

# ***Conservation Commission***

## ***Meeting Minutes***

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

October 5, 2017

### **I. Call to order**

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on October 5, 2017. Chm. Gray explained all of the reviews, unless otherwise stated, are joint reviews. Applications will be processed pursuant to the Massachusetts Wetlands Protection Act, M.G.L. c. 131, s. 40 and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw.

Note: Chm. Gray addressed the audience and explained the 5, 5, 5 rule; which allows the applicant / representative five minutes to make a presentation to the Commission members, Commission members will take five minutes to seek clarification if needed, the conservation agent will also give a report and five minutes of public input is allowed. He asked for all to silence their cell phones.

Note: The meeting was being recorded anyone in the audience who was recording or videotaping was asked to acknowledge such to the Commission. The proceeding listing of matters are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may be discussed to the limited extent permitted by the Open Meeting Law. All items within the meeting agenda are subject to deliberation and vote(s) by the Conservation Commission.

**Members Present:** Robert Gray, Rob Palumbo, Melvin P. Holmes and Elise Leduc.

**Excused Members:** Thomas Ligor, Paul Szwed, Susan Weston and Associate Member, Greg Berman.

**Also Present:** Sam Haines, Carol Mitchell, David MacLean, Tom Lee, Neil Langille, John MacLachlan, John Churchill, Dan Reddy, Mike Powers, Matthew Creighton, Clifford Wise and Gregory Cummings.

### **Request for Determination of Applicability:**

2) Maureen Dunn and Neil Langille

File # CC17-36

Representative: Same

14 Wright Lane, Buzzards Bay

To renovate and extend kitchen and construction of a deck within an AE Flood Zone.

Materials Reviewed – Site Photographs, Site Plan of Record and DEP Wetlands Change Mapping.

**(Hearing Under State Act Only)**  
**Continued from September 21, 2017**

Mr. Langille addressed the Commission and described the proposed project.

Board Comment – None.

Agent Comment – Mr. Haines stated the project is located within an AE Flood Zone, is not subject to the local Bylaw and the area where the construction is being proposed is relatively flat lawn; the whole area has been disturbed. As long as the project meets the Building Code standards for Appendix G, he has no issues with the project.

Board Comment – None.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Palumbo moved, Mr. Holmes seconded a Negative Two Determination.** With no discussion, the motion carried. 4-0-0.

**Notice of Intent:**

1) Donald W. Jones Jr.

File # SE7-1985

Representative: David R. MacLean & Associates

36 Baxendale Rd. Cataumet

To repair, restore and slightly modify existing boat house and to remove invasive vegetation and revegetate with native species within a V Flood Zone and within a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record (sheets S1, A0.1, A0.2, A1.1, A1.2), structural detail on Glasswalk SG and DEP Wetlands Change Mapping.

David MacLean addressed the Commission. He stated it's a two-part presentation, the first will pertain to the architectural piece of the project, which he will present and the landscape piece will be presented by Tom Lee, the consultant and landscape architect.

Mr. MacLean stated the existing boat house was built in the 1940s. The boat house is in need of restoration. It's structurally sound, but needs to be re-shingled in some areas and needs some repair. Additionally, half the boat house is enclosed, they are seeking to enclose the entire boat house. In so doing, they are proposing to extend the existing porch. The proposed extension will be cantilevered out four feet; nothing touches the beach. It will have transparent 1" Plexiglas panels, with a linear drain along the entire edge. The transparent Plexiglas will allow for 92% transparency to ensure sufficient light penetration to the existing salt marsh. There will be eight 1" Plexiglas panels which will be screwed down and will only be in place from Memorial Day to mid-September. He explained pedestrians will be able to pass around the building to gain access to the beach. In closing, Mr. MacLean reiterated the key points of his presentation.

Board Comment – Ms. Leduc questioned the removal of the panels during the off-season and its impact on pedestrians accessing the beach. Mr. MacLean stated presently, pedestrians can pass around the building as it is. He mentioned that the clients also own the property next door so there's a lot of traffic back and forth. A discussion ensued.

Agent Comment – Mr. Haines stated he and the representative have had numerous conversations with regard to the design of the project. He was concerned with the light penetration from a standard deck to the salt marsh as well as allowing fresh water to infiltrate into the salt marsh. Those concerns were addressed with the Plexiglas panels and the linear drain. The roof of the existing structure will not be extended any further than is currently there. Mr. Haines stated one issue he has with the plan is the location of the Mean High Water Line. On the plan drafted by Down Cape Engineering, it depicts the approximate location of the Mean High Water Line and appears to be further from the boat house than visual evidence. Mr. MacLean stated the owners would like to obtain a Chapter 91 license in case something happens to the structure. A Chapter 91 License requires that the building be located within Mean High Water. He stated he spoke with David Hill from Down Cape Engineering who is willing to re-evaluate the location of the Mean High Water Line. Mr. Haines's concerns are based on wet beach conditions and a wrack line. He stated it may be difficult to condition the Order without knowing exactly where the Mean High Water Line is. Mr. Haines feels if it doesn't require a Chapter 91 License, in his opinion, the Commission shouldn't allow the set of stairs as a net loss for the beach because there won't be a requirement to have

access across the structure. If it does require a Chapter 91 License then the stairs will be required.

