



**LEBANON CITY COUNCIL
NOTICE OF PUBLIC HEARINGS
FEBRUARY 17, 2021 - 7:00PM
REMOTE VIA WEBEX
LebanonNH.gov/LIVE**

The Lebanon City Council will hold public hearings on February 17, 2021 beginning at 7:00pm for the following:

1. COMPLETE DISCONTINUANCE OR RECLASSIFICATION OF A PORTION OF BARDEN HILL ROAD – A public hearing for the purpose of receiving public input and taking action to discontinue completely or reclassify a portion of Barden Hill Road as a Class A Municipal Trail.
2. COMPLETE DISCONTINUANCE OR RECLASSIFICATION OF DURKEE ROAD – A public hearing for the purpose of receiving public input and taking action to discontinue completely or reclassify Durkee Road as a Class A Municipal Trail.
3. COMPLETE DISCONTINUANCE OR RECLASSIFICATION OF ATHERTON ROAD – A public hearing for the purpose of receiving public input and taking action to discontinue completely or reclassify Atherton Road as a Class A Municipal Trail.
4. COMPLETE DISCONTINUANCE OR RECLASSIFICATION OF MCCALLISTER ROAD – A public hearing for the purpose of receiving public input and taking action to discontinue completely or reclassify McCallister Road as a Class A Municipal Trail.

Due to the current situation with the COVID-19 Pandemic, the City of Lebanon is offering its meetings via Webex. Members of the public are encouraged to attend by going to LebanonNH.gov/Live where you will find instructions on how to enter the meeting. Members of the public will be able to participate and ask questions through the Webex software or by phone. Please visit LebanonNH.gov/Live for full details.

THE AGENDA, IN ITS ENTIRETY, IS AVAILABLE ON THE CITY WEBSITE AT LEBANONNH.GOV.

BARDEN HILL ROAD

Patch Forest, LLC Request for Discontinuance

Patch Forest LLC
40 Patch Road
Lebanon, NH 03766



January 30, 2020

To the Lebanon City Council:

We, the members of Patch Forest LLC, respectfully request that, pursuant to RSA 231:43, the Lebanon City Council vote to formally discontinue the so-called Class VI roads, or any portions thereof (if any legally exist today), on our tracts of land located on the easterly side of Meriden Road. These tracts of land are identified as Parcels 167-20, 169-4, 169-5, 194-11, 194-15, 194-25, 196-2, 196-4 and 196-5. This would include be any and all parts of the so-called Atherton, Durkee, McCallister and Barden Hill Roads. We had originally requested that the City of Lebanon discontinue these roads by (hand-delivered) letter to the Lebanon City Manager on July 10, 2018. That letter stated:

"July 10, 2018

To the City Manager:

Patch Forest LLC purchased about 950 contingent acres in Lebanon that is connected to our already approximate 270 acres. The latter we have had for 8 generations and plan to continue the family tradition as we have three sons returning to work on the property. We plan to expand our current sugar bush (over 6000 taps) on this property. First, we are logging the new property and then will run sap lines throughout. Our goal is to put approximately 30-50,000 taps onto the new property. Historically, in our sugar bush we have had sugar lines cut, equipment tampered with and other destructive behavior. We are requesting that the City of Lebanon discontinue the Class VI roads on our property (see the attached map). This would allow us to run sugar lines across those roads. Please let us know if you want more information."

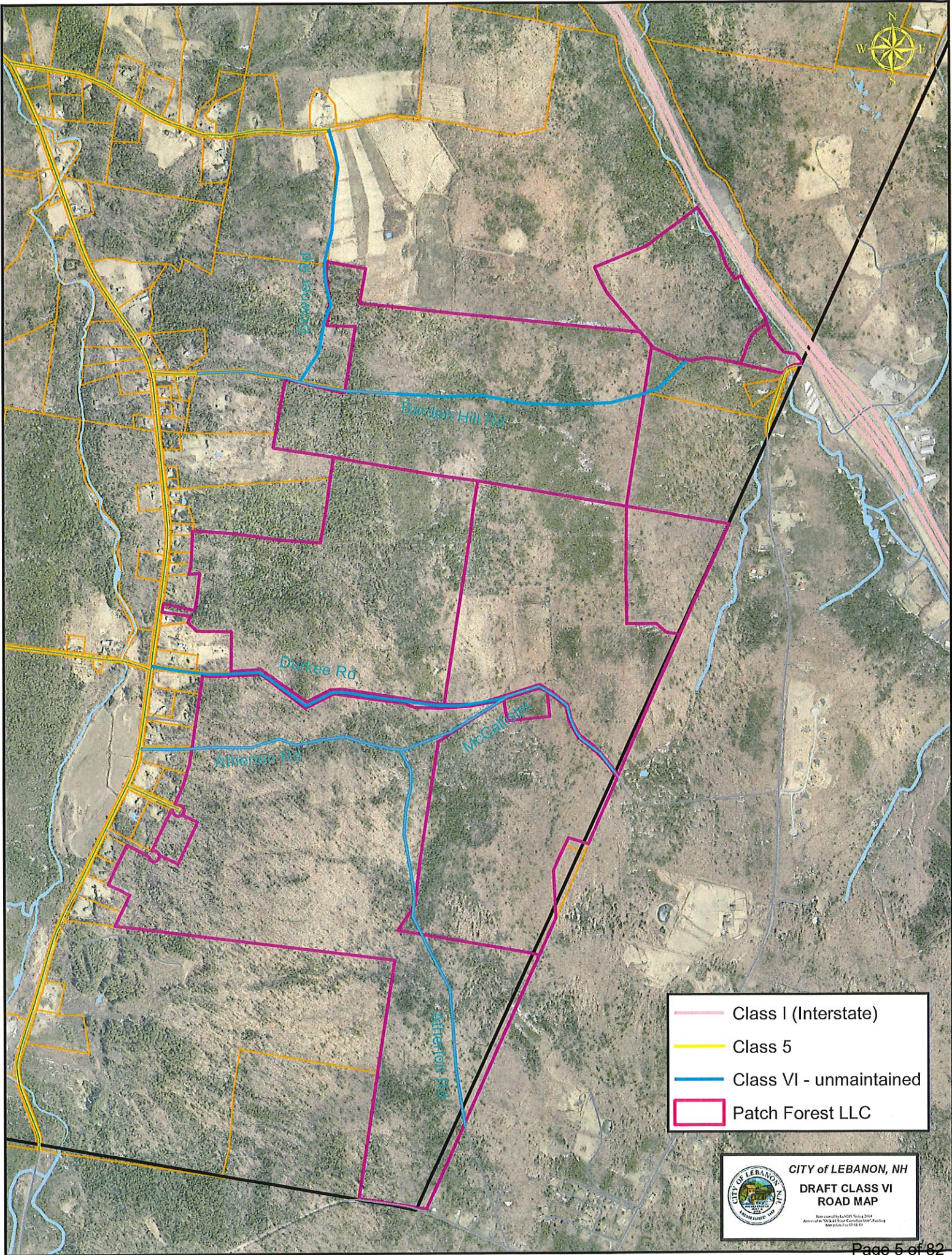
We just want to say that we have made arrangement with the snowmobile club to add a snowmobile trail below our sap lines. The snowmobile trail has crossed over our land for generations. This new trail would certainly be an upgrade for the public to use.

We plan to maintain this forest for generations as we have farmed the abutting land for 8 generations with the 9th generation on the way. All three of the next generation are returning to work on the farm. Cody returned after his graduation from Dartmouth in 2015. Joshua and Arthur have their undergraduate and masters' degrees in engineering and have just left their full time jobs to work in this sugar bush.

Sincerely,

A handwritten signature in blue ink, which appears to read "Barbara Patch", is written over the typed name.

Barbara Patch



- Class I (Interstate)
- Class 5
- Class VI - unmaintained
- Patch Forest LLC



CITY of LEBANON, NH

DRAFT CLASS VI

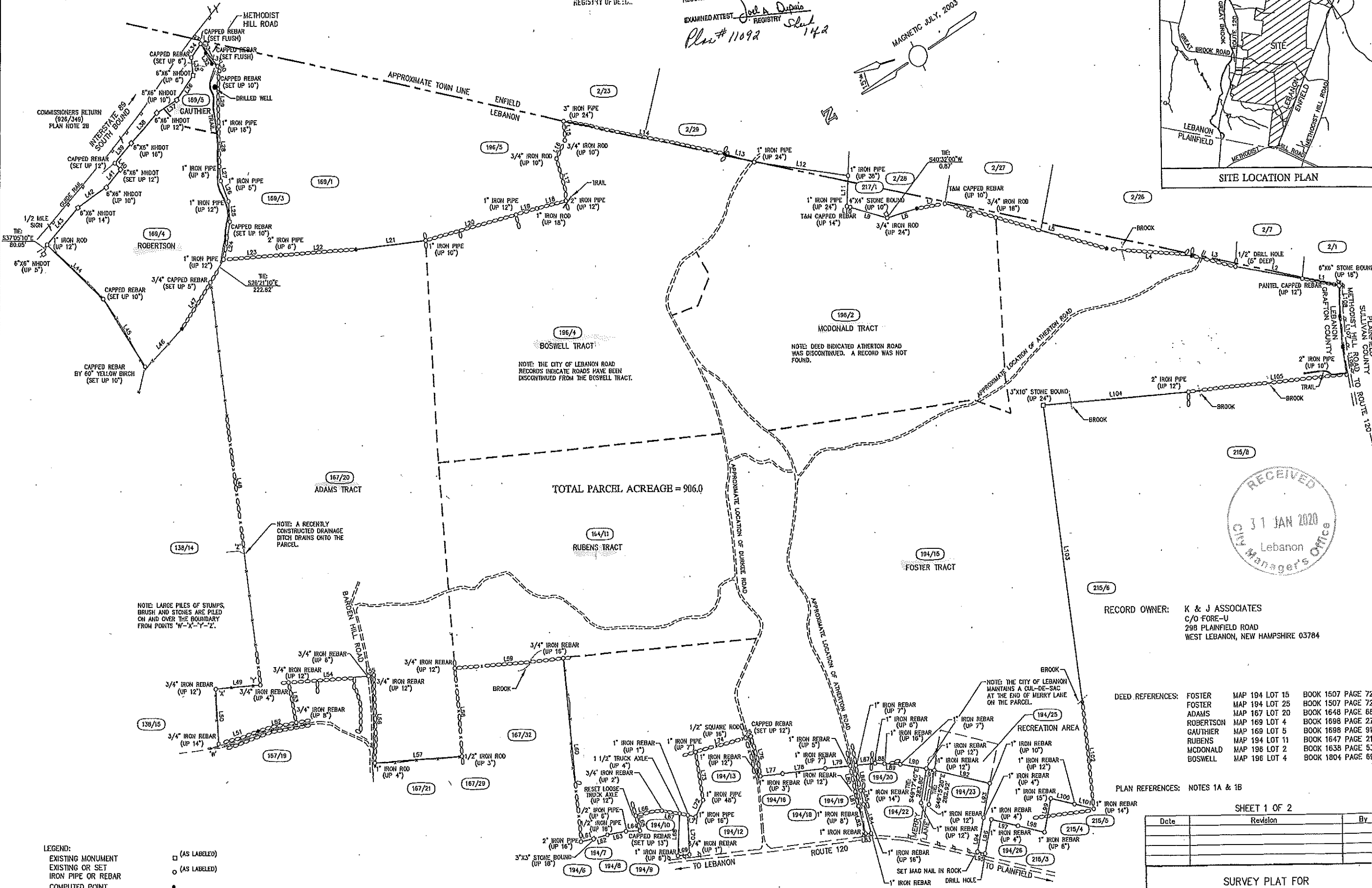
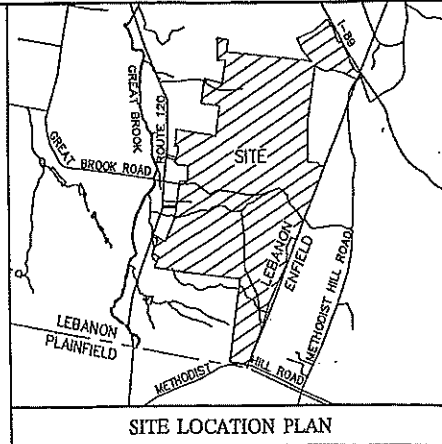
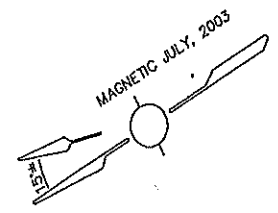
ROAD MAP

Map created by GeoDOT, Spring 2014
Approved by NH & RI State Constituent Street Funding
Map posted 7/20/15

P: 10100-BENWOOD BOUNDARY SURVEY BENWOOD SURVEY

018488

2003 JUL -9 PM 3:37
JUL 9 2003
REGISTRY OF DEEDS
RECEIVED 3:37 PM July 9, 2003
RECORDED: LIBER
EXAMINED ATTEST: *Joel A. Dupuis*
REGISTRY
Plan # 11092 Sheet 14.2



RECORD OWNER: K & J ASSOCIATES
C/O FORE-U
298 PLAINFIELD ROAD
WEST LEBANON, NEW HAMPSHIRE 03784

DEED REFERENCES:

FOSTER	MAP 194 LOT 15	BOOK 1507 PAGE 72
FOSTER	MAP 194 LOT 25	BOOK 1507 PAGE 72
ADAMS	MAP 167 LOT 20	BOOK 1648 PAGE 68
ROBERTSON	MAP 169 LOT 4	BOOK 1698 PAGE 21
GAUTHIER	MAP 169 LOT 5	BOOK 1698 PAGE 91
RUBENS	MAP 194 LOT 11	BOOK 1647 PAGE 21
MCDONALD	MAP 196 LOT 2	BOOK 1638 PAGE 51
BOSWELL	MAP 196 LOT 4	BOOK 1804 PAGE 61

PLAN REFERENCES: NOTES 1A & 1B

SHEET 1 OF 2

- LEGEND:
- EXISTING MONUMENT (AS LABELED)
 - EXISTING OR SET IRON PIPE OR REBAR (AS LABELED)
 - COMPUTED POINT
 - EDGE OF DRIVEWAY/ROAD (BOOK/PAGE)
 - DEED REFERENCE (MAP/LOT)
 - TAX MAP/LOT
 - WIRE FENCE
 - STONEWALL
 - UTILITY POLE
 - BOUNDARY LINE
 - APPROXIMATE TITLE LINE

I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO N.H.R.S.A. TITLE LXIV AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN RSA 676:18, III

DATE: *July 9 2003*

I HEREBY CERTIFY TO THE BEST OF MY BELIEF AND KNOWLEDGE THAT A NEW HAMPSHIRE URBAN CLASS SURVEY WAS DONE ON THE PROPERTY SHOWN. BOUNDARY LINES ARE CONSISTENT WITH EXISTING MONUMENT-

SURVEY PLAT FOR
THE RED BARN TRUST
ROUTE 120 - LEBANON - GRAFTON COUNTY - NH

July 3, 2003 SCALE: 1" = 400'

Page 6 of 82

DATE Revision By

Patch Forest, LLC
40 Patch Road
Lebanon, NH 03766



August 18, 2020

Lebanon City Council
20 West Park Street
Lebanon, NH 03766

Hand-Delivered

Re: Petition to Discontinue a short segment of the Barden Hill Road

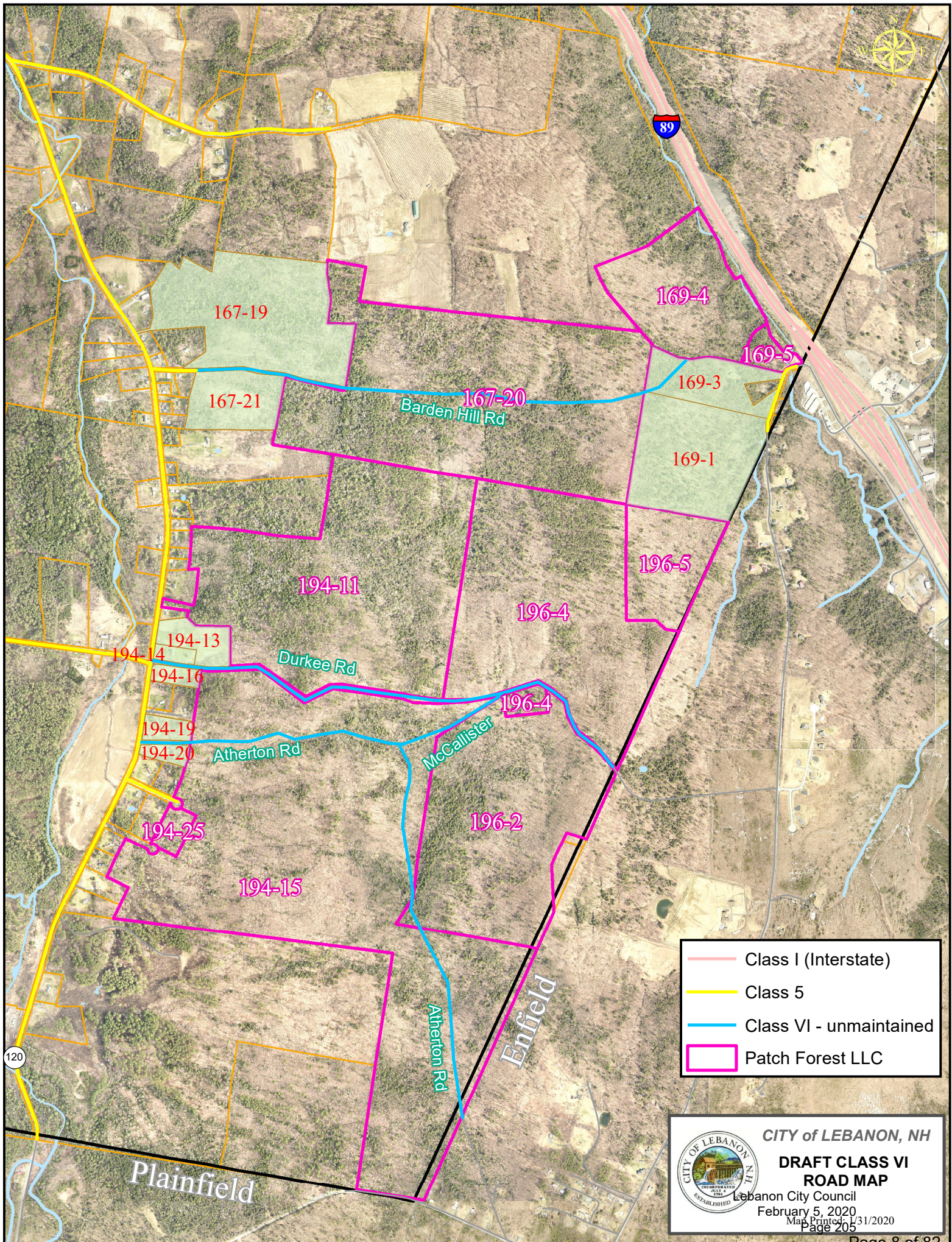
Dear Mayor McNamara and Members of the City Council:

By petition dated July 24, 2020, Patch Forest, LLC requested that the City Council discontinue the short segment of Barden Hill Road on its property which runs easterly to the old Barden Farm foundation. We wish to withdraw that petition, and request that the City of Lebanon to keep the status of Barden Hill Road in that location as is.

