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TOWN OF HARWICH

732 Main Street

Harwich, MA 02645

PHONE (508)-430-7538 FAX (508)430-7531

HARWICH CONSERVATION COMMISSION - MEETING AGENDA

TOWN HALL – GRIFFIN ROOM

Wednesday, March 19, 2025 – 6:00 PM

Commissioners and Staff Present

Chairman John Ketchum, Sophia Pilling, Viv Mulhall-Maguire, Wayne Coulson, Mark Coleman, and Conservation Administrator Amy Usowski

Commissioners Absent:

None

Call to Order

Chairman Ketchum called the meeting to order at 6:00 PM and the Pledge of Allegiance was recited.

The following applicants have filed a Request for Change in Plan

Wyndemere Beach Trust, 0 Hiawatha Rd, Map 6, Parcel T1, SE32-2069. Beach nourishment.

Dave Fogaren, Trustee of Wyndemere Beach Trust, presented the request in person. Mr. Fogaren explained that the Trust had acquired an extension permit for dredging and beach nourishment, planning to use sand dredged in the harbor from the Harbormaster. However, after speaking with the Harbormaster, Mr. Fogaren understood that there would be no more sand for the Trust to use on their beach for nourishment this season as planned. Instead, Mr. Fogaren and Ms. Usowski landed on screened bank sand as an alternative nourishment option. Ms. Usowski emphasized that the switch was minor.

No discussion from the Commission. No public comments.

Ms. Pilling moved to approve the Change in Plan. Mr. Coulson seconded.

Vote: 5:0

Motion carried; Change in Plan approved.

The following applicants have filed a Request for Determination of Applicability

James Welch, 0 & 45 Snow Inn Rd, Map F-2, F-3, Parcel N-4. Renovations/additions to existing boathouse and installation of grinder pump system. *Continuance of the Feb 19, 2025 meeting.*

Builder Chris Stoltz attended the meeting in person to answer any questions from the Commission.

Ms. Usowski recapped that during the last hearing, the Commission voiced concerns over the applicant's submission of a Request for Determination of Applicability instead of a Notice of Intent. The Commission was also concerned about the limit of work. Mr. Stoltz confirmed that there would be a chain-linked fence backed by an eco-mitt to prevent any loose soil or debris from getting into the ocean.

Ms. Usowski asked about the existing grass lawn and recommended that the applicants incorporate some native plantings into their plan.

No discussion from the Commission. No public comments.

Mr. Coulson moved to approve the Negative 2 and Negative 3 Determination. Ms. Mulhall-Maguire seconded.

Vote: 5:0

Motion carried; Request for Determination of Applicability approved.

Request for Abbreviated Notice of Resource Area Delineation:

Ken & Nicole Moniz, 50 Main Street Extension, Map 55, Parcel E1-1. Non-Perennial Stream Determination for Mapped Hydraulic Connection. *Continuance of the March 5, 2025 meeting.*

Daniel Croteau of Moran Engineering and property owner Ken Moniz presented the project in person. Mr. Croteau explained that Mr. Moniz would like to build an ADU on-site, more than 100ft away from a bank leading to an abandoned cranberry bog. However, an older version of a USGS map identifies the middle of the wetland to be a perennial stream, which has a 200ft regulatory buffer.

There is a culvert under Route 6 that is completely dry. Aerial photographs show the wetland to be historically a cranberry bog. Mr. Croteau said it's possible that the bog was at one point an intermittent stream, but that it hadn't flowed any time recently. Mr. Croteau took pictures and monitored the site over 4 consecutive days and more that showed the area to be dry. In Mr. Croteau's opinion, the area doesn't appear to be a perennial stream nor an intermittent stream.

When the site was deeded to the Town, it was deeded as a "stripped cranberry bog." Therefore, the property owner would like the Commission to determine that the wetland is not a river and not subject to the Rivers Act.