Board Comment – Ms. Leduc asked if the agent is suggesting that if a Chapter 91 is required that stairs be installed for pedestrians to walk up and over the porch and then back down. Mr. Haines explained that under Chapter 91, there are restrictions that have to allow access between Mean High and Mean Low. Mr. MacLean elaborated further.

Agent Comment – Mr. Haines stated the Commission will have to make a determination as to whether or not the Plexiglas will adversely impact the saltmarsh vegetation. Ms. Leduc asked if it will affect the habitat value. Mr. Haines stated he doesn't see this as a barrier to habitat movement; however, the Commission will have to make that determination.

Additional Board Comment – Chm. Gray questioned how the representative arrived at the 92% transparency figure. Mr. MacLean stated the figure came from the manufacturer. Chm. Gray asked the agent if he agrees with that. Mr. Haines stated he has not seen the spec sheet from the manufacturer. Mr. Holmes expressed concern that the Plexiglas may increase temperature. Mr. Maclean stated it faces north so he doesn't see that being an issue.

With no further comment regarding the architectural portion, Mr. Lee began the landscape portion of the presentation. He discussed the various types of invasive vegetation that is growing and the native vegetation they are proposing to replant the area with.

Board Comment – Chm. Gray asked for an estimated time frame, start to finish. Mr. Lee stated if removal and prep can take place this fall, then they will let it stabilize over the winter and see if any invasive seeds have regrown in the spring. Chm. Gray reiterated the conceptual plan is to clear and stabilize for the fall, assess the situation in the spring, remove any invasive species that have regrown, and then in the spring, perform the planting. Mr. Lee concurred.

Mr. Haines questioned the use of herbicides. Mr. Lee stated they are proposing spot treating, no spraying. They intend to hire a licensed applicator to perform the cutting and then apply the herbicide directly on the stem.

Ms. Leduc questioned a note on the final page of the submitted package that states, lift canopy of oaks & pines. Mr. Lee explained the canopies have a mix of healthy branches and dead wood with distorted branches. They are proposing to perform some selective pruning of the canopy to allow more light down on the new vegetation. In Ms.

Leduc's opinion, any dead wood or branches that don't pose a hazard shouldn't be removed.

Ms. Leduc asked how the core logs that are depicted on the plan will be anchored. Mr. Lee stated they'll probably be staked in. She asked if they will be installed temporarily. Mr. Lee stated they are happy to remove them once the vegetation takes hold if that's what the Commission requires.

Agent Comment – Mr. Haines explained the vegetation work on the Coastal Bank described in the NOI consists of removing invasive species and replanting native shrubs. There is the removal of three trees being proposed on the plan which are either non-native or dead, this wasn't in the original advertisement or on the agenda. Also, the site plan does not show a second set of existing coastal access stairs which are located off the flagstone patio. Plan L3 describes the rebuilding of the existing beach access stairs and a retaining wall, this work is all within the Coastal Bank or on top of the Coastal Bank and was also not included in the project description or advertisement. Mr. Haines stated the Commission will have to determine whether this work may proceed under this order. Chm. Gray asked for clarification. Mr. Haines stated the project description in the NOI and in the advertisement did not mention the retaining wall or the rebuilding of the coastal stairs. Mr. MacLean stated he thought access to the beach was a path only, not stairs.

Ms. Leduc asked what method will be used to remove and rebuild the retaining wall. Mr. Lee stated it's usually individual timbers doweled together with rebar, once the rebar is pulled out the timbers will be removed piece by piece. Ms. Leduc asked if the work will be done by hand. Mr. Lee stated yes, there's no access for machinery. Ms. Leduc asked what the mechanism will be to hold back the earth once the wall is removed. Mr. Lee stated there's an ornamental flower bed that would have to be excavated out. Ms. Leduc asked if that will be excavated by hand. Mr. Lee stated yes, there's not even room for a Bobcat. Ms. Leduc asked where the excavated material will be stored in the meantime. Mr. Lee referred to several areas on the property for storage. Ms. Leduc asked if he knows the approximate volume of soil. Mr. Lee stated he doesn't know; however, the wall's approximately 3' high and approximately 78' in length.

A brief discussion transpired with regard to the legal ad that was placed and whether or not the proposed work on the second set of stairs could be considered a landscape feature.

Chm. Gray asked the Commission members how they'd like to proceed with the issue regarding the second set of stairs; would they like to continue the matter so a new legal

ad can be placed to specify the stairs or do the feel the landscape activities will cover what is being proposed. Ms. Leduc stated the ad doesn't specifically mention landscaping so she feels it may be appropriate to re-advertise. She also feels additional detail is needed for the proposed work on the retaining wall and expressed concern that having more than one company involved may cause some aspects of the project to be overlooked. Mr. MacLean stated they'd be willing to take the stairs and the retaining wall out of this NOI. Ms. Leduc asked if a revised plan would have to be submitted. Mr. Haines stated if the Commission would like to issue an order tonight, they can simply condition the order that the stairs and retaining wall aren't included. Mr. Haines reiterated his concern with regard to the Mean High Water Line. Chm Gray stated the survey plan was prepared by a registered land surveyor who used an approximation for the Mean High Water Line and that's what the representative used to prepare the plan. The question of whether or not it needs to comply with Chapter 91 is up to Chapter 91 and is not within the Commission's purview. The Commission may add some language into the Order that makes the applicant aware of the fact that they may need to comply with Chapter 91. A brief discussion transpired with regard to the two sets of stairs listed on the plan.