This does not apply to our petition to discontinue the so-called Barden Hill Road Extension, in which we were joined by Glen and Anita Kimball. We continue to request that the City Council take formal action to discontinue this "highway." Our surveyor, Chris Rollins, LLS, found no evidence of a layout and no evidence whatsoever to indicate that a public road has existed there.

Patch Forest LLC

By: Barbara Patch
Barbara Patch, Member
Duly authorized



**Class VI Roads
Advisory
Committee
Recommendation
for
Reclassification**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council
CC: Shaun Mulholland, City Manager
Paula Maville, Deputy City Manager

FROM: Planning Staff
RE: Class 6 Road Committee Review of the Barden Hill Road

DATE: January 6, 2021

Honorable Mayor and City Councilors,

The Class 6 Committee (C6) has completed a review of the unmaintained section of the Barden Hill right-of-way, including a determination that it is indeed a public right-of-way, extending from the Class V maintained section, eastwardly to the intersection with Methodist Hill Rd. The review process involved the application of an assessment template, including the following components:

- Documenting evidence supporting the assertion of a public right-of-way.
- A review of any record of discontinuance
- Ascertaining the current physical condition of the right-of-way, as well as potential future uses.
- Generating a roadway classification recommendation for the City Council. The choices of roadway classifications include a discontinuance, or a designation of one of the following: Class B Trail, Class A Trail, Class VI Road, or Class V Road.

Following the template application, a review of additional relevant information, and inclusive of feedback from residents providing input during the review process, the C6 Committee generated the following motion to be provided to the City Council: ***Mr. Heistad MOVED that the Class VI Roads Advisory Committee recommend that the Lebanon City Council reclassify Barden Hill Road, a class VI Road, as a Class A Municipal Trail as defined in RSA 231-A:1(1), extending from the intersection of Barden Hill Road, Barden Road and Downer Road, easterly over the top of Methodist Hill to the Methodist Hill Road near Exit 16 off Interstate 89, and as shown on the City of Lebanon Draft Class VI Roads Map, printed May, 2014. The Committee further recommends that Barden Hill Road be subject to the following public trail use restrictions: Permitted means of travel shall be a) feet, skis, snowshoes, and horses, b) bicycles, ridden appropriately for a multipurpose trail, when the city deems that the conditions of the trail warrant their use, and c) snowmobiles, ridden appropriately for a multipurpose trail, when snow cover is adequate to warrant their use. Notwithstanding these permissions, none of these uses shall be allowed in a manner or in conditions that will encourage erosion or otherwise damage the trail. All other***

wheeled or motorized vehicles, on or off road, shall be prohibited, excepting the allowed vehicular uses of abutting landowners for access to uses of their land as set forth in RSA 231-A:1(1). The Public Works Director shall cause to be posted legible signs at the entrance to the trail describing the restrictions contained herein, as provided by RSA 231-A:4.

** The Vote on the MOTION passed (5-0)*

The C6 Committee review of Barden Hill occurred during the August 6th, August 20th, September 3rd, and September 17th, 2020 meetings. The agenda packet for those meetings, including photos, maps, resident letters of input, etc., can be found at the following links: [C6 August 6th](#), [C6 August 20th](#), [C6 September 3rd](#), and [C6 September 17th](#). A summary subset of the agenda packets is provided as attachments to this memo, including photos, maps and the assessment template. The motion generated during the September 17th meeting was reconsidered during the November 5th C6 meeting, including the generation of a modified motion containing specific use restriction language. The motion provided within the memo is from the November 5th meeting.

The Patch Forest Trust, joined by Glen and Anita Kimball, owners of parcels that abut Barden Road have a pending request before the City Council for the Barden Hill right-of-way to be discontinued. Their original discontinuance request was to include the entire segment extending from the Class V section of Barden Hill Road, eastwardly to the historic intersection with Churchill Way. The request was amended to only include the section of right-of-way from the intersection of the Downer Road (C6), eastwardly to the historic intersection with Churchill Way.

The City Council was scheduled to consider the request during the March 4th, 2020 meeting, but at the request of the attorney representing the Patch family, continued the discussion to a future date. In preparation for future discussion(s), the City Council during the April 15th, 2020 meeting requested the C6 Committee be restarted and complete their review of Lebanon Class VI roads, including the four associated with the Patch Forest Trust discontinuance request. The Class VI Committee initiated bi-weekly meetings in August, 2020, completing the review and specific recommendation as articulated within this memo.

ACTION ITEM

The City Council can choose between advancing the discontinuance process as requested by the Patch Forest Trust and Kimball family, or the reclassification of Barden Rd from the current Class VI roadway designation, to a Class A Trail, as recommended by the Class VI Roads Committee. If the Council decides to pursue the request for a discontinuance, a public hearing is required to be set; a reclassification to a Class A Trail does not require a public hearing but has historically been the practice of the City Council. Feedback provided to City staff during the January 6th City Council meeting will inform the preparation of agenda materials for a public hearing event, if the City Council desires to move in that direction.

ATTACHMENT

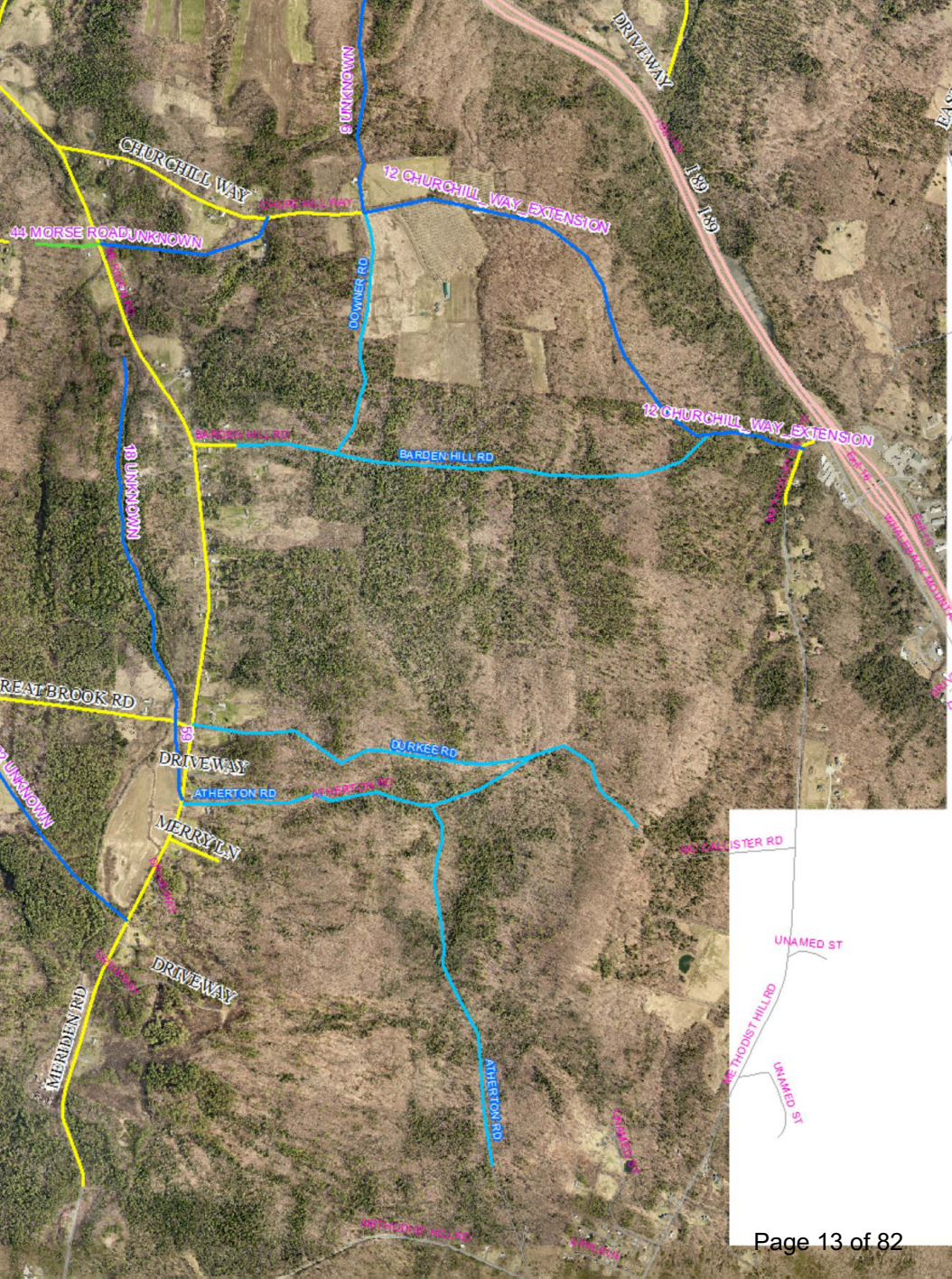
Attachment #1 = SE Quadrant Overview Map

Attachment #2 = Photos

Attachment #3 = Historic Maps

Attachment #4 = C6 Right-of-Way Template

Attachment #5 = City Attorney Public Highway Summary





Barden Hill Rd

Photo # 2-7

Description:

- Approx. 0.43 miles East from pavement section
- East of cellar hole & snowmobile junction - View East
- Snow machines travel east/west on this segment



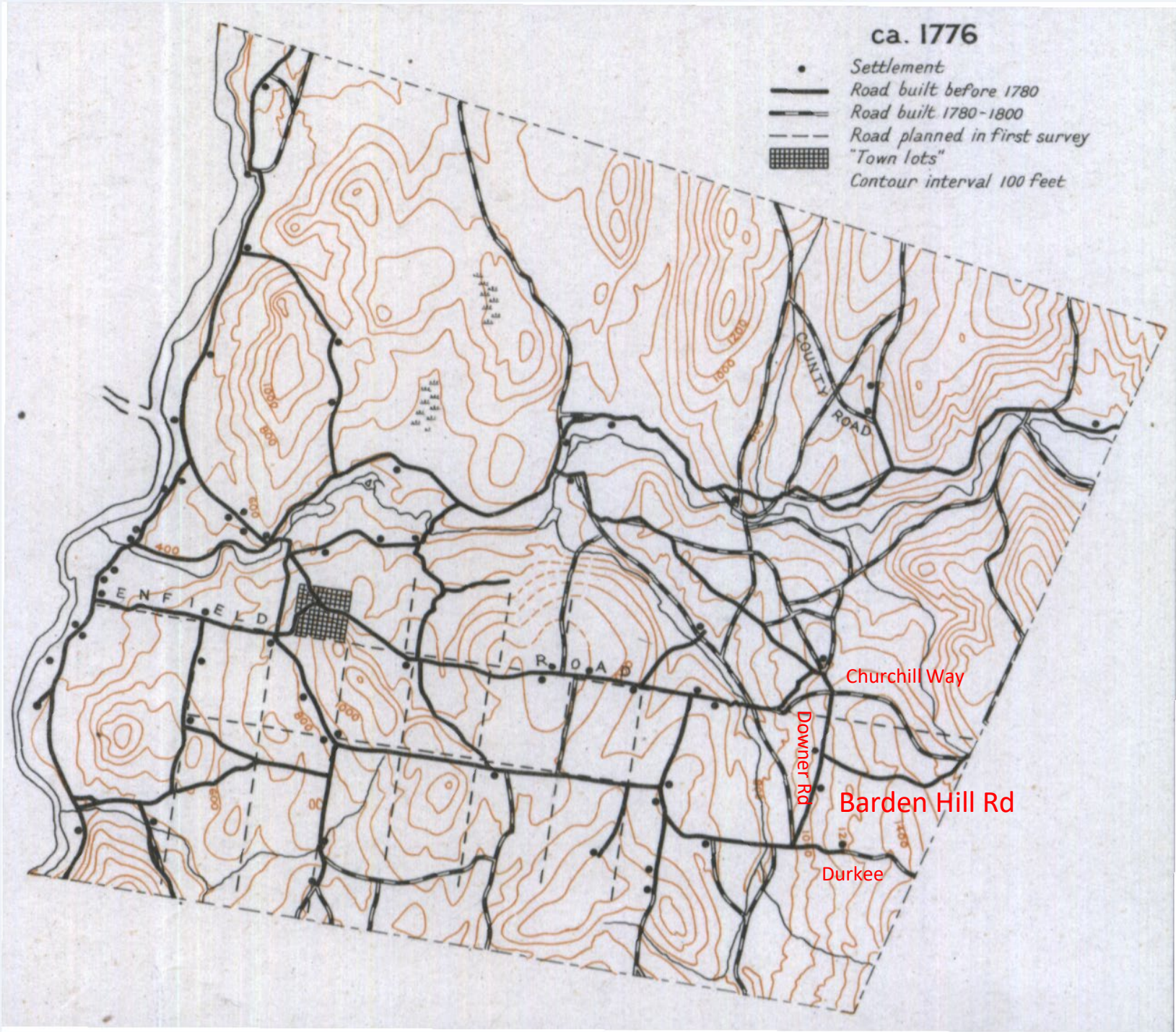
Barden Hill Rd

Photo # 2-6

Description:

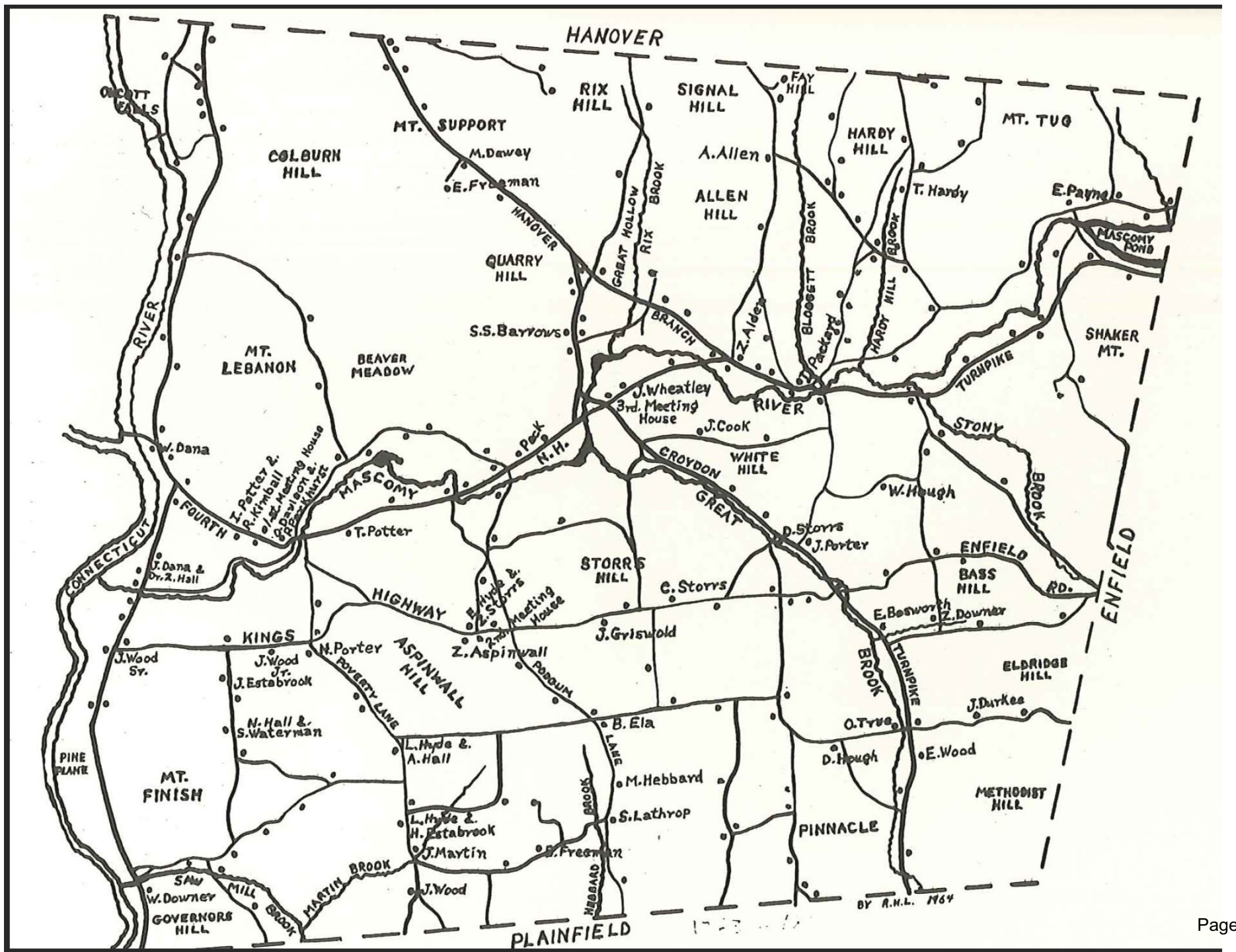
- Intersection of Barden & Churchill Way
- View West up Barden Hill Rd
- Iron Pin on property boundary visible to left of large sugar maple (pink ribbon)
- Discontinued Churchill Way heading Northerly, out of photo view, off to right side

Torbet Map - 1776



Red Labels on map placed
for reference by LebGIS

By Robert Leavitt,
1964



CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 1 – Legal Status)



Road Name: Barden Hill – East (Cellar Hole East of Downer intersection to intersection with discontinued Churchill Way)

