

**Town of Bourne
Conservation Commission
Meeting Minutes
Zoom Meeting Platform
June 02, 2021**

I. Call to Order

Chm. Robert Gray called to order the meeting of the Conservation Commission at 7:00PM on Thursday June 02, 2022, held in the Bourne Veteran's Community Building, 239 Main Street Buzzards Bay, MA 02532. Mr. Gray explained all reviews, unless otherwise stated are joint reviews. Applications will be processed pursuant to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131 40 and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw.

Mr. Gray asked if a member of the public wishes to comment they will first clearly state their full name for the record.

Mr. Gray asked if anyone was recording at this time, other than the Conservation Department.

Members present: Robert Gray, Elise Leduc-Fleming, Rob Palumbo, Paul Szwed

Members excused: Greg Berman, Thomas Ligor, Melvin Peter Holmes

Other Members: Stephanie Fitch, Richard Scott Vivilecchia, Amy Keenan, Brian Madden, Don Bracken, Maryfrances Galligan, Mark Manganello, Robert Desrosiers, John Chuckran, Paul O' Keefe, Bill Nielsen, Chip Coen, Kate McCarey, Susan Malcom, Natalie Galligan, Jim Filbin

Continuances (Notice of Intent)

1. DEP File Number: **SE7-2208**
Applicant: The Long Point Trust
Representative: Brian T. Madden, LEC Environmental
Project Address: 176 Scraggy Neck Road, Cataumet
Continuance requested to June 16th by the applicant.
2. DEP File Number: **SE7-2197**
Applicant: Town of Bourne
Representative: Zachary L. Basinski, PE, CFM
Project Address: 0 Shore Road, Pocasset
Continuance requested to June 16th by the applicant.

Withdrawn without prejudice. (Request for Determination)

1. File Number: **CC22-17**
Applicant: John Mathew Glynn
Project Address: 354 Circuit Ave, Pocasset
Reinstall pre-existing dock. This project is located in an AE flood zone, V flood zone and 100 ft. of a wetland resource area.

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Request for Determination:

1. File Number: **CC22-16**

Applicant: Richard Scott Vivilecchia

Representative: Same

Project Address: 144 County Road, Bourne

Remove and replace existing 8 x 8 shed with 16 x 10 shed, in the same location. This project is within an ACEC, 100 ft. of a wetland resource area and 200 ft. of a river front.

The homeowner Richard Scott Vivilecchia explains the current condition of the existing shed. The shed was built about 30-50 years ago and is built up on blocks. The shed has slid down the hill due to erosion over the years and he would like to increase the size of the shed for more storage on the property. Mr. Vivilecchia plans to put in sonotubes as close to the edge of the hill to help stabilize it. The front of the shed is the closest to the water and closest to the edge of the hill. Mr. Vivilecchia will rest the shed on cinder blocks. The hill appears to be solid and he has seeded some grass next to the shed in areas where he found to be eroded. He presented a plan with some erosion controls for the project, putting up a silt fence to maintain plants and keep materials off the slope.

Ms. Stephanie Fitch explains how she worked with Mr. Vivilecchia going over the RDA process and a site visit which prompted addressing the erosion and discussing the plantings. Ms. Fitch explains that it is a tight lot, and she explains that the way the driveway curves the plan fits the shed onto the one flat area it can fit in. Ms. Fitch concludes her report with showing Mr. Vivilecchia's native planting plan and erosion control plan and thinks it's a thorough RDA.

Member Comment: Mrs. Elise Leduc-Fleming's concern was about the shed being so close to the top of bank, which is already eroding. She asked about the placing of sonotubes during construction and questions if any digging would destabilize the bank. Mr. Vivilecchia answered that his method would be to use an auger machine to drill the hole. He will use an 8" tube in a larger hole to work as "surgically" as possible. Mrs. Leduc-Fleming says there may be a lot of rock underneath the soil. She reviewed the planting plan and appreciated the unique assembly of plantings that are usually atypical for Coastal Bank but it is a shadier site and given the location is farther back from the estuary system, there no concerns of salt spray.

