

**Bourne Conservation Commission
Public Meeting Minutes
September 7, 2023**

RECEIVED

Commission Members Present: Chm. Robert Gray, Vice Chair Rob Palumbo, Greg Berman, Joseph Soares, Jr., Sarah Butler, Susan Weston, and Melvin Peter Holmes.

2023 OCT -6 PM 1:10
TOWN CLERK BOURNE

Excused Members: Paul Szwed.

Professional Staff in Attendance: Amalia Amado, Conservation Department Secretary II.

Chm. Robert Gray called to order the meeting of the Conservation Commission at 6:30 PM, conducted in person on Thursday, September 7th, 2023, and held in the Bourne Veterans Community Building, 239 Main Street, Buzzards Bay, MA 02532. Chm. 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. Chm. Gray said that they follow a 5-5-5 rule. Chm. Gray said that if a member of the public wishes to comment they will first clearly state their full name for the record. Chm. Gray asked if anyone was recording at this time, other than the Conservation Department.

REQUEST FOR DETERMINATION

- 1.) **Request for Determination File Number: CC-23-19, 18 Windsor Road, Cataumet, John LoMedico.** Post-facto filing of an upgrade to an existing boathouse. This project is located in a VE flood zone and within coastal wetland resource areas. **Continued from 8/17/2023.**

Continued to September 21st, by request of the applicant.

- 2.) **Request for Determination File Number: CC-23-27, 11 Taylor Road and 0 Academy Drive, Buzzards Bay, Josephine Bevilacqua and Mark Spetelunas c/o Merrill Engineers and Land Surveyors.** Invasive species removal and restoration plan. The applicant also is proposing to install a fence along the property line. The project is located in an AE flood zone only.

Mr. Santos from Merrill Engineers explained that the applicant is looking to remove Knotweed at 11 Taylor Road. Vice Chm. Palumbo asked what other species a part of this landscaping and removal plan. Mr. Santos said that there is a little bit of Phragmites mixed in, along with two species of Honeysuckle, and 95% is Japanese Knotweed.

Amalia Amado said that Ms. Fitch made a site visit and did a review of this application, and her report says that this is landscaping and removal of invasive and upland species, as well as Phragmites, in AE flood zone only. She said that there are no concerns if the glyphosate is applied directly (no spraying) by a Massachusetts licensed herbicide applicator. The Knotweed control proposal was submitted by Chris Mark and Sons.

Tom Faherty, an abutter to 11 Taylor Road, said that he is in favor of the project. He asked if they planned on using Round up for this removal, and Mr. Santos said he believes it would be CMS. Mr. Faherty said that he has a garden and chickens abutting this property, and that is why he is concerned with what they are using to eradicate the Knotweed. There was some discussion on how they apply the herbicide on the cut stems.

Mr. Faherty also asked if they will be addressing the drainage, and Mr. Santos said that it will be graded out.

Motion made by Mr. Berman, seconded by Ms. Weston, for a Negative Two Determination with the following conditions: Must use a non-aerosol herbicide. All in favor. **Motion carried. 7-0-0.**

NOTICE OF INTENT

- 1.) **Notice of Intent: DEP File Number: SE7-2258, Parking lot off 0 Sagamore Road, Sagamore Beach, Town of Bourne c/o BSC Group, Inc.** The proposed project at the site involves upgrading the parking lot and the stormwater management system, as well as repairing the existing emergency access ramp, walkover stairway, and beach nourishment. The project is located on or within 100 ft. of coastal wetland resource areas and in a V flood zone. **Continued from 8/03/2023.**

Continued to September 21st, by request of the applicant.

- 2.) **Notice of Intent: DEP File Number: SE7-2257, Parking lot off 280 Standish Road, Sagamore Beach, Town of Bourne c/o BSC Group, Inc.** The proposed project at the site involves upgrading the parking lot and its stormwater management system, as well as repairing the existing emergency access ramp, walkover stairway, and beach nourishment. The project is located on or within 100 ft. of coastal wetland resource areas and in a V flood zone. **Continued from 8/03/2023.**

Continued to September 21st, by request of the applicant.

- 3.) **Notice of Intent: DEP File Number: SE7-2256, 60 Red Brook Harbor Road, Pocasset, Karen Fish-Will c/o Bracken Engineering, Inc.** To raze existing structures and rebuild a single-family dwelling, garage, pool, patio, and pool house. Installation of a Title V septic system with Innovative/Alternative technology, landscaping, grading, and associated utility work. The work will take place within a V flood zone and 100 ft. of wetland resource areas. **Continued from 8/17/2023.**

Chm. Gray said that he will step down and Vice Chm. Palumbo will take over this Public Hearing.

