Chairman Tenhave spoke of discussions he and Mr. Powers have had around forestry plans for the Wasserman Conservation Area. Mr. Powers stated he has been to the Wasserman Conservation Area and Riverside Drive. The boundary lines on both properties are clearly delineated. A proposal for writing plans for both properties (individually) will be provided.

#### STATUTORY/ADVISORY BUSINESS

##### **1. Pennichuck Water Works, Inc. (applicant) and Southwood Corporation (owner)**

Review for recommendation to the Planning Board of a 2-lot subdivision and a site plan to construct a 32,300 sq. ft. water distribution facility. The parcel is located at 16 Daniel Webster Highway and Manchester Street in the I-1 (Industrial), Aquifer Conservation Districts and 100-year flood hazard areas. Tax Map 1D, Lot 001.

Tom Zajac, Civil Engineer, Hayner Swanson, Inc., informed the Commission being sought was the Commission's recommendation for Site Plan approval for an October 20<sup>th</sup> Planning Board meeting.

The site is located within Map 1D, Lot 001, an existing Pennichuck lot, which is mostly wooded; 85 acres with frontage on both D.W. Highway and Manchester Street. The lot is located within the I-1 Industrial Zone. It is abutted to the north by the Harris Pond Development, to the east by the D.W. Highway, Manchester Street to the west, and watershed land and the Pennichuck Waterworks Treatment Facility to the south.

Mr. Zajac noted there is a concurrent subdivision application, which will create the lot to be developed. It will subdivide the existing Lot 001 into two lots. The new lot 1-5, will be 7.2 acres, and will be developed to construct a new Pennichuck Waterworks distribution facility.

The proposed distribution facility will provide more opportunity to operate this part of Pennichuck's business in close proximity to the neighboring treatment plant. Access to the site is provided on a new site driveway on D.W. Highway. The current facility is one-story, 32,300 sq. ft. There is parking along the south side of the building and vehicle storage area along the north. There are drive-thru doors on both ends of the building on the westerly side that will allow service vehicles to load and park within the building. Other site improvements include outdoor storage areas, which are to the northwest part of the site. They will be used to store earth materials, pipe, and other resources Pennichuck may need to have on site in case of a break in the middle of the night.

A gated driveway will be provided for security and new site lighting along with underground telephone, gas, electric, and water utilities. A subsurface septic system will service the facility. Various stormwater management techniques will accommodate new stormwater runoff from both the parking and rooftop areas.

Pennichuck Waterworks intends on opening this facility with just over 40 employees. Normal business hours are Monday through Friday, 6:00 a.m. - 6:00 p.m. However, during a water main crisis or break they will be operating at this facility. Given the number of employees and the light truck traffic associated with this use, there will be no significant impact to local traffic.

Given the site's location, any migration of salt or fertilizer would be downstream of the water supply and Supply Pond. Pennichuck Waterworks is amenable with the requirement that applicators be Green SnowPro Certified for plowing and winter maintenance onsite. Mr. Zajac stated there are no hazardous materials to be stored on this site.

The site is located downstream of Supply Pond and the treatment plant. The site drains to the south towards Pennichuck Brook where it goes under the D.W. Highway and into the Merrimack River. The design intent is to implement stormwater treatment practices throughout the site that take advantage of sandy soils. Runoff from new pavement and building rooftop areas will be captured using curbing and catch basins and treated in one of three infiltration basins located onsite. The project will meet the Town of Merrimack and Alteration of Terrain (AoT) stormwater regulations related to qualitative treatment and qualitative attenuation.

Chairman Tenhave spoke of the elevation change coming off of D.W. Highway, and questioned if most runoff would be captured or if there would be runoff into D.W. Highway. Mr. Zajac stated they would capture up to the property line. The last two catch basins are located right at the property line. There will be a small portion that runs out along the right-of-way. The D.W. Highway is not curbed so runoff will be captured.

Mr. Zajac stated the site will include a drive-thru facility for the washing of vehicles. No vehicle maintenance will occur. Just to the west of the building is a holding tank that will take the floor drain water. That will be pumped out about once a month. That flow will not go into the septic system. When asked, Mr. Zajac stated his belief the outdoor vehicle storage area would include a canopy. Runoff from that will be captured and piped into the stormwater system.

