

CONSERVATION COMMISSION

Town of GREENFIELD, MASSACHUSETTS
253 Main Street, Greenfield MA 01301

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GREENFIELD CONSERVATION COMMISSION
Minutes of April 14, 2009
7:00 p.m.

Greenfield Police Station
321 High Street

The meeting was called to order at 7:03 with the following members:

PRESENT: Alex Haro, Chair; Timothy Mosher, Vice-chair; Thomas DeHoyos; and Dee Letourneau

ABSENT: None

Also Present: Ralph Kunkel, Conservation Agent and members of the public.

Approval of minutes:

MOTION: Moved by Mosher, seconded by DeHoyos, and voted 4-0 to accept the Minutes of March 24, 2009 as amended.

Public Meetings/Hearings:

7:06 p.m. Joseph Kwan, Northrup Grumman Space and Mission Systems – to review a Notice of Intent for property located at 11-17 Meridian Street for a proposal to remediate contaminated soil and place soil cap at the former Swarf Disposal Area for the GTD. Continued from January 27, 2009.

Kunkel read into the record a letter dated April 14, 2009 from the consultant for Joseph Kwan, Magdalena Lofstedt of Camp Dresser McKee Inc., requesting that the Public Hearing be continued to May 12, 2009.

MOTION: Moved by Mosher, seconded by DeHoyos, and voted 4-0 to continue the Public Hearing for Joseph Kwan, DEP File # 168-0267, to May 12, 7:00 p.m. to be held at the Greenfield Police Station, 321 High Street.

7:08 p.m. Russell Haddleton, Mackin Construction Co. – to review a Notice of Intent for property located at Assessors Map R04 Lot 44 to conduct continued cleanup and assessment of fuel oil impacted soils and groundwater pursuant to 310 CMR 40.0000 (MCP) to address risk to public health and the environment, with associated *in situ* restoration and other mitigation for unavoidable impact to resource areas. Continued from March 24, 2009

Haro reopened the Public Hearing and reminded those present that the Public Comment Period was closed and there would be no more Public Comment received. Haro added that he would entertain limited requests for Points of Information.

Haro addressed a letter dated April 13, 2009 sent by Al Norman, 21 Grinnell Street, implying bias of Mosher and DeHoyos toward this project and that Norman had stated in his letter that they should recuse themselves from this hearing. Haro then asked Mosher and DeHoyos if they wished to recuse themselves. DeHoyos responded “No” and Mosher responded “Grievance noted.

No". Norman's letter included the following statement "Most recently, on March 24, 2009, I was interrupted by a member of the Commission from the dais while attempting to present a statement regarding a Notice of Intent. It was during the limited public comment period that Mr. DeHoyos chose to insert his editorial comments during my presentation. Mr. DeHoyos, a member of the Commission, broke into my allotted time to speak, directing me to 'stop making self-serving statements.'" DeHoyos requested that the record be set straight as to what he said to Norman.

From the approved minutes of March 24, 2009:

He [Norman] was interrupted by DeHoyos who asked if this would be public comment on the wetlands or simply self-serving comments. Norman replied that all of his comments were self-serving.

The applicant, Russell Haddleton was present and on his behalf were Eric Nelson of SVE Associates, Jeff Roelofs, Attorney, Amy Ball of the Horsley Witten Group, and Bruce Tease of Environmental Compliance Services.

Kunkel said that the applicant had submitted an amendment which was a detail on the plan showing the placement of the Bank flags on the original Wetlands Delineation.

Haro asked if the applicant's Comments to DEP had been received. Kunkel replied that they had and that those comments were included in the Commission's packets.

Nelson pointed out that there were additional modifications from Horsley Witten with responses to DEP Comments.

Roelofs asked that it be put into the record that he had submitted a Letter dated April 3, 2009, with an explanation as to both why the Commission should approve and including legal cases showing that the Commission has the authority to approve the project as both meeting the performance standards and as Limited Project status.

Haro asked if the Commission had any further questions of the applicant. There was no response. Haro then reviewed some of the options before the Commission:

- Option 1 as a Standard Approval
- Option 2 as a Standard Approval as well as Approval as a Limited Project
- Option 3 as a Limited Project Approval, only

Letourneau said she saw no reason why the proposed work does not meet the performance standards of the Act; and that the proposed work would meet the criteria for a limited project.

Haro asked Kunkel what he had learned. Kunkel replied that the proposed work certainly qualifies as a limited project, but that it currently also meets the performance standards. Kunkel added that DEP's comment was that "it may not need to be approved as a limited project."