Ms. Usowski said she agreed with Mr. Croteau and recommended the Commission determine that the stream is not perennial and confirm the wetland delineation per the existing site plan.

Mr. Coulson, being familiar with the wetland in question, said he had never seen water in the ditch.

Chairman Ketchum asked if any water had accumulated in the ditch following the recent rainfall. Mr. Croteau said he did not believe so.

Mary Chamberlain, representing abutter Richard Hamlyn of 61 Main St. Ext., provided a letter of support. Ms. Chamberlain spoke on behalf of Mr. Hamlyn, confirming anecdotally that water has never been observed in the wetland.

No further discussion from the Commission. No additional public comment.

Mr. Coulson moved to determine that the stream is not perennial, and that the wetland resource area is the top of the inland bank. Ms. Pilling seconded.

Vote: 5:0

Motion carried; Request for Abbreviated Notice of Resource Area Delineation approved.

The following applicants have filed a Notice of Intent

Jason Trepanier, Main Street/Route 28, Map 11, Parcel B4-0. Watermain replacement.

Bob Drake of GHD and Jason Trepanier, the Town of Harwich Water and Wastewater Superintendent, presented the project in person. Mr. Drake explained their proposal to replace an existing 12-inch watermain that goes under Route 28 in West Harwich, leaving it intact until the new watermain is installed. Abutting the Herring River, the site is surrounded by wetlands and within the regulatory AE floodplain. Most of the proposed work will take place within the paved area of Route 28.

To determine groundwater levels along the proposed trench, GHD took 30 soil boring samples roughly every 300 feet along the route from the Herring River to South St. From the street surface, there's an average of five feet down to the groundwater table, meaning little dewatering would be necessary. Mr. Drake explained that to dewater, they would use a trench pump attached to a hose with a filtered end. They would also install silt sacks in existing catch basins to prevent sediment from entering the waterways. If there is not a nearby catch basin, Mr. Drake explained they would create an enclosure area using haybales and filter fabric to contain the sediment while pumping. Mr. Drake said they also intended to install silt socks around the work area.

Mr. Drake then moved on to the second part of the project: drilling underneath the Herring River. To get the pipe under the river, they will need to directionally bore, which requires minimal disturbance. There will be more substantial disturbances, however, on either side of the pipe where there will be an 18-inch hole that goes underground. Mr. Drake explained that to stabilize the hole, and fill in any gaps, they will pump a clay solution called bentonite, which Mr. Drake described as being non-toxic nor hazardous to the environment and wildlife.

Mr. Drake did bring up the possibility that they could hit a soft spot in the soil while drilling, causing the bentonite to come up through any cracks to the surface in an event called a "frack-out." If this were to occur, Mr. Drake said they would have silt socks placed around the opening and along the

river's embankment to help contain the bentonite and minimize disturbance. If this were to occur in the river itself, Mr. Drake said they would pull filter booms across the surface of the water to prevent the dispersal of the substance. Mr. Drake emphasized that bentonite was not harmful to fish or other marine life.

All in all, Mr. Drake estimated the project to take two years to complete, including when the project would be on pause during the summer months and during a storm-heavy winter.

Ms. Usowski spoke about her concerns regarding the disturbance to the river and reminded the Commission that they are still waiting to receive a comment from the Massachusetts Division of Marine Fisheries, which will inform the vote. Ms. Usowski recommended postponing the Commission's vote until their next meeting on April 2 so that they can first hear from Mass DMF.

Ms. Usowski also asked about where they intended to begin drilling, stipulating that the wetlands and buffer zones not be disturbed until they had to be. Mr. Drake confirmed that they would start the drilling on the western side of the opening ideally this fall.

Ms. Usowski then asked about how they would restabilize the site once all the work is complete. Mr. Drake answered that they would be laying down native seed on all disturbed area.

Regarding the first part of the project, Mr. Coleman voiced concerns about the catch basins and expressed preference for the silt sack within the makeshift haybale enclosure at ground level to contain and filter the dewatering liquids. Mr. Drake responded that the catch basins more easily contain and filter the liquids rather than having it dispersed over the road.