No public comment.

Motion made by Mr. Palumbo and seconded by Mrs. Leduc-Fleming to approve under a Negative Two Determination.

Motion to approve under a Negative Two Determination- All in favor.

Motion carried. 4-0-0

Notice of Intent:

1. DEP File Number: **SE7-2207**
Applicant: Mass Maritime Academy
Representative: Mark Manganello, LEC Environmental
Project Address: 101 Academy Drive, Buzzards Bay

Proposed upgrade to an existing dock. This project is within a V flood zone and 100 ft. of a wetland resource area.

Member comment: Chm. Robert Gray explains to make a quorum there is a minimum of four members, and that Mr. Szwed never sits on Massachusetts Maritime Academy cases because he is an employee there. Chm. Gray explained that if he steps aside there would then only be three members and they would be unable to open the hearing. Chm. Gray explained there is a procedure in the law called The Rule of Necessity that allows him to sit on a matter if he needs to be the fourth member, which is the case now. The potential conflict is that Massachusetts Maritime Academy is his employer, again he normally would not sit on this matter. Chm. Gray asked if anyone objects to him sitting on this hearing.

No Objections.
Hearing Proceeds.

Mark Manganello introduces himself from LEC Environmental Consultants and introduced Russel Titmuss from GEI Consultants who will also be representing the pier improvement project. The project is designed to accommodate a new training ship for the academy. The ship is under construction and has different dimensions than the existing ship and requires more improvement and accommodations than what is there. Mr. Manganello identifies the Wetland Resource Areas: Coastal Flood Plain which covers the entire project area, Coastal Bank which is a rip rap slope along the shore line adjacent to the dock and behind the dock itself. There is Land Under the Ocean and Land Containing Shellfish Underwater. The project has four main components to it, there are several new mooring bollards, and a new pile supported fendering system, there are two pile supported concrete decks and there are infrastructure and utility improvements. Mr. Russel Titmuss explains in more detail about the accommodations of the new ship, it has almost the same length and width. The new ship is higher which is what's really driving the structural changes and it has more wind area, that's the primary difference. The new ship is a more modern ship which is powered by a diesel electric system, so the other aspect from upgrading the dock and mooring structure is upgrading the utilities. The ship can plug into shore power which is about 2 megawatts. There will be a new duct bank running from the entrance gate of the Academy, from last utility pole bringing in a new high voltage line that will come all the way down Academy Drive. The line will cross to a transformer which is positioned on the corner, from there it will cross over to a receptacle, which will plug into the ship to shore power. Other miscellaneous utility upgrades will be connecting new locations to the existing utility lines. The ship's heating system will be supplemented by steam from the shore. There is an existing steam generation building which will remain but the interior equipment will get changed out. The new steam supply will run in the existing utility trench that goes out to the dock. Mr. Titmuss explained the new fender system and that newer ships tend to have less steel in them and that the actual pressure you can have on the fenders is less. They are putting in more fenders and to do that they are putting in a row of piles with a concrete beam on top. The beam is five feet wide and eight feet tall, it is significant because the fenders are big for the ship. It will be supported by thirty steel pipe piles, that will run along the shore of the existing dock and they'll add the beam

on that which connects back to the existing dock. This will do two things, it gives a place for the new fenders and strengthens the existing dock for the loads from the new ship.