Robert Dewar of Bracken Engineering said he was there on behalf of the applicant. He gave a brief recap on the proposed project. He said that the applicant is proposing to raze the existing house to construct a new dwelling with a garage, pool, and a detached pool house.

Amalia Amado said that while Ms. Fitch is out on maternity leave, there is an Interim Conservation Agent, and he took over some of the reviews on the project that are part of

tonight's meeting. She said that he did the review before the revisions, and he updated it. She read aloud the report from Charles (Chuck) Katuska, which is attached to this set of minutes.

Mr. Dewar talked about the buffer zone and how they have tried to pull everything back away from the resource areas as far as they possibly can. He said that they do not have the mitigation comparison breakdown table and he talked about the landscaping plan. He said that the species that are listed are standard.

Ms. Butler asked Mr. Dewar what the irrigation plan is, and he responded by saying there would be some temporary irrigation provided, although it will not be permanent. There was some discussion about the mitigation plan for the cedar tree removal.

It was decided that some of the revisions are needed are to pull the pool out of the 50' buffer, replace the turf grass at the top of the band, add the riverfront resource area and add the appropriate mitigation.

Continued to October 5th, 2023.

- 4.) **Notice of Intent: DEP File Number: SE7-2254, 94 Salt Marsh Lane, Pocasset, Tracy MacLeod c/o Environmental Consulting & Restoration, LLC.** Proposed construction of a detached accessory structure, removal of a shed, removal of a patio & pavers and landscaping within 100 ft. of wetland resource areas and within an AE flood zone. **Continued from 7/20/2023.**

Brad from Environmental Consulting said that this site contains a single-family home, a driveway, a lawn, a shed, a patio, and walkways. He said that their proposed activity consisting of the detached structure is located within the buffer zone. He said that this project was designed so that there is no increase in square footage of the graded impervious area. He spoke more about the proposed structure to be replaced and about the new structure to be built. He added that there is a proposed drywell to capture roof water coming off the detached structure.

Ms. Amado said that Chuck reviewed this proposal, and she passed out his review to the Commission. There was some discussion about the oak trees, and about the mitigation plan. Ms. Weston asked about the bluestone pavers and Brad explained how they would be laid out.

Motion to close the public hearing by Vice Chr. Palumbo, seconded by Mr. Holmes. **Motion carried. 7-0-0.**

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, 11, 12, 14, 15, 16, 17, 18, 22, 26, 27, 28, and 29 and Special Conditions pursuant to the Bourne Wetland Protection By Law Article 3.7 including: 5, 6, 7 and 9. Additional special conditions are as follows:

ASC-1) A report with photos must be submitted to document the 150' of native plantings at the top of the coastal bank. Any plants that do not survive must be replaced prior to issuance of the COC.

ASC-2) Herbicide application must be performed by a licensed Massachusetts herbicide

applicator.

Ms. Weston added the following condition:

ASC-3) The placement of 2' x 2' bluestone pavers around the base of the (westward) black oak, should be done with no excavation to prevent harm to the tree.

Motion to move the draft to the final by Vice Chr. Palumbo, seconded by Mr. Holmes. **Motion carried. 7-0-0.**

- 5.) **Notice of Intent: DEP File Number: SE7-2259, 394 Scraggy Neck Road, Cataumet, Thomas Cibotti c/o Falmouth Engineering, Inc.** Install a pile supported residential small, elevated pier, ramp, and float. The work will take place within an V flood zone and other wetland resource areas. **Continued from 8/17/2023.**

Continued to October 5th, by request of the applicant.

- 6.) **Notice of Intent: DEP File Number: SE7-2255, 74 South Road, Pocasset, James and Patricia Filbin c/o Falmouth Engineering, Inc.** To install a pile supported residential small, elevated pier, ramp, and float. The work will take place within an AE flood zone, VE flood zone and within coastal wetland resource areas. **Continued from 8/17/2023.**

Michael Borselli, Falmouth Engineering, said he was there to represent the applicant. He said that there have been revisions made from previous hearings. At the last hearing there was a request that they modify their standard cross section of the dock to demonstrate that the overall width, without the extreme outer edges of the walkway, did not exceed 4 feet, and Mr. Borselli said that they did do what was requested.

Ms. Amado said that Ms. Fitch has a report tonight. Needed revised plan with 36" clearance, resource areas and moorings all on one. She said that the special conditions are complete.