Mr. Trepanier emphasized that they were also prepared to offer numerous public outreach opportunities to answer the public's questions and address their concerns.

Harwich resident Tom Berard asked Mr. Trepanier if there had been any efforts to better coordinate Route 28 projects and if homeowners would be responsible for facilitating their connections to the watermain. Mr. Trepanier said the Town would handle hookups.

No further discussion from the Commission. No additional public comment.

Chairman Ketchum moved to continue the Notice of Intent hearing to the April 2, 2025 meeting. Mr. Coulson seconded.

Vote: 5:0

Motion carried; hearing continued.

Warren Nichols, 13 Strandway, Map 1, Parcel J1-3. Landscape maintenance.

Warren Nichols, landscaper at 13 Strandway, was present to answer the Commission's questions.

Ms. Usowski explained that the former property owners did not want any ongoing conditions on their property. When the property recently changed hands, the new owner decided to apply for a Notice of Intent so that the Commission would grant a set of ongoing conditions allowing for routine landscape maintenance. This application is mainly for the purpose of securing a new Order of Conditions that guides long-term landscaping.

For this Notice of Intent, the owners are proposing to prune the rosa rugosa hedge on the coastal bank, not to below 3' tall. They are also proposing to continue the previous Order of Conditions that permitted slow-release fertilizers. Ms. Usowski told Mr. Nichols that the Commission would likely prohibit any type of fertilizer on the property.

Chairman Ketchum said he would like the Order of Conditions to explicitly prohibit fertilizers, pesticides, and herbicides.

No further discussion from the Commission. No public comments.

Chairman Ketchum moved to approve the Notice of Intent. Ms. Mulhall Maguire seconded.

Vote: 4:0:1. Mr. Coulson abstained.

Motion carried; Notice of Intent approved.

Requests for Certificates of Compliance

Dana Shock, 9 Fiddlers Landing, Map 6, Parcel A1-9. Hot tub construction and mitigation plantings.

Ms. Usowski began by recapping the Commission's previous approval of the project. Ms. Usowski drew the Commission's attention to the issued Order of Conditions, which did not condition the 90% survival of mitigation plantings or that the plants be in for at least two years before requesting a Certificate of Compliance.

Ms. Usowski recommended the Commission still grant the Certificate of Compliance since the applicant had been diligent about planting ferns and shrubs earlier that fall. Ms. Usowski suggested the Commission grant the Certificate under the condition that the applicant provides updates on the success of the plants (including pictures) by May 31, 2025. If plants have clearly died by this date, they will need to replace them accordingly.

No discussion from the Commission. No public comments.

Ms. Pilling moved to approve the Certificate of Compliance. Mr. Coulson seconded.

Vote: 5:0

Motion carried; Certificate of Compliance approved.

Order of Conditions:

Jeffrey Lang and Sandra Wycoff, 11 River Bend Road, Map 1, Parcel G1-9. Replacement of an existing wooden bulkhead, the installation of floats with scallop growing nets, and dredging at the base of the bulkhead to allow for scallop growing nets to remain submerged at low tide. Salt Marsh restoration is also proposed in eroded areas.

Ms. Usowski provided the drafted conditions to Attorney Elizabeth Pyle, representing abutters to 11 River Bend, and the applicant Jeffrey Lang. Ms. Pyle suggested that the Order include Coastal Bank as one of the resource areas impacted by the project. Ms. Usowski explained that by her interpretation of the Wetlands Protection Act, there is not a coastal bank present as defined in the regulations. Ms. Usowski further defined a coastal bank as a vertical buffer, landward of other wetland resource areas. Since there is a salt marsh on the other side of the bulkhead, the bulkhead itself would not be considered a coastal bank within the project area. Therefore, the resources in question include Riverfront Area, Salt Marshes, Coastal Beach, Land Under the Ocean, and Land Containing Shellfish.

