



TOWN OF

HARWICH

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Harwich, MA 02645

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HARWICH CONSERVATION COMMISSION - MEETING MINUTES

TOWN HALL – GRIFFIN ROOM

Wednesday, May 21, 2025 – 6:00 PM

Commissioners and Staff Present

Mark Coleman, Viv Mulhall-Maguire, Wayne Coulson, Sophia Pilling, Conservation Administrator Amy Usowski

Commissioners Absent:

John Ketchum

Call to Order

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

Conservation Restrictions - Discussion and Possible Vote

Harwich Conservation Trust- Cape Cod Rail Trail Overlook, Trustees of the Harwich Conservation Trust, Lot 2, 379 Main Street, Map 38, Parcel G320, Protection of nearly 50 acres adjacent to the Cape Cod Rail Trail and protection of scenic views from both the bike trail and Great Western Road.

Mr. Michael Lach, Executive Director of the Harwich Conservation Trust (HCT), was present to request the Conservation Commission accept and approve holding the conservation restriction on the property located at 379 Main Street, Lot 2, and to request approval of a letter from the Conservation Commission to the Harwich Board of Selectmen encouraging the Board's acceptance and approval of holding the conservation restriction.

Mr. Lach explained that the 50 acres of land is currently owned by Mr. Ray Thatcher, Jr. Mr. Lach stated that once the 2-year lease buy-back to the current owner has expired on the property, The Harwich Conservation Trust is looking to protect this property in perpetuity. He stated that local cranberry farmers are having a difficult time sustaining their farms in this economy but still wish to continue farming their land and continue their way of life. He stated the Harwich Conservation Trust and the Town of Harwich have partnered in the past with undertakings of this type in order to preserve the land, views and walking trails of Harwich. Mr. Lach reminded the Commission that the Town Meeting authorized approval of this conservation restriction.

No discussion from the Commission. No public comment.

MOTION

Mr. Coleman moved to accept and approve the Conservation Restriction for the Cape Cod Rail Trail Overlook and approve sending the Harwich Board of Selectmen a letter encouraging them to accept and approve of the holding of the Conservation Restriction. Ms. Mulhall-Maguire seconded.

Vote: 3-0-1. Mr. Coulson abstained.

Motion carried; Acceptance of the Conservation Restriction for the Cape Cod Rail Trail Overlook and sending a letter to the Board of Selectmen approved.

Harwich Conservation Trust- Red River Valley Preserve, Trustees of the Harwich Conservation Trust, 1039 Route 28, Map 35, Parcel S20, an 8.10-acre Conservation Restriction on a 9.57-acre property that will be the future home of the Harwich Conservation Trust.

Mr. Michael Lach, Executive Director of the Harwich Conservation Trust (HCT), was present to request that the Conservation Commission accept and approve holding the conservation restriction on the property located at 1039 Route 28 and request approval of a letter sent from the Conservation Commission to the Harwich Board of Selectmen encouraging the Board's acceptance and approval of holding the Conservation Restriction.

Mr. Lach stated the property is of ecological significance as it is within a public water supply recharge area to town wells and is also in the public area recharge to the Town of Chatham. He explained that the property will be the future home of the Harwich Conservation Trust, stating that they are in the design stages of the project. Mr. Lach reminded the Commission that the Town Meeting authorized approval of this conservation restriction.

No discussion from the Commission. No public comment.

MOTION

Mr. Coleman moved to accept and approve the Conservation Restriction for the Red River Valley Preserve and approve sending the Harwich Board of Selectmen a letter encouraging them to accept and approve of the holding of the Conservation Restriction. Ms. Pilling seconded.

Vote: 3-0-1. Mr. Coulson abstained.

Motion carried; Acceptance of the Conservation Restriction for the Red River Valley Preserve and sending a letter to the Board of Selectmen approved.

Change in Plans

Michael Lach, 10 Headwaters Drive, Map 80, Parcel 81, SE32-2566, Hinckley's Pond-Herring River Headwaters Eco-Restoration Project.