Haro said he agreed with Letourneau that the proposed work does meet the performance standards and that it would also make sense to approve it as a limited project.

Haro asked Kunkel for any further comments. Kunkel replied that there is not specific language in the Greenfield Ordinance relative to Limited Project Status other than that language wherein the Ordinance states: "Jurisdiction under this ordinance shall be the same as in the Massachusetts Wetlands Protection Act except as outlined" in the ordinance. Kunkel said that while that may apply to Limited Project Status, that he had checked with the town's attorney, an attorney from MACD and a Wetlands Administrator from another city, and that all had agreed it may not support Limited Project status relative to the 25-foot No Disturb Zone. Kunkel said that he had also spoken with these sources about the 25-foot No Disturb Zone and that all agreed this would constitute a legitimate and valid use of the waiver. Kunkel went on to say that in his opinion this would be a legitimate use of the waiver as this clean-up is mandated and yet our ordinance prohibits work in the 25-foot No Disturb Zone without language to address cases like this. Kunkel said an alternative to using the waiver would be to approve the work under the Act and deny it under the Ordinance, in which case the applicant would appeal to the DEP for a Superseding Order of Conditions and since it is a mandated clean-up, the state would most likely approve it. Kunkel then addressed another clause in the Ordinance which has been referred to in Public Comment in the past, Chapter 195-2.B(5) regarding replication of wetlands. Kunkel said that in the Wetlands Protection Act, restoration and replication are not used as synonyms but treated as separate mitigations; that replication is a type of mitigation but is not restoration; and that this clause would not be applicable to this Notice of Intent. Kunkel added that both attorneys and the wetlands administrator he had spoken with agreed with his interpretation.

Roelofs clarified why the applicant had requested to have the project approved both as a limited project and as meeting the performance standards of the Act. Roelofs stated that as an appeal had been threatened, this in his opinion, approving under both conditions would make the most sense.

There followed an exchange between Norman and Kunkel wherein Kunkel clarified statements that had been made at previous meetings.

Haro reminded the Commission that decisions need to be made with respect to correctness of the law, the Act and the Ordinance, and not based on threats of appeals or lawsuits.

Mosher said in his opinion each potential motion needs to be weighed individually.

Haro suggested going around to each commissioner and have each speak to what they favor.

Haro said with respect to approval under the Act, in his opinion the work meets the performance standards of the Act, and that he was inclined to approve the work under a standard Order of Conditions.

Letourneau stated that she agreed with Haro and that in her opinion the proposed work meets the performance standards. Letourneau then went on to cite 10.53 (q) from the General Provisions of the Act which would permit the cleanup and *in situ restoration* to be passed as a limited project. Letourneau said that she favored the project being approved both as meeting the performance standards and as a limited project.

Mosher said that he favored approving the project as meeting the performance standards. Mosher went on to say that while the local ordinance does have language regarding the No Disturb Zone, there are two State regulations that dictate the clean-up, therefore he would favor standard approval only.

DeHoyos said that he favored approval of the project as both meeting the performance standards of the Act and as a limited project, so that should there be a law suit the NOI would not come back before the Commission again.

Roelofs asked for a point of clarification to explain that in the document he had sent to the Commission he had included cases wherein projects were passed as both meeting performance standards and as a limited project.

Nelson reiterated that the premise of the Wetlands Protection Act is to “avoid”, and that the applicant cannot avoid in this case and that 10.53 (q) specifically addresses cases like this. Nelson said they were able to meet the performance standards only because of the small size of the resource area; otherwise it would be necessary to pass it as a limited project.

Haro closed the Public Hearing with respect to the Wetlands Protection Act.

MOTION: Moved by Mosher, seconded by Haro, and voted 1-3 (Haro voting in favor) that the NOI, DEP File #168-0269, from Russell Haddleton, President of Mackin Construction Company, as submitted meets the General Performance Standards of the Massachusetts Wetlands Protection Act for Bordering Vegetated Wetlands and Bank; the Commission therefore issues an Order of Conditions with Special Conditions to be issued using Attachment A as a guide.

Letourneau reiterated her point of how the project meets the performance standards and also qualifies as a limited project.