Motion to close the public hearing by Mr. Holmes, seconded by Ms. Butler. **Motion carried. 7-0-0.**

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, 7, 8, 9, 10, 12, 20, 27, 28, and 29 and Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 including: 7 & 12. under section (Docks Piers, Floats, Dredging, etc.) 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, and 25.

Additional special conditions are as follows:

ASC-1) The applicant is required to attain a Ch. 91 license for both groins and the pier.

ASC-2) The removal of the existing outhaul is required as mitigation for the construction of the pier.

ASC-3) 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 always maintain an appropriate spill kit at the project site, at all times.

ASC-4) The draft of any boat moored at the dock must be of a size that does not contact the ocean floor at low tide.

ASC-5) The use of swamp mats is required for any work occurring in the salt marsh.

ASC-6) 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-7) All recommendations included in the Division of Marine Fisheries letter dated July 18, 2023, and signed by Amanda Davis are to be incorporated into this OOC.

Bylaw Conditions Numbers 14-25 above shall continue in perpetuity beyond the limitations of this Order and with the sale of the property to others.

Motion to move the draft to the final by Mr. Holmes, seconded by Ms. Butler. **Motion carried. 7-0-0.**

- 7.) **Notice of Intent: DEP File Number: SE7-2241, 45 Harbor Drive, Pocasset, Jill A. Adroque c/o Coastal Engineering, Inc.** Proposed reconstruction of three groins, installation of a dock, and beach nourishment. The work will take place within an AE flood zone, VE flood zone, and coastal wetland resource areas. **Continued from 8/3/2023.**

Catherine from Coastal Engineering said that they made the revisions to the plans which the Commission asked for at their last meeting.

Ms. Amado said that Ms. Fitch said that Catherine submitted what the Commission asked for: construction methodology for pier, groin reconstruction and beach nourishment and revised plans with float stops at 4' separation and land containing shellfish label.

Ms. Fitch said that it is OK to not have 10' separation between piles since not in salt marsh, and Special Conditions are complete.

Motion to close the public hearing by Mr. Holmes, seconded by Ms. Butler. **Motion carried. 7-0-0.**

Ms. Amado read aloud the Draft Order of Conditions: 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, 18, 19, 20, 27, 28, and 29 and Special Conditions pursuant to the Bourne Wetland Protection Bylaw Article 3.7. 6, 7, 10, 12 Under section (Docks Piers, Floats, Dredging, etc.) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24.

Additional special conditions are as follows:

ASC-1) All recommendations included in the Division of Marine Fisheries letter dated August 2, 2023, and signed by Amanda Davis are to be incorporated into this OOC except the setback to eelgrass.

ASC-2) The removal of the existing outhaul is required as mitigation for the construction of the pier.

ASC-3) Beach nourishment cannot occur until sieve analyses have been performed and a report has been reviewed by the Agent. The source of the sand must also be approved by the Agent prior to nourishment.

ASC-4) 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-5) 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-6) The construction processes described in the memo dated 8.31.2023 are incorporated into this OOC and must be followed during actual construction.

Bylaw Conditions Numbers **14-24** above shall continue in perpetuity beyond the limitations of this Order and with the sale of the property to others.

Motion to move the draft to the final by Ms. Butler, seconded by Mr. Holmes. **Motion carried. 7-0-0.**

- 8.) **Notice of Intent: 80 Megansett Road, Cataumet, Bishop-Megansett Family Limited Partnership c/o Cape and Islands Engineering, Inc.** Proposed seasonal installation and maintenance of a timber pier with an aluminum ramp and a pile-supported 8 x 12- float in the waters of Squeteague Harbor. The work will take place in a v flood zone, within 200 ft. of a riverfront area and 100 ft. of wetland resource area.

Continued to September 21st, by request of the applicant.

REQUEST TO EXTEND THE ORDER OF CONDITIONS

- 1.) **DEP File Number: SE7-2159, 18 Wing's Neck Road, Pocasset, Daniel Ward and Jeff Lang, Jr c/o Nantucket Sound Bay Scallop Company.** Amend the order of conditions to include four (4) land based upwellers located on a wooden platform along the water at the Scallop Bay Marina. This project is within an AE flood zone, within 100 ft. of a wetland resource area and within the riverfront area.

Dan Ward, one of the owners of the Scallop Bay Marina, said that he came before the Commission two years ago for permitting for some aspects of the hatchery. He said that what they are requesting tonight should have been part of the application from two years ago. Mr. Ward discussed in detail their request.

