



## CONSERVATION COMMISSION MEETING MINUTES – April 16, 2020

**Present:** Laurie Freeman-Chair, Jacqueline Zane-Vice Chair, John Mooney, Bob Hidell, Bob Mosher and Crystal Kelly-Commissioners, Loni Fournier-Conservation Officer and Heather Charles-Lis-Assistant Conservation Officer

**Absent:** Thomas Roby

The remote meeting was held via Zoom with Dial in #929-205-6099, Meeting ID #961-5203-5943.

**The meeting was called to order at 7:02 PM.**

### Approval of Minutes

**Motion:** Chair Freeman moved to approve the draft minutes from the March 26, 2020 meeting.

**Second:** Vice Chair Zane

**Roll Call:** Comm’r. Hidell: aye, Comm’r. Mooney: aye, Comm’r. Kelly: aye and Comm’r. Mosher: aye

### Certificates of Compliance

**Hingham Harbor** – DEP 034-1332, continued from 4/13/20

Applicant: Michael Count, Foth Infrastructure & Environment, LLC

*Meeting Documents & Exhibits:* Wetlands Filing Summary Memo and As-built Plan 11/13/19

*Excerpts from the staff memo:* An Order of Conditions was issued in January 2019 to dredge approximately 61,650cyd of material from the Town Mooring Basin. The Order was amended in August 2019 to include the Marina Dock Basin, immediately adjacent, adding approximately 11,102cyds to the total material dredged. The Town Mooring Basin portion of the project was completed in January 2020, with 62,952cyds being dredged. The applicant is requesting a Partial Certificate of Compliance for this work. The as-built plan largely adheres to the proposed conditions. As of 4/10/20, the Shellfish Mitigation Fund contribution required by the Order has not been made. Staff recommends continuing this discussion to 5/18/20, to give the Town additional time to make this contribution.

The Commission was in agreement to continue consideration to May 18, 2020.

**Motion:** Chair Freeman moved to continue consideration of the Certificate of Compliance for Hingham Harbor MA DEP 034-1332 to May 18, 2020.

**Second:** Vice-Chair Zane

**Roll Call:** Comm’r. Hidell: aye, Comm’r. Mosher: aye, Comm’r. Kelly: aye and Comm’r. Mooney: aye

### Request for Determination of Applicability

**8 Black Horse Lane**, continued from 4/13/20

Applicant: Jeff and Heather Chisholm

Representative: John Zimmer, South River Environmental

Proposed: Construction of a deck and mudroom

*Meeting Documents & Exhibits:* Staff Memo, Original Plan 2/12/20, Revised Plan 3/18/20, and Original Foundation Plan 1/2/20

*Excerpts from the staff memo:* Staff visited the site on 3/23/20. Staff is in agreement with the wetland delineation.

Staff relayed comments to the representative on 3/16/20 as follows and is anticipating responses and a revised site plan.

- How are you proposing to handle rooftop runoff from the mudroom? The Commission typically seeks mitigation for stormwater runoff when there is an increase in impervious surface.
- What surface treatment is proposed directly under the new structures (mudroom and deck)?

- Is it possible to move the mudroom out of the 50ft buffer? Alternatively, is any mitigation being proposed for the additional structures in the 50 & 100-foot buffer zones? The Commission may allow the mudroom if there are no alternatives since it is proposed on sonotubes and partially within footprint of existing deck, however they typically seek mitigation in the form of native plantings/restoration of the buffer zone. This mitigation is usually 2:1 for new structures in the 50-foot buffer and 1:1 in the 100-foot buffer.
- Will the work require the removal of any trees or shrubs?

**UPDATED ON 4/13/20:** Based on a response to comments and a revised plan received on 4/10/20, and following discussion at the meeting, if the Commission is satisfied, the Commission could vote to issue a Determination of Applicability as follows. Note that the mitigation planting area is based upon mitigation of 2:1 for new structure in the 50ft buffer and 1:1 for new structure in the 100ft buffer as follows. Staff approximated the amounts based on the submitted plans and excluded existing and proposed stairs which are almost the same area.

50ft buffer

Proposed mudroom + proposed landing is 84sf + 18sf = 102sf

Proposed structure – existing deck is 102 sf - 88sf = 14 sf

2:1 mitigation = 28 sf

100ft buffer

Proposed deck 120 sf

1:1 mitigation = 120 sf

Total

28 sf + 120 sf = **148sf mitigation**

The representative, John Zimmer, was present on behalf of his client and described the proposal and the wetland resource areas. He stated that the closest point of work was 39 ft from the BVW line. He stated that he'd discussed the proposed conditions, including mitigation plantings and downspouts connected to an energy dissipator, with the homeowners and they were amenable to them. Brief discussion followed about the removal of yard waste from the wetland with J. Zimmer confirming that would be taken care of. With no further questions or concerns, the Commission ended discussion.

**Motion:** Chair Freeman moved to issue a Negative Determination of Applicability for the proposed work at 8 Black Horse Lane, as shown on the submitted plans, and adopt the findings of fact a through c, and conditions 1 through 10 of the staff report.