Chm. Gray suggested conditioning the stairs as shown on the plan for the boat house that would grant permission to install them only after a Chapter 91 is granted. Additionally, he suggested removing the second set of stairs from the Order because they weren't referenced in the public notice. Mr. MacLean stated he's fine with that. Chm. Gray asked if the second set of stairs is a full set of wooden stairs. Mr. Haines stated they are retaining timbers constructed into the Bank. Chm. Gray stated they may be something the agent could address administratively in the future.

Public Comment – None.

Board Comment – Mr. Palumbo asked if the proposed work on the retaining wall is also being removed from the order. Ms. Leduc confirmed that only the boat house stairs and the revegetation is what will be voted on. Mr. MacLean advised that should the property owner wish to perform repairs on the retaining wall and the second set of stairs, they'd file a separate Notice of Intent. Chm. Gray stated they could simply request to amend the existing Order of Conditions. This would require a new legal ad and for the abutters to be re-notified. Mr. MacLean was in agreement.

Chm. Gray entertained a motion to close the public hearing. **Mr. Holmes moved, Ms. Leduc seconded to close the public hearing.** With no discussion, the motion carried. 4-0-0.

Prior to reading the Draft Order of Conditions, Mr. Haines asked the Commission if they'd like a Special Condition added to the order disallowing the selective pruning of trees. Chm. Gray suggested the agent supervise the pruning of the dead trees to ensure trees that serve a purpose or hold wildlife habitat value aren't removed. He advised the agent to err on the side of caution as some of the dead trees in the Bank that aren't removed could become uprooted and cause an erosion problem. Mr. Haines stated he will handle this issue administratively.

Mr. Haines - Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers; 1-4, 7, 9, 10, 12, 15, 18, 19, 22, 26-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers 2, 5, 6, 12, 15 and 25. Number 12 will be amended to read that this Order of Conditions is not valid until the applicant receives a license from the DEP Division of Wetlands and Waterways relative to Chapter 91; if it is determined that the site falls within Mean High Water. Should any parts of the proposed structure or erosion controls break loose, it is the responsibility of the applicant to recover of the same or repair any damage to property of any parties that occurred during the loose structure. The following additional Special Conditions apply; 1) no foliar spraying of herbicides is allowed, a licensed pesticide applicator must perform the work, 2) the stairs off the boat house will be installed only after a Chapter 91 License is acquired, 3) reconstruction of the coastal access stairs and retaining wall are not permitted under this Order.

Ms. Leduc asked if the elective tree pruning is included in the order. Mr. Haines stated it was discussed that he will approve tree pruning administratively, but is willing to add a condition to the Order if they would like. Ms. Leduc doesn't feel it's enforceable if it isn't added in. Mr. Haines suggested adding a fourth condition that a pre-construction site meeting must be attended by the Conservation agent along with the landscaper and contractor and all pruning of trees must be approved by the Conservation agent. The Commission members agreed.

Chm. Gray entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Holmes moved, Ms. Leduc seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no further discussion, the motion carried. 4-0-0.

## 2) Calamar Enterprises

File # SE7-1984

Representative: InSite Engineering

Lot 4 Kendall Ct Subdivision (formerly 25 Perry Ave), Buzzards Bay

To construct a 3 story apartment complex with associated parking, utilities, drainage and landscaping within an AE Flood Zone.

Materials Reviewed – DEP Wetlands Change Mapping, Stormwater Management Report prepared for Calamar at Bourne, prepared by In Site Engineering Services, LLC, dated August 23, 2017; Site Plans prepared for Calamar at Bourne (18 sheets), prepared by In Site Engineering Services, LLC, dated August 23, 2017; Kendall Court Definitive Subdivision Plan titled: Grading and Drainage Plan, prepared by Horsley Witten Group, Inc., dated (revised) 10/10/2017; Kendall Court Definitive Subdivision Buzzards Bay, titled: Proposed Conditions Drainage Map, prepared by Horsley Witten Group, Inc., dated (revised) 10/10/2017.

**(Hearing Under State Act Only)**

Bretton Harkawicz of Calamar Enterprises addressed the board. Paul Carlson of In-site Engineering was also present. Mr. Harkawicz explained that the proposed project is currently before the Planning Commission and their public hearing has been continued to the following Thursday. They have received comments from the Design Review Committee who presented a letter of recommendation to the Planning Commission.

Mr. Harkawicz provided a brief history on Calamar Enterprise and explained that they are proposing to build and be the owner/operator of a senior housing complex. He stated if this project moves forward, it will be their nineteenth building that they've built throughout the mid-west and the Atlantic seaboard. The proposed facility will be for their own portfolio, they will have their own employees who will manage and operate the facility.

Mr. Harkawicz referred to the map and discussed the proposed location of the facility. He described in detail the layout of the proposed structure and the proposed landscape plan. Mr. Harkawicz explained that once Kendall Court is built, they will tie into Kendall Court's gas, water and sewer.