Ms. Usowski stated that the request is an Amended Order of Conditions, not a Change in Plan as presented on the application.

Mr. Michael Lach, Executive Director of the Harwich Conservation Trust (HCT), was present to discuss the project and introduced Mr. Tom Evans, President of the Harwich Conservation Trust Board of Trustees.

The project entails work in the 50-foot buffer zone to Hinkley's Pond as part of the Headwaters Restoration Project. The amendment to the order of conditions proposes adding a 4'x 15-20' long boardwalk to span the outlet of water flowing from the ecologically restored area on the east side of the Cape Cod Rail Trail. The boardwalk will be the access point for people needing to place non-motorized watercraft in the water and wishing to walk to the envisioned pond overlook which will replace the derelict pump house. Mr. Lach stated that per the already issued order of conditions, there will be a wheelchair accessible ramp leading back and forth from the pond viewing area up to the Cape Cod Rail Trail.

Ms. Usowski stated she and Mr. Nick Nelson, Senior Fluvial Geomorphologist and Regional Director- inter-fluve, spoke about the project and had discussed the potential for additional plantings, explaining that with new structures, mitigation plantings are normally requested. Mr. Nelson had reminded her that per the results of the Massachusetts Endangered Species Act (MESA) application, MESA wanted an area near the pond edge to remain clear for potential state-listed near-shore vegetation to emerge. She stated that Plymouth Genshin is the possible vegetation to emerge on the sandy, flat area near the pond. She stated that the width of the boardwalk is 4' but the length might be less than 15'. Ms. Usowski stated the project is a benefit to the area and she doesn't see the need for any mitigation. She remarked that the paths are well done and nicely guide people off the sensitive areas rather than trampling them.

Ms. Usowski recommended the approval of the requested Amended Order of Conditions.

No discussion from the Commission. No public comment.

MOTION

Ms. Pilling moved to approve the Amended Order of Conditions. Ms. Mulhall-Maguire seconded.

Vote: 3-0-1. Mr. Coulson abstained.

Motion carried; Amended Order of Conditions approved.

The following applicant has filed a Request for Determination of Applicability

MassDOT, South St, Main St, and Sisson Road Right-of-Ways. Proposed work seeks to improve existing sidewalks to make them ADA accessible throughout and transition them to a multi-use path along South Street, Main Street, & Sisson Road.

Mr. Kyle Stanley, Transportation Engineer-Pare Corporation, was present and Mr. Craig Lacroix, Environmental Scientist-Pare Corporation, online spoke about the MassDOT project to reconstruct and improve the existing sidewalk areas along South Street, Main Street and Sisson Road in order to provide a safe, ADA compliant route to school for Harwich Elementary School students.

Mr. LaCroix showed the plans, explained the scope of work, noted the buffer zones and spoke about the proposed erosion controls. He stated that most of the work entails resurfacing the existing impervious surfaces.

Mr. LaCroix explained that there are three resource areas within the vicinity of the scope of site work. Two of the resource areas are bordering vegetated wetlands (BVW's) and site work within these areas are deemed to be under the jurisdiction of the Conservation Commission, or otherwise, non-exempt to MassDOT. He stated that approximately 2,047 square feet of non-exempt work is located within the 100-foot buffer zone associated with these two bordering vegetated wetland areas. The third resource area is an isolated vegetated wetland which is deemed as not under the jurisdiction of the Conservation Commission, or otherwise, exempt to MassDOT. Mr. LaCroix explained that MassDOT is exempt from certain local requirements such as local by-laws.

He stated that a lot of the work consists of widening the shared use path and that every effort was made to remove all work in the wetland areas. He explained that they attempted to save some trees, but some will need to be removed due to the creation of a slope down to the wetland edge. After the slope is completed, eight trees will be planted to mitigate the loss of the trees.