Findings:

- This project meets the requirements of Part 1, Section 7.1 of the Town of Hingham Wetland Regulations governing procedures for a Request for Determination of Applicability.
- The work described is within an area subject to protection under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations, and will not alter or adversely affect the area subject to protection under the Act or the Regulations.
- For the purpose of this filing, the Commission makes no finding as to the exact boundaries of inland bank on site.

Conditions:

- Prior to the issuance of a Building Permit, erosion and sediment controls shall be installed, as shown on the final approved plan, and inspected by an agent of the Commission; straw wattles and/or hay bales shall not be used as a form of erosion or sediment control.
- Erosion and sediment controls shall remain in place until all disturbed or exposed areas have been stabilized with a final vegetative cover or the Commission has authorized their removal.
- Any debris, which falls into any resource area, shall be removed immediately by hand.
- There shall be no stockpiling of soil or other materials within 30 feet any resource area.
- No vehicle or other machinery, refueling, lubrication or maintenance, including concrete washout, shall take place within 50 feet of any resource area.
- Rooftop runoff from the addition shall be directed to downspouts with splash blocks and/or appropriately-sized stones to prevent scouring, and then to the lawn area to infiltrate.

7. Prior to issuance of a Building Permit, a planting plan shall be submitted to the Commission for review and approval. The plan shall include a minimum of 148 square feet of mitigation plantings adjacent to the existing wooded edge within the 50-foot buffer zone. All mitigation plantings shall be native species; no cultivars, non-native species, or invasive species shall be allowed.
8. Prior to issuance of an Occupancy Permit, the mitigation plantings shall be installed.
9. Prior to issuance of an Occupancy Permit, all lawn waste, brush, leaves, or other materials dumped in the wetland and the adjacent buffer zone, between WF2 and WF5, shall be removed by hand, and the practice discontinued, in accordance with Section 23.6 of the Hingham Wetland Regulations.
10. The Conservation Department shall be notified to any changes in plans prior to proceeding with said changed plans.

**Second:** Vice-Chair Zane

**Roll Call:** Comm’r. Hidell: aye, Comm’r. Mosher: aye, Comm’r. Kelly: aye and Comm’r. Mooney: aye

**Abbreviated Notice of Resource Area Delineation**

**0 Southeast Expressway** – DEP 034-1350, continued from 4/13/20

Applicant: South Shore Industrial Park Trust

Representative: Kelly Killeen, CHA Consulting, Inc.

*Meeting Documents & Exhibits: Wetlands Filing Summary, Revised Plan Set 4/7/20 and Peer Review Report Excerpts from the staff memo: No discussion has taken place to date. The peer review process is complete, including the review and approval of the latest plan set; a summary report is anticipated. Staff worked with the representative and peer reviewer to resolve the Commission’s concerns relative to the status of the stream on the western side of the property*

The representative, Kelly Killeen from CHA Consulting, was present on behalf of the applicant and summarized the process by which the ANRAD plans had been developed and finalized over a period of 6 months with the peer reviewer, LEC Environmental. He described the property and how it entailed close to 36,000 ft of delineation with agreement reached on 1400 flags and discussion over 140 flags. All parties are now in agreement that the resource areas are locked down and they are seeking issuance of an ORAD based on the plans most recently submitted on 4/7/2020.

The C.O. explained that the Peer Review Report had noted there were other areas that could potentially support vernal pool conditions that were not identified as such on the plan. The report recommended including a condition or finding addressing this. Discussion followed regarding the ANRAD form and how to include the suggested language from the Peer Review Report and concluded with a decision to add an additional Finding on a separate page of the ORAD. K. Killeen was amenable to this.

The C.O. reminded the Commission of the lengthy discussion regarding the stream status and informed them that it had been determined where the break with perennial and intermittent happens and all are in agreement. K. Killeen questioned if the confirmation of the perennial/intermittent stream delineation would also be included in the ORAD. Discussion followed regarding what wetland resource areas were requested for confirmation with the ANRAD and what resource areas were included on the plans. Staff and the Commission concluded that the ORAD would confirm the revised plan under the Modified section of the ANRAD and, although not specifically requested in the ANRAD, ‘Riverfront Area’ could be included as one of the resource areas confirmed.

**Motion:** Chair Freeman moved to issue an Order of Resource Area Delineation for 0 Southeast Expressway, MA DEP 034-1350, and adopt an additional finding as discussed at the meeting.

**Finding:**

As an addendum to Section C., Findings, of this Order of Resource Area Delineation, the Hingham Conservation Commission finds that confirmation of the presence/absence of Vernal Pools is not included with this Order of Resource Area Delineation. If a Notice of Intent Application is submitted for a proposed project located at this property, the mean high water line should be delineated and shown on site plans with associated Buffers under the Bylaw and the potential Vernal Pools should be evaluated in accordance with NHESP’s Guidelines for the Certification of Vernal Pool Habitat (2009).

**Second:** Vice-Chair Zane

**Roll Call:** Comm’r. Hidell: aye, Comm’r. Kelly: aye, Comm’r. Mooney: aye and Comm’r. Mosher: aye.

## **Request for Extension of Order of Conditions**

### **2 Planters Field Lane (Downer Estates)** – DEP 034-1284, continued from 4/13/20

Applicant: Feeley Realty Trust

Representatives: Mark Manganello, LEC Environmental Consultants, Inc. and Tom Pozerski, Merrill Corp.