MOTION: Moved by Letourneau, seconded by DeHoyos, and voted 3-1 (Haro opposed) that while the NOI, DEP File #168-0269, from Russell Haddleton, President of Mackin Construction Company, as submitted meets the General Performance Standards of the Massachusetts Wetlands Protection Act for Bordering Vegetated Wetlands and Bank, the Commission issues an Order of Conditions with the Special Conditions in Attachment A and approves the work as submitted in the final plans as a limited project with the understanding that as specified in the Order of Conditions and in the Special Conditions the Applicant shall come before the Commission for approval of any work not specified in the final approved plan.

Kunkel read per Haro's request from the Greenfield Wetlands Protection Ordinance §195-2.B (1) and §195-2.B (5). Kunkel said that in the Wetlands Protection Act "Replication and Restoration" are not used as synonyms; that he had consulted with the Town Attorney and an MACC Attorney and both agreed that they were not used as synonyms but treated separately in the Act. Kunkel then read into the record a list of reasons why, in his opinion, the Waiver (§195-4. H) would be a viable option to use to allow work in the 25-foot No Disturb Zone.

Letourneau said that she agreed with Kunkel regarding §195-2.B (5); that the "Restoration" was not an issue. Letourneau said that she had given some thought to §195-2.B (1) and that in her Opinion, this was not a "new" project. Letourneau also referenced the clause which states "shall be maintained" and that, in her Opinion, with the restoration and proposed enhancement, the No Disturb Zone potentially would be maintained. Letourneau reiterated that the State had mandated this clean-up.

Haro interrupted the proceedings to remind the Commission that there were two Requests for Determination to be reviewed, one at 8:00 p.m. and one at 8:15 p.m.

MOTION: Moved by DeHoyos, seconded by Mosher, and voted 4-0 to move the Drafting of the Order of Conditions for Russell Haddleton, DEP File #168-0269 on the Agenda until after the Public Meeting scheduled for 8:15 p.m.

8:02 p.m. Shelburne Falls Congregation of Jehovah's Witnesses – to review a Request for Determination of Applicability for property located at 261 Mohawk Trail (Assessors Map R25, Lot 31) to determine whether the work depicted on the plans is subject to the Wetlands Protection Act.

Patrick McCarty of McCarty Engineering represented the Applicant. McCarty said that they were in the process of preparing site plans for the construction of Kingdom Hall; in order to finish the drainage design the applicant requested permission to do conduct test pits on the site to determine soil conditions and groundwater elevations. McCarty reviewed the site plan.

Kunkel reminded the Commission that this activity would be an exempt activity.

McCarty described the nature of the work.

MOTION: Moved by DeHoyos, seconded by Letourneau and voted 4-0, to make a negative determination that the area described in the Request is subject to protection under the Act. Since the work described therein meets the requirements for the following exemption, as specified in the Act and the regulations, no Notice of Intent is required:

310 CMR 10.02(2)(b)

1. Minor activities within the buffer zone and outside any areas specified in 310 CMR 10.02(1)(a) through (e) are not subject to regulation under M.G.L. c. 131, § 40:

g. Activities that are temporary in nature, have negligible impacts, and are necessary for planning and design purposes (e.g., installation of monitoring wells, exploratory borings, sediment sampling and surveying).

Other Business:

Kunkel told the Commission that there had been three applications before the Town for Agricultural Preservation Retrictions:

- Log Plain Road - 30 acres
- Plain Road - 68 acres (lots of frontage on Green River above town pool)
- Leyden Road - next to town farm - 63 acres

Kunkel explained to the Commission that usually the Commission contributes 10% of the fee; however, the Commission's funds would not allow a contribution of that size. Kunkel said that the Commission, in the past has given \$2000, but because the Commission did not have that much in the funds he was recommending \$1000. The Commission asked for more information and requested Kunkel to invite Eric Twarog or Marcia Starkey to come before the Commission to explain APR's and address each of these.

Site Visits: 7:30 a.m. April 21, 2009, 528 Leyden Road, Elise Schlaikjer requested to remove 8 – 9 Weeping Willow trees. The trees are located in an intermittent stream.

8:15 p.m. Camp Kee-Wa-nee – to review a Request for Determination of Applicability for property located at Assessors Map R31 Lot 2 to determine whether the work depicted on the plans is subject to jurisdiction of the Wetlands Protection Act or the Greenfield Wetlands Protection Ordinance.

Ron Wood, Executive Director, and Chris Sexton, President of the Board of Directors, were present on behalf of the applicant.

Haro said that while he was unable to attend, that three members of the Commission had attended the site visit. Haro asked if the issue was Compensatory Storage. Kunkel replied that the applicant may not be required to do this; the applicant had been asked to get a letter from an engineer stating the elevations involved in the building and the flood plain.