Step 1 – Evidence Supporting Creation of the Road

CREATION OF THE ROAD	Yes	No
Layout (a record of the governing body's layout of the road)		X
Evidence of Prescription (prior to 1968) - To include map, field, deed, historical documentation, etc)	X	
Dedication and Acceptance (e.g. Subdivision Layout)		X
Deeded Ownership Deed on record at City Clerks office		X

Step 1A – Evidence of Prescription

Map Evidence

1855 W.C. Eaton	
1892 Hurd Atlas	
USGS Map(s)	
Torbert Maps	X
Other: Leavitt, 1964	x

Field Evidence

ROW Evidence	X
Stone Walls	
Cellar Holes	
Other	

Deed Evidence

Yes	no
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Historical Documentation

Downs History Book	
R. Carroll History Book	
Oscar Jewell Inventory	
NH DOT Archives	
Other	

Governing Body Documentation

Governing Body Votes (e.g. to change status, etc)	
Reference Regulations (e.g. weight limits, etc)	
Other	

General Comment(s)

Step 2 – Evidence of Discontinuance

Discontinuance Documentation

Lebanon City Clerk	
Town Meeting Minutes	
Registry of Deeds	
Other	



CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 2 – Condition & Use Status)



Road Name: Barden Hill – East (Cellar Hole East of Downer intersection to intersection with discontinued Churchill Way)

Step 3 – Current Condition of Road

	Yes	No
Historical ROW distinguishable	X	
Supports Hiking	X	
Supports Biking		X
Passable by Auto		X
Passable by 4x4		X

Evidence of Road Mis-Use

	Yes	No
Excessive Rutting		
Littering		
Wheeled Vehicle Use		
Other (e.g. stream erosion, etc.,)		

Step 4 – Current Road Usage

	Yes	No
Snowmobile		X
Pedestrian Hiking Trail		X
Wheeled Vehicle Use		X
Landowner(s) Access (accessing abutting props.)		X
Access (supporting hunting, maintenance, etc)		X
Other		

Step 5 – Potential Future Uses

	Yes	No
Hiking / Foot Trail Network	X	
Biking Network	X	
Emergency Roadway Access		
Lebanon Road Network		
Other (Snowmobile)	X	



CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 3 – Status of Recommendation)



Road Name: Barden Hill – East (Cellar Hole East of Downer intersection to intersection with discontinued Churchill Way)

Step 6 – Outreach Activity

	Yes	No
Feedback garnered from residents related to existing and potential future use	X	
Informal Public Meetings for discussion	X	
Informal Abutter Notification related to meetings and discussions	X	
City Department Feedback	X	
Formal Abutter Notification prior to Council Public Hearing		
Other		

Step 7 – Class VI Road Committee Recommendation

Status Recommendation	Yes	No
Discontinuance		X
Class B Trail		X
Class A Trail	X	
Class VI Road		X
Class V Road		X

Step 8: Action Items

	Yes	No
Signage to be installed		
Gates / Barriers to be installed		
Funding Source Identified to support action items		
Coordination amongst vested/interested parties		
Abutter Notice		



CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 1 – Legal Status)



Road Name: Barden Hill – West (Rte 120 - to - Cellar hole, East of Downer intersection)

Step 1 – Evidence Supporting Creation of the Road

CREATION OF THE ROAD	Yes	No
Layout (a record of the governing body's layout of the road)		X
Evidence of Prescription (prior to 1968) - To include map, field, deed, historical documentation, etc)	X	
Dedication and Acceptance (e.g. Subdivision Layout)		X
Deeded Ownership Deed on record at City Clerks office		X

Step 1A – Evidence of Prescription

Map Evidence

1855 W.C. Eaton	X
1892 Hurd Atlas	X
USGS Map(s)	X
Torbert Maps	X
Other Wailing 1860	X

Field Evidence

ROW Evidence	X
Stone Walls	x
Cellar Holes	X
Other	

Deed Evidence

Yes	no
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Historical Documentation

Downs History Book	
R. Carroll History Book	
Oscar Jewell Inventory	
NH DOT Archives	
Other	

Governing Body Documentation

Governing Body Votes (e.g. to change status, etc)	
Reference Regulations (e.g. weight limits, etc)	
Other	

General Comment(s)
1937 Pine Blister map

Step 2 – Evidence of Discontinuance

Discontinuance Documentation

Lebanon City Clerk	
Town Meeting Minutes	
Registry of Deeds	
Other	



CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 2 – Condition & Use Status)



Road Name: Barden Hill – West (Rte 120 - to - Cellar hole, East of Downer intersection)

Step 3 – Current Condition of Road

	Yes	No
Historical ROW distinguishable	X	
Supports Hiking	X	
Supports Biking	X	
Passable by Auto	X	
Passable by 4x4	X	

Evidence of Road Mis-Use

	Yes	No
Excessive Rutting		X
Littering		X
Wheeled Vehicle Use		X
Other (e.g. stream erosion, etc.,)		

Step 4 – Current Road Usage

	Yes	No
Snowmobile	?	
Pedestrian Hiking Trail	X	
Wheeled Vehicle Use	X	
Landowner(s) Access (accessing abutting props.)	X	
Access (supporting hunting, maintenance, etc)	X	
Other		

Step 5 – Potential Future Uses

	Yes	No
Hiking / Foot Trail Network	X	
Biking Network	X	
Emergency Roadway Access		X
Lebanon Road Network		X
Other	X	



CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 3 – Status of Recommendation)



Road Name: Barden Hill – West (Rte 120 - to - Cellar hole, East of Downer intersection)

Step 6 – Outreach Activity

	Yes	No
Feedback garnered from residents related to existing and potential future use	X	
Informal Public Meetings for discussion	X	
Informal Abutter Notification related to meetings and discussions	X	
City Department Feedback	X	
Formal Abutter Notification prior to Council Public Hearing		
Other		

Step 7 – Class VI Road Committee Recommendation

Status Recommendation	Yes	No
Discontinuance		X
Class B Trail		X
Class A Trail	X	
Class VI Road		X
Class V Road		X

Step 8: Action Items

	Yes	No
Signage to be installed		
Gates / Barriers to be installed		
Funding Source Identified to support action items		
Coordination amongst vested/interested parties		
Abutter Notice		



TO: Lebanon City Council
FROM: Matthew C. Decker
DATE: December 29, 2020
RE: Public Highways

FOR PUBLIC REFERENCE

The following summary of relevant statutes and case law is intended to assist the Lebanon City Council and the residents of Lebanon in their review of reports and recommendations from the Class VI Roads Advisory Committee as well as petitions to discontinue public highways. This is a general summary of basic law, and does not discuss possible exceptions to the basic law.

Definition of “Public Highway”

- A public highway is an easement held in trust by government for the use of the public. The underlying land is usually, although not always, owned by abutting landowners. *See New Hampshire Municipal Association, A Hard Road to Travel: New Hampshire Law of Local Highways, Streets, and Trails*, Chapter 1, p. 17, 2015 Ed.
- The law limits the public to “viatic use” of a highway. “Viatic use” means any use reasonably incidental to the purpose of traveling. *Lydston v. Rockingham Cty. Light & Power Co.*, 75 N.H. 23 (1908).

Creation of Public Highways

- RSA 229:1 lists four ways a public highway may be created:
 - (1) Layout (“laid out in the mode prescribed therefor by statute”)
 - The layout process is defined at RSA 231:8 *et seq.* and includes a petition to the town select board or city council, a public hearing, a written “return” containing a description of the highway, and a payment of damages to the landowner(s) over whose land the highway passes.
 - (2) Deeded ownership (“roads which have been constructed for or are currently used for motor vehicle, bicycle, or pedestrian public travel over land which has been conveyed to a city or town or to the state by deed of a fee or easement interest”)
 - (3) Dedication and acceptance (“roads which have been dedicated to the public use and accepted by the city or town in which such roads are located”)
 - (4) Prescription (“roads which have been used as such for public travel... for 20 years prior to January 1, 1968”)

Creation by Prescription

- “To establish a highway by prescription, it must appear that the general public used the way continuously without interruption for a period of twenty years prior to 1968, under a claim of right without the owner’s permission.” *Gill v. Gerrato*, 156 N.H. 595, 596 (2007) (citations omitted).
- Evidence supporting prescription has been held to include, but is not limited to:
 - Photographs and testimony from community residents;
 - References to the road as a public highway in historical documents;
 - Historic maps;
 - The existence of cellar holes along the road;

- Stone walls lining the road;
 - Use of the road to access a commercial entity; and
 - Municipal maintenance. *See Hard Road to Travel* at Ch. 2, pp. 46-47.
- “[A] highway established by prescription is not as a matter of law restricted in width to the track of actual travel. In a case of prescription, the easement is not necessarily limited to the travelled path and the ditches on each side, but where the road has been fenced out for many years about the usual width, and there is nothing to control it, a jury would be justified in finding the whole space between the fences to be a public highway. The space between the wrought road and its exterior limits may be needed for various purposes, as for furnishing earth and other materials for making the road, constructing culverts and watercourses, making changes in the travelled path, and avoiding obstructions by snow... and for these and other reasons the space given to highways is very generally much more than what is occupied by the travelled path, and... it is competent for a jury to find, from ancient fences and other circumstances, that the true limits of a highway extend beyond the wrought road.” *Hoban v. Bucklin*, 88 N.H. 73 (1936) (citations and quotations omitted).

Conversion of Public Highways to Trails

- RSA 231-A allows municipalities to reclassify Class V or VI public highways into municipal trails. Trails remain full public rights-of-way, but subject to public trail use restrictions.
- Reclassification of highways to trails allows municipalities to restrict development on abutting parcels and restrict public uses (e.g. prohibitions of motor vehicles, wheeled vehicles, or OHRVs, or restrictions to specified modes of travel such as horse, bicycle or foot). RSA 231-A:4.
 - With “Class A” trails, abutting landowners can continue to use the trail for vehicular access for “such nondevelopment uses as agriculture and forestry, or for access to any building or structure existing prior to its designation as a trail” and the owner’s access “shall be exempt from applicable public trail use restrictions”. RSA 231-A:1, I.
 - With “Class B” trails, abutting landowners have no special rights and must obey any trail use restrictions imposed on the public. RSA 231-A:1, II.

Discontinuance

- Once a public highway is established, the rights last indefinitely, unless a formal public decision is made to discontinue them. *Blagbrough Family Realty Trust v. A&T Forest Products, Inc.*, 155 N.H. 29 (2007).
- “Highway discontinuance is not favored in the law... and the burden is upon the party who asserts discontinuance to prove it by clear and satisfactory evidence.” *Davenhall v. Cameron*, 116 N.H. 695, 697 (1976); *see also Town of Goshen v. Casagrande*, 170 N.H. 548, 551 (2018).
- Public highways cannot be lost by adverse possession. *See* RSA 236:30; *Windham v. Jubinville*, 92 N.H. 102 (1942).
- “For all the same reasons that highway continuance is favored in the law, it is probably best to avoid complete discontinuances of highways unless absolutely necessary. It is often the case that the public right of way will be useful in the future. The only time complete discontinuance should be considered is when there is some specific alternative use in mind for the land... If the only goal is to save on town maintenance costs, consider discontinuing the highway subject to gates and bars instead. That is the purpose of the Class VI classification, and the right of way will be preserved for future use, if necessary.” *Hard Road to Travel*, Ch.4, at p. 76.

DURKEE ROAD

Patch Forest, LLC Request for Discontinuance

Patch Forest LLC
40 Patch Road
Lebanon, NH 03766



January 30, 2020

To the Lebanon City Council:

We, the members of Patch Forest LLC, respectfully request that, pursuant to RSA 231:43, the Lebanon City Council vote to formally discontinue the so-called Class VI roads, or any portions thereof (if any legally exist today), on our tracts of land located on the easterly side of Meriden Road. These tracts of land are identified as Parcels 167-20, 169-4, 169-5, 194-11, 194-15, 194-25, 196-2, 196-4 and 196-5. This would include be any and all parts of the so-called Atherton, Durkee, McCallister and Barden Hill Roads. We had originally requested that the City of Lebanon discontinue these roads by (hand-delivered) letter to the Lebanon City Manager on July 10, 2018. That letter stated:

"July 10, 2018

To the City Manager:

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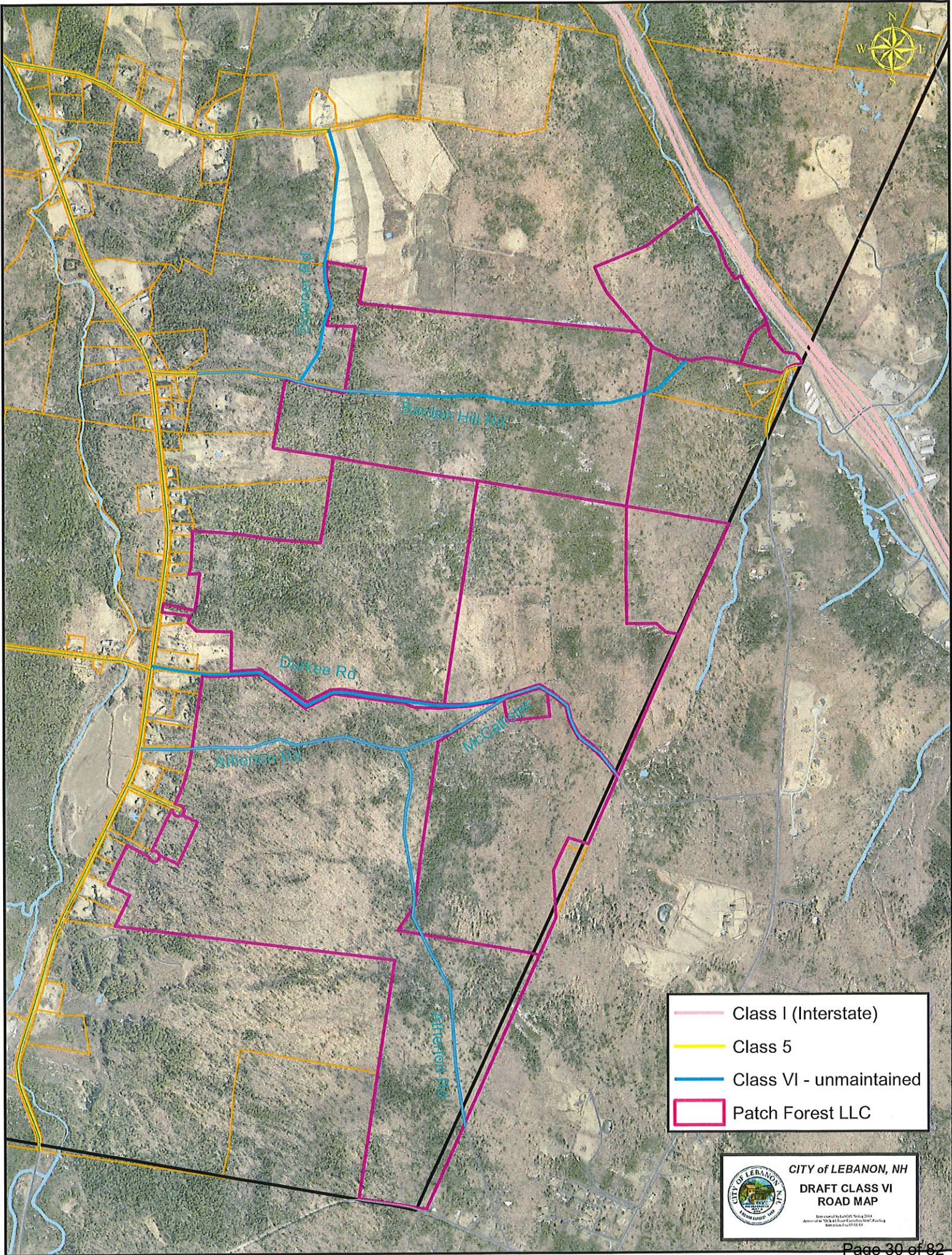
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We plan to maintain this forest for generations as we have farmed the abutting land for 8 generations with the 9th generation on the way. All three of the next generation are returning to work on the farm. Cody returned after his graduation from Dartmouth in 2015. Joshua and Arthur have their undergraduate and masters' degrees in engineering and have just left their full time jobs to work in this sugar bush.

Sincerely,

A handwritten signature in blue ink, reading 'Barbara Patch', is written over the typed name.