*Meeting Documents & Exhibits: Wetlands Filing Summary Memo, Final Plan Set 11/29/18 and Order of Conditions*

*Excerpts from the staff memo: An Order of Conditions was issued in April 2017 for the construction of a three-lot subdivision. Work did not begin on the project until August 2019 and it is anticipated that by June 2020, the only remaining work will be the construction of the houses. The applicant is requesting a three-year extension. Staff visited the site on 3/18/20 and did not find any violations of the Order. Staff recommends issuing a three-year extension. Staff also requests confirmation from the Commission that landscaping activities within the 50ft buffer zone would be acceptable before June 30<sup>th</sup>. Condition #36, restricting “all work” within the 50ft buffer zone between March 1<sup>st</sup> and June 30<sup>th</sup>, could be interpreted to include landscaping activities. During the 3/18/20 site visit, staff observed that the largest water quality swale, the wetland replication area, and at least one of the mitigation areas were graded and ready for plantings.*

Neither applicant nor representative were present on the call and Chair Freeman noted that the application seemed straightforward. The C.O. agreed but stated she was looking for confirmation from the Commission that the applicant could move forward with planting and landscaping within the 50 ft buffer. The Commission confirmed their agreement with this.

**Motion:** Chair Freeman moved to issue a three year Extension to the Order of Conditions for 2 Planters Field Lane MA DEP 034-1284.

**Second:** Vice-Chair Zane

**Roll Call:** Comm’r. Hidell: aye, Comm’r. Kelly: aye, Comm’r. Mooney: aye and Comm’r. Mosher: aye.

Commissioner Freeman read the Public Hearing Notice of Intent statement and added clarification that with the current State of Emergency with the coronavirus, the deadlines noted in the statement have been suspended, and at the moment, there’s a 45 day grace period after the order has been lifted by the Governor, before the standard deadlines will again apply.

## **Notices of Intent**

### **156 Chief Justice Cushing Highway** – DEP 034-1349, continued from 4/13/20

Applicant: Fred Butts

Representative: Brendan Sullivan, Cavanaro Consulting, Inc.

Proposed: Construction of single family home and septic system

*Meeting Documents & Exhibits: Staff Memo and Revised Plan Set dated 4/8/20*

*Excerpts from the staff memo: The hearing for this Notice of Intent was opened at the 2/10/20 meeting, having been continued a number of times prior to that without any discussion. At that meeting, the representative gave an initial presentation and responded to initial questions.*

*Staff visited the site on 9/24/19 and subsequently reviewed the wetland delineation with the wetland scientist. Staff agrees with the delineation as shown on the most current plan. Staff previously relayed a number of comments and questions to the project representative and owner, and recently a response letter and revised plans were submitted. At this point, the remaining comments are as follows:*

- ***Encroachment into the 50ft and 100ft buffer zones.*** *Unpermitted site work (earth disturbance, clearing, stockpiling) has significantly encroached into the buffer zone along most of the length of the limit of disturbance, including into the 50ft buffer zone on the neighboring property. The revised plan includes loaming and seeding the disturbed area on the neighboring property with a conservation grass mix. At a minimum, staff recommends instead seeding with a wildlife mix, which provides a variety of plants for better habitat value, and preferably planting some native shrubs and/or trees. A post and rail fence is proposed along the property line in this area, which should help prevent further encroachment.*
- ***Structures in the 100ft buffer zone and impervious area.*** *The new house would have an ~4,240sf footprint, with ~1,100sf of the house within the 100ft buffer zone. A large water quality swale will be constructed in the 100ft buffer zone to receive and treat rooftop runoff. The Commission should determine whether additional mitigation, in the form of restoration/native plantings, is required.*

- **Landscaping and Tree Removal and Replacement Policy.** *It appears that lawn is proposed to extend beyond the current limit of disturbance into a wooded area in the 100ft buffer zone, though lawn is not proposed in the 50ft buffer zone. The site plan indicates that at least part of the area that is currently disturbed was historically maintained as pastureland. Staff confirmed this on historic aerials and notes that there were at least some trees in the area. A planting plan has been provided with trees and shrubs proposed mostly outside the 100ft buffer zone. Compliance with the Commission's Tree Removal and Replacement Policy should be addressed to the extent feasible.*
- **Stormwater management.** *The plans have been reviewed by the peer review engineer hired by the Planning Board and revised significantly since the initial filing. Additional minor plan revisions are anticipated and were conditioned by the Planning Board. Staff doesn't have any additional comments.*

