

**Bourne Conservation Commission
Public Meeting Minutes
December 21, 2023**

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Commission Members Present: Chair Robert Gray, Vice Chair Rob Palumbo, Paul Szwed, Susan Weston and Jacob Gadbois.

Excused Members: Greg Berman, Peter Holmes, Sarah Butler and Joseph Soares.

Professional Staff in Attendance: Stephanie Fitch, Conservation Agent

Chair Robert Gray called to order the meeting of the Conservation Commission at 6:30 PM, conducted in person on Thursday, December 21, 2023, and held in the Bourne Veterans Community Building, 239 Main Street, Buzzards Bay, MA 02532, and held virtually by Zoom. Chair Gray explained all reviews, unless otherwise stated, are joint reviews. Applications will be processed pursuant to the Massachusetts Wetland Protection Act, M.G.L. Chapter 131, Section 40, and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw. Chair Gray said that they follow a 5-5-5 rule, and he explained the rule. Chair Gray said that if a member of the public wishes to comment they will first clearly state their full name for the record. Chair Gray asked if anyone was recording at this time other than the Conservation Department.

Notice of Intent

1. Applicant: Town of Bourne c/o Timothy Lydon DEP File Number: **SE7-2269**
Representative: Daniel Cannata of VHB Inc.
Project Address: 0 Old Monument Neck Rd, Bourne (Mass Coastal Railway Layout)
Proposed Project: Bourne Rail Trail Phase 1. Work consists of constructing a 10-foot wide shared use path (SUP) along the west side of the existing Mass Coastal Railway Corridor between the existing parking areas at the Tidal Flats Recreation Area on Monument Neck Road near its intersection with President's Road. **Continued to January 4, 2024.**

2. Applicant: Brenda & Derek Cruz DEP File Number: **SE7-2274**
Representative: G.A.F. Engineering, Inc.
Project Address: 4 Bay Drive, Bourne
Proposed Project: To raze an existing dwelling and construct a new 3 bedroom dwelling on concrete piles. Parking will be below the dwelling on concrete slab. All associated grading and landscaping performed. The dwelling is served by municipal sewer and water. The work will take place within an AE flood zone.

Brian Grady from G.A.F Engineering is overseeing the project to raze and reconstruct a home built 60 years ago to meet current FEMA flood zone regulations in AE flood zone elevation 16. The finished floor elevation is planned to be at 17.3, supported by concrete piles with open lattice work. They intend to use the area's concrete slab for parking and additional storage. Approximately 60 cubic yards of fill will be brought in, and they'll be capturing roof runoff using drywells.

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Ms. Fitch, the conservation agent, conducted a site inspection, confirming the property's within the AE flood zone exclusively, with no other wetland resource areas within a 100-foot radius. While she acknowledged the presence of a storm management system, she questioned if there were any concerns about the proposed driveway being twice the size of the current one and potential runoff issues affecting adjacent properties.

In response, Brian Grady addressed Ms. Fitch's concerns, explaining that their approach involves capturing roof runoff, which they view as an enhancement to the site's overall management strategy.

Ms. Fitch highlighted the loss of three trees and suggested considering replacements with trees or shrubs to aid in mitigation. Additionally, she noted the absence of erosion controls on the plan.

In response, Brian Grady committed to establishing a defined work limit using straw wattles or fencing to address erosion concerns. When Chair Gray inquired about potential runoff issues arising from the substantial fill used to elevate the structure, Brian Grady reassured that the runoff is intended to flow in the same direction, with approximately 90% of it being captured by the drywells.

During the public comment, abutter Mike Harris from 3 Bay Drive expressed concern about his 90-year-old home, citing its reliance on two sump pumps to maintain a dry basement. He worried about potential impacts from runoff originating from the proposed expansion. Harris requested information regarding the proposed property's dimensions compared to the existing structure and inquired about setbacks.

In response, Brian Grady clarified that the existing building setback is 29 feet, while the proposed structure's closest point measures 24 feet. He reassured Harris that the driveway alterations wouldn't impact their home's sump pump. Additionally, Grady affirmed that the planned roof runoff would flow east to west and toward the rear, minimizing potential effects on neighboring properties across the street on Bay Drive.

Motion made to close the public hearing by Ms. Weston and seconded by vice chair Palumbo. All in favor. **Motion carried 4-0-0.**

The draft order of conditions is to include all general conditions, as well as the following special conditions pursuant to Mass General Law Chapter 131, section 40:

1,2,3,4,7,9,10,12,14,15,16,18,19,27,28 and 29. Special Condition Number 15 shall continue in perpetuity beyond the limitations of this order and with the sale of the property to others.

