

TOWN OF SALISBURY
PLANNING AND ZONING COMMISSION

Re: #2024-0257 / Wake Robin LLC
& Ms. Serena Granbery (ARADEV
LLC) / 104 & 106 Sharon Road &
53 Wells Hill Road / Special Permit
For Hotel (Section 213.5) / Map 47/
Lot 2 & 2-1 / DOR: 08/05/2024

November 15, 2024

VERIFIED PETITION FOR INTERVENOR STATUS

I. Introduction.

Pursuant to C.G.S. §22a-19, the Petitioners (as defined below) hereby submit this verified petition for party or intervenor status in the above proceedings. The ground for the petition is that the proposed special exception project involves conduct that is reasonably likely to have the effect of unreasonably impairing or destroying the public trust in the natural resources of the state, in two respects; first, the surface and groundwater quality both on-site and off-site and second, unreasonably destroying natural resources, specifically CT-Listed plant species.

II. Names and Addresses of Petitioners and Petitioners' Counsel.

Petitioners:

Angela Cruger
86-88 Wells Hill Road
Lakeville, CT 06039

William Cruger
86-88 Wells Hill Road
Lakeville, CT 06039

Petitioners' Counsel:

Perley H. Grimes, Jr., Esq.
Cramer & Anderson LLP
46 West Street
Litchfield, CT 06759
Phone: 860-567-8718
Facsimile: 860-567-4531
Email: pgrimes@cramer-anderson.com

III. Facts and Circumstances Giving Rise to the Petition.

The applicant refers to the project as above captioned on its plans as the Wake Robin Inn Redevelopment and on its website as a boutique hospitality campus. The property totals 13.8 acres. It is located in the RR-1 Residential Zone and has 5.71 acres in the Aquifer Protection Overlay District. The site is within the watershed to Wononskopomuc Lake. 17.2% of the property will have impervious surfaces. The property will have a renovated expanded Inn, 12 new guest cottages, an event barn and fast casual restaurant, restaurant and bar, a spa-gym, and 150 parking spaces. Attached hereto is a report from George Logan of Rema Ecological Services, LLC. Mr. Logan concludes that the proposed development is reasonably likely to have the effect of unreasonably polluting surface and groundwater quality, both on-site and off-site and of unreasonably destroying natural resources, specifically CT-Listed plant species. The Applicant has not provided a comprehensive ecological inventory of the site.

IV. Legal Grounds for Party/Intervenor Status Under C.G.S. §22a-19.

Pursuant to C.G.S. § 22a-19, any person may intervene in any administrative proceeding based on facts alleged in a verified pleading that the proposed activity at issue “has, or is reasonably likely to have, the effect of unreasonably polluting, impairing, or destroying the public trust in the air, water, or natural resources of the state.” The

verification by Petitioners Angela Cruger and William Cruger of the facts alleged and referred to herein is appended to this petition. This petition alleges facts and attaches expert testimony proving that the Project is reasonably likely to adversely affect groundwater and surface water and CT-Listed plant species.

The bar is quite low for filing an intervention petition, and thus § 22a-19 applications should not be lightly rejected. Finley v. Town of Orange, 289 Conn. 12 (2008) (an application need only allege a colorable claim to survive a motion to dismiss), citing Windels v. Environmental Protection Commission, 284 Conn. 268 (2007). An allegation of facts that the proposed activity at issue in the proceeding is likely to unreasonably impair the public trust in natural resources of the state is sufficient. See Cannata v. Dept. of Environmental Protection, 239 Conn. 124 (1996) (alleging harm to floodplain forest resources).