Ms. Amado said that Ms. Fitch gave the following report: The Order of Conditions was originally issued on 7/15/21. They renewed their Ch. 91 when they bought the property. There is DMF approval to the aquaculture license from 2021. The addition of the land-based upwellers has been under discussion for over a year. She has checked in with the Shellfish Constable and he said they will need to have their propagation permit amended with DNR and possibly DMF, but the license with the Select Board is all set. The deck is in a previously disturbed area and the only alteration to the ground is the 10 helical piles under the upwellers. No vegetation will be removed or disturbed. The platform is not located closer to the river than existing conditions (docks, paved boat ramp, and rails). If the Commission feels this meets the Riverfront performance standards in the previously disturbed area, then she has no concerns.

There was some discussion about them being bolted down sufficiently, and Mr. Ward assured the Commission that they will be bolted down to the actual structure.

Motion to close the public hearing by Mr. Holmes, seconded by Ms. Butler. **Motion carried 7-0-0.**

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, 11, 12, 15, 17, 18, 19, 22, 27, and 28. Under section (Docks Piers, Floats, Dredging, etc.) 14, 15, 16, 17, 18, 20, 21 and Special Conditions pursuant to the Bourne Wetland Protection By Law Article 3.7.

Additional special conditions are as follows: Please read ASC-1.

ASC-1. The entire structure, other than the public restrooms, identified as the commercial shellfish hatchery can only be utilized for aquaculture and shall undergo yearly inspection by the Bourne shellfish Constable. No chemicals, petroleum products, or other pollutants are allowed to be stored within the aquaculture facility. If the shellfish constable identifies any activities unrelated to aquaculture within the building, then the project will be in violation of this Order and all withdrawal and discharge of water from the river must cease and desist and all exterior piping will be removed or capped at the expense of the applicant. This condition will continue so long as the property is operated as a commercial shellfish facility and therefore may continue beyond the expiration date of this Order.

Motion to move the draft to the final by vice chair Palumbo, seconded by Mr. Holmes. **Motion carried. 7-0-0.**

- Approve minutes 6/15/2023 and 7/20/2023.

Motion made to accept and release the meeting minutes of June 15th, 2023, with one correction as noted, by Mr. Holmes and seconded by Ms. Weston. **Motion carried 7-0-0.**

Motion made to accept and release the meeting minutes of July 20th, 2023, by Mr. Holmes and seconded by Ms. Butler. **Motion carried 7-0-0.**

- Vote to excuse absent members.

Motion made to excuse Paul Szwed from the meeting by Vice Chr. Palumbo and seconded by Mr. Holmes. **Motion carried 7-0-0.**

- Report of the Conservation Department.

Ms. Amado said that Ms. Fitch has applied for a CPC proposal for the Pollinator Pathway project. She said that it is in collaboration with the Assistant Town Administrator, Liz Hartsgrrove. She would like a letter of support for the project. It was presented to the Open Space Committee and received their vote of support, and the next step is the Community Preservation's Public Hearing, to see if they will vote to place the article on the warrant for Fall Town Meeting.

A letter will be written, and Chm. Gray said that they will put it on the agenda for the next meeting for a vote.

- Adjourn

Motion made to adjourn the meeting by Mr. Holmes and seconded by Mr. Berman. **Motion carried 7-0-0.**

The meeting was adjourned at 7:58 PM.

Meeting minutes typed by – Kim Johnson, Recording 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.

CHARLES J. KATUSKA, P.W.S.

September 7, 2023

Stephanie Fitch, Agent
Bourne Conservation Commission
24 Perry Avenue
Buzzards Bay, MA 02532

Re: Notice of Intent - 60 Red Brook Harbor Road (Map 47.4 Parcel 11)
DEP File #SE7-2256

Dear Ms. Fitch,

As per your direction, I have reviewed plans and documents submitted as a Notice of Intent (NOI) under both the MA Wetlands Protection Act (M.G.L. Ch. 131, s.40) and the Bourne Wetlands Protection Bylaw (Article 3.7 of the Town of Bourne Bylaws) for work proposed at the referenced address. Specifically, plans and documents reviewed include, but are not limited to -

- Notice of Intent Application package for the referenced address dated August 2, 2023 and prepared by Bracken Engineering, Inc.
- A 2-sheet plan set (Existing Conditions Plan, Proposed Site Plan) prepared for the property owner, Karen Fish-Will, by Bracken Engineering, Inc., dated August 2, 2023, as submitted, and now with revisions dated August 17 and August 31, 2023.