Representative Brendan Sullivan from Cavanaro Consulting was present on behalf of the applicant, Fred Butts. B. Sullivan reviewed the latest 9 page plan set which has undergone extensive stormwater review through the planning board and includes the septic design. He stated that the wetland line had been confirmed with the ACO and John Zimmer last fall. He described that test pits were done with the peer reviewer, John Chessia, and it was determined, based on the quality of the soils, that infiltration was nearly impossible. They propose a 30 ft remove and replace to put the septic system in. For stormwater, he stated that there is an increase in volume off site but they do not affect the wetland north of the site which is restricted by a pipe that crosses East Street. The water quality swale designed in the back yard, it retains and helps with TSS (Total Suspended Solids) removal for the driveway and the house to attenuate flow to the rear of the property. They propose a silt sock around the perimeter and a double silt sock on the northerly portion of the property. They have an extensive erosion control plan, tracking pad, stockpile areas and have set aside extra hay bales and siltation on site for emergencies and stockpiling. They have a landscape plan and propose some trees up along the street. He noted that they had submitted their application prior to the Commission's Tree Removal Policy however the applicant is willing to replace the 4-5 trees that will be taken down in the 100 ft buffer. He added they could easily replace in kind or with shrubs. For the sloped areas in the back there is currently lawn proposed however they could plant more of a wildlife mix as the steep slope is not conducive to mowing and will help stabilize the slope and provide habitat. He concluded with stating that the project received approval from the Planning Board with some conditions to satisfy some of John Chessia's comments, they've resubmitted to the Board of Health, they're in the process of filing with Aquarion water and also Mass Highway for a curb cut permit.

Discussion followed regarding the trees currently on site, their size and quantity. Responding to a question from Chair Freeman, B. Sullivan stated that there might have been some scrub trees, none 6 inches or more in diameter, that were removed for the extensive test pit holes but that most of the site was already pasture. He restated that there were 4-5 trees in the back that would need to come out and agreed to replace those. He also confirmed that, as recommended in the staff memo, they would use a 'wildlife mix', rather than 'conservation mix' as labeled on the plan, for the slope and add a fence to keep it protected.

The ACO stated that she had no further comments on the stormwater management as all issues were resolved and that she is comfortable with what is suggested for addressing the Tree Removal Policy. She described the disturbance created by the test pits and is in support of the wildlife mix.

The ACO stated that one item not addressed was the 1:1 mitigation for the new structure in the 100 ft buffer which she felt would not be difficult to fit in as plantings along the line of work. Commissioner Hidell expressed his preference that a lot of the plantings be flow deceleration shrubs/vegetation in order to provide reduction of any scouring that could happen.

Responding to questions from the Commission, B. Sullivan reviewed the details of the retention pond and the swale. Commissioner Hidell noted that it would be up to the homeowner to isolate the area if they have young children. B. Sullivan noted that it is designed to drain after 36 hours.

The Commission had no further questions or comments and Chair Freeman confirmed that they would need to continue to one more hearing. The ACO agreed and stated that there were no draft conditions prepared, it would be preferable to have the mitigation details, as discussed, on the plan.

Chair Freeman invited any comments from the public. No member of the public commented.

**Motion:** Chair Freeman moved to continue consideration of 156 Chief Justice Cushing Highway, MA DEP 034-1349 to May 4, 2020.

**Second:** Vice-Chair Zane

**Roll Call:** Comm’r. Hidell: aye, Comm’r. Kelly: aye, Comm’r. Mosher: aye and Comm’r. Mooney: aye.

**2 Beach Lane** – DEP 034-1359, continued from 4/13/20

Applicant: Theodore Sharp

Proposed: Demolition and reconstruction of single family home

Meeting Documents & Exhibits: Staff Memo and Revised Narrative (v4), Revised Existing Conditions Plan 2/7/20, Revised Proposed Conditions Plan (Sheet 1) 4/2/20, Revised Proposed Conditions Plan (Sheet 2) 4/7/20, Revised Foundation Plan 4/3/20, Proposed Floor Plan (Sheet 1) 3/24/20, Proposed Elevations (Sheet 1) 3/24/20, Proposed Elevations (Sheet 2) 3/24/20, and Drainage Report

Excerpts from the staff memo: *This hearing is continued from 3/26/20, where no discussion took place. Prior to this date, the project was last discussed at the 2/24/20 Commission meeting. The Commission focused on the following topics during that meeting: the expansion, over existing, of the proposed house within the flood zone (AE) and 50ft buffer zone; the increase in impervious area, over existing, and how stormwater would be handled; and the available area for mitigation. The metrics for the previously approved project were available and referenced during the discussion. The applicant submitted a revised narrative, revised proposed conditions plans (two sheets), a revised foundation plan, and preliminary drainage calculations on 4/8/20. Staff reviewed the list of comments that were shared with the applicant and Commission to date and updated that list to include just the remaining, unaddressed comments (below). Additional comments, following a brief review of the revised materials, are included in italics.*

- Erosion controls need to be added to the plan, along with a detail. *A silt sock has been added to the plan, however a silt fence is in place on site. Will the existing erosion controls be replaced?*
- There is a significant amount of new structure being proposed particularly within the 50ft buffer zone, which is a no disturb zone. The Commission seeks to avoid and then minimize structures and activities in this buffer zone in accordance with their bylaw and regulations. In cases where the Commission allows some activity in this buffer zone, they seek mitigation, typically at a 2:1 ratio of native plantings or restored areas. Have you considered a smaller size or different orientation for structures? And have you considered mitigation for the additional encroachment into the buffer zone? It appears that it would be difficult to even achieve a mitigation area of the typical size in the current proposal. *The total proposed mitigation area is less than what has recently been preferred and required by the Commission (2:1 in the 50ft and 1:1 in the 100ft). Staff notes that with respect to the previously approved project, only 2:1 mitigation was required for work in the 50ft buffer zone (i.e. no mitigation was required for work in the 100ft buffer zone).*
- Please provide a detail or any information you may have on the driveway pavers, subbase, etc. if available.
- Are you proposing a culvert under the driveway (as I know this came up previously as a possibility)? *Per the revised narrative, “Working with the Conservation Department staff, we will determine whether it is advisable to put a drainpipe under the driveway to move water to the sides of the lot.” Staff feels that the Commission should have input on this detail.*
- The garage flood vents need to also be shown on the site plan and architectural plans. *The number and location of flood vents differs between the proposed conditions/foundation plans and the first floor architectural plan.*
- Do you have a planting plan or list? You should also be aware the Commission has a Tree Removal and Replacement Policy, which will apply if any trees equal to or greater than 6” diameter at breast height (dbh) are being removed (or have been removed recently).
- *Per the elevation architectural plans, a vertical skirt board will be placed around the foundation. Staff notes that engineered, breakaway panels may be required (by building code) due to the house’s location in an AE flood zone.*