When asked if the amount of water reaching Pennichuck Brook would increase, Mr. Zajac stated it would. A preliminary stormwater study was submitted. Comments were received back from both Town staff and the peer review consultant. They have since reworked the site to provide more storage. When they resubmit to the Town, all flows will be less up to the 100-year storm. When they resubmit to the Town for the subdivision and Site Plan approval they will submit their AoT application as well.

Vice Chairman Caron questioned the area of the proposed snow storage. Mr. Zajac stated there to be a total of four snow storage areas. Chairman Tenhave noted the Plan (Sheet 1/Note 10) already includes language regarding Green SnowPro Certification. He noted language relative to the judicious use of pesticides and herbicides, and stated the Commission's preference that, prior to utilization of any fertilizer, the contractor test the soil to see if fertilizer is required, and if required, the preference would be for use of slow-release nitrogen, no phosphate fertilizer.

Chairman Tenhave questioned whether there is risk of the earthen material washing down the parking lot and ending up interfering with the stormwater management system. Mr. Zajac responded he does not believe so given the distance it would have to travel noting there are catch basins with deep sumps, sediment forebays, etc. If sand or gravel did get into the system it would be easily maintained.

**The following comments will be forwarded to the Planning Board:**

- Green SnowPro Certified applicators for plowing and winter maintenance onsite.
- Test the soil to determine if fertilizer is required. If required, utilize slow-release nitrogen, no phosphate fertilizer.

**2. John J. Flatley Co. (applicant/owner)**

Re-review for recommendation to the Planning Board of an application for a multi-family residential project located at 645 D.W. Highway Tax Map 6E Lot 003-01. The re-review is related to a pedestrian bridge and trails proposed along a wetland on the property.

Mr. Alastair Millns, Secretary, Merrimack Planning Board, (Board) explained when the Applicant came before the Board two weeks ago with the final plan, the Board was dismayed to notice the trail, which has always been part of what was promised, seems to have had to be cut back at the request of the Commission. Instead of going

across the wetlands, which would have been accomplished through the construction/installation of a small bridge, which was an idea the Board was pleased with, the trail now is intended to trail around the buildings. In the Board's opinion, it became less of a trail and more of a path between the buildings.

It was explained to the Board that the Commission had concerns that placing a bridge over the wetlands would result in considerable risk to the wetlands. The Board has questioned whether there is a means of reaching agreement to some concessions whereby the bridge could be constructed as part of the project.

Mr. Redding, Planning Board member, made it very clear that he had learned a great deal as a child walking through that sort of environment, and wondered if the Commission would provide some guidelines that would be acceptable to allow that bridge to be included in the project. If the Commission is not amenable, that position will be respected, and the matter will not be pushed. The Board simply believes it a better design if the trail could be further away from the buildings and enable passageway over the wetlands giving the youngsters, in particular, the opportunities to see what wetlands look like, etc.

Mr. Kevin Walker, John Flatley Company, pointed to the area of the proposed bridge on the plan. He provided copies of photographs that were taken earlier in the day. One of the photos showed the existing bridge, which would be improved. It was noted the two end caps have been notched out to support the logs going across. Those logs would have to be taken out for safety sake, but it might be visually pleasing to leave the timber ends in. The bridge is approx. 8' long.

Commissioner Boisvert questioned if the area is traveled by ATVs. Mr. Millns responded there are certainly ATVs in the area, which were witnessed during site walks. One of the concerns the Board had is that some of the ATVs come out of Allen Road into the area. As part of the project that sort of free access will have to be addressed. The area being discussed would run past the buildings and then up past the club house up to the pool area. In addition, as the area goes past the play area, it is believed it would be an opportunity for youngsters to learn about wetlands, etc. Mr. Walker spoke of opportunities for signage providing educational information on wetlands species, etc.

Chairman Tenhave commented the Board can do as it wishes; the Commission's role is advisory. Mr. Millns remarked that is understood, however, that is not how they wished to proceed. They would like to see if a compromise can be reached that addresses all concerns. The objective is to make the site something all parties can be proud of.

Vice Chairman Caron remarked one of the areas of concern was the notation on the plan that refers to a 6' wide stone dust path. If stone dust is placed up to an old bridge that is made of wood, is decaying, and very low, the stone dust is then going to be washed into the water. Mr. Walker responded he does not disagree. A solution could be that the buffer area on each side be left as a natural footpath area. He believes the area could be modified in a way the Commission would be pleased with. Vice Chairman Caron suggested a post and rail fence on either side could mark the trail. Mr. Walker was in agreement with, within the buffer zone, natural groundcover and post and rail up to the bridge and on the opposite side of the bridge. He added, outside of the buffer zone where it is wide open, the trail would revert back to something that is either stone dust or lined, etc. to clearly mark the trail.