Mr. Carlson described the layout of the lot, its elevation and the proposed design of the storm water facilities. Mr. Harkawicz elaborated further on the lot's elevation.

Board Comment – Chm. Gray opened a brief discussion with regard to FEMA's freeboard regulations.

Mr. Holmes asked how raising the site will impact Perry Avenue. Mr. Harkawicz discussed the grading process. Mr. Carlson elaborated further.

Chm. Gray asked how the property will be accessed. Mr. Harkawicz stated the facility will be accessed off Kendall Court. Mr. Harkawicz briefly discussed an initial plan for emergency access but will now be pedestrian access.

Agent Comment – Mr. Haines stated he has spoken to the Town Planner numerous times with regard to this project. It has been determined that it will go to a joint peer review which will be led by the Bourne Planning Board. The reason why the Commission will not take the lead on this is because their water and drainage is tying into the easements and drainage for Kendall Court. Mr. Haines noted a discrepancy between sheets four and twelve on the east side of the property. Sheet four shows a sloping grade, whereas twelve refers to a concrete retaining wall. Sheet eighteen has a typical detail of the retaining wall. He questioned which is correct. He also mentioned the possible need for additional erosion controls along the property line. Mr. Harkawicz stated this was a discussion held with the Planning Commission. Erosion sedimentation control measures will be in place during construction to protect property lines with straw wattles and hay bales in select sloped areas. Mr. Carlson stated amendments will be made to the plan to reflect those measures.

Mr. Harkawicz referred to the plan to discuss the various proposed locations of retaining walls as well as the types of plantings being proposed.

Mr. Haines stated it may be appropriate to install either a wire backed silt fence or a silt fence/hay bale combination along the northwest side of the property to protect the abutting homes. Mr. Harkawicz agreed.

Board Comment – Chm. Gray asked if a peer review has been scheduled. Mr. Haines stated they are in the process of scheduling it and are trying to use the same individual from Coastal Engineering as the one used for the hotel and subdivision. Mr. Harkawicz stated based on conversations he's had with the Town Planner, the review has been started.

Chm. Gray asked the agent if specific language resulting from the peer review will be needed in order to issue the Order of Conditions. Mr. Haines stated he doesn't have any information from the peer review and would feel more comfortable having additional information.

Agent Comment – Mr. Haines explained the fill that will be placed for the project will create Coastal Banks per DEP Policy 92.1, which in his opinion may place unfair bylaw constraints. Should the Commission issue an Order, he recommends a special bylaw condition that says, should the project create Coastal Bank per DEP Policy 92.1 as a result of fill within the AE Flood Zone to comply with building code standards, these Coastal Banks would not be subject to the minimum 50' setback under the town's Wetlands Protection Bylaw.

Board Comment – None.

Public Comment – abutter, John MacLachlan, addressed the Commission. He provided them with a multi-page handout and provided a brief detail of the land. He discussed the various species of wildlife that he states he's seen on the site Mr. MacLachlan referred to a map and photographs in his handout and discussed the existence of a pond on the site and also the possibility of a Vernal Pool existing. He expressed concern that the site is home to the Eastern box turtle and questioned whether the site has ever been surveyed for wildlife or a wetland and if the Commission has ever visited the site.

Board Comment – Chm. Gray asked the abutter to pinpoint on the map the area that he thinks the pond is located. Mr. MacLachlan did.

Next, Mr. MacLachlan expressed concern that the project will greatly affect groundwater on his property. He is worried that parking lot runoff will jeopardize his organic garden. Additionally, he discussed concerns with the proposed catch basin and the lack of drainage in the proposed tiered wall. He is asking that perimeter drainage be installed. He questioned whether a fencing plan has been submitted and was told fencing is not being proposed for this project. He asked that the tiered wall be fenced to prevent pedestrian access.

Board Comment – Chm. Gray stated they will investigate whether there are jurisdictional areas on the site under the bylaw. He asked the agent if a wildlife habitat report was submitted on this property. Mr. Haines stated there was not. Chm. Gray asked the representative whether or not the site had been professionally examined from a wildlife perspective. Mr. Harkawicz stated they had. He explained that they looked at National Wildlife Habitat history, National Wetland indicator maps and classified the soils on the site. There was no listed endangered species on the National Wildlife indicators and there were no wetlands indicated on National Wetlands inventory. Also, the soils that are presently on the site are not indicative of hydric soils, which would indicate the presence of a wetland. Chm. Gray informed the representative that unfortunately the soil maps usually map soils in three to five acres or more so they never pick up micro topographies which could possibly be hydric soils and create wetland conditions that would be applicable to the bylaw. Chm. Gray noted that in the NOI application, the map that was utilized for the rare species was dated 2008. He stated there is a 2017 map and suggested that map be consulted.

Chm. Gray asked Mr. MacLachlan if he ever notified the state regarding the presence of Eastern box turtle. Mr. MacLachlan stated no. A discussion ensued.

Chm. Gray informed Mr. MacLachlan that the agent will investigate the area he feels may have been a pond. Mr. MacLachlan asked if any Commission members had information regarding the pond. Mr. Haines replied that he had been to the site earlier

that day and doesn't feel it is a wetland under the bylaw. It appears to him that the area was a test pit of some kind. Mr. MacLachlan stated a pond is depicted on this site on several of the town's maps and questioned why the town has no information on the pond. Mr. Haines stated there is a body of water next door at their Canal Crossing site. He did not see any body of water on the project site but will research it further. A discussion ensued.