Ms. Usowski summarized the purpose and scope of the project and spoke about the resource areas that fall under the Conservation Commission's jurisdiction. She stated that work near the bordering vegetated wetland located across from the school entrance on South Street should not adversely impact the wetland area. The second wetland area is located on the north side of Main Street. Ms. Usowski stated that the third area, which is non-jurisdictional, is the isolated vegetative wetland located by Main Street. That wetland comes up almost all the way up to the existing sidewalk. She asked that all work be done as carefully as possible, especially near the isolated vegetative wetland area, to be very careful about erosion controls and to try to remove as few trees as possible. She proposed Red Maple trees as the replacement trees and stated that they should not worry about saving the existing trees if they are found to be invasives.

Mr. Coulson stated that a teacher at the Harwich Elementary School told him the road to the library can be scary for the children with all the traffic and that the improvements to the sidewalk are great.

Ms. Pilling asked about the slope to be created by the spot in the vegetated wetland and the seed mix type to be used. Mr. Stanley stated that the slope would be 1.8-1, enough of a slope to be able to loam and seed, but did not recall the type of seed mix to be used.

Ms. Usowski asked if they would be amenable with the Commission conditioning that a native seed mix be used. Mr. Stanley agreed to the condition.

Ms. Usowski stated she recommended approval of the RDA with a negative 3 determination.

No further discussion from the Commission. No public comment.

MOTION

Mr. Coulson moved to approve the Request for Determination of Applicability with a Negative 3 Determination. Mr. Coleman seconded.

Vote: 4-0

Motion carried; Request for Determination of Applicability with a Negative 3 Determination approved.

The following applicant has filed a Request for an Amended Order of Conditions

Marc Gordon and Carolyn Porter, 4 Monomoy Rd, Map 5, Parcel K1-A3, SE32-2583, Extend walkway and connect to patio and deck area.

Mr. John M. O'Reilly, Civil Engineer / Land Surveyor-J.M. O'Reilly & Associates, Krystal McMorow, Owner-Sundogs Ecological Landscapes and Mr. & Mrs. Porter, homeowners, were present to ask the Commission to approve an amendment to their order of conditions to include extending their 5' wide walkway into the patio to the south side of the building. They would also like to relocate the AC pads and round out the walkway at the north end. He also clarified that the pathway will be permeable. Ms. McMorow stated that Area C has been completed with the exception of the pitch pine trees which will be planted in the fall.

Ms. Usowski asked about the timeline for the plantings. Ms. McMorow stated she still needs to complete the invasive management part and will be able to get back to it this summer. Ms. Usowski clarified that the original mitigation overcompensated for the additional hardscape and does not see the need for any additional mitigation. Ms. Usowski stated there were no changes to condition, there was only a revised plan. She stated that if the Commission agrees they can sign off on the plan change.

No further discussion from the Commission. No public comment.

MOTION

Mr. Coulson moved to approve the Amended Order of Conditions. Ms. Mulhall-Maguire seconded.

Vote: 4-0

Motion carried; Amended Order of Conditions approved.

The following applicants have filed a Notice of Intent

Jeffrey Lang, 11 River Bend Rd, Map 1, Parcel G1-9. House demolition and rebuilding, septic system installation, bulkhead repairs and replacement, and mitigation plantings. *Continued from May 7, 2025. Applicant has requested a continuance to June 4, 2025.*

Ms. Usowski explained that the applicant has requested a continuance to the Commission's June 4, 2025 meeting.

No discussion from the Commission. No public comment.

MOTION

Mr. Coleman moved to approve the continuance of the hearing to the June 4, 2025 meeting. Mr. Coulson seconded.
Vote: 4-0

Motion carried; Continuance of the hearing to the June 4, 2025 meeting approved.

Lauren McCabe, 11 Nons Rd, Map 6, Parcel C1-10. Reconstruction of an existing dock. *Continued from April 16, 2025. Applicant has requested a continuance to June 4, 2025*

Ms. Usowski explained that the applicant has requested a continuance to the Commission's June 4, 2025 meeting.