Chairman Tenhave stated his objection with the bridge and getting people into the buffer is that wetlands swell; they change. If people are walking their dogs, which would be a regular occurrence on that trail, and dogs need to relieve themselves that activity could occur within the wetland or the buffer of the wetland causing wash into the wetland. Although it is a nicety to be able to see frogs and things that come with a wetland of that type, having some sort of a boundary that discourages them from actually getting into the wetland is more appropriate.

Mr. Walker stated he is close to 100% confident the trails would be run the same as those they have at their Nashua facility; no pets. Councilor Vaillancourt questioned if the trails at the Nashua facility have stone dust walking paths, and was informed they had stone dust, but ended up doing just under two miles of a 10' wide paved bike path. The difference between the two sites is the Nashua facility is all bedrock, which made it difficult to do anything other than pavement. In Merrimack, the material is easily compacted, sand, and really one of the ultimate situations for doing something along the lines of a stone dust type trail. Total trail length is approx. 2,400'. The intent is to have a walking trail around the entire site.

Councilor Vaillancourt commented it would be a nice environment for people to live. However, encouraging traffic to go through a wetland goes against everything she has learned of conservation efforts. If the intent is to allow

children the opportunity to experience nature, you don't put down stone dust; there is a trail through the woods to walk on. She requested serious consideration be given to leaving the area natural. Mr. Walker stated he would pass that along. He reiterated he is in 100% agreement with, within the buffer area users should be kept on the path by lining both sides with a fence. He added there should be some educational signage.

Chairman Tenhave commented, if moving forward in that regard, he would recommend the bridge be made as wide as possible to be kept away from the wetlands as much as possible. Mr. Walker responded, if that is the desire of the Commission that is what they would do.

The issue of maintenance was discussed. Mr. Walker stated the site would be a heavily maintained property. Mr. Millns noted the Merrimack Village District (MVD) is requiring the developer to maintain all of the sewer systems on the site.

Vice Chairman Caron questioned if winter use of the trail is anticipated. Mr. Walker stated nothing has been specifically discussed, but they would hope it would be utilized perhaps for cross country skiing. There would be no snow removal.

Vice Chairman Caron commented current use is snowmobiles, ATVs, and dirt bikes. With a walking path over the bridge, as long as the bridge is maintained and there is a clear distinct pathway and signage identifying the wetland and advising users to stay on the trail, the current condition would be improved.

Chairman Tenhave stated the sentiment of the Commission is a preference to not allow traffic in the area. However, if a bridge is to be constructed, the Commission would like to see the following occur:

- Increase the width of the bridge
- Within the buffer zone, post and rail fencing on either side of the bridge
- Trail should remain natural (no stone dust)
- Discourage ATV access to the area
- Signage

Mr. Millns commented the Commission has some very justifiable concerns, and it is up to the Board to ensure those concerns are addressed to a large extent, and he will see that is done. He thanked the Commission for the opportunity to discuss the matter.

## OLD BUSINESS

### **1. NED Pipeline**

Commission to have a general discussion on the NED project and any immediate actions it may wish to take.

Councilor Vaillancourt provided two maps; one depicting the one-mile radius for where the metering station is proposed to be located and the other a large version of what is being called the Amherst Alternative Option I (Alternative).

Debra Huffman is working with Town Manager, Eileen Cabanel, Vice Chairman Tom Mahon, and the Town's legal counsel to compose language to submit to the FERC with regard to the metering station. The information will be available and addressed at the Town Council's September 24<sup>th</sup> meeting.

A special meeting of the Town Council (Council) was conducted last week in order to get the FERC comments regarding the Alternative route submitted. Councilor Vaillancourt spoke of having emailed members of the Commission a link to the formal letter the Council signed off on and submitted to FERC. Legal counsel had advised the Council had until Friday, September 4<sup>th</sup> to get these particular comments in to ensure Kinder Morgan would be forced to address them in their next Resource Report. Chairman Tenhave had been asked to weigh in on the comments that were included in the letter as was the MVD. The letter included an addendum from the MVD. The engineer the MVD is working with sat in on the discussion and provided the addendum. Councilor Vaillancourt stated her belief the comments provided by the engineer were pertinent. The engineer stated the original proposed route, as far as MVD is concerned, went from bad to worse with the Alternative.