Chm. Gray explained the Commission has very limited jurisdiction in this matter. If there's a bylaw wetland, they have more jurisdiction; however, the only reason this was filed with the Conservation Commission is because it's mapped as a Coastal Flood Zone, which is a Wetland Resource Area. Unlike all other Wetland Resource Areas, it has no performance standards for the Commission to condition the project. He explained that the Planning Board will work with the Conservation agent to address his and anyone else's concerns. A discussion transpired with regard to the Commission's purview.

Chm. Gray explained to the representative that the Commission will be looking into the concerns raised by the abutter.

Chm. Gray entertained a motion to continue the matter to October 19, 2017. **Mr. Holmes moved, Mr. Palumbo seconded to continue the matter to October 19, 2017.** With no discussion, the motion carried. 4-0-0.

## 2) Town Of Bourne

File # SE7-1982

Representative: JC Engineering, Inc.

0 Crab Rock Way, Sagamore Beach

To rebuild the existing coastal access stairs and perform storm water improvements within a V Flood Zone and a Coastal Resource Area.

Materials Reviewed – letter from The Massachusetts Wildlife's Natural Heritage & Endangered Species Program.

**(Continued from September 21, 2017)**

Chm. Gray asked the agent why the matter was continued. Mr. Haines stated they were awaiting a response from The Massachusetts Wildlife's Natural Heritage & Endangered Species Program, which they have received.

Chm. Gray stated he would not normally sit on a JC Engineering project because he does work for them; however, if he steps down there's no quorum. Therefore, he invoked the rule of necessity which allows him to sit to maintain the quorum. In doing so, he stated again for the record that he would not normally sit on a JC Engineering project because he does work for them. He asked the public if anyone was opposed to him sitting to maintain the quorum, there was not.

John Churchill addressed the board and discussed the conditions set forth in the letter from The Massachusetts Wildlife's Natural Heritage & Endangered Species Program. He briefly discussed input received by abutters with regard to the material being proposed for the detachable step. He also discussed the possibility of adding additional sonotubes at the bottom of the detachable step to serve as additional support vs. a concrete pad that was originally proposed. Mr. Churchill briefly explained ways that the erosion problem will be addressed.

Board Comment – Mr. Palumbo asked if an access agreement has been reached. Mr. Haines stated the town is continuing to work on an access agreement. They have reached an agreement with all but three property owners. If an access agreement isn't reached they will have to access the area from the top, which may impact on the cost.

Mr. Holmes opened a brief discussion concerning the proposed sonotubes at the base of the structure vs. the originally proposed concrete pad.

Chm. Gray asked if the town is still pursuing beach access with the three remaining property owners. Mr. Haines stated they are in discussions with the property owners and suggested conditioning the Order that beach access must be obtained. A discussion ensued.

Agent Comment – Mr. Haines stated he'd prefer to have the administrative flexibility with the construction of detachable stairs.

Additional Board Comment – Mr. Palumbo clarified that the detachable stairs will only be removed during storm events. Mr. Churchill agreed.

Public Comment – Dan Reddy thought it'd be better to store the detachable stairs along the side of the structure or under the structure rather than having the DPW remove them completely from the site. A brief discussion transpired concerning the material that may be used to construct the detachable stairs. Mr. Haines stated by not putting specifics in the Order, will allow him the flexibility to work with their contractor to determine what the best course of action should be. Mr. Reddy stated the original idea from a design point of view was that if the last section was compromised, it wouldn't affect the

integrity of the rest of the structure. Mr. Reddy discussed the need to reconfigure the hand railings to match the profile of the timber landing. He asked if access from Plymouth is still an option. Mr. Haines stated it is not. Mr. Reddy offered assistance with obtaining access agreements from the remaining property owners. Mr. Haines stated he does not feel comfortable with sharing property owner information.

Mike Powers discussed his thoughts on the installation of the sonotubes.

Gregory Cummings inquired as to whether or not the stairs will definitely be detachable. Mr. Haines stated the DPW, the contractor and the town's engineer will be involved in making that decision.

With no further discussion, Chm. Gray entertained a motion to close the public hearing. **Mr. Holmes moved, Ms. Leduc seconded to close the public hearing.** The motion carried 4-0-0.

Mr. Haines - Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers; 1-3, 10, 12, 14, 18, 19, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers 5, 6, and additional Special Conditions, 1) the town must obtain access agreements prior to crossing any private land for beach access, 2) if beach access is required, sand ramps or swamp mats must be placed over existing stone groins to protect the groins from vehicles crossing over them, 3) all work associated with beach stair installation and maintenance is prohibited during the period of April 1<sup>st</sup> and August 31<sup>st</sup> to protect breeding shorebird species, 4) the applicant has the responsibility of protecting breeding Piping Plovers and state listed species of terns that may be on that section of beach; therefore, the applicant should allow the regular monitoring for the presence of Piping Plovers and terns by a qualified shorebird monitor as determined by the Division during the period of April 1<sup>st</sup> through August 31<sup>st</sup> and shall allow any nests, scrapes or unfledged chicks to be protected with symbolic fencing, warning signs and twine fencing, 5) upon filing for renewal, extension or amendment of the Order of Conditions, the applicant shall contact the division for a written response regarding impacts to Resource Area habitats of state listed wildlife.