The Connecticut Appellate Court has noted that statutes “such as the EPA are remedial in nature and should be liberally construed to accomplish their purposes.” Avalon Bay Communities, Inc. v. Zoning Commission of the Town of Stratford, 87 Conn. App. 537 (2005); Keeney v. Fairfield Resources, Inc., 41 Conn. App. 120, 132-33 (1996). In Red Hill Coalition, Inc. v. Town Planning & Zoning Commission, 212 Conn. 727, 734 (1989) the Supreme Court held that “section 22a-19[a] makes intervention a matter of right once a verified pleading is filed complying with the statute, whether or not those allegations ultimately prove to be unfounded.” See Polymer Resources, Ltd. v. Keeney, 32 Conn. App. 340 (1993) (“[Section] 22a-19[a] compels a trial court to permit intervention in an administrative proceeding or judicial review of such a proceeding by a party seeking to raise environmental issues upon the filing of a verified complaint. The statute is

therefore not discretionary.”) See also Connecticut Fund for the Environment, Inc. v. Stamford, 192 Conn. 247, 248 n.2 (1984).

The rights conveyed by CEPA are so important and fundamental to matters of public trust that the denial of a 22a-19 intervention itself is appealable. See CT Post Limited Partnership v. New Haven City Planning Commission, 2000 WL 1161131 Conn. Super. (Hodgson, J. 2000) (§ 22a-19 intervenors may file an original appeal for improper denial of intervenor status).

Because the facts and expert testimony set forth in this Petition demonstrate that the Project is reasonably likely or will or may cause unreasonable impact or harm to the natural resources of the site the Commission must consider whether there are feasible and prudent alternatives to the Project. Under § 22a-19, “[t]he agency is not allowed to approve a proposal which does or is reasonably likely to unreasonably pollute, impair or destroy the public trust in the air, water or natural resources of the state, if considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with reasonable requirements of public health, safety, and welfare.” R. Fuller, Connecticut Land Use Law & Practice § 32:6, p. 206 (2007 ed.), citing § 22a-19(b) (emphasis added); see Quarry Knolls II Corp. v. Planning & Zoning Commission, 258 Conn. 674, 736-37 (2001).

Substantial evidence in this hearing will demonstrate the likelihood that the Project will have a reasonable likelihood of impairing the public’s trust in the natural resources of the state. Moreover, Petitioners will demonstrate that there is a feasible and prudent alternative to the Project.

CONCLUSION

The project is located in the RR-1 Residential Zone. 41% of the property is within the Aquifer Protection Overlay District and is within the Wonoskopomuc Lake watershed. The project proposes a six (6) fold increase in the square footage of buildings on the property and adds multiple commercial uses in the RR-1 Zone wholly out of keeping with the existing quiet country inn and the neighboring residential properties.

Wherefore, the Petitioners respectfully request that the Petitioners be granted intervenor status.

PETITIONERS,
ANGELA CRUGER and
WILLIAM CRUGER

By:



Perley H. Grimes, Esq.
Attorney for Petitioners
Cramer & Anderson, LLP
46 West Street
Litchfield, CT 06759
Phone: (860) 567-8718
Fax: (860) 56-4531
pgrimes@cramer-anderson.com

VERIFICATION

The undersigned, Angela Cruger and William Cruger, duly sworn, hereby verify that the above petition is true and accurate to the best of their knowledge and belief.



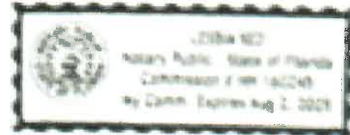
Angela Cruger


William Cruger

Subscribed and sworn to before me this 15th day of November, 2024



Notary Public
My Commission Expires: August 2, 2025



CERTIFICATION

I hereby certify that a copy of the foregoing Verified Petition for Intervenor Status was mailed, first class, postage prepaid and via email, this 18th day of November, 2024 to the following:

Salisbury Planning and Zoning Commission
c/o Charles R. Andres, Esq.
Barclay Damon LLP
545 Long Wharf Drive, Ninth Floor
New Haven, CT 06511
candres@barclaydamon.com

Salisbury Planning and Zoning Commission
c/o Abby Conroy
27 Main Street
PO Box 548
Salisbury, Connecticut 06068
landuse@salisburyct.us

Wake Robin LLC
c/o Joshua E. Mackey, Esq.
Mackey Butts & Whalen LLP
3208 Franklin Avenue
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Serena Granbery
c/o Joshua E. Mackey, Esq.
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Aradev LLC
c/o Joshua E. Mackey, Esq.
Mackey Butts & Whalen LLP
3208 Franklin Avenue
Millbrook, NY 12545
jmackey@mbwlawyers.com

Dated this 18th day of November, 2024.