The Council also discussed the Survey Access Agreement (Agreement). A timeline of the numerous back and forth interactions/communications between the Town and its counsel and representatives of Kinder Morgan and their counsel with regard to the Agreement was attached to the letter to the FERC. At this point, Kinder Morgan has sent the Agreement back with changes to areas that had been agreed to previously. One of the biggest

sticking points is they are not agreeable to the language that would require a Town representative accompany representatives of Kinder Morgan while surveying Town owned property. The Council took a formal vote to state what was provided was the last draft that would be provided and Kinder Morgan could take it or leave it. The Council addressed the entire process and what is considered to be bad faith negotiating on the part of Kinder Morgan to the FERC. Chairman Tenhave questioned, and was told there has been no response.

On September 10<sup>th</sup>, Councilor Dwyer requested periodic discussion take place regarding the amount expended to date on legal representation in this matter. Councilor Vaillancourt stated the amount expended by the Commission is also being tracked. At the end of July, the total expenditure for the Town was nearly \$43,000 and for the Commission \$32,000. She had reminded the Council the Environmental Impact Study was for all of the Commission land not just that which would be impacted by the proposed pipeline. However, she sees the pipeline as the catalyst for the Commission's expenditure.

No formal vote was taken. There was discussion of whether or not the Council was ready to stipulate a cap on expenditures and if there are things we do not wish legal counsel to address in an effort to lessen the legal cost, etc. One consideration was discontinuing counsel's daily review of the FERC filings. The concern was that taking such a position at this time could have the unintended consequence of not being aware of a particular deadline, etc., which could have undesirable results. Although a good many individuals are monitoring the filings, something could be missed.

Councilor Vaillancourt noted the Council was requested by the New Hampshire Municipal Pipeline Coalition (Coalition) to sign on to a letter addressed to the Inspector General, U.S. Department of Energy dated September 14<sup>th</sup>. The Council took a formal vote to sign the letter. The letter basically questioned oversight of the FERC. It is becoming clear there really is no oversight. Town Manager Cabanel came across a potential oversight committee for the FERC. Additional research is being conducted by the Town Manager, and the Council intends to request the Coalition communities agree to the forwarding of an addendum with a cover letter to that oversight committee. The Council is uncertain of the authority of the Inspector General.

During the Council meeting, Chairman Harrington stated she, along with the Coalition, met with Governor Hassan. From that meeting, she had retained a letter from the Office of Energy & Planning to the FERC, written by Tracey Boisvert, Program Director for the Conservation Land Stewardship Program. A copy was provided to the Commission electronically.

The final scoping meeting will be conducted at 6:00 p.m. on September 29<sup>th</sup> at the Franklin Pierce University Field House in Rindge, NH.

Councilor Vaillancourt spoke of having seen a letter from the State Delegation; Jeanne Shaheen, Annie Kuster, Kelly Ayotte, and Frank Guinta to the FERC dated September 10<sup>th</sup>. An electronic copy was forwarded to the Commission as well as the Council. The letter demands answers to questions, particularly those surrounding need, by September 18<sup>th</sup>.

With regard to the letter concerning the Alternate route, quite a bit of public comment was provided at the special meeting, the majority of which was from residents whose personal homes and neighborhoods would be affected. Some good information was garnered. There was a good deal of discussion around how to address the different neighborhoods. In the first letter the Council wrote, the number of personal land owners affected was identified. However, those individuals were not identified by neighborhoods. The most recent letter covered that.

Chairman Tenhave spoke of the Open House scheduled for 6:00 p.m. on September 17<sup>th</sup> at the American Legion in Merrimack. Chairman Tenhave noted the letter from the New Hampshire Municipal Conservation Commissions was sent and registered.

Chairman Tenhave spoke of having received a letter from Kinder Morgan requesting the opportunity to speak with the Commission regarding wetland mitigation, e.g., potential projects within the Town. His response, which was copied to the members of the Commission, Town Manager Cabanel, and Chairman Harrington, stated the issue would be addressed at this meeting. He also informed Kinder Morgan the Commission conducts regularly scheduled meetings, there are agenda submittal deadlines, and Kinder Morgan is welcome to submit an agenda item. When asked, he stated he received a response from Alan that said thank you, and he looks forward to hearing the results of this meeting.