Barbara Patch



- Class I (Interstate)
- Class 5
- Class VI - unmaintained
- Patch Forest LLC



CITY of LEBANON, NH

**DRAFT CLASS VI
ROAD MAP**

Map created by GeoDOT, Spring 2014
Approved on 10/18/15 by Council Members' Meeting
Map posted 1/15/16

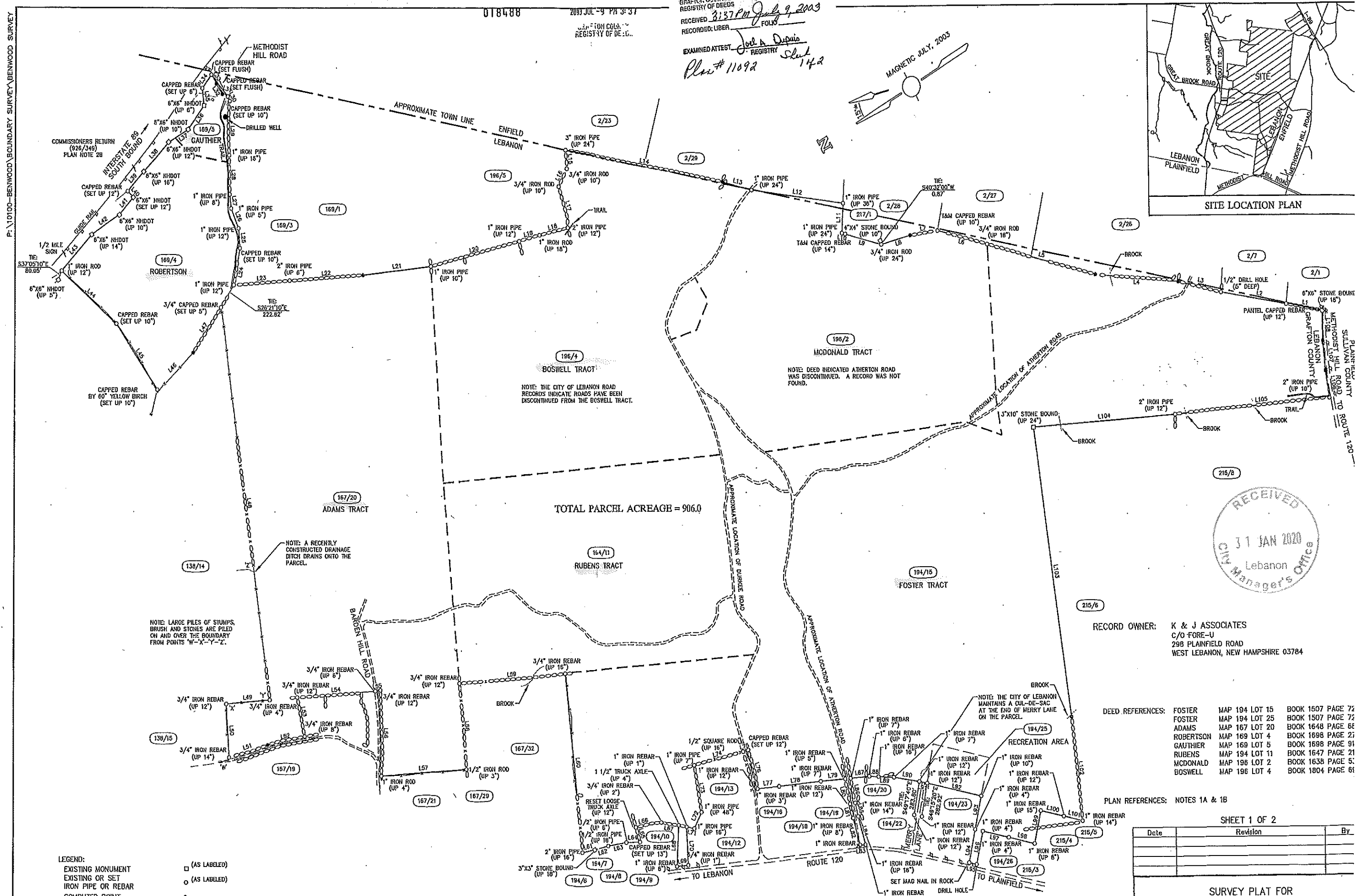
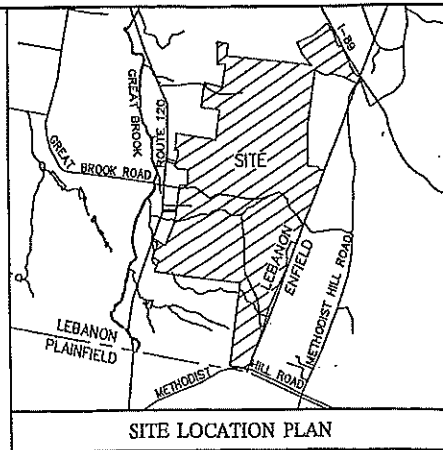
P: 10100-BENWOOD BOUNDARY SURVEY BENWOOD SURVEY

018488

2003 JUL -9 PM 3:37
JUL 9 2003
REGISTRY OF DEEDS
RECEIVED 3:37 PM JUL 9 2003
RECORDED: LIBER
EXAMINED ATTEST: *Joel A. Dupuis*
REGISTRY
Plan # 11092 Sheet 14.2

GRAPHIC OF DEEDS
RECEIVED 3:37 PM JUL 9 2003
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MAGNETIC JULY, 2003



TOTAL PARCEL ACREAGE = 906.0

RECORD OWNER: K & J ASSOCIATES
C/O FORE-U
298 PLAINFIELD ROAD
WEST LEBANON, NEW HAMPSHIRE 03784

DEED REFERENCES: FOSTER MAP 194 LOT 15 BOOK 1507 PAGE 72
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PLAN REFERENCES: NOTES 1A & 1B

SHEET 1 OF 2

Date	Revision	By

SURVEY PLAT FOR
THE RED BARN TRUST
ROUTE 120 - LEBANON - GRAFTON COUNTY - NH

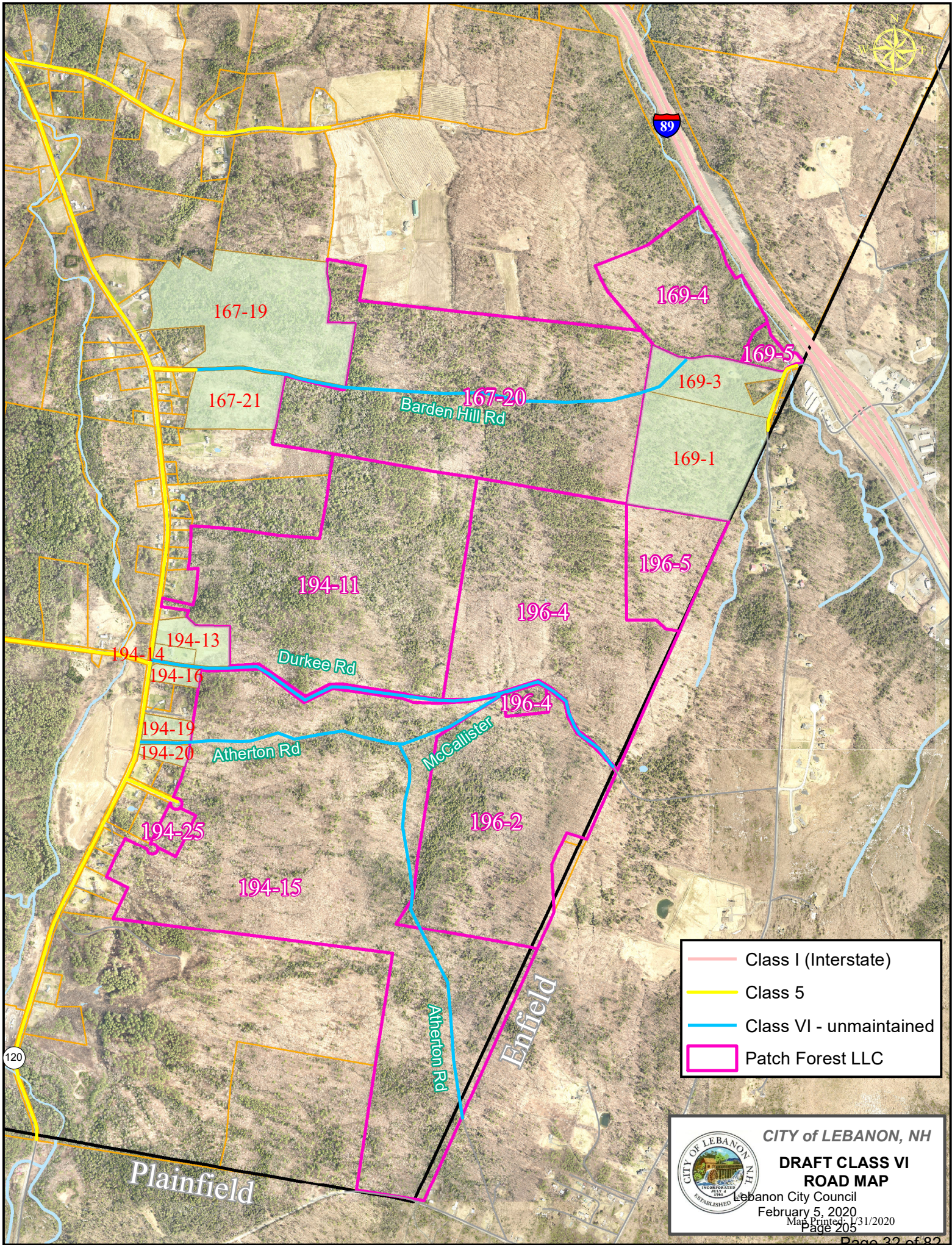
0 400 800 1200 1600 2000
JULY 3, 2003 SCALE: 1" = 400' Page 31 of 82

LEGEND:
EXISTING MONUMENT (AS LABELED)
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APPROXIMATE TOWN LINE

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DATE: JUL 9 2003

I HEREBY CERTIFY TO THE BEST OF MY BELIEF AND KNOWLEDGE THAT A NEW HAMPSHIRE URBAN CLASS SURVEY WAS DONE ON THE PROPERTY SHOWN. BOUNDARY LINES ARE CONSISTENT WITH EXISTING MONUMENT-



- Class I (Interstate)
- Class 5
- Class VI - unmaintained
- Patch Forest LLC



CITY of LEBANON, NH

**DRAFT CLASS VI
ROAD MAP**

Lebanon City Council
February 5, 2020
Map Printed 1/31/2020
Page 205

Class VI Roads Advisory Committee Recommendation for Reclassification



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council
CC: Shaun Mulholland, City Manager
Paula Maville, Deputy City Manager

FROM: Planning Staff
RE: Class 6 Road Committee Review of the Durkee Road

DATE: January 6, 2021

Honorable Mayor and City Councilors,

The Class 6 Committee (C6) has completed a review of the Durkee Road right-of-way, including a determination that it is indeed a public right-of-way. The review process involved the application of an assessment template, including the following components:

- Documenting evidence supporting the assertion of a public right-of-way.
- A review of any record of discontinuance
- Ascertaining the current physical condition of the right-of-way, as well as potential future uses.
- Generating a roadway classification recommendation for the City Council. The choices of roadway classifications include a discontinuance, or a designation of one of the following: Class B Trail, Class A Trail, Class VI Road, or Class V Road.

Following the template application, a review of additional relevant information, and inclusive of feedback from residents providing input during the review process, the C6 Committee generated the following motion to be provided to the City Council: ***Mr. Heistad MOVED that the Class VI Roads Advisory Committee recommend that the Lebanon City Council reclassify Durkee Road, a class VI Road, as a Class A Municipal Trail as defined in RSA 231-A:1(1), extending from the Meriden Road (Route 120) to McCallister Road in Enfield, at the Enfield town boundary, and as shown on the City of Lebanon Draft Class VI Roads Map, printed May, 2014. The Committee further recommends that Durkee Road be subject to the following public trail use restrictions: Permitted means of travel shall be a) feet, skis, snowshoes, and horses, b) bicycles, ridden appropriately for a multipurpose trail, when the city deems that the conditions of the trail warrant their use, and c) snowmobiles, ridden appropriately for a multipurpose trail, when snow cover is adequate to warrant their use. Notwithstanding these permissions, none of these uses shall be allowed in a manner or in conditions that will encourage erosion or otherwise damage the trail. All other wheeled or motorized vehicles, on or off road, shall be prohibited, excepting the allowed vehicular uses of abutting landowners for access to uses of their land as set forth in RSA 231-***

A:1(1). The Public Works Director shall cause to be posted legible signs at the entrance to the trail describing the restrictions contained herein, as provided by RSA 231-A:4.

**** The Vote on the MOTION passed (5-0***

The C6 Committee review of Durkee Road occurred during the October 1st, 2020 meeting. The agenda packet for that discussion, including photos, maps, letters of input, etc., can be found at the following link: [C6 October 1st, 2020](#). A summary subset of the agenda packet is provided as attachments to this memo, including photos and map(s). The motion generated during the October 1st meeting was reconsidered during the November 5th C6 meeting, including the generation of a modified motion containing specific use restriction language. The motion provided within the memo is from the November 5th meeting.

The Patch Forest Trust, owners of several parcels that abut Durkee Road have a pending request before the City Council for the Durkee Rd right-of-way to be discontinued. The City Council was scheduled to consider such during the March 4th, 2020 meeting, but at the request of the attorney representing the Patch family, continued the discussion to a future date. In preparation for future discussion(s), the City Council during the April 15th, 2020 meeting requested the C6 Committee be restarted and complete their review of Lebanon Class VI roads, including the four associated with the Patch Forest Trust discontinuance request. The Class VI Committee initiated bi-weekly meetings in August, 2020, completing the review and specific recommendation as articulated within this memo.

ACTION ITEM

The City Council can choose between advancing the discontinuance process as requested by the Patch Forest Trust, or the reclassification of Durkee Rd from the current Class VI roadway designation, to a Class A Trail, as recommended by the Class VI Roads Committee. If the Council decides to pursue the request for a discontinuance, a public hearing is required to be set; a reclassification to a Class A Trail does not require a public hearing but has historically been the practice of the City Council. Feedback provided to City staff during the January 6th City Council meeting will inform the preparation of agenda materials for a public hearing event, if the City Council desires to move in that direction.

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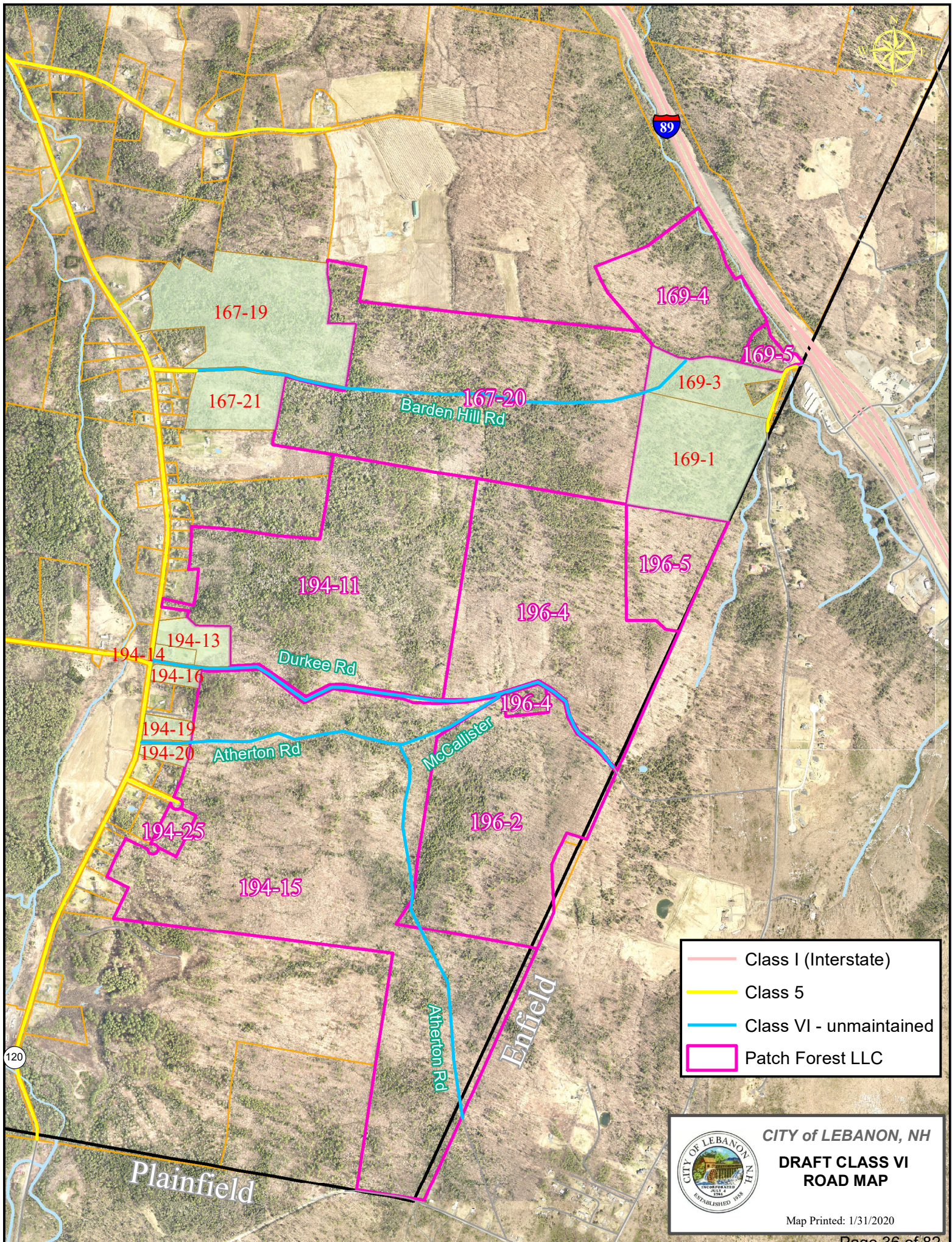
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Attachment #2 = Photos

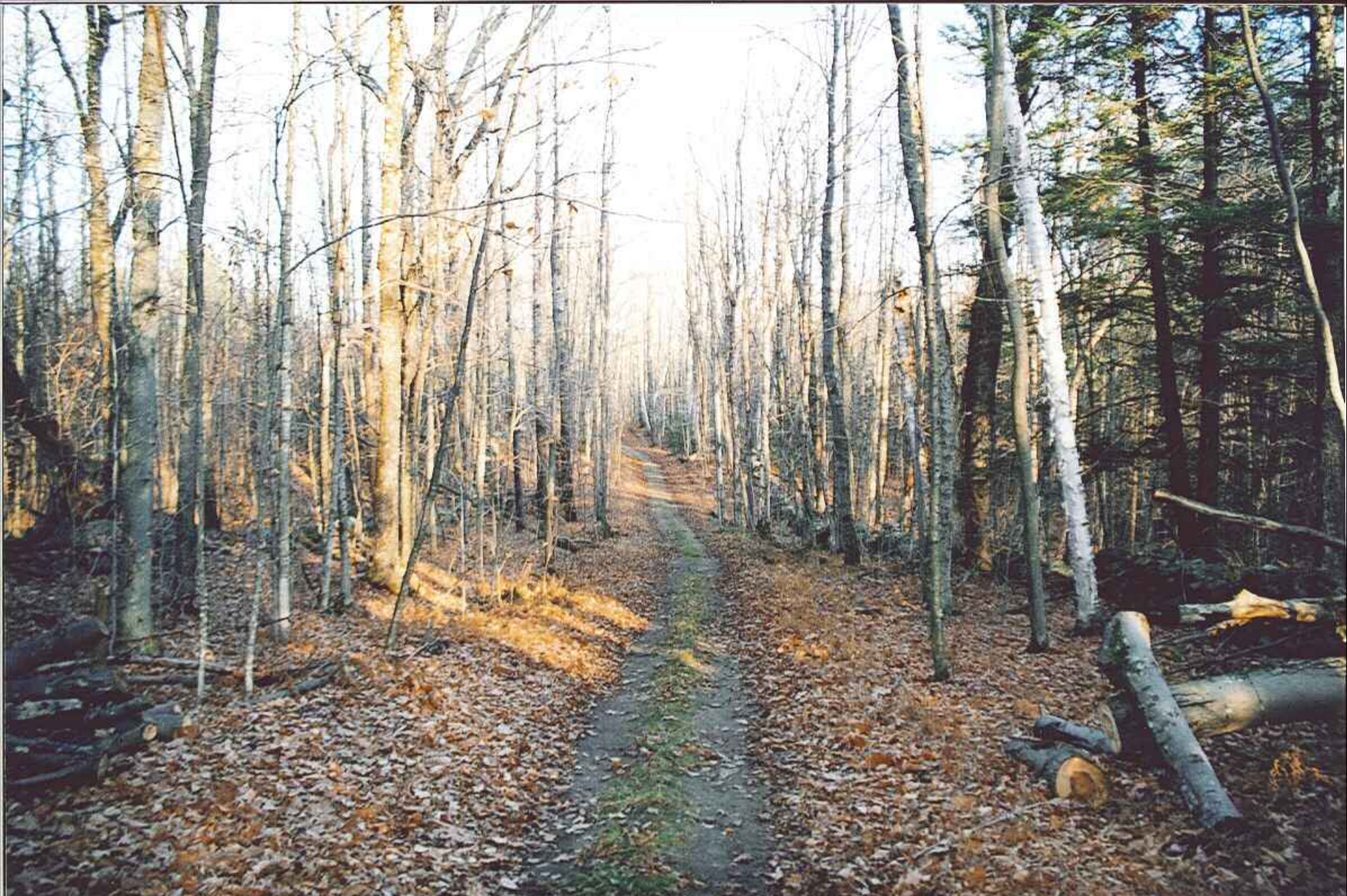
Attachment #3 = Historic Map(s)