Applicant Theo Sharp was present and reviewed the locus, the current house, and existing conditions. He noted that the Commission had approved a similarly sized house (proposed by R. Thompson) as to what he is proposing. He described some of the differences between his proposal and the prior approved house including location on the lot, type of foundation and pervious pavers for the driveway.

T. Sharp described some of the specifics of the project. They would demolish the existing house and foundation and start fresh. They propose to increase the structure in the fifty ft buffer by 1191 sf and in the 100 ft buffer by 962 sf. T. Sharp added that, in terms of overall impervious, his proposal increases impervious by about 900 sf whereas the Thompson project increased the impervious by about 2200 sf.

Based on the last hearing feedback, they narrowed the deck by 2 ft to bring it further back from the revetment and also cut the walkway on the east side of the house by 10 ft. Also questioned at the last hearing was the roof runoff and T. Sharp explained that they'd since submitted elevations, new site plans and a drainage report. He stated that the roof runoff will go under the house where there will be ten inches of  $\frac{3}{4}$  inch crushed stone and will essentially create a retention basin where the roof runoff and everything coming from the lot can infiltrate back into the ground. In a 25 yr storm that wouldn't be overwhelmed. He noted that the engineer didn't run calculation for a 100 yr storm because in a 100 yr storm the lot is under water.

Addressing the question of how they would mitigate for the additional structure in the 50 and 100 ft buffers, T. Sharp directed the Commissioners to the table in the revised narrative summarizing the mitigation required and reviewed the numbers and space available in both the 50 and 100 ft. He added that they'd submitted a site plan indicating five areas for proposed mitigation totaling 2940 sf of mitigation. What they propose would be short in the 50 ft buffer but over in the 100 ft buffer. T. Sharp described the five areas on the site plan for mitigation. He compared his project to the Thompson project and noted that the Thompson project provided for mitigation for additional structure in the 50 ft buffer but none was required for additional structure in the 100 ft buffer. T. Sharp made further comparisons between the two proposals' mitigation quantity and location. He described the buffer zones on the lot as being in very much the same condition all the way to the 3 ft revetment, with the resource area on the other side of the revetment.

Commenting on the flood vents in the garage, T. Sharp stated that the engineer had calculated what was needed and put 3 rather than 4 and should the project move forward as proposed, he would have the designer change that notation on the site plan. Essentially there would be a flood vent in the north, the west and the east side walls of the garage.

Addressing the remaining items in the staff memo, T. Sharp stated that they show silt socks on the site plan; it would be fine to keep the silt fence up but noted that it's hard to keep that standing. They would use whatever the Commission prefers. He stated that they haven't chosen the pervious pavers yet but would likely choose something similar to and install the same way as what they used at Foley Beach Rd. and Howe St. (other Sharp projects). He proposed that they would present the preparation and materials to the Conservation staff when it's decided and before installation. In regards to a possible culvert under the driveway, given the results of the runoff report, T. Sharp feels that it is not needed as all the runoff from the lot should be contained under the house. Similar to his last couple projects, as well as noted on the Thompson project plan, the plantings and the species for the mitigation were to be determined in a meeting with the Conservation agent, and he would propose the same here. The final comment on the staff memo in regards to using breakaway panels will be examined and Building Commissioner Mike Clancy consulted.

He concluded that he believes that this project is an improvement over the existing site as well as the one that was already approved.

Chair Freeman asked staff if they had any follow up comments in regards to T. Sharp's presentation.

The ACO stated that for erosion controls, it makes sense to have a staked silt sock ultimately as it holds up better than a silt fence when tidal water flows in. For the driveway pavers, if the Commission feels comfortable with it, it could be something included as a condition. She has no issues with no culvert under the driveway. In regards to the breakaway panels she had no initial comments and would want to get the Building Dept. input just to be sure that anything going in allows for the free passage of floodwaters.