Councilor Vaillancourt commented she made the Council aware of Chairman Tenhave's correspondence and the intent of the Commission to discuss the matter. She questioned if there are wetlands or other mitigations on

Town owned property that the Commission either doesn't own or oversee, would the Town, as an entity, be involved in mitigation discussions? If the answer is yes, she questioned how to coordinate mitigations efforts between the Commission and the Council. Even if the answer is no, she still believes the Council needs to be aware of and involved in this discussion. The questions were thrown out, and she intends to follow up on them with the Town Manager.

Chairman Tenhave stated there could be potential projects on Town owned property or these projects could introduce new property to the Town. In the past, the Commission has done wetland mitigation for the Outlet Mall, which resulted in the Commission gaining a parcel in Grater Woods. At the time, the Commission offered the various potential projects, one being purchasing a piece of land and immediately donating it to the Commission. That is the option they chose. They ended up spending more money than required, but not an extremely large amount. There is a formula that considers the size of wetland impact and identifies the requirement for the level of mitigation required or can provide a dollar value.

Councilor Vaillancourt spoke of discussions around having projects identified for such an instance, and suggested the two bodies should be working together on that. She questioned how that would occur. Chairman Tenhave responded the two bodies would have to come together in a public session for those discussions unless a land purchase were involved where the desire would be to have the opportunity to negotiate. That would necessitate a non-public session.

Councilor Vaillancourt questioned if the Commission wished for her to raise the issue with Chairman Harrington or if the Chairman of the Commission should initiate that discussion. Chairman Tenhave questioned the will of the Commission.

Commissioner Glenn agreed it is well advised to be prepared for such an instance, e.g., identify potential mitigation. However, she does not believe discussions in that regard should include Kinder Morgan at this point in time noting Kinder Morgan has not yet filed. Councilor Vaillancourt suggested that to be a different discussion. Her desire was to identify potential mitigation. Chairman Tenhave suggested it likely that most of the list would be generated in a public session, and suggested each body should be considering what it believes to be appropriate. Councilor Vaillancourt reiterated her belief it would be beneficial for the Council and the Commission to have a joint meeting. Chairman Tenhave stated an option to be for a representative of the Commission to engage in discussion with the Council.

Councilor Vaillancourt will speak with Town Manager Cabanel and Chairman Harrington to determine if the desire is to place an agenda item on a future agenda of the Council and invite a representative of the Commission to participate. Chairman Tenhave commented on opportunities for projects to be undertaken as mitigation for impacts and/or the possibility, depending on the level of impact, to offset some of the expenses of the Commission, e.g., desirable parcels for purchase.

Councilor Vaillancourt stated concerns have been expressed about putting the cart before the horse, e.g., it is not yet known if the pipeline project will in fact come to fruition. She stated her opinion there is the need to be prepared for the possible scenario. Actions such as that are not an indication of anything other than due diligence. Chairman Tenhave stated agreement. He commented if unprepared for such a scenario, the likelihood of mitigation dollars instead being funneled to the State's Aquatic Resource Mitigation (ARM) Fund is considerably greater. That was an issue raised in the scoping comments provided to the FERC. In the event mitigation is required, the desire is for funds to remain local. Chairman Tenhave commented when he received the letter from Kinder Morgan he thought it may be that they heard that concern.

***The opinion of the Commission was to extend an invitation for representative(s) of Kinder Morgan to request an agenda item and participate in a public meeting.***

Chairman Tenhave will relay that information. He requested Commissioners give consideration to potential mitigation projects, etc.

Chairman Tenhave stated, being aware of the extension to the deadline for submittal, he has not yet crafted the next set of scoping comments for submission. He has utilized the additional time provided for further review of the Resource Reports.

He noted metering stations are assumed to have an impact of .92 acres. Aerial photography has been done; however, he is concerned it may have been done at the wrong time of year with regard to identification of

wetlands and vernal pools. They tried to identify some of those items, and he believes they did a poor job. He did not see much of any comments around fertilizer use or deicing compounds, which is strong in the Commission's case (particularly in Resource Report 1). He will bring that up. They do talk about erosion control matting, etc., which is mentioned in the comments submitted by the New Hampshire Fish & Game; some of the matting being proposed for use is not ideal for snakes and other critters. He plans on reiterating that fact in the next set of comments.