Attachment #4 = C6 Right-of-Way Template

Attachment #5 = City Attorney Public Highway Summary







1855 Eaton Map



1860 Walling Map



CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 1 – Legal Status)



Road Name: Durkee Rd

Step 1 – Evidence Supporting Creation of the Road

CREATION OF THE ROAD	Yes	No
Layout (a record of the governing body's layout of the road)		X
Evidence of Prescription (prior to 1968) - To include map, field, deed, historical documentation, etc)	X	
Dedication and Acceptance (e.g. Subdivision Layout)		X
Deeded Ownership Deed on record at City Clerks office		X

Step 1A – Evidence of Prescription

Map Evidence

1855 W.C. Eaton	X
1892 Hurd Atlas	x
USGS Map(s)	X
1930 Torbert Map	X
Other: DPW ATLAS	X

Field Evidence

ROW Evidence	Y
Stone Walls	Y
Cellar Holes	Y
Other: monumentation	Y

Deed Evidence

Yes?	No?
------	-----

Historical Documentation

C. Downs History Book	
R. Carroll History Book	
B. Leavitt works	X
Oscar Jewell Inventory	
NH DOT Archives	
Other	

Governing Body Documentation

Governing Body Votes (e.g. to change status, etc)	
Reference Regulations (e.g. weight limits, etc)	
Other	

General Comment(s)

Step 2 – Evidence of Discontinuance

Discontinuance Documentation

Lebanon City Clerk	N
Town Meeting Minutes	N
Registry of Deeds	N
Other	N



CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 2 – Condition & Use Status)



Road Name: Durkee Rd

Step 3 – Current Condition of Road

	Yes	No
Historical ROW distinguishable	X	
Supports Hiking	X	
Supports Biking	X	
Passable by Auto		X
Passable by 4x4	X	

Evidence of Road Mis-Use

	Yes	No
Excessive Rutting (gullying)		
Littering		
Wheeled Vehicle Use		
Other:		

Step 4 – Current Road Usage

	Yes	No
Snowmobile (*portions Eastern Section (?))		
Pedestrian Hiking Trail		
Wheeled Vehicle Use (portions)		
Landowner(s) Access (accessing abutting props.)		
Access (supporting maintenance, etc)		
Other: X-Country Ski		

Step 5 – Potential Future Uses

	Yes	No
Hiking / Foot Trail Network	X	
Biking Network (NOTE: with proper maintenance)	X?	
Emergency Roadway Access		X?
Lebanon Road Network		X
Other		



CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 3 – Status of Recommendation)



Road Name: Durkee Rd

Step 6 – Outreach Activity

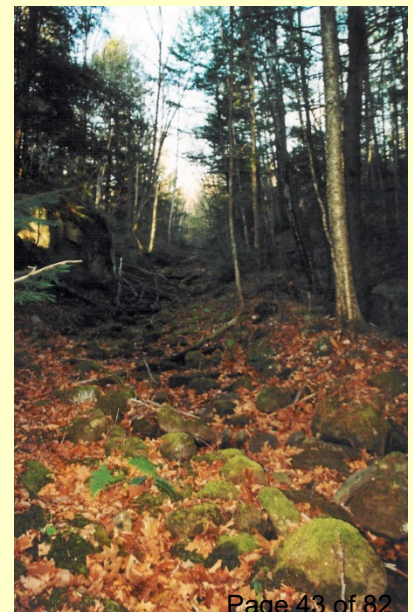
	Yes	No
Feedback garnered from residents related to existing and potential future use	X	
Informal Public Meetings for discussion	X	
Informal Abutter Notification related to meetings and discussions	X	
City Department Feedback	X	
Formal Abutter Notification prior to Council Public Hearing		
Other		

Step 7 – Class VI Road Committee Recommendation

Status Recommendation	Yes	No
Discontinuance		
Class B Trail		
Class A Trail	x	
Class VI Road		
Class V Road		

Step 8: Action Items

	Yes	No
Signage to be installed		
Gates / Barriers to be installed (** South End)		
Funding Source Identified to support action items		
Coordination amongst vested/interested parties (*Snowmobile club; Recreation Dept; Airport)		
Abutter Notice		



TO: Lebanon City Council
FROM: Matthew C. Decker
DATE: December 29, 2020
RE: Public Highways

FOR PUBLIC REFERENCE

The following summary of relevant statutes and case law is intended to assist the Lebanon City Council and the residents of Lebanon in their review of reports and recommendations from the Class VI Roads Advisory Committee as well as petitions to discontinue public highways. This is a general summary of basic law, and does not discuss possible exceptions to the basic law.

Definition of “Public Highway”

- A public highway is an easement held in trust by government for the use of the public. The underlying land is usually, although not always, owned by abutting landowners. *See New Hampshire Municipal Association, A Hard Road to Travel: New Hampshire Law of Local Highways, Streets, and Trails*, Chapter 1, p. 17, 2015 Ed.
- The law limits the public to “viatic use” of a highway. “Viatic use” means any use reasonably incidental to the purpose of traveling. *Lydston v. Rockingham Cty. Light & Power Co.*, 75 N.H. 23 (1908).

Creation of Public Highways

- RSA 229:1 lists four ways a public highway may be created:
 - (1) Layout (“laid out in the mode prescribed therefor by statute”)
 - The layout process is defined at RSA 231:8 *et seq.* and includes a petition to the town select board or city council, a public hearing, a written “return” containing a description of the highway, and a payment of damages to the landowner(s) over whose land the highway passes.
 - (2) Deeded ownership (“roads which have been constructed for or are currently used for motor vehicle, bicycle, or pedestrian public travel over land which has been conveyed to a city or town or to the state by deed of a fee or easement interest”)
 - (3) Dedication and acceptance (“roads which have been dedicated to the public use and accepted by the city or town in which such roads are located”)
 - (4) Prescription (“roads which have been used as such for public travel... for 20 years prior to January 1, 1968”)

Creation by Prescription

- “To establish a highway by prescription, it must appear that the general public used the way continuously without interruption for a period of twenty years prior to 1968, under a claim of right without the owner’s permission.” *Gill v. Gerrato*, 156 N.H. 595, 596 (2007) (citations omitted).
- Evidence supporting prescription has been held to include, but is not limited to:
 - Photographs and testimony from community residents;
 - References to the road as a public highway in historical documents;
 - Historic maps;
 - The existence of cellar holes along the road;

- Stone walls lining the road;
 - Use of the road to access a commercial entity; and
 - Municipal maintenance. *See Hard Road to Travel* at Ch. 2, pp. 46-47.
- “[A] highway established by prescription is not as a matter of law restricted in width to the track of actual travel. In a case of prescription, the easement is not necessarily limited to the travelled path and the ditches on each side, but where the road has been fenced out for many years about the usual width, and there is nothing to control it, a jury would be justified in finding the whole space between the fences to be a public highway. The space between the wrought road and its exterior limits may be needed for various purposes, as for furnishing earth and other materials for making the road, constructing culverts and watercourses, making changes in the travelled path, and avoiding obstructions by snow... and for these and other reasons the space given to highways is very generally much more than what is occupied by the travelled path, and... it is competent for a jury to find, from ancient fences and other circumstances, that the true limits of a highway extend beyond the wrought road.” *Hoban v. Bucklin*, 88 N.H. 73 (1936) (citations and quotations omitted).

Conversion of Public Highways to Trails

- RSA 231-A allows municipalities to reclassify Class V or VI public highways into municipal trails. Trails remain full public rights-of-way, but subject to public trail use restrictions.
- Reclassification of highways to trails allows municipalities to restrict development on abutting parcels and restrict public uses (e.g. prohibitions of motor vehicles, wheeled vehicles, or OHRVs, or restrictions to specified modes of travel such as horse, bicycle or foot). RSA 231-A:4.
 - With “Class A” trails, abutting landowners can continue to use the trail for vehicular access for “such nondevelopment uses as agriculture and forestry, or for access to any building or structure existing prior to its designation as a trail” and the owner’s access “shall be exempt from applicable public trail use restrictions”. RSA 231-A:1, I.
 - With “Class B” trails, abutting landowners have no special rights and must obey any trail use restrictions imposed on the public. RSA 231-A:1, II.

Discontinuance

- Once a public highway is established, the rights last indefinitely, unless a formal public decision is made to discontinue them. *Blagbrough Family Realty Trust v. A&T Forest Products, Inc.*, 155 N.H. 29 (2007).
- “Highway discontinuance is not favored in the law... and the burden is upon the party who asserts discontinuance to prove it by clear and satisfactory evidence.” *Davenhall v. Cameron*, 116 N.H. 695, 697 (1976); *see also Town of Goshen v. Casagrande*, 170 N.H. 548, 551 (2018).
- Public highways cannot be lost by adverse possession. *See* RSA 236:30; *Windham v. Jubinville*, 92 N.H. 102 (1942).
- “For all the same reasons that highway continuance is favored in the law, it is probably best to avoid complete discontinuances of highways unless absolutely necessary. It is often the case that the public right of way will be useful in the future. The only time complete discontinuance should be considered is when there is some specific alternative use in mind for the land... If the only goal is to save on town maintenance costs, consider discontinuing the highway subject to gates and bars instead. That is the purpose of the Class VI classification, and the right of way will be preserved for future use, if necessary.” *Hard Road to Travel*, Ch.4, at p. 76.

ATHERTON ROAD

Patch Forest, LLC Request for Discontinuance

Patch Forest LLC
40 Patch Road
Lebanon, NH 03766



January 30, 2020

To the Lebanon City Council:

We, the members of Patch Forest LLC, respectfully request that, pursuant to RSA 231:43, the Lebanon City Council vote to formally discontinue the so-called Class VI roads, or any portions thereof (if any legally exist today), on our tracts of land located on the easterly side of Meriden Road. These tracts of land are identified as Parcels 167-20, 169-4, 169-5, 194-11, 194-15, 194-25, 196-2, 196-4 and 196-5. This would include be any and all parts of the so-called Atherton, Durkee, McCallister and Barden Hill Roads. We had originally requested that the City of Lebanon discontinue these roads by (hand-delivered) letter to the Lebanon City Manager on July 10, 2018. That letter stated:

"July 10, 2018

To the City Manager:

Patch Forest LLC purchased about 950 contingent acres in Lebanon that is connected to our already approximate 270 acres. The latter we have had for 8 generations and plan to continue the family tradition as we have three sons returning to work on the property. We plan to expand our current sugar bush (over 6000 taps) on this property. First, we are logging the new property and then will run sap lines throughout. Our goal is to put approximately 30-50,000 taps onto the new property. Historically, in our sugar bush we have had sugar lines cut, equipment tampered with and other destructive behavior. We are requesting that the City of Lebanon discontinue the Class VI roads on our property (see the attached map). This would allow us to run sugar lines across those roads. Please let us know if you want more information."

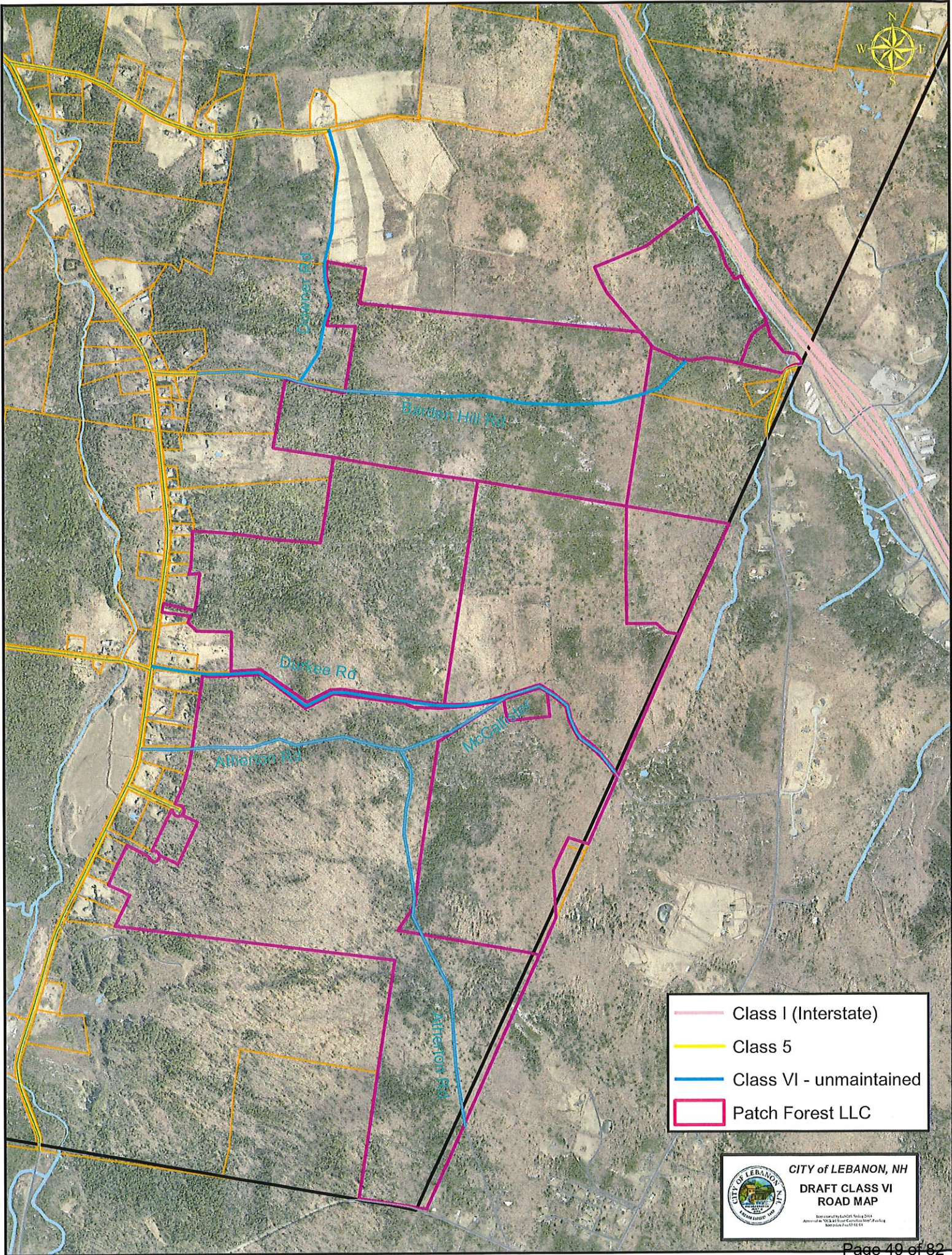
We just want to say that we have made arrangement with the snowmobile club to add a snowmobile trail below our sap lines. The snowmobile trail has crossed over our land for generations. This new trail would certainly be an upgrade for the public to use.

We plan to maintain this forest for generations as we have farmed the abutting land for 8 generations with the 9th generation on the way. All three of the next generation are returning to work on the farm. Cody returned after his graduation from Dartmouth in 2015. Joshua and Arthur have their undergraduate and masters' degrees in engineering and have just left their full time jobs to work in this sugar bush.