Regarding mitigation, the ACO stated that there is an improvement in some ways with this design but not in all ways. The fact that it's proposed on piers to allow the free passage of floodwaters is something that is required by the regulations and can't be considered mitigation. The ACO spoke further about mitigation and taking into consideration all the interests of the WPA and Bylaw. There's mitigation for additional impervious area and runoff from driveway and the structure, but also there's interest in regards to the quality of the water, water pollution and the habitat of the land. The regulation for new structure is a separate and distinct section of the bylaw. She noted that it's been brought up that much of the site is just lawn now and she suggested that a vegetated area has a higher value, from a resource area standpoint, than a structure and that once something is built, the buffer zone is not likely to ever be restored. In this instance there is virtually no naturally vegetated buffer, only some vegetation on the stone revetments. Her recommendation remains to keep the 2:1 for structure in the 50 ft buffer. Commissioner Mooney agreed with the ACO.

Chair Freeman asked if 2:1 mitigation could be provided in the 50 ft buffer and if there room to do that. The ACO stated that she doesn't see how it could be achieved without pulling back, shortening the deck more or making the structure a different shape. Lengthy discussion followed in regards to positives and negatives to alternatives for the current proposed design as well as references to what was previously approved by the Commission. Commissioner Zane and Kelly expressed their concern regarding the significant encroachment into the 50 ft buffer and Chair Freeman pointed out that there is that distinction between the two projects.

Commissioner Hidell stated that his biggest concern with the prior project was the type of foundation because it didn't address the flooding issue and that this proposal is an improvement. In regards to the ACO's concern about mitigation, he suggested that, on the other hand, in the interface between the back of the revetment and the house, vegetation is not going to have a very good chance of living. Commissioner Mosher agreed that it was a better plan than was already approved.

Chair Freeman invited any comments from the public. No member of the public commented.

Chair Freeman noted that, although expressing concerns, no commissioner had expressed a desire to have the applicant change the design and suggested that the Commission would continue the hearing and ask staff to prepare conditions accommodating all the concerns regarding mitigation and include as much mitigation as can be provided with the current design. Commissioner Mooney expressed his opposition to the project. The ACO suggested that, with the current design, perhaps the space between mitigation areas 1 and 2 directly abutting the revetment, could also be filled with mitigation planting. T. Sharp stated that he would have no problem with that allowing for a stepping stone path to get through and over the revetment. Brief scheduling discussion followed.

**Motion:** Chair Freeman moved to continue consideration for 2 Beach Lane MA DEP 034-1359, to May 4, 2020.

**Second:** Vice-Chair Zane

**Roll Call:** Comm'r. Hidell: aye, Comm'r. Kelly: aye, Comm'r. Mooney: nay and Comm'r. Mosher: aye.

## **12 Boulder Glen Road** – DEP 034-1362, continued from 4/13/20

Applicant: Tracy Shriver

Representative: Joan Deely, Land Stewardship, Inc.

Meeting Documents & Exhibits: Staff Memo and Revised Habitat Management Plan 4/8/20

Excerpts from the staff memo: *The applicant has submitted a Notice of Intent indicating that this is a proposal for an Ecological Restoration Limited Project, as well as the required Appendix A: Ecological Restoration Limited Project Checklists. Per the regulations, the proposed work could only be permitted as a restoration or rehabilitation, thus the Commission will need to determine if the project meets the criteria and is eligible to be permitted as such.*

*Staff visited the site on 2/12/20 and 3/5/20 to observe conditions at both high and low tides. The applicant's property, as well as the abutting neighbor's property, consists of a single-family house with large adjacent lawn areas. The applicant's property then transitions into a wooded upland before sloping down to the marsh. The marsh consists of a monoculture of Phragmites at higher elevations, primarily native *Spartina patens* (saltmarsh hay) at a similar or lower elevations, and native *Spartina alterniflora* (smooth cordgrass) at the lowest marsh elevations. The neighbor's property has a more gradual slope to the marsh, which consists largely of a monoculture of Phragmites. Beyond this property, the marsh ends at Porters Cove Road. Most, but not all the Phragmites is inundated at the highest tides. Phragmites is also found in other marsh areas in the vicinity.*

*Staff worked with the representative regarding comments on the NOI and Appendix A forms and the project scope and specifications, resulting in a number of changes to the proposal. At this point, the items that still need to be addressed include the following. Staff recommends that any additional updates to the Habitat Management Plan be made prior to the issuance of an Order, as the Order for an ecological restoration project references the plan and typically does not include conditions beyond standard conditions (staff contacted MassDEP to verify this). This is partly why staff asked for some details that might normally be conditioned. Comments that were provided directly to the representative are in quotation marks:*

- *NOI form. Riverfront area impacts and total riverfront area on site are not correct as currently listed.*
- *"Please explain how the limits of work were determined. In particular, there is Phragmites growing to the west/northwest of the limits of work. How will the invasive plant management be successful with a large stand of immediately adjacent Phragmites remaining? I assume the Phragmites in the marked area would be removed*

*from its landward to seaward extent, but please confirm.” The representative has indicated they will address this at the meeting.*