Chairman Tenhave stated the intent to have the letter prepared in time for discussion/approval at the next meeting. Councilor Vaillancourt suggested the comments also include a request for Kinder Morgan to utilize an updated map. She spoke of the Commission's reports and the discussion regarding disturbed land promoting invasive species, and noted that is one issue she does not believe has been addressed in writing to date. Chairman Tenhave stated his recollection that is addressed in one of the Resource Reports; have acknowledged the disturbing of lands increases the potential. They then say they will follow Best Management Practices. They are creating working documents for each state, which are supposed to be state specific to address the different agencies in the different states and what they need to do. But when you search for those, all you find is that they have identified that in New Hampshire they have to deal with the NHDES and local conservation commissions.

There is discussion of seeding and fertilizers and mulching within the project space, but again it refers you to the project specific ECP for each state to know what they are going to do. There is language around testing wells within 200' of the construction workspace, but they need to acquire permission to do that work. They bring up hay and straw bales all over, which will have to be corrected. There is language around once in every 3 years to maintain herbaceous low scrub shrub cover that will happen within their right-of-way. They will annually maintain at least a 10' corridor centered over the project pipeline and uplands and in wetlands. They state they will not utilize herbicides or pesticides in the right-of-way or on the above-ground facilities.

It addresses the cathode and AC mitigation in Merrimack. They show places where that might occur, but there is not a lot of data as to how they would put that in. There are no contractor yards in Merrimack. There are a number of access roads shown for Merrimack, one of which happens to go right through the Gilmore Hill Memorial Forest, which they don't acknowledge as a conservation property even though they have been told it is. The Deed does not allow an access road. That road now is under water a good part of the year.

They do address bentonite being used in the horizontal drilling to the point where they say they have to extract those liquids out of the hole after they are done with drilling. They will dump them into a pit that they will dig in the ground. From there they will siphon it out and take care of it. While they are in the process of digging they are putting fluid in and extracting it out and it is going into a pit. He will address that by stating that pit would have to be lined because bentonite is not a compound that is normally found in this part of the country.

They don't talk about the no disturb buffer in Merrimack, but say they will follow local ordinances. They will be informed of the buffer. They do plan on replanting. They say they will utilize local native seeds. It will be reiterated that is a requirement. They do not cover any of the historic places in the Horse Hill Nature Preserve (HHNP) that would be impacted. They say they will follow local permitting requirements for blasting. They will be reminded Merrimack has its own ordinance that has been in effect for some time.

In certain places they list public lands, but they do not list Gilmore Hill, and they minimize the impacts on the HHNP. They state because it is going to be along existing right-of-way that the impacts would be minimal.

Chairman Tenhave stated the letter will contain general comments around issues in Town and an entire section on the HHNP and the Gilmore Hill Memorial Forest.

## NEW BUSINESS

### **1. Update on Land Acquisition Activities**

Commission to discuss land acquisition activities and take any necessary action.

Chairman Tenhave stated there are no updates at this time. As the work is underway, the item will continue to be placed on the agenda.

## OTHER BUSINESS

- Update on Environmental Impact Study (EIS) for the HHNP and Gilmore Hill Memorial Forest.



Chairman Tenhave stated Mr. Littleton, the Wildlife Ecologist who is performing the EIS for the Commission, will be in attendance at the Commission's next meeting to provide and present the final study. Mr. Littleton has provided his opinion it is appropriate to take any sensitive information/data that he has collected and pull it out of the final report. That information will be addressed separately. When asked who is making the determination of sensitive, Chairman Tenhave stated he has spoken with Mr. Littleton who is aware of what is viewed as sensitive from his experience in working with other communities as well as knowledge of those items that are required to be reported to the New Hampshire Heritage Bureau. When asked if the required information has been reported, Chairman Tenhave replied the Commission paid for that to be done. The consultants who identified the information have started the reporting process.

Chairman Tenhave noted the Resource Reports speak to drawing on the New Hampshire Heritage Bureau for identifying what species are found and where they are, but they pulled all of their data earlier this year. They will be made aware of the need to gather that information again. Councilor Vaillancourt asked and was told the Chairman has been speaking with the Town's legal counsel with regard to how to address sensitive information.