Perley H. Grimes, Jr., Esq.



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- Soil & Wetland Studies
 - Ecology • Application Reviews
 - Listed Species Surveys • GPS
 - Environmental Planning & Management
 - Ecological Restoration & Habitat Mitigation
 - Expert Testimony • Permitting

November 11, 2024

VIA E-MAIL

Mr. Perley H. Grimes, Jr., Esq.
Cramer & Anderson, LLP
46 West Street
P.O. Box 278
Litchfield, CT 06759-0278

RE: PRELIMINARY APPLICATION REVIEW

Special Permit for Hotel

104 & 106 Sharon Road & 53 Wells Hill Road, Salisbury, CT

REMA Job No.: 24-2744-SLS4

Dear Attorney Grimes:

At your request, REMA ECOLOGICAL SERVICES, LLC (REMA), is submitting this preliminary review of a Special Permit application before the Salisbury Planning & Zoning Commission for the above-referenced proposal, which is for the redevelopment of the Wake Robin Inn site. Our review included secondary-source data, such as archival aerial photographs, and GIS-sourced data and mapping, including for soils, topography, geology, and natural resources. We also reviewed the Draft (2024) and the current (2012) Plans for Conservation and Development (POCD), and the 2009 Natural Resource Inventory for the Town.

The recently submitted plans produced by SLR, dated July 29, 2024, and revised through November 6, 2024, as well as the SLR Drainage Report, dated August 1, 2024, and revised through November 6, 2024, were also reviewed. Finally, we reviewed pertinent sections of the Town's Zoning Regulations, with an effective date of May 20, 2024.

The following summarize our findings to date:



1. The submitted plans and supporting documentation do not closely follow the 2024 Connecticut Stormwater Quality Manual, which is the most recent State-wide guidance for the protection of water quality. While computations for the water quality volume (WQV) and water quality flow (WQF) are provided, compliance with *Standard 1 – Runoff Volume Control and Pollutant Reduction*, and *Standard 2 – Stormwater Runoff Volume Control Quantity Control* are not discussed, and no calculations are provided. Moreover, compliance with the *minimum average annual pollutant load reductions* is not demonstrated. These are: 90% Total Suspended Solids (TSS); 60% Total Phosphorus (TP); 40% Total Nitrogen (TN).

Achieving superior water quality renovation is of paramount importance given that the site is within the watershed to Wononskopomuc Lake, as well within an Aquifer Protection Area (APA). Our initial review of the plans and drainage report lead us to conclude that the proposed development is reasonably likely to have the effect of unreasonably polluting surface and groundwater quality, both on-site and also off-site.

We note that according to Section 801.6 (*Preservation of Water Quality and Quantity*) of the Salisbury Zoning Regulations states:

“The proposed use and the site *shall be designed to minimize any risk of surface-water or groundwater pollution*, soil erosion and sedimentation, and water diversion.” (Emphasis added.)

Similar language is also found in Section 802.1.c.

2. In Section 800.3.g (*Site Plan Application Requirements*) of the Salisbury Zoning Regulations, and last bullet, we read:

“Location of any threatened or endangered species or species of special concern as defined and provided by the Connecticut Department of Energy and Environmental Protection (DEEP) including locations from the State DEEP Natural Diversity Data Base.”

The applicant has shown the overlap unto the site of the estimated habitat of CT-listed species (i.e., endangered, threatened, special concern) as is currently depicted on the CT DEEP GIS mapping. However, a site assessment from CT



DEEP has not been provided. REMA has queried the CT DEEP through their online portal, which has generated the attached site assessment. This shows that five (5) listed species have been documented within or in close proximity to the site, including four plants. Based on the descriptions of the types of habitats within which these plants have been documented, it is more likely than not that these plants would occur at the subject site.

To date the applicant has not provided a comprehensive ecological inventory of the subject site, especially with the areas of proposed disturbance, which includes habitat descriptions and a botanical inventory. As a result we conclude that it is reasonably likely that the proposal will have the effect of unreasonably destroying natural resources, specifically CT-listed plant species.