An initial site inspection to confirm existing conditions was conducted on September 5, 2023.

Document Review and Site Inspection Comments

1. The NOI application package includes a Project Narrative identifying wetland resource areas on or adjacent to the site, noting that portions of the parcel occur within Land Subject To Coastal Storm Flowage (LSCSF). There is no information provided, either in narrative form, in NOI Section B.3.1 or on the project plans indicating the square footage of impact proposed within LSCSF. Work proposed within LSCSF is limited to 2 areas of mitigation plantings, and no grading is proposed in LSCSF.
2. Given that there are no formal performance standards provided for LSCSF in regulations implementing either the MA Wetlands Protection Act (WPA) or the Bourne Wetlands Protection Bylaw (BWPB), the narrative's written description of compliance assertions regarding the protected public interests is applicable to compliance review. The discussion of performance standards contained in the narrative, however, makes no mention of the additional public interests protected under the BWPB, erosion and sedimentation control and recreation and/or commercial use. Further consideration of these locally protected public interest is warranted.
3. Although the submitted NOI and the initial plan set are silent on the issue, revised project plans now indicate that work is proposed within the Riverfront Area (RFA) association with Red Brook. Basic impact area calculations are provided on Sheet 2 of the revised site plan set. To date, I have received no additional materials describing compliance with the applicable WPA/BWPB regulations for protection of the public interest present within RFA.
4. The project proposed includes considerable work within buffer zones regulated under both the WPA and the BWPB. Other than unsubstantiated and non-parallel quantities presented in the Nitrogen Loading and Mitigation Worksheet included in the NOI package, there is no quantification of buffer zone impacts contained in the NOI documents. Given the mitigation planting proposals offered, this omission is significant to the evaluation of compliance under the BWPB, particularly with respect to the public's interest in wildlife habitat.
5. Regarding the proposed mitigation measures, the lack of information on buffer zone impacts becomes

critical. Buffer zone impact areas include grassy lawn, areas dominated by mixed shrubs and herbs/forbs, mature trees and, in some areas, landscape plantings. The applicant's NOI offers no breakdown of buffer zone impact area characteristics, and, with those limitations, the evaluation of specific planting proposals is difficult. Furthermore, the visual representations of the site's vegetation coverage, as shown on the project plans by treelines, appears to significantly underrepresent the site's coverage by non-lawn areas. Note, just as examples, that the existing shed and garage to be removed are nearly surrounded and overhung by tree/shrub vegetation, the "existing garden area (to be removed)" is a dense herb/forb and shrub area, and the "existing fruit tree grove (to be removed)" is a single overgrown peach tree and a thoroughly overgrown grape arbor.

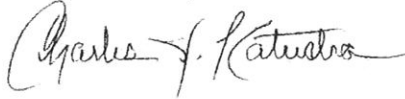
6. Given the project's reliance on native species plantings for impact mitigation, I find that the basic species lists and construction notes included in the Mitigation Planting Notes on the revised Project Site Plan are unlikely to result in an outcome adequate to replace or mitigate for the loss of a variety of complex plant associations which currently provide a range of wildlife habitat characteristics onsite. Furthermore, I am of the opinion that any consideration of project mitigation and regulatory compliance based on a "planting plan to be provided by others" is inappropriate.

The engineered elements of this proposal (demolition of existing structures, construction of a new house with associated amenities, stormwater management) appear to be as environmentally sound as is feasible, given site conditions and limitations. The house and garage are to be located farther from protected wetland resource areas, the proposed septic system is designed to reduce nitrogen loading to this sensitive embayment, the pool and pool house are to be constructed in (mostly) areas of existing lawn, and all stormwater/rooftop runoff is proposed to be infiltrated onsite.

I note in passing that erosion and sediment control is very much a construction period issue and I presume that any Order of Conditions which the Conservation Commission might issue will contain adequate conditions for erosion and sedimentation control. I note also that the proposed garage, identified on the plan set initially submitted as simply "proposed garage", is now identified on the revised plan set as "proposed garage (1) bedroom". I presume that the Commission will confer, in general, with the Board of Health to assess this change before issuing any Order of Conditions.

My primary concern with this NOI is for the assessment of the mitigation proposals. Without additional information both quantifying and characterizing the proposed impacts to regulated resource areas and buffer zones (now including work proposed in the Riverfront Area and minor plantings on the Coastal Bank) and a detailed, site-specific mitigation planting plan, I am unable to offer any conclusive assessment of the mitigation measures proposed to date.

For the Commission,



CHARLES J. KATUSKA, P.W.S.