Chm. Gray entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Holmes moved, Ms. Leduc seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no further discussion, the motion carried. 4-0-0.

**Abbreviated Notice of Resource Area Delineation:**

1) Greg Wirsén

DEP File #  
Green Seal Environmental  
21 Hunters Brook Road, Sagamore Beach

Abbreviated Notice of Resource Area Delineation

Materials Reviewed – Site Photographs, Revised Site Plan of Record, DEP Wetlands Change Mapping and letter from resident outlining history of Hunters Brook.

(Continued to October 19, 2017)

**Request to Amend Order of Conditions:**

**1) Hideaway Village Condo Assoc.**

File # SE7-1896

Representative: BSC Group

749 Head of the Bay Road, off Knollview Rd & Nautical Way, Buzzards Bay

Presentation of the 3 year monitoring report and request to amend the existing Order of Conditions to allow for the installation of fiber rolls, replacement of hay bales and zig-zag sand drift fence within a V Flood Zone and within 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs, 3 year monitoring report prepared by BSC, Stormwater fact sheet for sand fencing, Site Plan of Record and DEP Wetlands Change Mapping.

(Continued from September 21, 2017)

Matt Creighton of BSC Group addressed the members. He explained back in the spring, when the third round of beach nourishment was being completed, the Order of Conditions were close to expiring. A one year extension was requested to complete the third year of nourishment but also because the Commission had asked for a three year monitoring report, which needed to be completed after the nourishment phase. Since then, the three year monitoring report has been submitted. He explained a shellfish survey was provided prior to the start of the profiling of the beach. Each year before the nourishment began, a pre-survey and a post-survey was performed. The surveys went as far out seaward as they could get at low tide walking with a rod, a boat was not used. The two adjacent beaches on both sides were also surveyed to see where the sand was going. The three year report also included a shellfish survey. He went on to briefly explain their findings over the three year period. Mr. Creighton stated they will be requesting another extension in the spring.

Agent Comment – Mr. Haines asked if the aerial photo provides a good indication as to where the sand is drifting. Mr. Creighton referred to the photo to explain where the sand was originally placed and where it had drifted to. A brief discussion transpired with regard to an existing sandbar.

Board Comment – Chm. Gray noted a decline in the oyster population. Mr. Creighton explained the reason for the decline is due to the removal of an unpermitted stone groin.

Ms. Leduc commented on the decline of other species of shellfish. Chm. Gray stated the area is open for shell fishing. Ms. Leduc stated shell fishing occurred prior to the start of the project and asked how they differentiate between impacts caused by the project vs. shell fishing. Chm. Gray explained why it's difficult to put any validity into a shellfish survey. A discussion ensued.

Next, Mr. Creighton discussed the beach profiles and changes that will be implemented in the amount of sand that will be applied in the future to avoid overbuilding the beach. Ms. Leduc stated she hasn't seen the original application or plan, but would like to know how it was worded because she's concerned that the beach may have been over built for three years. Mr. Haines provided the Commission with the original file. Mr. Creighton stated he believes the original Order of Conditions allowed for up to 3,500 cubic yards of sand per year to be placed on the beach. Ms. Leduc questioned whether or not sand was automatically added each year even if no erosion occurred. Mr. Creighton replied that it was. Mr. Haines stated her concerns could be addressed in future Orders of Conditions and offered suggestions on ways to address Ms. Leduc's concerns moving forward. A discussion ensued.

Mr. Holmes stated he was present when the original application was filed and recalled that the project was not immediately approved; a lot of information was gathered prior to the Commission granting approval.

Mr. Creighton referred to site photographs and discussed at length the proposed project; to install fiber walls and a zigzag sand drift fence.

Mr. Haines clarified that this isn't going to be a typical sand drift fence to accumulate, this fence will retain their sand. Mr. Creighton agreed and elaborated further on the purpose of the proposed fence.

Agent Comment – Mr. Haines passed out a CZM Storm Smart Coast fact sheet that discusses issues that may be associated with this type of fence. Because there's a lot more wood associated with them, if they are involved in a storm, there's a lot more floating debris. It also talks about creating erosion rather than the accumulation of sand

in certain areas. A brief discussion transpired with regard to the existing fence and its purpose to create a protective dune.

Ms. Leduc asked if the protective fence will be in the same footprint as the nourishment or is it in another segment of the property. Mr. Creighton referred to the plan to pinpoint the nourishment area. He also discussed measures the property owner has taken to protect their road. Mr. Haines stated those preventative measures were never permitted.

Ms. Leduc asked the representative if he was before the Commission to inform them of what's already been done or to ask if it can be done. Mr. Creighton stated he's seeking permission to remove what was done and replace it with something more legitimate. He's seeking to amend the existing Order of Conditions which would allow the proposed work.

Ms. Leduc opened a brief discussion with regard to the type of fence selected for the proposed area for installation.

Ms. Leduc referred to the plan and questioned why a terrace was being created rather than a piece of a dune. Mr. Creighton offered an explanation for the reason of the design.