We note that during a recent application before the Town of Salisbury's land use boards for Dresser Woods, Railroad Street, REMA searched the site for listed species, including plants, and provided an ecological assessment of the entire site.

Please feel free to contact us if you have any questions.

Respectfully submitted,

REMA ECOLOGICAL SERVICES, LLC

A handwritten signature in black ink, appearing to read 'George T. Logan', with a horizontal line extending to the right.

George T. Logan, MS, PWS, CSE
Certified Professional Wetland Scientist
Registered Soil Scientist, Certified Senior Ecologist

Attachment: CT DEEP NDDDB Site Assessment



Generated by eNDDB on:
11/4/2024

George Logan
Towns: Salisbury
Automated Site Assessment: 748084612

Subject: Wake Robin Inn

This is an automated site assessment and not a Natural Diversity Data Base determination. The information provided represents a snapshot that can be used for general planning purposes. **This letter cannot be used to fulfill Endangered Species Act compliance requirements.** Please see information below as well as our [FAQs](#) describing the appropriate use and limitations of the automated Site Assessment tool.

Current data maintained by the Natural Diversity Data Base (NDDB) and housed in the DEEP ezFile portal, indicates that populations of the following State Endangered, Threatened, or Special Concern species (RCA Sec. 26-306) have been documented within or in close proximity to the area delineated. **Please see the attached table for detailed species information.**

HOW SITE ASSESSMENT SPECIES LISTS ARE COMPILED

Site assessment species lists include all information regarding listed species available to us at the time of the request. This information is a compilation of data collected over the years by the Department of Energy and Environmental Protection's Natural History Survey and cooperating units of DEEP, landowners, private conservation groups and the scientific community. New and updated information is incorporated into the Data Base and accessed through the ezFile portal as it becomes available. The species list provided is not necessarily the result of comprehensive or site-specific field investigations.

WHAT PURPOSE DOES THIS SITE ASSESSMENT SERVE?

A site assessment is intended to provide a snapshot of the species that may be in the vicinity of your drawn area. It may be useful in project planning or to gain an understanding of the potential for listed species to utilize the site. The list is computer generated; it was not prepared or reviewed by program staff. Biologist review of your location may result in the addition of species not provided by the automated site assessment.

I'VE REVIEWED MY SITE ASSESSMENT. WHAT DO I DO NEXT?

If you are undertaking an activity that requires a state permit, utilizes state funding, or involves state agency action, you must demonstrate compliance with the CT Endangered Species Act. This is done through the full Natural Diversity Data Base review process. Please return to the DEEP's ezFile Portal and select [Natural Diversity Data Base Review](#) to begin this review process. Keep in mind that these detailed reviews may include additional species not identified in the automated site assessment. Program staff consider factors such as habitat characteristics, species life history and other

information to determine appropriate species of concern.

SURVEY WORK MAY BE NECESSARY

Suitable and potentially occupied habitat may extend beyond mapped NDDB areas and unmapped areas may represent potential habitat that has not been adequately surveyed for all taxa. If you are undertaking activities that involve significant ground disturbance, converting natural lands to development, or otherwise fragmenting or disturbing large areas, we recommend conducting comprehensive biological surveys and a full site habitat characterization for areas that have not been assessed through prior biological inventories. Survey work may be required as part of the NDDB review process; completing some or all of this work up front will allow the process to proceed more efficiently.

This survey and habitat characterization should be comprehensive and not strictly limited to species included in the site assessment. Field surveys should be performed by a qualified taxonomic expert with the appropriate scientific collecting permits. Surveys should be conducted at seasonally appropriate times.

A report summarizing the results of such surveys should include:

1. Survey date(s) and duration.
2. Site descriptions and photographs.
3. List of component vascular plant and animal species within the survey area (including scientific binomials).
4. Data regarding population numbers and/or area occupied by State-listed species.
5. Detailed maps of the area surveyed including the survey route and locations of State listed species.
6. Recommendations for management and protection of State-listed species with reference to project activities.
7. Statement/résumé indicating the taxonomic expert's qualifications.