Motion made to accept the draft and move to the final by Ms. Weston and seconded by vice chair Palumbo. All in favor. **Motion carried 4-0-0.**

1. Applicant: Eric & Susan Marandett
Representative: Jeff Thibodeau, Helios Land Design
Project Address: 37 Harbor Drive, Pocasset

DEP File Number: **SE7-2276**

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Proposed Project: Proposed landscape improvements (pool, spa, patio, fencing, walls, fire pit) in a previously landscaped area. The work will take place in an AE flood zone, within 200 ft. of a riverfront and within 100 ft. of wetland resource area. **Continued to January 4, 2024.**

2. Applicant: Merlin Ladd of Ladd Homes LLC DEP File Number: **SE7-2271**
Representative: Webby Engineering, Inc.
Project Address: 46 Holt Road, Buzzards Bay
Proposed Project: To construct two duplex buildings in an AE flood zone. **Continued from 12.07.23.**

The applicant had a prior commitment, but Ms. Fitch confirmed receiving the revised plans. She believes they fulfill the interim agent's recommendations for stormwater mitigation to be shown on the plan. The site plan dated 12/11/23 includes two bio retention areas on the NE and SW corners of the site and drywells for roof runoff collection. Additionally the landscape measures include native plants as approved by the Conservation Commission, signaling that the project is now ready for approval.

Motion made to close the public hearing by Ms. Weston and seconded by vice chair Palumbo. All in favor. **Motion carried 4-0-0.**

The draft order of conditions is to include all general conditions, as well as the following special conditions pursuant to Mass General Law Chapter 131, section 40:
1,2,3,4,7,10,12,14,15,16,17,19,27,28 and 29. No additional Special Conditions under the bylaw.

Motion made to accept the draft and move to the final by Ms. Weston and seconded by vice chair Palumbo. All in favor. **Motion carried 4-0-0.**

3. Applicant: Alan Patrick and Cynthia Croatti DEP File Number: **SE7-2263**
Representative: Cape and Islands Engineering, Inc.
Project Address: 7 Eustis Lane, Catuamet
Proposed Project: Proposed installation and maintenance of a walkway, seasonal pier, ramp and float. The work will take place within a V flood zone and 100' of a wetland resource area. **Continued from 12.07.23**

Ms. Fitch initiated her report by addressing the prevalent topic of tree cutting discussed during the previous hearing. Confirming that the work falls within the provisions of file number SE7-2157 and is being executed by Wilkinson Design, she expressed no reservations in that regard. However, she raised an inquiry concerning a sizable submerged boulder along the pathway leading to the proposed pier. Additionally, Ms. Fitch sought clarification on whether the construction of the pier would necessitate the use of heavy machinery on the beach or saltmarsh.

Mark Dibb responded by indicating that there's no expected necessity for heavy machinery on the beach. He said there will be 4x4 posts installed on land, suggesting a potential requirement for a

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barge for the section out in the water, although the definitive need for one remains uncertain. He clarified that heavy machinery won't traverse the dune.

Ms. Fitch pointed out that the applicant possesses a permitted 4-foot path leading to the beach. She recommended preserving its natural state and limiting access to the beach solely via the new boardwalk, proposing the addition of a few steps for access.

Addressing this, Mark Dibb acknowledged the existence of the permitted path, which was considered during the design phase for potential access points. However, citing the recent approval of this path for beach access, he expressed the intention to retain it. This decision is motivated by concerns that the proposed pier's permitting process with Chapter 91 might extend for an additional 9 months or more, and there's a reluctance to risk losing access to the beach entirely during this period. The owner would prefer to keep both. Mr. Dibb expressed openness to the idea of re-naturalizing the path, contingent upon its reduced usage.

Ms. Fitch highlighted no concerns regarding adjacent moorings or any issues 1/5 of the waterway, affirming that the location is an excellent site for a dock.

Mr. Dibb expressed his approval of the idea to add stairs in a specific location to get over the beach grass. He highlighted that these stairs would provide an alternative path, particularly useful for individuals already on the beach, reducing the necessity to use the other route. Although not explicitly requesting the addition of the stairs, Mr. Dibb mentioned having proposed plans available if needed.