No discussion from the Commission. No public comment.

MOTION

Mr. Coleman moved to approve continuance of the hearing to the June 4, 2025 meeting

Mr. Coulson seconded.

Vote: 4-0

Motion carried; Continuance of the hearing to the June 4, 2025 meeting approved.

John and Hallie Vitolo, 9 Stanley Road, Map 81, Parcel A11, Reconstruction of existing Seasonal Dock, Stairs and Boathouse supports in Hinkley's Pond. *Continued from May 7, 2025.*

Ms. Usowski stated that Mr. Mark Burgees, Engineer-Shorefront Consulting, was instructed that he need not attend as only the DEP number was needed. Ms. Usowski stated the DEP number has been received and recommended approval of the NOI. She stated that she drafted the order of conditions.

No discussion from the Commission. No public comment.

MOTION

Mr. Coulson moved to approve the Notice of Intent. Mr. Coleman seconded.

Vote: 4-0

Motion carried; Notice of Intent approved.

Ms. Usowski read the Order of Conditions.

MOTION

Mr. Coulson moved to approve the Order of Conditions. Ms. Mulhall-Maguire seconded.

Vote: 4-0

Motion carried; Order of Conditions approved.

The Marjollet/Kerry Long Beach Nominee Trust, 0 Pleasant Lake Avenue, Map 100, Parcel K4-4, Construction of a Seasonal Dock in Long Pond. *Continued from May 7, 2025.*

Mark Burgess, Engineer- Shorefront Consulting, was present. Ms. Usowski stated that the DEP number has been received, and she drafted the Order of Conditions. Ms. Usowski added that there is also a one-time in-lieu of mitigation fee amounting to \$1,584 to be paid before the construction begins. She stated that the in-lieu money goes to improving wetlands and buffer zones in other areas of town.

No discussion from the Commission. No public comment.

MOTION

Ms. Pilling moved to close the public hearing and approve the Order of Conditions.

Mr. Coulson seconded.

Vote: 4-0.

Motion carried; Public Hearing closed, Order of Conditions approved.

Kristen Kelly Fisher, 101 Sequattom Road, Map 101, Parcel X6, Permitting of existing dock in Long Pond.
Continued from May 7, 2025.

Mark Burgess, Engineer-Shorefront Consulting, was present and Ms. Fisher was online. Ms. Usowski stated that the DEP number has been received. She stated that the existing dock in Long Pond has been there for a long time but never officially permitted. It meets all of the requirements, with the exception that it is not quite deep enough at the end, so they are adding a section at the end to get it to 3 feet. Ms. Usowski stated that they are being assessed an in-lieu of mitigation fee amounting to \$138.00 for this minor addition.

No discussion from the Commission. No further public comment.

MOTION

Mr. Coleman moved to close the public hearing and approve the Order of Conditions. Ms. Mulhall-Maguire seconded.

Vote: 4-0

Motion carried; Public hearing closed, Order of Conditions approved.

James & Jarmila Sullivan, 31 Mill Rd & 6 Brora Dr, Map 15, Parcels U3 & U2-2. Reconstruction of existing joint use dock and maintenance dredging. *Continued from May 7, 2025. Applicant has requested a continuance to June 4, 2025.*

Mark Burgess, Engineer-Shorefront Consulting, was present. Ms. Usowski explained that the applicant has requested a continuance to the June 4, 2025 meeting.

Mr. Burgess stated that at the last meeting, the Commission wanted to increase the dredging footprint to achieve the 3' of clearance under the most landward floats by the dock. Mr. Burgess stated that the applicants were fine with that. He stated that low tide flows under the center of the float and noted that it has fallen out of compliance because the area silts in. He spoke about the fact that to achieve the 3' of clearance, it would entail intertidal dredging. Mr. Burgess stated he is more concerned with the proximity of the salt marsh to the dredge footprint. He stated that the floats are only going to be used for launching kayaks and he might have to ask for a variance.