Sincerely,

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CITY of LEBANON, NH

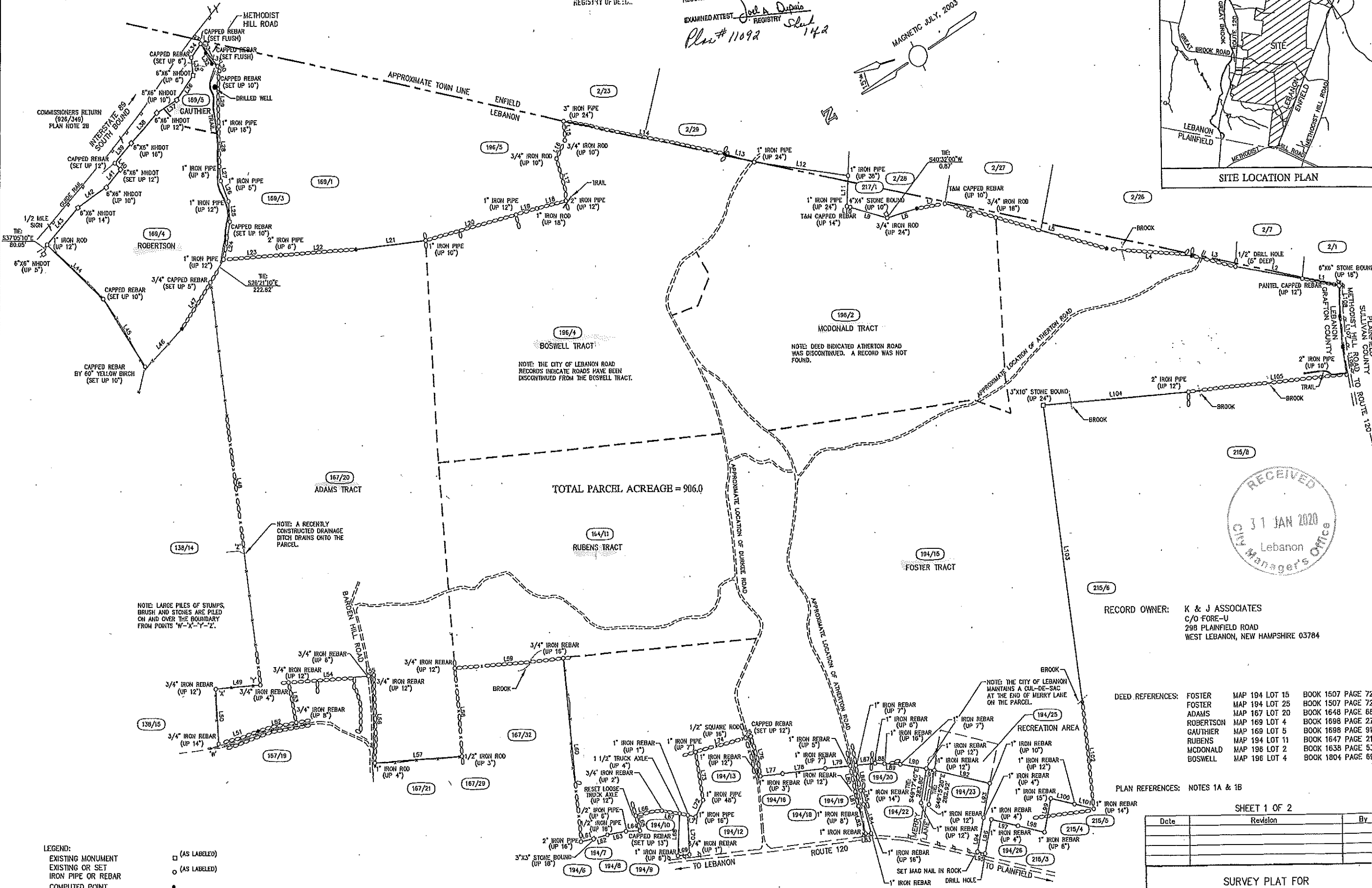
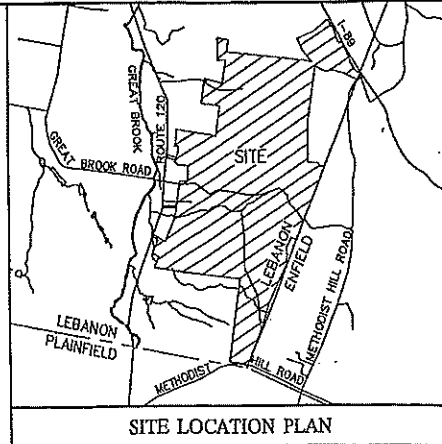
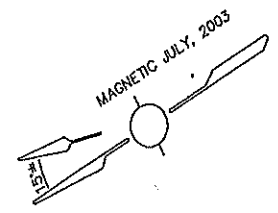
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Map created by GeoDOT, Spring 2014
Approved by NH & RI State Comptroller's Office, February
Map posted 7/20/15

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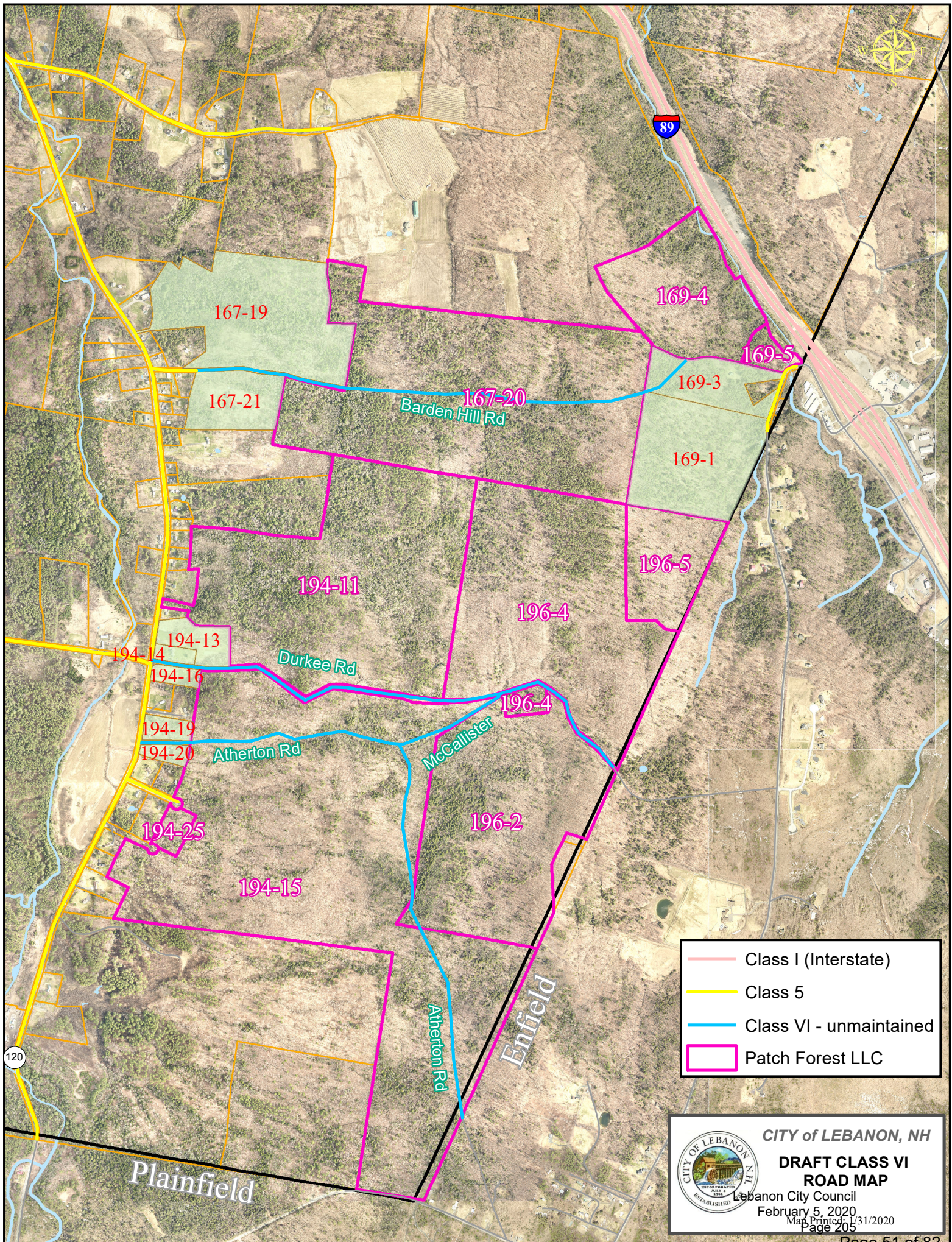
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JULY 3, 2003 SCALE: 1" = 400' Page 50 of 82

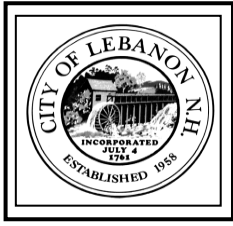
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CITY of LEBANON, NH
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ROAD MAP
Lebanon City Council
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Map Printed 1/31/2020
Page 205

**Class VI Roads
Advisory
Committee
Recommendation
for
Reclassification**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council
CC: Shaun Mulholland, City Manager
Paula Maville, Deputy City Manager

FROM: Planning Staff
RE: Class 6 Road Committee Review of the Atherton Road

DATE: January 6, 2021

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to be posted legible signs at the entrance to the trail describing the restrictions contained herein, as provided by RSA 231-A:4.

** The Vote on the MOTION passed (5-0)*

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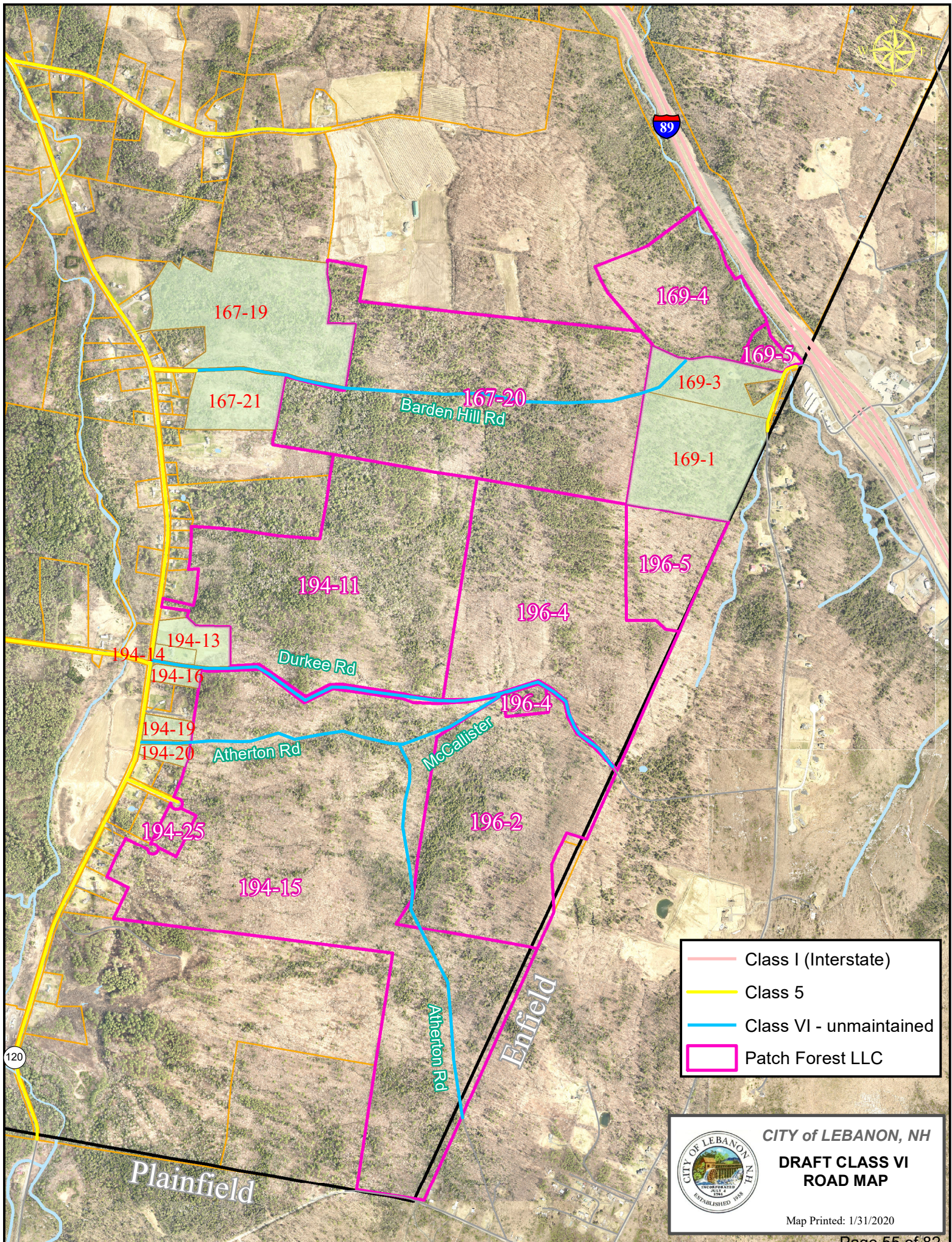
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- Class 5
- Class VI - unmaintained
- Patch Forest LLC



CITY of LEBANON, NH

**DRAFT CLASS VI
ROAD MAP**

Map Printed: 1/31/2020



Photo 5-8
Lower Atherton- Looking west toward route 120



Photo 6-7
Atherton Looking east



Photo 6-6
Incised Section

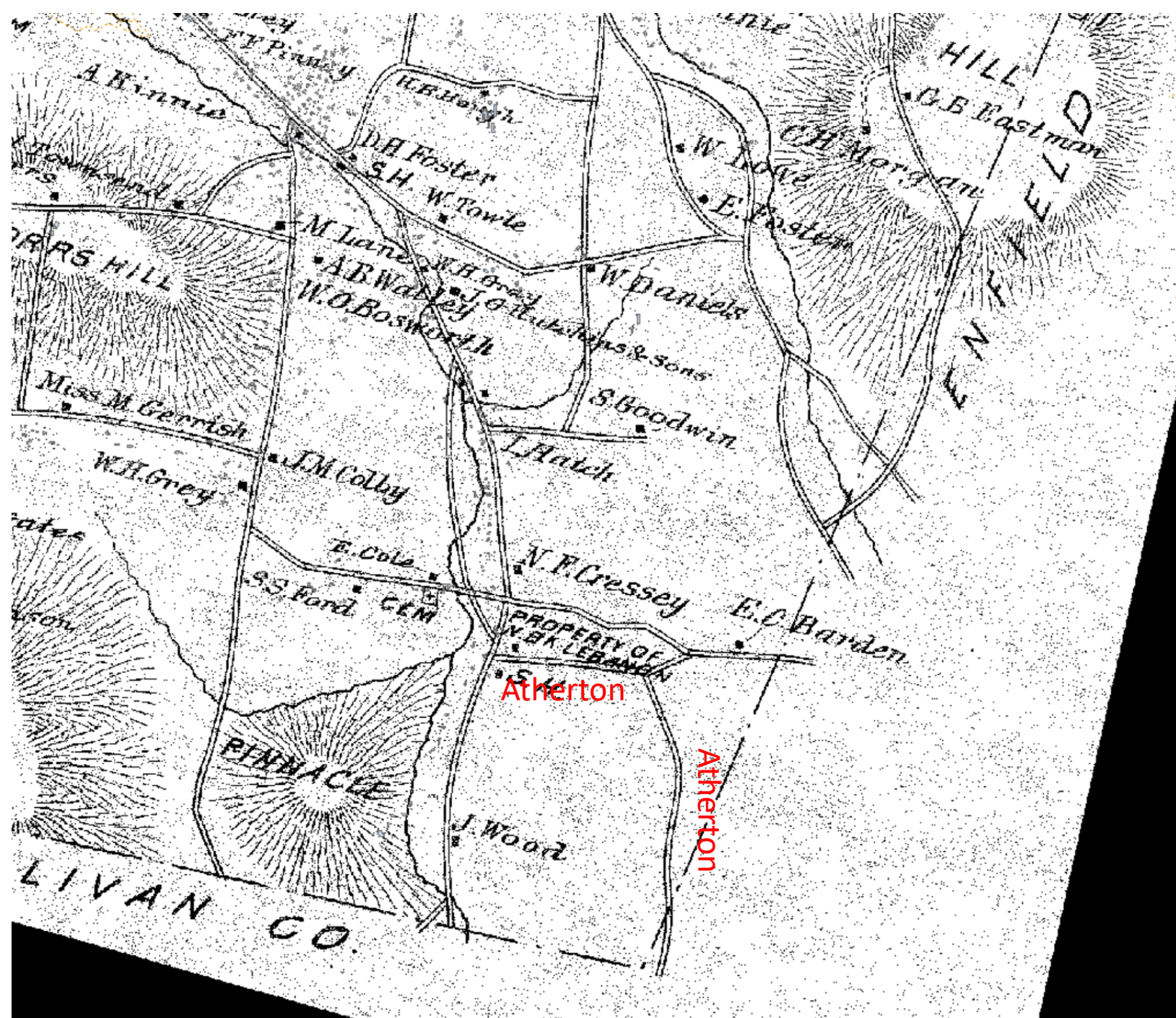


Photo 9-15
Enfield end off Methodist Hill Rd

1860 Walling Map



1892 Hurd Map



Red Labels on map placed
for reference by LebGIS

CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 1 – Legal Status)



Road Name: Atherton Rd

Step 1 – Evidence Supporting Creation of the Road

CREATION OF THE ROAD	Yes	No
Layout (a record of the governing body's layout of the road)		
Evidence of Prescription (prior to 1968) - To include map, field, deed, historical documentation, etc)	x	
Dedication and Acceptance (e.g. Subdivision Layout)		
Deeded Ownership Deed on record at City Clerks office		

Step 1A – Evidence of Prescription

Map Evidence

1855 W.C. Eaton	X
1892 Hurd Atlas	X
USGS Map(s)	x
1930 Torbert Map	X
Other (Walling 1860)	X

Field Evidence

ROW Evidence	X
Stone Walls	Limited (West end)
Cellar Holes	N
Other	

Historical Documentation

Downs History Book	
R. Carroll History Book	
Oscar Jewell Inventory	
NH DOT Archives	

Deed Evidence

Yes	No
-----	----

Governing Body Documentation

Governing Body Votes (e.g. to change status, etc)	
Reference Regulations (e.g. weight limits, etc)	
Other	Yes

General Comment(s) :

- 1937 Pine Blister Map
- **Connection to Enfield C6 Road**

Step 2 – Evidence of Discontinuance

Discontinuance Documentation

Lebanon City Clerk	N
Town Meeting Minutes	N
Registry of Deeds	



CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 2 – Condition & Use Status)



Road Name: Atherton

Step 3 – Current Condition of Road

	Yes	No
Historical ROW distinguishable?	X	
Supports Hiking (** severe erosion on western section but NW / SE section excellent)	x	
Supports Biking	partial	Part.
Passable by Auto		x
Passable by 4x4		x

Evidence of Road Mis-Use

	Yes	No
Excessive Rutting	y	
Littering		x
Wheeled Vehicle Use		x
Other (stream erosion)	x	

Step 4 – Current Road Usage

	Yes	No
Snowmobile (*portions N/S segments)	part.	
Pedestrian Hiking Trail	light	
Wheeled Vehicle Use		x
Landowner(s) Access (accessing abutting props.)		x
Access (supporting hunting, maintenance, etc)		x

Step 5 – Potential Future Uses

	Yes	No
Hiking / Foot Trail Network	X	
Biking Network (section(s) would need work)	X	
Emergency Roadway Access		X
Lebanon Road Network		X
Other		



CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 3 – Status of Recommendation)



Road Name: Atherton

Step 6 – Outreach Activity

	Yes	No
Feedback garnered from residents related to existing and potential future use	x	
Informal Public Meetings for discussion	x	
Informal Abutter Notification related to meetings and discussions	x	
City Department Feedback	x	
Formal Abutter Notification prior to Council Public Hearing		na

Step 7 – Class VI Road Committee Recommendation

Status Recommendation	Yes	No
Discontinuance		
Class B Trail		
Class A Trail	x	
Class VI Road		
Class V Road		

Step 8: Action Items

	Yes	No
Signage to be installed	X(?)	
Gates / Barriers to be installed	tbd	
Funding Source Identified to support action items	city	
Coordination amongst vested/interested parties		
Abutter Notice	x	



TO: Lebanon City Council
FROM: Matthew C. Decker
DATE: December 29, 2020
RE: Public Highways

FOR PUBLIC REFERENCE

The following summary of relevant statutes and case law is intended to assist the Lebanon City Council and the residents of Lebanon in their review of reports and recommendations from the Class VI Roads Advisory Committee as well as petitions to discontinue public highways. This is a general summary of basic law, and does not discuss possible exceptions to the basic law.