He also mentioned an accessible area with proper clearance underneath, explaining why the stairs weren't initially proposed. Paul Szwed raised the question about maintaining the existing path for access to the beach during the off-season, as the permanent section of the boardwalk ends at the salt marsh.

Mr. Dibb shared copies of the proposed stair plans during the discussion. Ms. Fitch suggested noting the delineation process and the responsible party upon completion. No public comments were made during the meeting. They are implementing the plan dated 12/21/2023, which include the proposed stairs.

Motion made to close the public hearing by Vice chair Palumbo and seconded by Mr. Szwed. All in favor. **Motion carried 4-0-0.**

The draft order of conditions is to include all general conditions, as well as the following special conditions pursuant to Mass General Law Chapter 131, section 40: **1, 2,3,4,7,8,9,12,18, 27, 28 and 29.** Special conditions pursuant to the Bourne Wetland Protection Bylaw Article 3.7: **5,6,7,10,12,14,15,16,17,18,19,22,23 and 24.**

ASC-1) The contractor shall develop a spill management plan for any hazardous materials that may be employed during work in the buffer zone, salt marsh, or over the water. Specifically, the plan must address how to effectively deal with spillage of fuel or hydraulic fluids from equipment. The contractor must maintain an appropriate spill kit at the project site at all times.

ASC-2) The applicant must meet with the Bourne Shellfish Constable and fulfill payment to the Shellfish Mitigation Fund per BWR 1.09(2) prior to construction. Proof of payment must be submitted to the Agent

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prior to construction.

ASC-3) All recommendations included in the Division of Marine Fisheries letter dated October 13, 2023 and signed by Amanda Davis are to be incorporated into this OOC except for the eelgrass setback as described in the second bullet point.

ASC-4) The results of the additional eelgrass survey, as requested by the Division of Marine Fisheries, must be submitted to the Conservation Department prior to construction. If the survey finds eelgrass, the Bourne Wetland Regulations will apply.

ASC-5) No use of heavy machinery is permitted on the coastal beach, dune or salt marsh.

General condition Number(s), Special Condition Number(s), Bylaw Conditions Number(s) **14, 15, 16, 17, 18, 20, 21, 25** above shall continue in perpetuity beyond the limitations of this Order and with the sale of the property to others.

Motion made to move the draft to the final by Ms. Weston and seconded by vice chair Palumbo. Roll call: Ms. Weston-yes, vice chair Palumbo-yes, chair Gray-yes and Mr. Szwed-abstained. **Motion carried 3-0-1.**

4. Applicant: John Glynn

DEP File Number: **SE7-2272**

Representative: Zenith Consulting Engineers, LLC

Project Address: 354 Circuit Avenue, Pocasset

Proposed Project: Construct a 45' long non-seasonal walkway connecting to a 52' long seasonal pier with a ramp and a 8' x 24' float. The work will take place in a V flood zone, within 100 ft. of a wetland resource area and 200 ft. of a riverfront. **Continued from 12.07.23**

Jamie Bissonette from Zenith Consulting Engineers, LLC, informed the group that there were no changes to the plan since the last meeting and that the continuance was due to waiting on feedback from both Natural Heritage and the Division of Marine Fisheries which have been received.

Ms. Fitch examined the 1/5 across the waterway and inquired about the commission's comfort level. Mr. Bissonette provided an overview of the survey, highlighting the measurement of 520 feet from point to point showing it meets the 1/5 regulation and offset 130 ft. from the centerline.

Ms. Fitch indicated that the Department of Natural Resources (DNR) expressed no initial concerns regarding navigation or moorings. However, she raised a point for the applicant's awareness: if navigation issues were identified at a later stage due to interference with moorings in the area, the applicant might need to modify or reduce the dock under the direction of the harbor master.

Ms. Fitch inquired about the construction method for the salt marsh area. Mr. Bissonette responded, detailing the proposed approach. According to him, the process involves laying plywood and using a small logger to position 6" diameter piles, which will later be removed.

The seasonal section will be supported by 4x4 posts, which will be removed together with the pier section, ramp, and float in the off season. The optimal period for installation which will cause the least

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amount of damage is during the non-growing season, typically in winter through very early spring when the salt marsh remains frozen.

John Glynn sought clarification on Special Condition Number 21, as per the Bourne Wetland Protection outlined in Article 3.7, which Ms. Fitch referenced: 'If it is later determined that this structure interferes with navigation, the applicant must downsize it under the direction of the Harbormaster.