Vice Chairman Caron questioned how much of the meeting would be devoted to the discussion with Mr. Littleton. Chairman Tenhave stated his belief an hour would be required. Vice Chairman Caron questioned if there will be a need and/or desire for a non-public session to allow the opportunity to discuss those issues identified as sensitive. Chairman Tenhave stated he would inquire as to whether or not that is allowable under the Right to Know Law.

- Watson Park Kiosk - Update

Chairman Tenhave stated Paul Micali, Assistant Town Manager, Finance Director, has had discussions with the artist who will do the work. He stated his belief the desire continues to move forward. Chairman Tenhave stated he has spoken with George May who helped locate the artist and to refine the photo that is going up on the kiosk to ensure its appropriateness.

- August 17, 2015 Discussions with Piscataquog Land Conservancy - Update

Chairman Tenhave spoke of the Commission's discussion with Chris Wells, Executive Director, Piscataquog Land Conservancy at its last meeting. Chairman Tenhave has shared with Mr. Wells some of the current conservation language placed in Deeds. Mr. Wells stated he would provide feedback on that language. Mr. Wells was asked what type of project would be an appropriate first project to test the waters, etc. Some ideas have been provided. Chairman Tenhave stated he has questions he wishes to pose to the Town's counsel. He will request the Town Manager facilitate acquiring a legal opinion. Chairman Tenhave commented he is interested in understanding what the governing body of the Town feels about a third-party easement on Town property. He would like to have the opinion of legal counsel before approaching the Town Council.

- HHNP Parking Lot Wetland Delineation - Update

Chairman Tenhave stated the wetlands have all been delineated within the area requested. Last Saturday members of the Commission as well as representatives from each of the three subcommittees were onsite. Tracy Tarr, GZA GeoEnvironmental, Inc. (GZA) provided those in attendance with an education on wetland delineation and how it is done. The report and training materials were shared with the members of the subcommittees that were in attendance. Chairman Tenhave will provide copies to all members of the subcommittees.

The information was also shared with Kyle Fox, Deputy Director, Public Works Department who has stated he will visit the site. Chairman Tenhave stated his impression the overall consensus was the wetlands are not nearly as close as was believed based on the information communicated when the parking lot was first put in. That will allow the Commission to put in an expanded parking lot without being right up against the buffer. Deputy Director Fox will work up some ideas and relay them.

Vice Chairman Caron questioned if it is the intent to fund the parking lot expansion. Chairman Tenhave stated his belief that would be the intent until we know what that number really is. The Commission expressed agreement with that concept. Councilor Vaillancourt questioned what other funding sources could be utilized. Chairman Tenhave responded there could be the possibility of matching grants, etc. He suggested there may be some as it is an outlet to recreation trails, etc. However, he does believe the Commission would end up leveraging its own funds regardless of other possible funding sources. Councilor Vaillancourt questioned if the Commission has

access to Town staff for assistance with grant writing. Chairman Tenhave was unsure. He suggested asking the Association of Conservation Commissions for ideas, e.g., if the project lends itself to one grant over another, etc.

Chairman Tenhave noted grant opportunities will be part of the training that is coming up in November with the New Hampshire Association of Conservation Commissions. They have had workshops going on throughout the year as well.

- Beaver Policy and Water Control Activities

***The item will be addressed at a future meeting.***

- New Hampshire Association of Conservation Commissions Annual Conference

The conference is scheduled for November 7<sup>th</sup>. Chairman Tenhave requested those interested in attending make him aware in time for the next meeting so that a vote could be taken to approve the use of educational dollars for that purpose.

Councilor Vaillancourt spoke of the Commission's previous discussion of acquiring a permit for a one-time burn. It was suggested the subcommittee take up the issue to determine if they would be interested in overseeing such an activity. She questioned if the issue has been discussed by the subcommittee. Vice Chairman Caron stated the subcommittee would meet the following night, and the issue would be taken up at that time.

- Bean Road Bridge

Chairman Tenhave informed the viewing audience the Bean Road bridge is closed. Councilor Vaillancourt stated the bridge was closed sooner rather than later because of the report received. She is of the belief the original timeline will be followed.