A brief discussion transpired with regard to existing storm water control on Nautical Way.

Ms. Leduc referred to grass pictured on the existing topography and asked if the intention is to plant the fill. Mr. Creighton replied, yes.

Chm. Gray asked for the agent's input. After a brief discussion, Mr. Haines stated he does not see this BMP application having any more of a negative impact than what's existing. Chm. Gray asked if what's being proposed is compatible with the regulations that govern this Coastal Resource Area. Mr. Haines stated, yes. Chm. Gray explained when a particular proposal by the applicant or representative of the applicant is compatible with the performance standards of that Resource Area, the Commission should not dictate the design. A discussion ensued.

Chm. Gray suggested the representative report back to the Hideaway Village Condo Association that the Commission is concerned with possible drainage issues associated with Nautical Way, which are more important to address in a future filing. A brief discussion transpired on possible ways to address the issues.

Ms. Leduc questioned the description of the project on the agenda and asked if the existing hay bales are being replaced or should it state they're being removed. Mr. Creighton stated they'd be replacing the hay bales with the fiber rolls.

Ms. Leduc asked when the proposed work will occur. Mr. Creighton stated he's unsure. The existing one year extension expires in the spring so the work will have to be done before then or they'll have to request an extension.

Public Comment – None.

A discussion transpired with regard to adding additional Special Conditions to the amended Order. Mr. Haines stated all conditions match the previous amendment except for the two additional conditions as previously stated. The additional Special Conditions are;

ASC-1: in accordance with 310 CMR 10.27(5), clean sediment of a grain size compatible with that on the existing beach must be utilized.

ASC-2: Project Proponent must contact the Director of Bourne Natural Resources at least four weeks prior to start of work to determine if any actions are required to prevent adverse impacts to shellfish within the work area.

ASC-3: All equipment must be stored above mean high water. In addition, adequate cleanup and containment equipment must be available on project site at all times in case of any fuel spills.

ASC-4: Project Proponent must meet criteria as noted by Mass. Division of Marine Fisheries, in letter dated June 2, 2014, to the maximum extent practicable.

ASC-5: This amended Order allows for the installation of drift fencing and coir logs off Nautical Way to prevent coastal erosion as shown on the August 4, 2017 Plan of Record.

ASC-6: The quantity of sand added for Beach Nourishment annually shall not exceed the amount necessary to maintain the Post Nourishment Profile (4/13/2017) as established in the As-Built plan included in BSC's 3 year Monitoring Report dated 04/14/2017. The quantity of sand shall not exceed 3,500 cubic yards annually.

Chm. Gray entertained a motion to grant the amendment with the language including the additional Special Conditions. **Mr. Holmes moved, Mr. Palumbo seconded to approve the amendment with the language including the additional Special Conditions.** With no discussion, the motion carried. 4-0-0.

In an effort to expedite the matter, Mr. Haines asked the chair to address a violation that he was going to address in his report that wasn't listed on the agenda.

- Violation 55 Salt Marsh – Mr. Haines responded to a complaint he received on October 5, 2017. There was earth work and fill being placed adjacent to the coastal salt marsh. Mr. Haines provided the Commission with photos he took of the site. He spoke with Mr. Wise, the property owner, and at that time he placed a verbal cease and desist on the work because of its proximity to the marsh. He noted there was also drainage being replaced. Mr. Haines felt this was in violation of the Wetlands Protection Act and the Bylaw because the work was not permitted.

Chm. Gray asked the agent if he inspected the silt fence that was installed. Mr. Haines stated the silt fence was in place but it wasn't dug in. He mentioned it's not an adequate BMP. Mr. Haines spoke with the property owner about this and he will look into getting some biodegradable straw wattles as soon as possible.

Mr. Wise addressed the Commission and expressed his embarrassment over a medical condition he's experiencing and asked for the board's patience. Chm. Gray made note of his request and asked for an explanation of the situation. Mr. Wise provided a brief history of the property and stated it has sustained storm damage over the years. He explained that he's trying to restore the property back to the condition that he remembers as a child. As for the drainage pipe, he explained that he'd like to use it to divert drainage from the house. Mr. Wise apologized for his ignorance of the regulations and stated he is prepared to do whatever is required by the Commission.

Agent Comment – Mr. Haines stated he is willing to work with Mr. Wise to remove all the material, remove the hardscaping and drainage in that area if he doesn't want to go through the permitting process. He's not sure the project would be approved under an RDA, and wants the dirt adjacent to the saltmarsh to be removed immediately. Mr. Haines explained the definition of an RDA to the property owner. He stated there's a lot more fill that hasn't been spread yet so Mr. Wise has the ability to grade the fill back to what the Commission could consider existing topography.

Board Comment – Mr. Holmes stated he's hoping the agent will be able to work with Mr. Wise.

Ms. Leduc stated Mr. Wise will need more than an RDA in order to accomplish what he's intending. She questioned the agent on the property owner's next step. Mr. Haines stated they'd either go to enforcement or he'll work with Mr. Wise to remove the soil from the area.

Mr. Haines explained to Mr. Wise the steps he needs to take to rectify the situation. Mr. Wise stated the house is a three season house and since he'll be doing the work on his own, he doesn't think he'll be able to accomplish it all before the winter.