Ms. Usowski stated that she is more concerned about the salt marsh to the dredge footprint. She added that that the owners cannot have a boat at the site. Ms. Usowski said they can't have a discussion about this now at this meeting because the Commission was asked to continue the hearing to June 4, 2025.

No discussion from the Commission. No public comment.

MOTION

Mr. Coleman moved to approve the continuance of the hearing to the June 4, 2025 meeting. Ms. Pilling seconded.

Vote: 4-0

Motion carried; Continuance of the hearing to the June 4, 2025 meeting approved.

Request for a Certificate of Compliance

William M. and Paula M. Ebben, 0 Snow Inn Road, Map 15, Parcel N8-B-0-R, SE32-2475, Pier, ramp, and float with dredging.

Ms. Usowski said the project is complete and in compliance.

No comments from the Commission.

MOTION

Mr. Coulson moved to approve a Certificate of Compliance. Ms. Mulhall-Maguire seconded.

Vote: 4-0

Motion carried; Certificate of Compliance approved.

John A. and Mary Facey, 26 Lakeside Terrace, Map 72, Parcel W253, SE32-783, House and deck addition project.

John and Mary Facey, 26 Lakeside Terrace, Map 72, Parcel W253, SE32-1146, House addition project.

Ms. Usowski said that both projects are complete and in compliance and recommends approval.

No discussion from the Commission.

MOTION

Mr. Coleman moved to approve the Certificates of Compliance for both projects. Ms. Mulhall-Maguire seconded.

Vote: 4-0

Motion carried; Certificates of Compliance approved.

Discussion and Possible Vote

Legal opinions regarding use of Town parcel at 23 Walther Road.

Ms. Usowski spoke about the history of the Town parcel of land and the two legal opinions regarding the possibility of reconstructing the stairs. Ms. Usowski stated that the land is under the care and custody of the Conservation Commission, and it is therefore up to them to decide whether stairs can or cannot be constructed. She said that given the second legal opinion that has been received, the Commission is being asked to reconsider their opinion. Ms. Usowski stated that if the stairs are to be constructed, the project still needs to go through all the same channels and meet the Wetland By-Law standards just as would any other project.

Each Commissioner gave their decision.

Mr. Coulson said that he would like to see the stairs rebuilt. He asked if they could possibly get a third opinion. Mr. Coulson said that with or without the fence, people are still going to access the beach via the bank.

Ms. Mulhall-Maguire said she would like the stairs to be rebuilt. She said that without the stairs in place, she sees further disturbance of the eroding bank and possible danger to those attempting to access the beach. She also stated that she is very familiar with the stairs as she lived in the area for over 20 years and believes that was the intent in leaving the land to the Town.

Ms. Pilling stated that her opinion has not changed. She does not want to see the stairs rebuilt. She stated that it seems as if the information was omitted from the deed.

Mr. Coleman stated he would like to see the stairs rebuilt. He stated that discussion centers around the wishes of the person who donated the land versus the practicality of living in the neighborhood and access to the beach. He stressed the importance of safety and not seeing further erosion of the bank. He is inclined to think the stairs at a particular time were not considered to be a structure.

There was a discussion about the integrity of the coastal bank.

Mr. Coleman asked for public comment.

Public Comment

Ms. Karin Larson stated that she sees people climbing on the sand and causing more erosion and having no stairs is a safety problem. She stated that people have paid high taxes to purchase their house near this stair access point to the beach. She stated that the Town should stop the erosion on the bank and give safe access to the beach.

Mr. Matt Sutphin stated that when people are used to something it is very hard to give it up. He stated that by rebuilding the stairs, Josephine Jenkin's gift is not being honored. He asked the Commission to consider if they were giving a gift to the Town, what their expectations would be. He stated that Ms. Jenkins did not leave a private beach for the neighborhood and stated that there is a posted sign telling people not to use the slope. He stated that the deed states all structures to be gone except a bike rack. He asked the Commission to believe in principle.