Ms. Usowski reviewed some of the proposed special conditions, including a time-of-year restriction and the requirement for the applicant to go before the Conservation Commission should they need to change any aspect of the project.

Regarding shellfish mitigation, Ms. Usowski recommended the applicant be required to purchase \$2,000 of shellfish seed (species at the discretion of the Natural Resource Director) every year for the first three years after the project's completion.

Regarding equipment storage, Mr. Coleman said he did not believe it was within the Conservation Commission's jurisdiction to regulate the storage of commercial equipment on land. Mr. Lang offered that they only store equipment on the gravel driveway, to keep it away from the marsh and waterfront. Ms. Pilling agreed with Mr. Coleman. Ms. Usowski proposed revising the Order to allow for storage on the gravel driveway.

Noreen Cahalane of West Harwich said she believed the Order should specify that the permit is granted for scallop farming, as opposed to any native species of shellfish. Ms. Cahalane also expressed concern that the applicant would still be allowed to use previously permitted floats in addition to the newly approved scallop farming floats. Ms. Cahalane said that she had observed the floats stored in the gravel driveway come loose with high tides. Mr. Lang clarified that one of the previously permitted floats is old and would be properly discarded, while the other would be kept on the property to use recreationally. The Commission agreed to articulate in the Conditions that any floats stored on site should be secured.

Harwich resident Betty Murphy also asked for clarification regarding the shellfish type. Ms. Usowski explained that they would be farming scallops specifically, but growing quahog seed for the purposes of mitigation.

Charlie Agro of BSC Group attended the meeting online. Mr. Agro confirmed the square footage of the existing floats to be 156 sf and licensed.

Harwich resident Mary Lou Cahalane said she would not like to see oysters grown in the Herring River, expressing concern that they would become a nuisance.

Attorney Elizabeth Pyle of Hill Law contributed to the conversation virtually. Attorney Pyle advised the Commission to necessitate complete and thorough review of any changes to the plan. Attorney Pyle also recommended including language that prohibited storage of commercial supplies specifically.

No further discussion from the Commission. No additional public comments.

Chairman Ketchum moved to close the public hearing. Mr. Coulson seconded.

Vote: 5:0

Motion carried; public hearing closed.

Mr. Coulson moved to approve the Order of Conditions. Ms. Coleman seconded.

Vote: 4:0:1. Ms. Mulhall-Maguire abstained.

Motion carried; Order of Conditions approved.

Eric & Jane Peterson, 277 Great Western Rd, Map 38, Parcel A1-11. After-the-Fact tree and shrub removal and replanting.

Eric Peterson of 277 Great Western Rd attended the meeting virtually. Mr. Peterson asked the Commissioners if they would consider revisiting the issue of fine amounts.

Ms. Pilling and Mr. Coleman said they believed the homeowner still needed to be held accountable. Ms. Mulhall-Maguire asked for clarification on Mr. Peterson's intent with the project. Mr. Peterson explained that he did not want his property to be clear-cut. Mr. Coulson and Chairman Ketchum said they agreed that there was no reason to change the fine amount.

No further discussion from the Commission. No public comments.

Mr. Coleman moved to close the hearing and issue the Order of Conditions. Ms. Coulson seconded.

Vote: 5:0

Motion carried; Order of Conditions approved.

Kathleen & Sal Lupoli, 11 & 15 Shore Rd, Map 2, Parcel B1-14 & B1-11. Repair existing bulkhead and concrete seawall.

Chatham Attorney Anthony Bowers and Daniel Croteau of Moran Engineering were present in person. Mr. Bowers confirmed that the applicants agreed with the Order of Conditions as drafted. Chairman Ketchum said he wanted to include a condition that required the removal of the plastic azek on the property. Mr. Croteau corrected that the resource area in question was Coastal Bank instead of Coastal Dune.

No further discussion from the Commission. No public comments.