- *Staff has concerns regarding impacts of mowing or other equipment in the salt marsh and also leaving cut Phragmites on site as this invasive plant can spread vegetatively from plant parts. In response, the representative has included two options in the Habitat Management Plan: Option #1 Mowing using a low ground-pressure walk-behind mower that would mulch the stems, and Option #2 Cut and Removal using brush saws and manual removal and disposal of plants. There is also a third Option #3 involving the representative’s company overseeing a local company in implementing these tasks. The Commission should consider whether to limit removal to hand tools only and whether to require removal of Phragmites from the marsh and disposal off site, and thus whether to specify which of the two main options should be used.*
- *“How and where is Phragmites being disposed of once treated/removed?”*
- *Staff recommended planting native species following removal of Phragmites, as discussed in the following comment to the representative, which resulted in the Habitat Management Plan including restoration plantings to be approved in advance by the Commission. Staff recommends that the Commission review and approve the planting plan prior to issuance of an Order. “Has there been any consideration of planting native species following removal of Phragmites? I understand there are native plants that will hopefully colonize the area, however I want to avoid a lengthy amount of time with no vegetation in the treated area. In addition, I do not think *Spartina patens* will grow readily at the higher elevations. I did observe the tides and elevations at this site, and planting natives suited to the edge of the marsh, for example *Iva frutescens* (High tide bush), would be preferable and have significant ecological benefit.”*
- *“The plan should be updated to specifically state that all reports will be provided to the Commission. The plan should say that this would include not only daily work logs and land management records for tasks, but also annual reports summarizing progress and percent Phragmites.”*
- *“The plan should also indicate the following: Prior to the start of work there will be a pre-construction meeting on site between the project supervisor or contractor responsible for the work and an agent of the Commission. The Commission should be notified 48 hours prior to commencing work on the site. And finally, the Order of Conditions should be included in any contracts or subcontracts with other companies if applicable.”*
- *“During the site visit, I observed that some small woody vegetation is being cut in a portion of the area beyond the stone wall on the [12 Boulder Glen] property. No cutting of vegetation should be occurring without Conservation approval except for maintenance of existing lawns. Also maintaining a naturally vegetated condition in the upland will help to prevent the growth and spread of Phragmites.”*
- *“I also observed a large pile of leaves near the shed in the buffer zone, close to the water. Typically the Commission requires yard waste to be removed from the buffer zone where is in a naturally vegetated area and/or in close proximity to a resource area.”*

The applicant, Tracy Shriver, and representative, Joan Deely of Land Stewardship, Inc, were present on the call. T. Shriver described the property that he and his wife bought 3 years ago and expressed his desire to be a good steward. He stated that this NOI is specifically geared toward phragmites removal from his property and a portion of his neighbor’s property and unfortunately, phragmites will still exist in the cove but he would be unable to remove it all. They do see it as a long term commitment.

J. Deely stated that they have a proposal to do phragmite control on the Shriver property, similar to jobs both inland and coastal that they’ve done for close to 15 years and they’ve found an approach that works well. She stated that she’d been in conversation with the ACO regarding the mowing of the phragmites before treatment can start, wanted to clarify any issues with that, and to find out from the Commission what they wanted attended to before work can start on the project. Chair Freeman asked staff what were the remaining concerns.

The ACO went through the comments, one by one, of the staff memo expressing particular concern regarding #3 about mowing. She noted that she was unfamiliar with the proposed mowing equipment and that J.Deely had sent a photo of the ‘low ground pressure mower’, but that it might be helpful to have the specifications and manufacture of the mower. The ACO had concerns regarding the actual removal of the phragmites itself. One thought is that it gets mowed and allowed to mulch and it will eventually flow out but she has concerns with that because phragmites do spread vegetatively from plant parts and even with phragmites in the area, she has concerns about spreading it more; it would be preferable to get that material offsite. J. Deely commented that what they would be mowing is the dead

phragmites in order to access the plants before they start to grow again, and that, in their experience, phragmites won't regrow from the dead plant debris. What is being mowed and mulched by the mower isn't capable of spreading anything because it's dead. The ACO stated that she had done some research and it seemed that there is a low chance that there could be some spread and her suggestion for removal is out of an abundance of caution; she deferred to the Commission.

Referring to #5 of the staff memo, the ACO described areas where native spartina patens may or may not grow in and noted that T. Shriver and J. Deely had indicated that they were willing to plant in areas that don't fill in. #6 referred to updating the Habitat Management Plan, for example, regarding providing reports and preconstruction information. As an ecological restoration project the Commission is not able to add special conditions for items like these, only the specific conditions in the state form are allowed and so it's suggested that these items are included in the plan.

The ACO concluded her comment summary on two points related to observations she'd made onsite and for which she and the CO have since had a productive conversation with T. Shriver. One is that small woody vegetation, cat briar, was being cut on a slope above the resource area. They learned from T. Shriver that this area had been maintained historically as an open area and they had talked about the benefits of a naturally vegetated buffer. And two, there was a large pile of yard waste near the shed and T. Shriver had indicated that the pile is getting depleted as he's mulching around the property and in future they'll locate the pile elsewhere on the property.

Chair Freeman stated that in regards to the mowing, her hope is for it to be done in an environmentally protective way but still practical and not require hand removal; the intent is to protect the habitat but to be able to do it in a way that is not an overly expensive process. She stated that she would be willing to permit the mowing. She noted also that the applicant was willing to do the native planting. She feels that it's a comprehensive, conscientious effort and fully supports the project.