Definition of “Public Highway”

- A public highway is an easement held in trust by government for the use of the public. The underlying land is usually, although not always, owned by abutting landowners. *See New Hampshire Municipal Association, A Hard Road to Travel: New Hampshire Law of Local Highways, Streets, and Trails*, Chapter 1, p. 17, 2015 Ed.
- The law limits the public to “viatic use” of a highway. “Viatic use” means any use reasonably incidental to the purpose of traveling. *Lydston v. Rockingham Cty. Light & Power Co.*, 75 N.H. 23 (1908).

Creation of Public Highways

- RSA 229:1 lists four ways a public highway may be created:
 - (1) Layout (“laid out in the mode prescribed therefor by statute”)
 - The layout process is defined at RSA 231:8 *et seq.* and includes a petition to the town select board or city council, a public hearing, a written “return” containing a description of the highway, and a payment of damages to the landowner(s) over whose land the highway passes.
 - (2) Deeded ownership (“roads which have been constructed for or are currently used for motor vehicle, bicycle, or pedestrian public travel over land which has been conveyed to a city or town or to the state by deed of a fee or easement interest”)
 - (3) Dedication and acceptance (“roads which have been dedicated to the public use and accepted by the city or town in which such roads are located”)
 - (4) Prescription (“roads which have been used as such for public travel... for 20 years prior to January 1, 1968”)

Creation by Prescription

- “To establish a highway by prescription, it must appear that the general public used the way continuously without interruption for a period of twenty years prior to 1968, under a claim of right without the owner’s permission.” *Gill v. Gerrato*, 156 N.H. 595, 596 (2007) (citations omitted).
- Evidence supporting prescription has been held to include, but is not limited to:
 - Photographs and testimony from community residents;
 - References to the road as a public highway in historical documents;
 - Historic maps;
 - The existence of cellar holes along the road;

- Stone walls lining the road;
 - Use of the road to access a commercial entity; and
 - Municipal maintenance. *See Hard Road to Travel* at Ch. 2, pp. 46-47.
- “[A] highway established by prescription is not as a matter of law restricted in width to the track of actual travel. In a case of prescription, the easement is not necessarily limited to the travelled path and the ditches on each side, but where the road has been fenced out for many years about the usual width, and there is nothing to control it, a jury would be justified in finding the whole space between the fences to be a public highway. The space between the wrought road and its exterior limits may be needed for various purposes, as for furnishing earth and other materials for making the road, constructing culverts and watercourses, making changes in the travelled path, and avoiding obstructions by snow... and for these and other reasons the space given to highways is very generally much more than what is occupied by the travelled path, and... it is competent for a jury to find, from ancient fences and other circumstances, that the true limits of a highway extend beyond the wrought road.” *Hoban v. Bucklin*, 88 N.H. 73 (1936) (citations and quotations omitted).

Conversion of Public Highways to Trails

- RSA 231-A allows municipalities to reclassify Class V or VI public highways into municipal trails. Trails remain full public rights-of-way, but subject to public trail use restrictions.
- Reclassification of highways to trails allows municipalities to restrict development on abutting parcels and restrict public uses (e.g. prohibitions of motor vehicles, wheeled vehicles, or OHRVs, or restrictions to specified modes of travel such as horse, bicycle or foot). RSA 231-A:4.
 - With “Class A” trails, abutting landowners can continue to use the trail for vehicular access for “such nondevelopment uses as agriculture and forestry, or for access to any building or structure existing prior to its designation as a trail” and the owner’s access “shall be exempt from applicable public trail use restrictions”. RSA 231-A:1, I.
 - With “Class B” trails, abutting landowners have no special rights and must obey any trail use restrictions imposed on the public. RSA 231-A:1, II.

Discontinuance

- Once a public highway is established, the rights last indefinitely, unless a formal public decision is made to discontinue them. *Blagbrough Family Realty Trust v. A&T Forest Products, Inc.*, 155 N.H. 29 (2007).
- “Highway discontinuance is not favored in the law... and the burden is upon the party who asserts discontinuance to prove it by clear and satisfactory evidence.” *Davenhall v. Cameron*, 116 N.H. 695, 697 (1976); *see also Town of Goshen v. Casagrande*, 170 N.H. 548, 551 (2018).
- Public highways cannot be lost by adverse possession. *See* RSA 236:30; *Windham v. Jubinville*, 92 N.H. 102 (1942).
- “For all the same reasons that highway continuance is favored in the law, it is probably best to avoid complete discontinuances of highways unless absolutely necessary. It is often the case that the public right of way will be useful in the future. The only time complete discontinuance should be considered is when there is some specific alternative use in mind for the land... If the only goal is to save on town maintenance costs, consider discontinuing the highway subject to gates and bars instead. That is the purpose of the Class VI classification, and the right of way will be preserved for future use, if necessary.” *Hard Road to Travel*, Ch.4, at p. 76.

MCCALLISTER ROAD

Patch Forest, LLC Request for Discontinuance

Patch Forest LLC
40 Patch Road
Lebanon, NH 03766



January 30, 2020

To the Lebanon City Council:

We, the members of Patch Forest LLC, respectfully request that, pursuant to RSA 231:43, the Lebanon City Council vote to formally discontinue the so-called Class VI roads, or any portions thereof (if any legally exist today), on our tracts of land located on the easterly side of Meriden Road. These tracts of land are identified as Parcels 167-20, 169-4, 169-5, 194-11, 194-15, 194-25, 196-2, 196-4 and 196-5. This would include be any and all parts of the so-called Atherton, Durkee, McCallister and Barden Hill Roads. We had originally requested that the City of Lebanon discontinue these roads by (hand-delivered) letter to the Lebanon City Manager on July 10, 2018. That letter stated:

"July 10, 2018

To the City Manager:

Patch Forest LLC purchased about 950 contingent acres in Lebanon that is connected to our already approximate 270 acres. The latter we have had for 8 generations and plan to continue the family tradition as we have three sons returning to work on the property. We plan to expand our current sugar bush (over 6000 taps) on this property. First, we are logging the new property and then will run sap lines throughout. Our goal is to put approximately 30-50,000 taps onto the new property. Historically, in our sugar bush we have had sugar lines cut, equipment tampered with and other destructive behavior. We are requesting that the City of Lebanon discontinue the Class VI roads on our property (see the attached map). This would allow us to run sugar lines across those roads. Please let us know if you want more information."

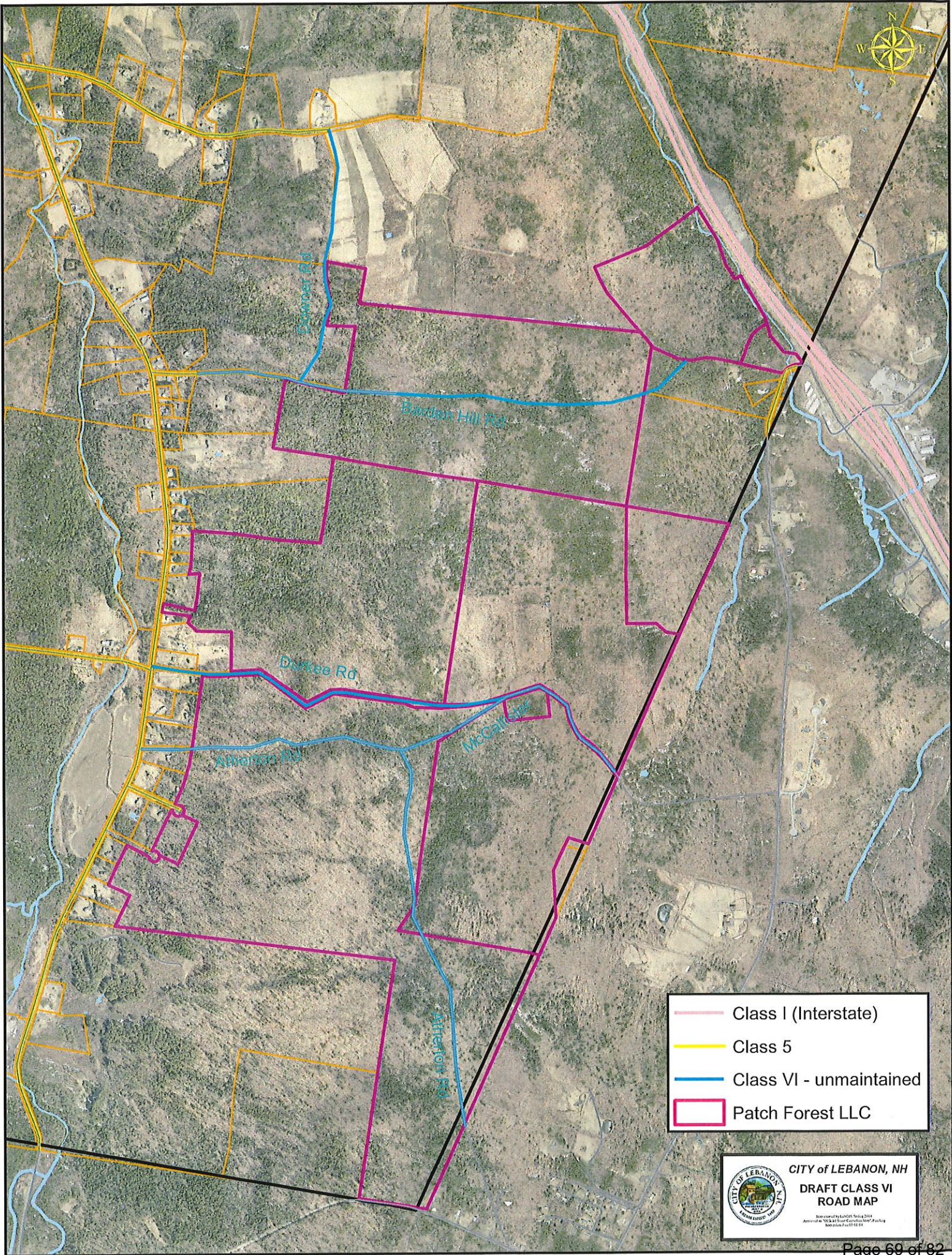
We just want to say that we have made arrangement with the snowmobile club to add a snowmobile trail below our sap lines. The snowmobile trail has crossed over our land for generations. This new trail would certainly be an upgrade for the public to use.

We plan to maintain this forest for generations as we have farmed the abutting land for 8 generations with the 9th generation on the way. All three of the next generation are returning to work on the farm. Cody returned after his graduation from Dartmouth in 2015. Joshua and Arthur have their undergraduate and masters' degrees in engineering and have just left their full time jobs to work in this sugar bush.

Sincerely,

A handwritten signature in blue ink, which appears to read "Barbara Patch", is written over the typed name.

Barbara Patch



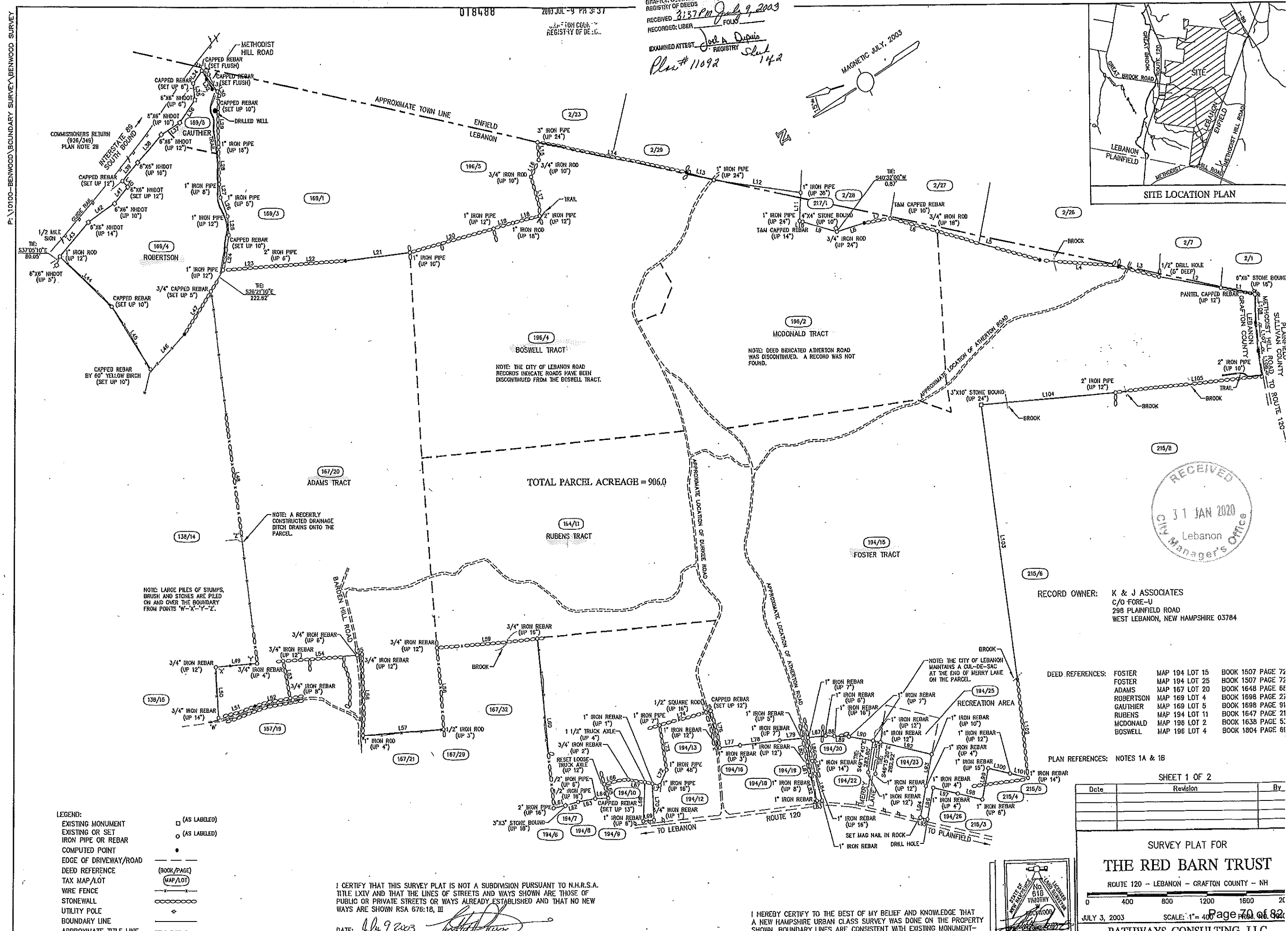
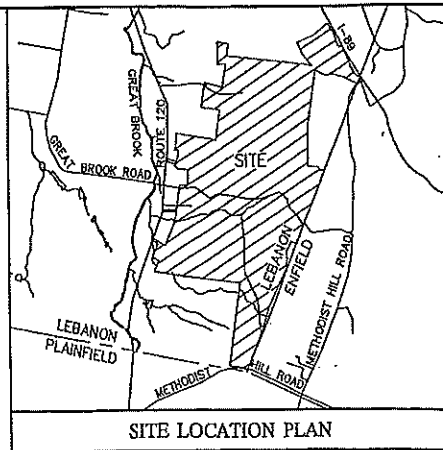
- Class I (Interstate)
- Class 5
- Class VI - unmaintained
- Patch Forest LLC



CITY of LEBANON, NH

**DRAFT CLASS VI
ROAD MAP**

Map created by GeoDOT, Spring 2014
Approved on 10/18/15 by Council Members' Meeting
Map posted 1/15/16



RECORD OWNER: K & J ASSOCIATES
C/O FORE-U
298 PLAINFIELD ROAD
WEST LEBANON, NEW HAMPSHIRE 03784

DEED REFERENCES:	FOSTER	MAP	194	LOT	15	BOOK	1507	PAGE	72
	FOSTER	MAP	194 <td>LOT</td> <td>25</td> <td>BOOK</td> <td>1507</td> <td>PAGE</td> <td>72</td>	LOT	25	BOOK	1507	PAGE	72
	ADAMS	MAP	167	LOT	20	BOOK	1648	PAGE	68
	ROBERTSON	MAP	169	LOT	4	BOOK	1698	PAGE	27
	GAUTHIER	MAP	169	LOT	5	BOOK	1698	PAGE	91
	RUBENS	MAP	194 <td>LOT</td> <td>11</td> <td>BOOK</td> <td>1647</td> <td>PAGE</td> <td>21</td>	LOT	11	BOOK	1647	PAGE	21
	WCDONALD	MAP	196	LOT	2	BOOK	1638	PAGE	5
	BOSWELL	MAP	196	LOT	4	BOOK	1804	PAGE	61

PLAN REFERENCES: NOTES 1A & 1B

SHEET 1 OF 2

Date	Revision	By

SURVEY PLAT FOR
THE RED BARN TRUST

ROUTE 120 - LEBANON - GRAFTON COUNTY - NH

[illegible]