Member comment: Chm. Gray asked how far the vertical steel pile will be going into the sediment. Mr. Titmuss explained that it's a driven steel pile, the mud line is about -30, -32 right now using mean low water. They are going to drive it down until they get refusal, all of the existing piles on the pier are at about -50, -52 in that range, and so it will go about 20 feet into the sediment. There will be 30 steel piles going in. Also there are small patches in the deck area they want to fill in where piles will be placed for support, there is no fill going in the water. Again it will be the steel pipe piles, the reason for adding this one here is the new ship has a ramp that lowers down, so that you can actually drive a truck straight into the ship. This will be much more efficient and with the configuration of the existing dock there is a piece they'll need to add, so that the ramp can land on the expanded deck. Mr. Titmuss explains they are going to infill a portion of the deck where there's a notch in the deck to strengthen up the dock. All the bollard work and bollard foundations will be done on land. Near the bow new concrete mooring foundations will have greater capacity up to 250 tons to hold more lines. That goes back to an anchor wall to provide a pull out capacity.

Mr. Manganello talks about the DMF monitoring recommendations, and the concern is turbidity during construction. They recommend installing a silt curtain for turbidity and recommend speeds do not exceed 1 knot. They will monitor turbidity and make sure they are not exceeding the threshold.

Member comment: Chm. Gray asked if they quantified the square footage of Land Containing Shellfish impact. Mr. Manganello said the direct disturbance from the pilings would impact 120 square feet that is the approximate diameter of the pilings. Mr. Manganello commented that DMF listed the species of shellfish that are there on the map and that eel grass is noted in the general vicinity. The primary concern was turbidity effecting the eel grass more than anything else. Mrs. Leduc-Fleming asked if DMF had any specific recommendations pertaining to shellfish. DMF is only requesting turbidity monitoring. Chm. Gray recommends to incorporate by reference the DMF letter into the Order of Conditions. Mrs. Leduc-Fleming asked who would be doing the monitoring and recommends having a monitoring plan documented by Mass Maritime and the contractors so that everyone knows what the expectations are, having that on file prior to work starting would be helpful.

Public Comment: John Chuckran- Would like to see a condition added to the Order that states every pile must be pumped dry prior to installing concrete to prevent spillover of cementitious material into shellfish habitat. Mr. Manganello and Mr. Titmuss respond that is doable.

Motion made by Mrs. Leduc-Fleming and seconded by Mr. Palumbo to close the public hearing.

All in favor- motion closed.

The draft order of conditions is to include all general conditions and special conditions pursuant to 131 40 include: 1, 2, 3, 4, 7, 9, 10, 12, 14, 18, 19, 27, 28, 29

Special conditions pursuant to Bourne bylaw article 3.7 include: 5, 6, 7, 12 (CH.91)

ASC-1) All recommendations included in the Massachusetts Division of Marine Fisheries letter dated June 2, 2022 and signed by Simonette Harrison are to be included in this OOC.

ASC-2) A monitoring plan to meet the Massachusetts Division of Marine Fisheries' monitoring recommendation is to be submitted to the Conservation Agent prior to the start of work.

ASC-3) Every pile must be pumped dry prior to installing concrete to prevent spillover of cementitious material into shellfish habitat.

Motion made by Mrs. Leduc-Fleming and seconded by Mr. Palumbo to move the draft to the final. All in favor.

Motion Carried 4-0-0.

2. DEP File Number: SE7-2206

Applicant: Pdraig Duncan

Representative: John S. Chuckran

Project Address: 9 Wallace Point Road, Buzzards Bay

Rebuild existing sea wall within an AE flood zone, V flood zone and within 100 ft. of a wetland resource area. **Continued from 05/05/2022.**

Robert Desrosiers from ASAP engineering working with the contractor John Chuckran, addresses the four items that were raised at the May 5th hearing. 1. The slope of the rip rap wall, the goal is to get the slope as close to 1.5:1 as possible. 2. A re-engineered cap that shows a 6" bevel so that it's no longer a vertical face. The cap itself is above the inner tidal zone so that there is no interaction with the regular wave and river action that goes by there. 3. A shellfish survey done by Brad Holmes from Environmental Consulting & Restoration concludes the project was unlikely to impact the shellfish habitat. 4. The siltation curtain located on the beach and the turbidity fence were recommended to stay by Brad Holmes where they are located in the process. The initial concern was losing them in the event of a storm and that the contractor is committed to removing them if anything occurs. The plans have been revised to reflect those changes.