J. Deely stated that they were trying to decide when to start planting the restoration planting. In their experience, especially in salt marsh, native regeneration happens apace because there's such a huge seed bank under the phragmites but as the ACO pointed out, at the upper limit of the salt marsh the plant community begins to shift and there may not be a sufficient population of the marsh plants growing there. She feels that might not begin to reveal itself until a couple of years into the project and asked for guidance as to when to propose the planting and it doesn't make sense to develop a plan before knowing where it's needed. Commissioner Hidell agreed that they would need to wait to see what the underlying natural regrowth would be. J. Deely asked how to indicate that planting is on the table without having to have that plan set; whether it would be one year or two is unknown.

The ACO stated that there is currently a section in the plan on restoration planting and perhaps that could be expanded with reference to a consultation between Conservation staff and the representative each year; possibly include a site visit after treatment and then consultation in the following spring to see what, if anything, is coming in. She sees the advantage of not planting right away but suggested not to wait past the first two years so that the phragmites don't move right back in.

J. Deely explained that the protocol they follow is an initial treatment and then 3 years of follow up treatments and with a lot of their coastal projects they do what they call stewardship treatments which would help to keep the section on the Shriver property free of phragmites. She agrees it makes sense to put in the habitat management plan that in addition to the annual reporting specifications that it also call for annual monitoring of revegetation and then gauging what may need to be addressed by restoration plantings. The ACO expressed her support of that and suggested further language that the planting plan may be developed in consultation with the Commission. J. Deely and the ACO stated that they could hash out the language and the Commission agreed.

Brief discussion followed regarding the walk behind mower and the other option of handcutting, concluding with the J. Deely offering to send the specification and manufacturer information in and noting that hand cutting is labor intensive and costly.

Chair Freeman invited any comments from the public. No member of the public commented.

**Motion:** Chair Freeman moved to continue consideration of 12 Boulder Glen Road, MA DEP 034-1362, to May 4, 2020.

**Second:** Vice Chair Zane

**Roll Call:** Chair Hidell: aye, Comm'r Kelly: aye, Comm'r. Mooney: aye, and Comm'r. Mosher: aye

**100 Industrial Park Road** – DEP 034-1361, continued from 4/13/20

Applicant: Timothy Casey, JEB Group, LLC

Representative: Kevin Hixson, BL Companies

Proposed: Warehouse renovation and demolition, and site improvements

Meeting Documents & Exhibits: Wetlands Filing Summary Memo and Original Plan Set 3/6/20

Excerpts from the staff memo: continued from 3/26/20 No discussion took place. The representative will be making an initial presentation to the Commission. Staff reviewed the application materials and provided detailed comments to the representative on 4/8/20. Staff anticipates additional correspondence with the representative. The applicant has simultaneously filed with the Planning Board, who hired a peer review engineer. The Planning Board is anticipating opening its hearing in mid-May.

The representative, Kevin Hixson from BL Companies, was present on the call and described the project. It's a developed industrial 17 acre site with two buildings on it; one, 149,000 sf is proposed to be renovated and the other 41,203 sf building south of the large building and closer to the wetlands that will be demolished. Under the existing conditions the parcel has approximately 9.5 acres of impervious surface (56%). The proposed redevelopment would result in 10.9 acres of impervious surface and they propose to mitigate the increase in impervious coverage with 3 subsurface stormwater chamber systems. They have also considered some bioretention areas and some hydrodynamic separators with that and some deep sump catch basins because the stormwater system that is there now is a very basic stormwater system that was installed decades ago.

K. Hixson explained that an ORAD for the property had just recently received an extension. The wetlands are located on the south and south west side of property and there is also a flood zone A on the south side in the wetland area; nothing is proposed in the flood zone. He further described some of the proposed stormwater mitigation and noted that a soil management plan is also associated with the site.

K. Hixson stated that they had received an email from the ACO and will address her comments moving forward and they also anticipate receiving the peer review comments.

He explained that the existing encroachment (4266 sf) in the 50 ft buffer includes the leaching area, the driveway and the parking. The proposed encroachment (8289 sf) in the 50 ft buffer would include the leaching area, driveway and a bioretention area; without the bioretention area, the impact would not change.

The existing encroachment (27,276 sf) in the 100 ft buffer includes the parking, the driveway and leaching area. The proposed encroachment (30,973 sf) in the 100 ft buffer includes the parking, the driveway, the leaching area and bioretention area; without the bioretention area, there would be no change between the existing and proposed.

The ACO commented that with a lengthy list of comments sent to the representative, it wouldn't make sense to go through it just yet. She noted the project is subject to MA stormwater standards and there will be a peer reviewer through the Planning Board. Staff has not yet made a site visit. K.Hixson commented that a tree survey would be done and they would follow the Commission's Tree Removal Policy for the site.

Brief discussion followed regarding the use of the site and scheduling of the next hearing.

Chair Freeman invited any comments from the public. No member of the public commented.

**Motion:** Chair Freeman moved to continue consideration of 100 Industrial Park Road, MA DEP 034-1361, to May 18, 2020.

**Second:** Vice Chair Zane

**Roll Call:** Chair Hidell: aye, Kelly: aye, Comm'r. Mooney: aye, and Comm'r. Mosher: aye

Chair Freeman adjourned the meeting at 9:30 pm.

Submitted, \_\_\_\_\_  
Sylvia Schuler, Administrative Secretary

Approved on May 4, 2020

*This meeting was recorded. To obtain a copy of the recording please contact the Conservation office.*