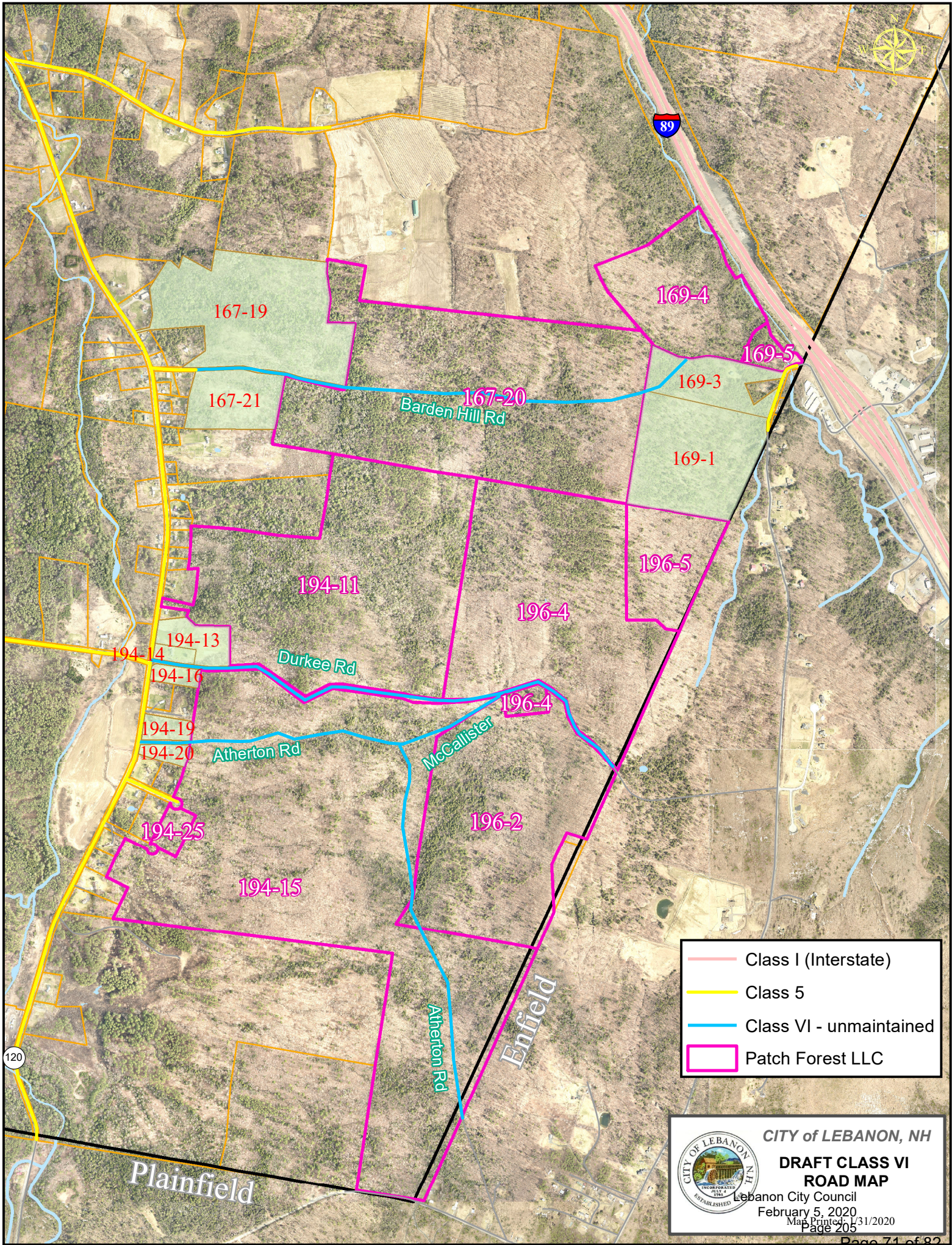
Page 30 of 82

3, 2003 SCALE: 1" = 400' Page 40 of 84

I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO N.H.R.S.A. TITLE LXIV AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN RSA 676:18, III

DATE: 4/4/9/2003 

I HEREBY CERTIFY TO THE BEST OF MY BELIEF AND KNOWLEDGE THAT
A NEW HAMPSHIRE URBAN CLASS SURVEY WAS DONE ON THE PROPERTY
SHOWN. BOUNDARY LINES ARE CONSISTENT WITH EXISTING MONUMENT-



- Class I (Interstate)
- Class 5
- Class VI - unmaintained
- Patch Forest LLC

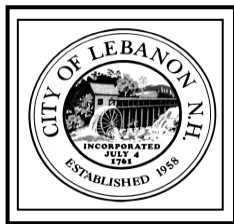


CITY of LEBANON, NH

**DRAFT CLASS VI
ROAD MAP**

Lebanon City Council
February 5, 2020
Map Printed 1/31/2020
Page 205

**Class VI Roads
Advisory
Committee
Recommendation
for
Reclassification**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council
CC: Shaun Mulholland, City Manager
Paula Maville, Deputy City Manager

FROM: Planning Staff
RE: Class 6 Road Committee Review of the McCallister Road

DATE: January 6, 2021

Honorable Mayor and City Councilors,

The Class 6 Committee (C6) has completed a review of the McCallister Road right-of-way, including a determination that it is indeed a public right-of-way. The review process involved the application of an assessment template, including the following components:

- Documenting evidence supporting the assertion of a public right-of-way.
- A review of any record of discontinuance
- Ascertaining the current physical condition of the right-of-way, as well as potential future uses.
- Generating a roadway classification recommendation for the City Council. The choices of roadway classifications include a discontinuance, or a designation of one of the following: Class B Trail, Class A Trail, Class VI Road, or Class V Road.

Following the template application, a review of additional relevant information, and inclusive of feedback from residents providing input during the review process, the C6 Committee generated the following motion to be provided to the City Council: ***Mr. Heistad MOVED that the Class VI Roads Advisory Committee recommend that the Lebanon City Council reclassify McCallister Road, a class VI Road, as a Class A Municipal Trail as defined in RSA 231-A:1(1), extending from Atherton Road to the Enfield town boundary, at McCallister Road in Enfield and as shown on the City of Lebanon Draft Class VI Roads Map, printed May, 2014. The Committee further recommends that McCallister Road be subject to the following public trail use restrictions: Permitted means of travel shall be A) by foot, skis, snowshoes, and horses, B) bicycles, ridden appropriately for a multipurpose trail, when and where the city deems that the conditions of the trail warrant their use, and C) snowmobiles, ridden appropriately for a multipurpose trail, when snow cover is adequate to warrant their use. Notwithstanding these permissions, none of these uses shall be allowed in a manner or in conditions that will encourage erosion or otherwise damage the trail. All other wheeled vehicles or motorized vehicles, on or off road, shall be prohibited, excepting the allowed vehicular uses of abutting landowners for access of their land as set forth in RSA 231-***

A:1(1). The Public Works Director shall cause to be placed legible signs at the entrance to the trail describing the restrictions contained herein, as provided by RSA 231-A:4.

**** The Vote on the MOTION passed (6-0***

The C6 Committee review of McCallister occurred during the December 3rd, 2020 meeting. The agenda packet for that discussion, including maps, residents letters of input, etc., can be found at the following link: [C6 December 3rd, 2020](#). A summary subset of the agenda packet is provided as attachments to this memo, including maps and the assessment template.

The Patch Forest Trust, owners of several parcels that abut McCallister Road have a pending request before the City Council for the McCallister Rd right-of-way to be discontinued. The City Council was scheduled to consider the request during the March 4th, 2020 meeting, but at the request of the attorney representing the Patch family, continued the discussion to a future date. In preparation for future discussion(s), the City Council during the April 15th, 2020 meeting requested the C6 Committee be restarted and complete their review of Lebanon Class VI roads, including the four associated with the Patch Forest Trust discontinuance request. The Class VI Committee initiated bi-weekly meetings in August, 2020, completing the review and specific recommendation as articulated within this memo.

ACTION ITEM

The City Council can choose between advancing the discontinuance process as requested by the Patch Forest Trust, or the reclassification of McCallister Rd from the current Class VI roadway designation, to a Class A Trail, as recommended by the Class VI Roads Committee. If the Council decides to pursue the request for a discontinuance, a public hearing is required to be set; a reclassification to a Class A Trail does not require a public hearing but has historically been the practice of the City Council. Feedback provided to City staff during the January 6th City Council meeting will inform the preparation of agenda materials for a public hearing event, if the City Council desires to move in that direction.

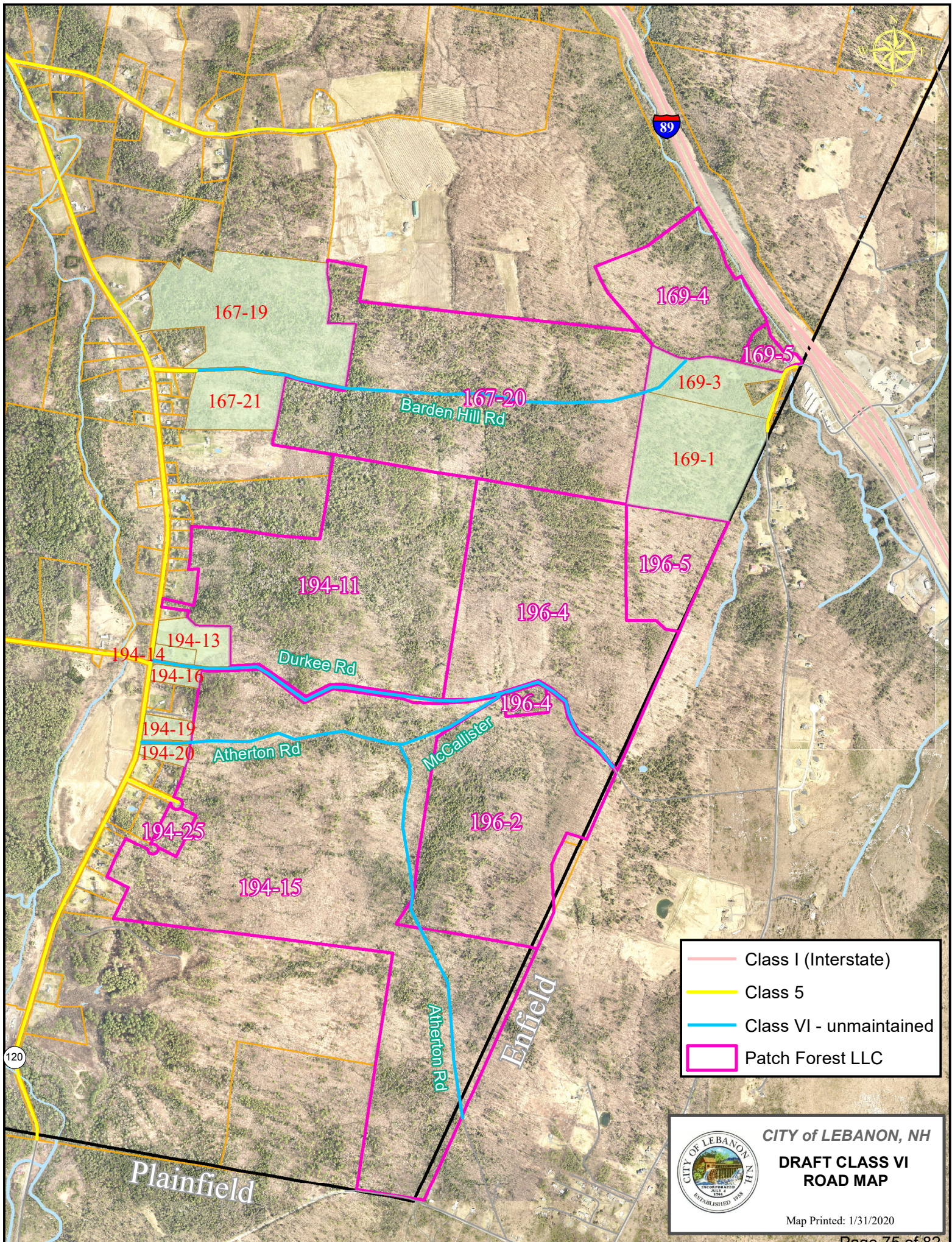
ATTACHMENT

Attachment #1 = SE Quadrant Overview Map

Attachment #2 = Historic Map(s)

Attachment #3 = C6 Right-of-Way Template

Attachment #4 = City Attorney Public Highway Summary



- Class I (Interstate)
- Class 5
- Class VI - unmaintained
- Patch Forest LLC



CITY of LEBANON, NH

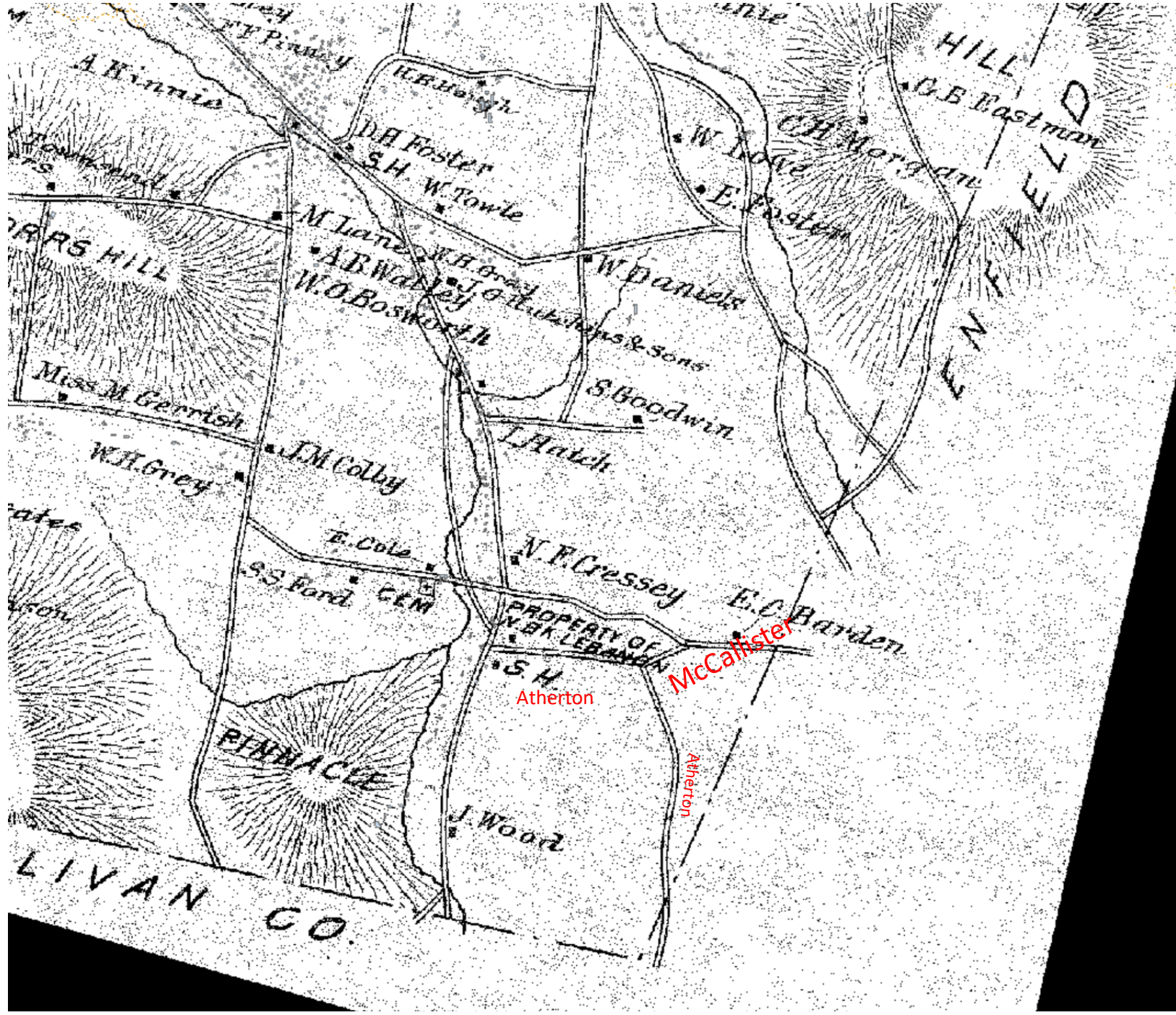
**DRAFT CLASS VI
ROAD MAP**

Map Printed: 1/31/2020

1860 Walling Map



1892 Hurd Map



Red Labels on map placed
for reference by LebGIS

CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 1 – Legal Status)



Road Name: McCallister

Step 1 – Evidence Supporting Creation of the Road

CREATION OF THE ROAD	Yes	No
Layout (a record of the governing body's layout of the road)		
Dedication and Acceptance (e.g. Subdivision Layout)		
Evidence of Prescription (prior to 1968) - To include map, field, deed, historical documentation, etc)	Y	

Step 1A – Evidence of Prescription

Map Evidence

Torbet Map Series	Y
1855 W.C. Eaton	N
1860 Wailing	Y
1892 Hurd Atlas	Y
USGS Map(s)	Y
1930 Torbert Map	
City Historian Map(s)	Y
Other	

Field Evidence

ROW Evidence	Y
Stone Walls	remnant
Cellar Holes	
Other:	

Deed Reference* or Survey Plan * *Abutting parcels*

Yes X	No
-------	----

Historical Documentation

Downs History Book	
R. Carroll History Book	
Oscar Jewell Inventory	
NH DOT Archives	
Other	

Governing Body Reference

Public Meeting Minutes	
Maintenance or Admin management task	
Other	

Map Comment(s) :

Step 2 – Evidence of Discontinuance

Discontinuance Documentation

Town Record Volumes	
Town / City Meeting Minutes	



CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 2 – Condition & Use Status)



Road Name: McCallister

Step 3 – Current Field Condition of Road

	Yes	No
Historical ROW distinguishable?	X	
Erosion Issues	X	
Vegetation Overgrowth	minor	
Supports Hiking	X	
Supports Biking	X	
Passable by Auto		X
Passable by 4x4		X

Step 4 – Current Users

	Yes	No
Snowmobile		X
Pedestrian Hikers	limited	
Mountain Bike		X
Wheeled Vehicle Use		X
Abutter Access – Driveway or Thru-way		X
Abutter Access – Forest & Ag. Use	X	
Other		

Evidence of Road Mis-Use

e.g. unpermitted uses,
visible damage such as
excessive rutting, etc.

	Yes	No
		X

Step 5 – Potential Future Uses

	Yes	No
Hiking / Foot Trail Network	X	
Biking Network	X	
Emergency Roadway Access		X
Lebanon Road Network		X
Other (snowmobile potential)	X	



CLASS VI ROAD ASSESSMENT TEMPLATE

(Sheet 3 – Status of Recommendation)



Road Name: McCallister

Step 6 – Outreach Activity

	Yes	No
Abutters Notified	X	
Public Meeting Posting Requirements	X	
City Department Feedback	X	

Step 7 – Class VI Road Committee Recommendation

Status Recommendation	Yes	No
Discontinuance		
Class B Trail		
Class A Trail	X	
Class VI Road		
Class V Road		

Step 8: Potential Maintenance Considerations

	Yes	No
Signage to be installed	X	
Gates / Barriers to be installed		
Other:		



TO: Lebanon City Council
FROM: Matthew C. Decker
DATE: December 29, 2020
RE: Public Highways

FOR PUBLIC REFERENCE

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Discontinuance

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