Ms. Bernadette Waystack showed the Commission pictures of the land. She noted that the deeds states no structures, and a bathhouse was removed from the property, but not the stairs. She stated that the stairs were not initially removed because they were never interpreted as a structure. She added that the Town set a precedent by rebuilding the stairs after Hurricane Bob in 1991. She thanked the Commission for all the important work they do.

Mr. Matt Sutphin stated that the property was previously owned by his family and sold to Mr. and Mrs. Jenkins. Ms. Jenkins made a deal with his family to not construct anything on the property besides the bathhouse. He stated that Ms. Jenkins did not give the land to the Town to build a public beach. He stated that the stairs came to be because when the fire department burned down the bathhouse the stairs were left intact. Mr. Sutphin expressed that if Ms. Jenkins had wanted to give beach access to the neighbors, she would have specified it in the deed. He stated that it comes down to whether the Commission wants to honor the deed or not. He stated that the Commission's original decision is consistent with the deed and honored Ms. Jenkins's intention.

Mr. Richard Garrison stated that he owns the house two houses away from the property. He stated that Ms. Jenkins wanted people to have access to the beach, noting that is the reason for the stairs. He said that people in his family knew Ms. Jenkins and knew her intention was to donate the land to the Town so that people could enjoy the beach.

Ms. Susan Tomich spoke about her interpretation of the intent of the property, stating the intent was to give the entirety of the land which includes the beach and the area in between up to the flat part of the land. She asked the Commission if they want people traversing between the two areas via a stairway or by walking down it and eroding the dunes.

Ms. Katherine Tran said that on page 2 of the deed it says that the property shall be used only for passive recreation. She stated that meant Ms. Jenkins wanted people to use the beach.

Mr. Sutphin stated that passive recreation is leaving the ground raw and enjoying it to the extent that one can without destroying it. He stated he believes he would get support from the Selectboard on that comment.

A gentleman asked why someone would give the Town a property with a beach if not to be used for beach access.

Ms. Usowski stated that she does not believe a third opinion is warranted. She stated that she does also see the issue from a safety/liability standpoint. She stated that in her opinion, recreation would occur at the beach and the best way to get to the beach is over the bank and it would be best to have a stairway there for safety reasons.

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

MOTION

Mr. Coleman moved to notify the Harwich Selectmen that the Conservation Commission agree with the second legal opinion as it is legally possible. Ms. Mulhall-Maguire seconded.

Vote: 4-1 Ms. Pilling voted no.

Motion carried; Approved to notify the Harwich Selectmen that the Conservation Commission agrees with the second legal opinion as it is legally possible.

Ms. Usowski confirmed that the next step in the process is to file a Notice of Intent application with all the required documents. She noted that there was a donation made for the project as the Conservation Department does not have the monies to fund the project. Ms. Tran said she would be more than willing to help.

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

Minutes of May 2, 2025

MOTION

Mr. Coleman moved to approve the minutes of May 2, 2025. Mr. Coulson seconded.

Vote: 4-0

Motion carried; Minutes of May 2, 2025 approved.

Ms. Usowski stated that she has been in touch with Ms. Kristen Andres, Director of Education and Outreach-Association to Preserve Cape Cod, to figure out a date for her to come speak about land management practices for the third public information workshop.

Ms. Usowski stated Thursday May 29, 2025 is the Community Garden Planting Day and stated that Commissioner are welcome to participate.

ANY OTHER BUSINESS WHICH MAY COME BEFORE THE COMMISSION

None

MOTION

Mr. Coleman moved to adjourn the meeting at 7:40pm. Ms. Pilling seconded.

Vote: 4-0

Motion carried; Meeting adjourned.

Attendees:

Bernandette Waystack	Tom Evans
John O'Reilly	Michael Lach
Matt Sutphin	Mark Burgess
Kyle Stanley	Katherine Tran
Karen Larson	
Jeanne Barker	
Bert Barker	