Chair Gray explained that the Harbormaster conducts an annual inspection, and the mooring permit is issued in conjunction with the float. Additionally, Chair Gray emphasized that if a mooring gets misplaced, the Commission will not revisit it, as their primary focus is on the construction aspect. In the event that the Harbormaster or Cove Master identifies a misplaced mooring, they will collaborate with the owners to ensure it does not pose navigation issues. The Department of Natural Resources (DNR) commented that, presently, there are no issues observed, and their assessment is based on the moorings represented on the plan.

Mr. Glynn understood the condition once it was explained. Additionally, Chair Gray asked the engineer whether coordinates of the moorings could be included on the survey in the future. The engineer clarified that the moorings have a tendency to move, and can add that in the future.

Ms. Fitch read the draft order of conditions is to include all general conditions, as well as the following special conditions pursuant to Mass General Law Chapter 131, section 40: **1, 2,3,4,7,8,9,12,18, 27, 28 and 29**. Special conditions pursuant to the Bourne Wetland Protection Bylaw Article 3.7: **5,6,7,10,12,14,15,16,17,18,19,21,22,23 and 24**.

ADDITIONAL SPECIAL CONDITIONS pursuant to the Bourne Wetland Protection By-Law Article 3.7

ASC-1) The contractor shall develop a spill management plan for any hazardous materials that may be employed during work in the buffer zone, salt marsh, or over the water. Specifically, the plan must address how to effectively deal with spillage of fuel or hydraulic fluids from equipment. The contractor must maintain an appropriate spill kit at the project site at all times.

ASC-2) The applicant must meet with the Bourne Shellfish Constable and fulfill payment to the Shellfish Mitigation Fund per BWR 1.09(2) prior to construction. Proof of payment must be submitted to the Agent prior to construction.

ASC-3) All recommendations included in the Division of Marine Fisheries letter dated December 21, 2023 and signed by Amanda Davis are to be incorporated into this OOC.

ASC-4) Permanent walkway must be constructed during salt marsh dormant season.

General condition Number(s), Special Condition Number(s), Bylaw Conditions Number(s) **14, 15, 16, 17, 18, 20, 21, 25** above shall continue in perpetuity beyond the limitations of this Order and with the sale of the property to others.

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Motion made to move the draft to the final by vice chair Palumbo and seconded by Ms. Weston. All in favor. **Motion carried 4-0-0.**

5. Applicant: Ian E. Davies DEP File Number: **SE7-2270**
Representative: Bracken Engineering, Inc.
Project Address: 7 Gainsboro Drive, Buzzards Bay
Proposed Project: To construct a 3-foot wide by 125-foot long seasonal pier, ramp and float system with a permanent walkway, including all associated utilities grading and landscaping. The proposed project is located within 100' of a wetland resource area and in a V flood zone. Hearing closed on 12/07/2023.

Associate member Jacob Gadbois stood in to cast a vote while Chair Gray excused himself from participating in this review.

Motion made to close the public hearing by Mr. Szwed and seconded by vice chair Palumbo. Roll call vote: Mr. Gadbois-yes, Mr. Szwed-yes, vice chair Palumbo-yes and Ms. Weston-abstained. **Motion carried 3-0-1.**

Ms. Fitch read the draft order of conditions is to include all general conditions, as well as the following special conditions pursuant to Mass General Law Chapter 131, section 40: **1, 2, 3, 4,7,8,9,12,18,19, 27, 28 and 29.** Special conditions pursuant to the Bourne Wetland Protection Bylaw Article 3.7:**4,5,6,7,10,12,14,15,16,17,18,19,21,22,23, 24 and 25.**

ADDITIONAL SPECIAL CONDITIONS pursuant to the Bourne Wetland Protection By-Law Article 3.7

ASC-1) The contractor shall develop a spill management plan for any hazardous materials that may be employed during work in the buffer zone, salt marsh, or over the water. Specifically, the plan must address how to effectively deal with spillage of fuel or hydraulic fluids from equipment. The contractor must maintain an appropriate spill kit at the project site at all times.

ASC-2) The applicant must meet with the Bourne Shellfish Constable and fulfill payment to the Shellfish Mitigation Fund per BWR 1.09(2) prior to construction. Proof of payment must be submitted to the Agent prior to construction.

ASC-3) All recommendations included in the Division of Marine Fisheries letter dated November 15, 2023 and signed by Amanda Davis are to be incorporated into this OOC.

ASC-4) DMF recommends eelgrass surveys be conducted between June and September. Since this eelgrass survey was conducted in October, a second survey within the recommended time frame is required prior to construction.