Site survey reports should be sent to the CT DEEP-NDDB Program (deep.nddbrequest@ct.gov) for further review by program biologists.

SENSITIVE SPECIES

Please note that, for purposes of automated site assessments, certain sensitive species are not identified beyond their taxa. Additional information will be provided for those projects that will be conducting survey work in preparation for permitting ground disturbing activities or for other activities that might necessitate survey work. For these projects, please submit a Natural Diversity Data Base Review Request and we will provide information to your taxonomic expert.

ADDITIONAL RESOURCES

The following resources may be helpful when planning survey work

- State Listed plant species and Natural Communities documented within each CT town
- Thirteen of Connecticut's Most Imperiled Ecosystems (1998) - Metzler and Wagner
- The Vegetation of Connecticut - Metzler and Barrett
- Nature's Network identifies opportunities for conserving and connecting intact habitats and ecosystems and supporting imperiled species.
- Connecticut's Critical Habitat map. The Critical Habitat map project contains a subset of

known important natural community types and sites in CT. Refer to Resource Guide for a complete description and limitations of this product.

Additional sites of Critical Habitats and important natural communities exist, some of which are documented by NDDDB and some of which have not been identified, or fully mapped or field verified. You may contact NDDDB prior to conducting field reviews for more comprehensive information.

This letter is computer generated from our existing records and carries no signature. If however, any clarification/error is noted, or, if you have further questions, please contact the following:

CT DEEP Bureau of Natural Resources
Wildlife Division
Natural Diversity Data Base
79 Elm Street
Hartford, CT 06106-5127
(860) 424-3011
deep.nddbrequest@ct.gov

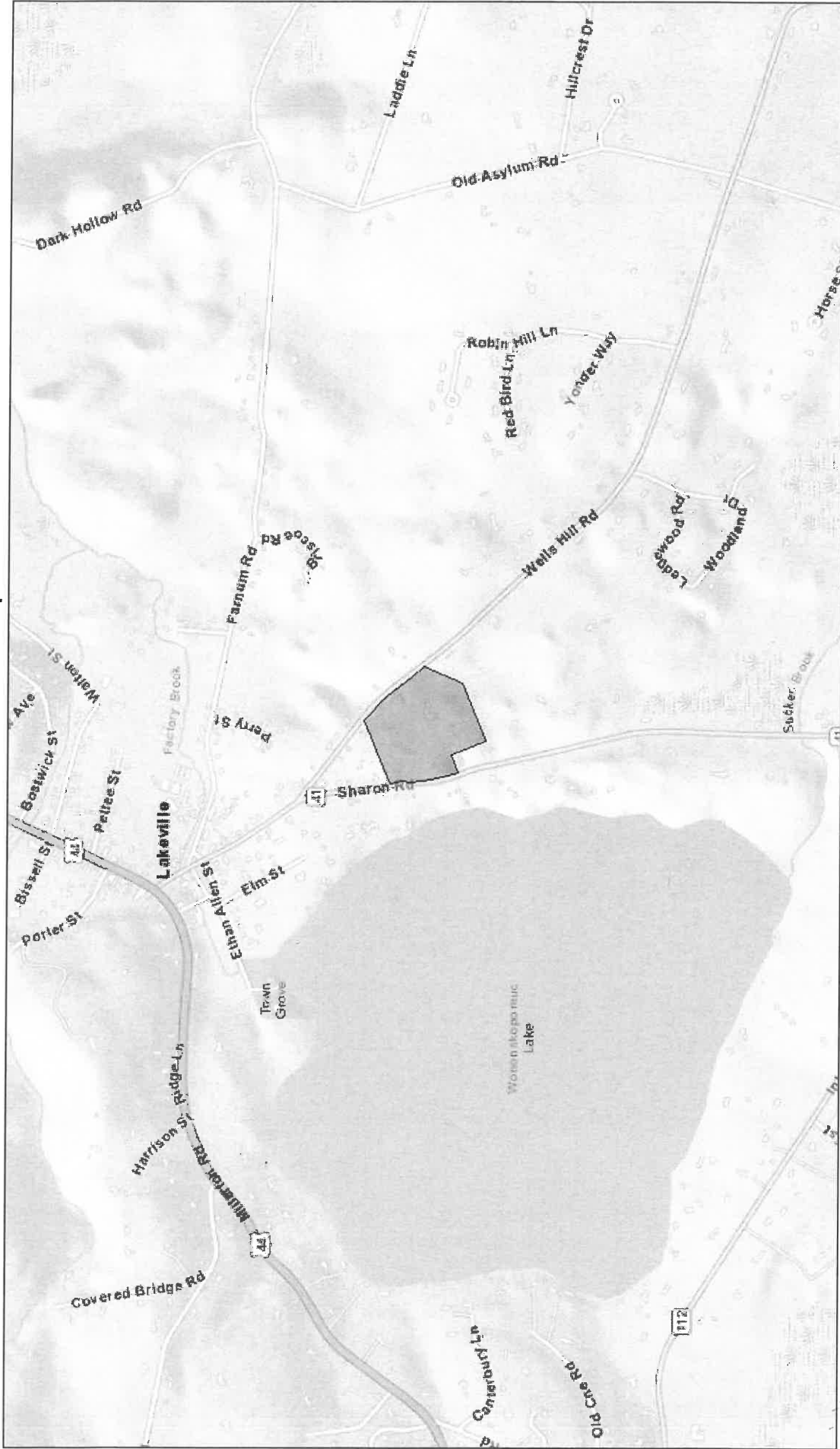
Please include a snapshot of the map, your last name, and the subject area town when you e-mail or write. Thank you for consulting the Natural Diversity Data Base.