Mr. Palumbo asked the homeowner how long he's been working on this. Mr. Wise stated he rented a machine and moved the fill in three days. Mr. Palumbo asked why he couldn't apply the same method to remove the fill as he did to spread it. A discussion ensued.

Mr. Haines informed Mr. Wise that his options are to try and resolve the matter or face enforcement. Mr. Holmes stated he'd like to see the matter get resolved.

A brief discussion transpired concerning the applicant's removal of invasive species from the marsh.

Mr. Haines informed the homeowner that the soil must be removed. Chm. Gray asked if the agent will work with Mr. Wise to remove the soil. Mr. Haines stated he will work with the homeowner and explained that if the soil isn't removed in a timely manner he'll come back to the Commission to issue an Enforcement Order. Mr. Haines asked Mr. Wise to install appropriate erosion controls in the area. He advised Mr. Wise that he can only remove the soil, all other work must cease.

Chm. Gray asked if the fill was brought in. Mr. Haines replied yes, there are two large piles.

A brief discussion transpired with the regard to drainage features the property owner is seeking to install.

Mr. Haines reiterated what's required of the applicant in order to avoid enforcement which will result in penalties and fines.

Mr. Wise thanked the Commission.

**Certificate of Compliance:**

1) David C. Warner

File # SE7-1962

Representative: Warwick & Associates

276 Scraggy Neck Rd. Cataumet

License and maintain the existing seasonal wooden pile supported dock and to restore a 25' buffer along the top of a sea wall within a V Flood Zone and within 100 feet of a Wetland Resource Area.

Agent Comment - A site visit was performed. The plantings are now in place. Mr. Haines recommended issuance of the certificate.

Chm. Gray entertained a motion. **Mr. Holmes moved, Ms. Leduc seconded to grant the Certificate of Compliance.** With no discussion, the motion carried. 4-0-0.

2) David C. Warner

File # SE7-1962

Representative: Warwick & Associates

276 Scraggy Neck Rd. Cataumet

Repair of existing sea wall within a V Flood Zone and within 100 feet of a Wetland Resource Area.

Agent Comment - A site visit was performed. Mr. Haines stated there's obviously been some repairs to the wall, though nothing recent. Mr. Haines recommended issuance of the certificate.

Chm. Gray entertained a motion. **Mr. Holmes moved, Ms. Leduc seconded to grant the Certificate of Compliance.** With no discussion, the motion carried. 4-0-0.

3) Marion Nutter

File # SE7-1791

Representative: Warwick & Associates

14 Wenaumet Bluffs Dr., Pocasset

Replace the existing concrete and stone sea wall with new stone revetment and to install a new foundation under the existing garage within an AE Flood Zone, 100 feet of a Wetland Resource Area and within 200 feet of a river front.

Agent Comment - A site visit was performed. Mr. Haines stated the wall and the required plantings are now in place. Mr. Haines recommended issuance of the certificate.

Chm. Gray entertained a motion. **Mr. Holmes moved, Ms. Leduc seconded to grant the Certificate of Compliance.** With no discussion, the motion carried. 4-0-0.

4) John L. Churchill Jr.

File # SE7-1945

Representative: JC Engineering, Inc.

24 Central Blvd., Bourne

To raze an existing building and shed, construct a new dwelling and septic system, perform minor grading and utility installation within an AE Flood Zone.

Agent Comment - A site visit was performed. Mr. Haines stated his conditions were not restrictive enough, there was more tree clearing and lawn than he had anticipated. However, he does not see any reason why they are not legally in compliance and recommended issuance of the certificate.

Chm. Gray entertained a motion. **Mr. Holmes moved, Ms. Leduc seconded to grant the Certificate of Compliance.** With no discussion, the motion carried. 4-0-0.

### **Other Business:**

- Update on 8 Agawam Point Road violation – Mr. Haines submitted site photographs for the members to review. He stated the dock has been removed, the grass is matted down and excavation has been performed for the pilings. It is up to the Commission to decide whether or not to take additional action; however, Mr. Haines feels no further enforcement action is required. He'd like to write the property owner a letter and monitor the situation for a year, reserving the right to require additional planting if the vegetation does not regrow as anticipated. The Commission members agreed. Chm. Gray asked if the property owner is clear that the dock cannot be reinstalled. Mr. Haines stated he could not be clearer and informed the property owner that reinstalling the dock without the proper permitting will result in an automatic enforcement with DEP. Mr. Haines also discussed with the property owner how to appropriately permit a saltmarsh walkway and all of the permitting required.

- Vote excused absent members, if necessary – **Mr. Holmes moved, Ms. Leduc seconded to excuse the absent members, Thomas Ligor, Paul Szwed, Susan Weston and Associate Member, Greg Berman.** With no discussion, the motion carried. 4-0-0.

- Acceptance of Previous Meeting Minutes – Deferred.

- Re-Organization of Conservation Commission – Deferred

- Report of the Conservation Agent – None.

- Public Comment Period on Non-Agenda Items – None.

## **II. Adjournment**

**Mr. Palumbo moved, Mr. Holmes seconded to adjourn.** With no discussion, the motion carried. 4-0-0. The meeting adjourned at 10:17 PM.

Minutes submitted by: Carol Mitchell