ASC-5) The location of the block walkway must be stabilized with native, non-invasive plantings and monitored for one year to ensure survival and stability of the bank.

Bylaw Conditions Numbers **14, 15, 16, 17, 18, 20, 21, 25** above shall continue in perpetuity beyond the

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limitations of this Order and with the sale of the property to others.

Motion made to move the draft to the final by Mr. Szwed and seconded by vice chair Palumbo. Roll call vote: Mr. Gadbois-yes, Mr. Szwed-yes, vice chair Palumbo-yes and Ms. Weston-abstained. **Motion carried 3-0-1.**

Request for Certificate of Compliance

1. Applicant: Kenneth B. Vona DEP File Number: **SE7-2106**
Representative: Cape & Islands Engineering, Inc.
Project Address: 34 Baxendale Rd
Proposed Project: Request for Certificate of Compliance for the Order of Conditions issued on 11/04/2020. To construct and maintain a retaining wall and fill, deck, stairs with the removal of second set of stairs, maintain previously approved invasive species within an AE Flood Zone, V Flood Zone and within a 100 feet of a wetland resource area.

Ms. Fitch made contact with the applicant, and as per ASC-2, it is stipulated that a monitoring report for any modified area must be furnished to the Conservation Department post-completion of the work, and subsequently, after a year.

Motion made to postpone by vice chair Palumbo and seconded by Ms. Weston. **Motion carried 4-0-0.**

2. Applicant: James O'Reilly DEP File Number: **SE7-1442**
Representative: Christopher B. Sherwood Esq.
Project Address: 0 Nairn Road, Cataumet
Proposed Project: Request for Certificate of Compliance for the Order of Conditions issued on 11/21/2002. Replacement of coastal bank stairs and section of seawall within 100 feet of a wetland resource area and within a VE flood zone.

Ms. Fitch made a site visit on December 19th, 2023 and recommended issuance.

Motion made to issue the COC by vice chair Palumbo and seconded by Ms. Weston. **Motion carried 4-0-0.**

3. Applicant: Donald Berk DEP File Number: **SE7-1914**
Representative: Same
Project Address: 388 Scraggy Neck Road, Cataumet
Proposed Project: Request for a partial Certificate of Compliance for the Amended Order of Conditions issued on 11/09/2018. To construct a new single family dwelling; to include buffer restoration and adjustments of the previously approved retaining wall within both AE and V flood zones and within a 100 feet of a wetland resource area.

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Ms. Fitch conducted a site visit on December 19th, 2023, and observed that neither the house nor the pool had been completed; however, some landscaping and a wall had been executed. Notably, there had been a change of ownership. Considering this change, it's likely that the registry may not approve a partial Certificate of Completion (COC). Instead, they may issue a full COC while specifying the incomplete work. Ms. Fitch recommended to grant the COC.

Motion made to issue the COC by vice chair Palumbo and seconded by Ms. Weston. **Motion carried 4-0-0.**

4. Applicant: Alex & Julie Szeto DEP File Number: **SE7-1648**
Representative: Atlantic Design Engineers, Inc.
Project Address: 99 Phillips Road, Sagamore Beach
Proposed Project: Request for Certificate of Compliance for Order of Conditions issued on November 11, 2006. The reconstruction of the existing dwelling and the installation of a new septic system. Located within 100' of a wetland resource area and within an AE flood zone.

The boardwalk over town property has been removed and beach grass replanted. The final site visit was made on 11.16.23.

Motion made to issue the COC by vice chair Palumbo and seconded by Ms. Weston. **Motion carried 4-0-0.**

Report of the Conservation agent:

Ms. Fitch plans to send out an email to everyone for review, specifically addressing the instances where Land Containing Shellfish regulations are necessary. There has been some uncertainty regarding the conditions that warrant the 2.5 to 30-inch separation required for the base of the float, prompting the need for clarification.

Motion made to excuse absent members by Mr. Swzed and seconded by vice chair Palumbo. **All in favor. Motion carried 4-0-0.**

Motion made to adjourn Mr. Swzed and seconded by vice chair Palumbo. All in favor. **Motion carried 4-0-0.**

Minutes typed by Amalia Amado, Conservation Secretary

Audio recorded by the Conservation Department.

Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can and include a way we can contact you if we need more information. Please allow advance notice. Send an email to kthut@townofbourne.com or call the Town Administrator's Office at 508-759-0600 x1503.