Common Name	Northern long-eared bat
Scientific Name	<i>Myotis septentrionalis</i>
Listing Status¹	FE
Taxa	mammal
General Ecology	The Northern long-eared bat is one of the species most impacted by White Nose Syndrome. Populations in Connecticut have declined by over 90%, and it has been Federally listed as Endangered. During the summer northern long-eared bats roost singly or in maternal colonies underneath bark, in cavities or in crevices of both live trees and snags (dead trees). Males and non-reproductive females may also roost in cooler places, like caves and mines. Northern long-eared bats seem to be flexible in selecting roosts, choosing roost trees based on suitability to retain bark or provide cavities or crevices. This bat has also been found rarely roosting in structures, like barns and sheds. Northern long-eared bats spend winter hibernating in caves and mines, called hibernacula. The presence of northern long-eared bat (<i>Myotis septentrionalis</i>), a federally endangered and state endangered species, may require consultation with the US Fish and Wildlife Service Ecological Field Office in order to be in compliance with the Federal Endangered Species Act if the proposed project requires federal permits or uses federal funds. For more information on federal requirements visit: http://www.fws.gov/midwest/endangered/mammals/nleb/
Common Name	Smooth cliff-brake

Scientific Name	<i>Pellaea glabella</i>
Listing Status¹	E
Taxa	plant
General Ecology	Habitat: damp or shaded calcareous rocky slopes (G). Blooming time: Jun, Jul, Sep
Common Name	Wallrue spleenwort
Scientific Name	<i>Asplenium ruta-muraria</i>
Listing Status¹	T
Taxa	plant
General Ecology	Habitat: sheltered cliffs, seams & crevices of limestone outcrops (D&C). Blooming time: Jul
Common Name	Eastern few-fruit sedge
Scientific Name	<i>Carex oligocarpa</i>
Listing Status¹	SC
Taxa	plant
General Ecology	Habitat: shaded rock ledges, hillsides, rich woods. On marble and traprock. Mature fruits: Jun
Common Name	Handsome sedge
Scientific Name	<i>Carex formosa</i>
Listing Status¹	SC
Taxa	plant
General Ecology	Habitat: calcareous meadows, woods, thickets & open swamps (D&C). Calcareous spring fens. Not uncommonly in forest trails. Mature fruits: late-May-Jun

¹E = State Endangered, T = State Threatened, SC = State Special Concern, FE = Federally Endangered, FT = Federally Threatened, NA = Not applicable.

Wake Robin Inn Map



November 4, 2024

1:19,195



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community