#### PRESENTATION OF THE MINUTES

Merrimack Conservation Commission. . . . . August 17, 2015

*The following amendments were offered:*

Page 2, Line 23; replace "Brooke" with "Brook"  
Page 4, Line 43; add a comma after "ownership"  
Page 9, Line 8; replace "activit" with "activity"  
Page 9, Line 24; replace "traked" with "tracked"

**MOTION BY COMMISSIONER TENHAVE TO ACCEPT AS AMENDED  
MOTION SECONDED BY COMMISSIONER CARON  
MOTION CARRIED  
5-0-0**

PUBLIC COMMENT - None

#### COMMISSIONER COMMENTS

Vice Chairman Caron spoke of spending a good deal of time on the properties over the weekend, and witnessing a lot of new targets in the shooting area in Grater Woods. A good many of them were not shot. That left him believing the individuals who placed them may have been interrupted by the Police. He did not receive an activity sheet or hear from Lt. Tarleton. He had intended to reach out to him, but has not yet had the opportunity to do so. He will follow up.

When in the area a few weeks ago a lot of debris was rounded up and placed in trash bags, which were left on the side and are still there waiting to be removed, but there was a lot of new debris in the area. Vice Chairman Caron spoke of time spent at the HHNP. He commented often times the Watanic Bowmen Club do their shoots out there. Looking in the kiosk there was an indication of a shoot; however, there were a ton of markings left behind as well as paper plates stapled to trees. It is as if they do not pick up after a shoot. He remarked this has

been brought to their attention in the past. There is the need to provide notification, posting in the kiosk, and then cleanup upon completion. Chairman Tenhave stated he would follow up.

Vice Chairman Caron stated his intent to talk to the school district regarding how the cross country trails are marked as he believes a better job can be done with that. He commented the Commission has the infrastructure so that if they wanted a post to hang a sign on it could be provided.

Commissioner Glenn commented on having read online that New Hampshire has not had any cases of Triple E, etc. this year. That reminded her of what she learned while in Alaska; they don't have any of those types of diseases. She also learned that their mosquitos do all of the pollinating.

Commissioner Boisvert questioned if the Commission could devise a policy regarding discharging of firearms, outside of hunting, on conservation property. Chairman Tenhave spoke of an email exchange he has been having with Police Chief Doyle regarding target shooting and hunting on Commission properties. He was looking for clarification as to whether or not the Commission has rules around that. Technically, target shooting can only be done with landowner permission per State RSA. The Commission has never granted permission to anyone to do target shooting. He does not believe the Town has ever granted anyone permission. It was noted target shooting with bows and arrows also requires landowner permission. Vice Chairman Caron commented the bowmen are out there whenever they want. Councilor Vaillancourt questioned if they have some type of a formal arrangement. Chairman Tenhave stated there was an arrangement that was in writing. He is unclear if there was an associated timeline. She suggested a review of the agreement at an upcoming meeting.

Chairman Tenhave stated he verified that the information listed on the Commission's website for its major properties is accurate. If interested in knowing whether or not target shooting or any other activity is permitted, a review of the website will provide that information. If it is listed under the not permitted uses, it is not permitted. Certain activities may not be permitted because of an Ordinance or language within a Deed, etc. If the website is silent on a matter, one can assume it is a permitted use. Chairman Tenhave stated the Commission can engage in a more general discussion of permitted uses at a future meeting.

Chairman Tenhave informed the Commission of his attendance at a Wildcat Falls Subcommittee meeting, and the scheduling of a workday on September 26<sup>th</sup>. Anyone interested in helping out can notify him or the Chair of the Subcommittee. They are looking to post the updated map on the kiosk and get the Lexan so that it can be sized, etc.

Chairman Tenhave noted members of the Michael LoVerme Foundation actively assist with that property. Councilor Vaillancourt stated the Fourth Annual Michael LoVerme Memorial 5k will be conducted on October 18<sup>th</sup>. Michael LoVerme participated in cross country/winter track/spring track all four years at Merrimack High School. The 5k that is put on yearly is how the foundation raises funds to finance their efforts. Chairman Tenhave noted the foundation is looking to place a bench in Wildcat Falls in memory of Michael. The Commission has provided some ideas, a photo of the bench that was done for Harold Watson was provided, and suggestions made regarding paint or stain that could be used as coating to allow for cleaning in case needed over time.

#### ADJOURNMENT

**MOTION BY COMMISSIONER GLENN TO ADJOURN**  
**MOTION SECONDED BY COMMISSIONER BOISVERT**  
**MOTION CARRIED**  
**5-0-0**

*The September 14, 2015 meeting of the Merrimack Conservation Commission was adjourned at 8:53 p.m.*

Submitted by Dawn MacMillan