Ms. Stephanie Fitch summarizes the project and addresses the concerns of the Commission. Ms. Fitch reports that CZM mentions if a seawall cannot be replaced that a curved face can be added to help deflect the waves which they have done here with a battered cap. Ms. Fitch tried to connect with Brad Holmes from ECR to discuss the siltation fence more but was unable to reach him. She was happy to see that slope decreased to a ratio of 1.5:1, which again per CZM recommendations of revetments recommends a slope no steeper than a 1.5:1. The structure does not extend seaward and there is a time of year restriction from the DMF report. Ms. Fitch asked a question to the Commission on what to do about the unpermitted rocks that are there currently in regards to a violation with the previous Conservation Agent. Mr. Desrosiers says that it's the contractors view to use as many of them in the new wall as possible. Ms. Fitch asked where they came from. Mr. Chuckran said the homeowner trucked them in because he was afraid of losing the wall.

Member comment: Mrs. Leduc-Fleming asked if the stones are not being utilized in the wall repair that they be taken off the beach. Reusing them is the best case scenario but any leftover from being the wrong size should be taken off the beach. Mr. Chuckran Agreed.

No public comment.

Motion made by Mrs. Leduc-Fleming seconded by Mr. Palumbo to close the public hearing.

All in favor. Motion Carried.

The draft order of conditions is to include all general conditions and special conditions pursuant to 131 40 include: 1, 2, 3, 7, 9, 10, 12, 14, 18, 19, 27, 28, 29

Special conditions pursuant to Bourne bylaw article 3.7 include: 5, 6, 7, 12 (CH.91)

ASC-1) All conditions included in the Massachusetts Division of Marine Fisheries letter dated April 21, 2022 and signed by Simonette Harrison are to be included in this OOC.

Motion made by Mrs. Leduc-Fleming seconded by Mr. Palumbo to move the draft to the final. All in favor.

Motion Carried 4-0-0.

Request for Certificate of Compliance:

- 1) DEP file Number: **SE7-2134**
Applicant: Scallop Bay Marina LLC
Representative: Falmouth Engineering, Inc.
Project Address: 18 Wings Neck Road, Bourne

To upgrade two septic systems, one for house, one for boatyard within an AE flood zone, within 100 feet of a wetland resource area and within 200 feet of a Riverfront Area.

Ms. Fitch did a site visit and reviewed the as built plans from the Health Department since this was for the septic systems. Ms. Fitch recommends to issue the COC.

Motion made by Mrs. Leduc-Fleming and seconded by Mr. Palumbo to issue the COC. All in favor.

Motion carried. 4-0-0.

Discussion on BWR 1.16 Dock and Pier Regulations:

Chm. Gray opens the discussion of the Bourne Wetlands Regulations 1.16 Dock and Pier regulations.

Ms. Stephanie Fitch explains the finalized notes sent to the Commission from the Shore and Harbor Committee, finalized on May 19th, 2022. Ms. Jamy Buchanan Madeja took notes at the last meeting and offered to re write and include the recommendations.

Ms. Fitch recommends to only review page one of the Preamble at this meeting and any additional comments. The next two pages can be reviewed over the next two meetings and the final edits will have a joint meeting with the Shore and Harbor Committee.

Proposed addition:

5.19.22 SHC Revised Draft

PREAMBLE

Insert the following text after the current last paragraph of BWR 1.16(1)(a):

"There can be some environmental impacts from small residential docks and there can also be environmental impacts from the absence of such in-water structures. Specifically, without a small residential dock to access deeper water, there may be repeated disturbance of the resources caused by persons walking or swimming or dragging small crafts including kayaks and dinghies and traversing the resource areas and disturbing the water quality with sedimentation in attempts to reach deeper waters. With respect to velocity zones and small residential docks, there can also be risk of debris from storm events. ~~when there is no permitted, secured seasonal structure designed to withstand winds and tie vessels to and required to be removed seasonally.~~ Debris from land structures or in water structures can require public funds to remove after storms from public locations. For the foregoing reasons, the following provisions will provide public environmental benefit that mitigates the risk of negative impacts to protected resource areas."