Mr. Coulson moved to approve the Order of Conditions. Ms. Coleman seconded.

Vote: 5:0

Motion carried; Order of Conditions approved.

Discussion and Possible Vote

1. Request by petitioner to review 3 Citizens Petitions for Town Meeting 2025: 1. A home rule petition to reduce the application of fertilizer, 2. A home rule petition to reduce the application of pesticides, and 3. A petition to add a Tree Preservation Bylaw to the General Bylaws of the Town of Harwich.

East Harwich resident Patrick Otton, author of the Citizen Petitions, attended the meeting in person. Mr. Otton said the petitions are identical to those proposed last year, except for new language concerning vegetable gardens. Mr. Otton summarized that he believes these petitions will help protect and conserve the natural resources and space on Cape Cod. Mr. Otton said these petitions were home-ruled requests, meaning he will be asking the state legislature to allow the Town of Harwich to make its own regulations regarding fertilizer.

Ms. Usowski said she appreciated Mr. Otton's efforts. Ms. Usowski recommended the Commission support the Tree Preservation Bylaw. Mr. Coulson expressed his surprise that there are no regulations currently restricting the clearcutting of lots during construction. Ms. Pilling asked if the average resident trying to build a house would be burdened by the proposed bylaw. Mr. Otton stressed that even if the Commission were to support the Bylaw as is, amendments and revisions could be added later on.

Mr. Coulson moved to support the Tree Preservation Bylaw. Ms. Pilling seconded.

Vote: 5:0

Motion carried.

Regarding the home-rule petitions to reduce the application of fertilizer and pesticides, Ms. Mulhall-Maguire said she was not ready yet to support the issues. Mr. Otton reminded the Commission that other Cape towns have adopted similar measures. Chairman Ketchum and Ms. Pilling agreed that the Commission had more research and information-gathering to do before agreeing to support the petitions.

2. Herring River Study Update

Matt Ladewig and Luke Olsen, both of TRC, attended the hearing virtually. Ms. Usowski explained that the Commission will host a public hearing to discuss further the study findings. Ms. Usowski asked Mr. Ladewig if he had contacted the Town of Harwich IT Director, Sarah Eaton, to incorporate the findings onto the Town's GIS database. Mr. Ladewig said he would reach out to Ms. Eaton again. Chairman Ketchum said he thought it was important that the information be presented in an accessible form so the public can understand.

Ms. Pilling asked if there were site photos for the control marsh sites and Mr. Olsen confirmed the researchers did not take pictures if structures were not present. Ms. Mulhall-Maguire asked clarifying questions regarding the transects. Chairman Ketchum suggested TRC include definitions in parentheses after unfamiliar terms.

Ms. Usowski offered the date of April 16th, a regular hearing, for Mr. Olsen and Mr. Ladewig to formally present the study to the public.

3. Reschedule next nutrient management workshop

Friday, March 28 will not work to schedule the next nutrient management workshop. The Commission discussed other date possibilities but did not schedule a next meeting. Ms. Usowski said she would get back to them with new options.

Minutes

3/5/25

Mr. Coleman moved to approve the minutes. Ms. Pilling seconded.

Vote: 5:0

Motion carried; minutes approved.

Meeting Attendance

Chris Stoltz	Tom Berard
Mary Chamberlain	Doris Berard
Dave Fogaren	Daniel Croteau
Eric Woodbury	Ron Bourgeois
Robert Drake	Noreen Cahalane
Jason Trepanier	Bill Cahalane
Patrick Otton	Mary Lou Cahalane
Anthony Bowers	Betty Murphy
Jeff Lang	Sandy Wycoft
Ann Marie Varella	

Adjournment

Mr. Coulson moved to adjourn the meeting. Ms. Mulhall-Maguire seconded.

Vote: 5:0

Motion carried; meeting adjourned.

Minutes taken and transcribed by Lily Gooding, Assistant Conservation Agent