Member comment: Mrs. Leduc- Fleming read the additional paragraph of the Preamble aloud for the public and the Commission discussed to take out the strikethrough sentence above.

Proposed Insert the following new subsection:

BWR 1.09

(2) Velocity Zone-related Fees:

- (a) All applications for docks in Velocity Zones (only small residential docks are authorized to apply at this time) are subject to a "V-zone Impact Mitigation Fee" which will be paid to the Bourne Coastal Resilience Fund to help provide for debris removal in the event of severe storms.
- (b) Where applicable, applications for docks in Velocity Zones may also be subject to a "Shellfish Seeding Fee," to be determined upon the Commission's review of the surrounding shellfish habitat.

Member comment: Chm. Gray asked about the "shellfish seeding fees" and if it's been worked out where that fee money is going to end up. Ms. Fitch explains that it would be subject to the Shellfish mitigation fund. Since the Shellfish habitat falls on the Department of Natural Resources it would be determined upon joint review with the Commission. The Director of DNR has been involved with the Shore and Harbor Committee, and the Shellfish Mitigation fund was passed at the Town Meeting and now has to go on to legislation, so it is not formalized yet. Chm. Gray asked when we would get feedback from the AG on that. Ms. Fitch believes sometime in the fall.

The Commission members discussed the importance of the funds, and the Coastal Resilience Fund which has not been set up yet, and how it helps in the event of a severe storm. The Commission also discusses the mechanism and what the fee structure should consist of. Before anything is enacted a further discussion with the other departments will take place.

Proposed addition:

Add to Section 1.07(4):

"All Orders of Conditions for small residential docks issued pursuant to BWR 1.16(g) shall require a performance bond, as a permit condition, to provide security pursuant to BWR 1.07(2)."

Member Comment: The Commission would like to leave this out, as it should be up to their discretion and not mandated.

Proposed revision:

Revise the current text at BWR 1.16 (e) (3) to read as follows [Page 20, lines 45-48]:

3. To keep disturbance of the bottom minimal at all times during both construction and use, the water depth at the seaward end of any structure shall be a minimum of three (3) feet at the time of mean low water;

Member Comment: The Commission discussed the changes and to keep the two current thresholds, if DMF recommendation is 3 feet, they will change the current 2.5 feet to 3 feet. And keep 1.5 feet where there is no shellfish resources. Keeping the shellfish recourse depth with what DMF recommends.

Public comment: Chip Coen – Mr. Coen respects the process that is taking place on the discussion of the dock regulations, he is looking to follow along with all the concerns and is asking if he can obtain a list. Ms. Fitch explains that the most current revised regulations updated 2020, are on the homepage of the Bourne Conservation Department website. The Commission clarified that the additions talked about tonight marked in red were submitted to them as suggestions. Ms. Fitch will check with council on sharing the proposed draft from the Shore and Harbor Committee with the public.

Bill Nielsen asked why the hearing was continued for 0 Shore Road, Pocasset SE7-2197. Ms. Fitch stated we are still waiting on the Fish & Wildlife's opinion on the project. The final plans then will be presented at the next hearing in two weeks. Mr. Nielsen is concerned about the parking in regards to the Pocasset Shore Park SE7-2176. The Commission explains that there is a newly permitted staircase as well as and an edible blueberry garden that will go in one area, and that he can call the office for updates on the progress.

Vote to Excuse Absent Members:

Motion to excuse absent members. All in favor. **Motion carried 4-0-0.**

Approval of meeting Minutes:

May 19th, 2022 Approved.

II. Adjournment:

Motion made by Mr. Palumbo and seconded by Mrs. Leduc-Fleming to adjourn. All in favor.

Meeting adjourned at 8:33PM