Wood said the applicant had retained Tony Wonseski of SVE Associates. Wood said that SVE had found a Benchmark on Barton road which would be used for the survey and that Camp Kee-Wah-Nee may submit a Request to have the Insurance Map amended. Wood said that they had a time-table to have the building complete and ready for occupancy, July 6, 2009 which is the beginning of Camp.

DeHoyos asked how long SVE would take. Wood replied that he did not have a time-table for SVE.

Discussion followed as to whether to issue a Determination with a condition that if they did not get the Insurance map amended they would be required to do compensatory flood storage; or whether to continue the Public Meeting to the next Commission Meeting.

Letourneau asked if they were within 25 feet of the intermittent stream running adjacent to the "Common Area". Kunkel replied that they were outside the 50 foot line of the buffer zone.

Letourneau proposed a Motion to approve the construction with conditions. During the discussion Mosher asked dimensions so he could calculate the flood storage. Kunkel said they would be unable to calculate the compensatory flood

storage until they got the report from the engineer. Mosher replied that since the applicant is asking the Commission to base a condition on future information “to be provided”, that the applicant should be asking for a continuance. Letourneau withdrew her suggestion of a motion.

MOTION: Moved by DeHoyos, seconded by Letourneau, and voted 4-0 to continue the Public Meeting for Camp Kee-Wah-Nee to April 28, 2009, 7:00 p.m. to be held at the Greenfield Police Station.

8:30 p.m. Mackin Construction Company, Russell Haddleton, President – to review a Request for Determination of Applicability for Property located at 37 Butternut Street (Assessors Map R06 Lot 15 and Lot 28A) to determine whether the area depicted on the plans is subject to the jurisdiction of the Wetlands Protection Act or of the Greenfield Wetlands Protection Ordinance, Chapter 195 and to determine whether the boundaries of the resource areas depicted on the plans are accurately delineated.

Eric Nelson, SVE Associates and Ward Smith, Valley Environmental Services, were present on behalf of the applicant.

Haro reviewed the site visit. Nelson reminded the Commission that delineations of portions of the property had been approved January 13, 2009. Nelson referred to adjustments that had been made in the field and said those adjustments were reflected on the plans that he was submitting, a revised Sheet 4; Area D where Wetlands Flag D12 was relocated and that D54 was removed and intermittent flags were placed between D53 and D55. Nelson said he would submit a revised surveyed plan with two to three weeks.

Haro stated that during the site visit he had asked Smith how he determined where Wetlands existed that needed to be delineated and that Smith had replied that he had walked the entire property. Haro was concerned that if any wetlands had been missed that the landowner would come before the Commission with a delineation.

Nelson stated that Smith, a professional Wetlands Scientist, had walked the entire 10 acres three times and that the applicant was requesting approval of the delineated wetlands currently before the Commission and that the delineations were good for three years.

Mosher asked if it was feasible to approve a delineation that had not been surveyed. Nelson responded that in the field with the Commission present they had measured the placement of the flags and that those measurements were accurately delineated on the revised map he had submitted. And he would be submitting a map that reflects the surveyed placement of those additional flags. Mosher stated that on the map Nelson had submitted Wetland Flag D53F was 100 feet from the road shown on the map and that he knows he was not 100 feet from the road.

A discussion ensued regarding approval of the delineation with a condition regarding the flags that had been added during the site visit and the flags that were moved during the site visit.

MOTION: Moved Letourneau, seconded by DeHoyos, and voted 4-0 to make a positive determination that boundaries of the resource areas as described on the submitted plans are confirmed as accurate:

- 1. Area A, the area delineated by Flags A-1 to A-18 and A-49 to A-85;**

2. Area D, the area delineated by Flags D-1 to D53; the area D -53; the area delineated by D-55 to D-82

Wetland Flags D-53A to D-53K were accurately depicted in the field but are not yet shown on the plan, but will be submitted when they have been surveyed.

8:50 p.m. Russell Haddleton, Mackin Construction Co. – to review a Notice of Intent for property located at Assessors Map R04 Lot 44 to conduct continued cleanup and assessment of fuel oil impacted soils and groundwater pursuant to 310 CMR 40.0000 (MCP) to address risk to public health and the environment, with associated *in situ* restoration and other mitigation for unavoidable impact to resource areas.

Haro reopened the public hearing and asked Letourneau if she would like to briefly summarize her statement prior to the 8:00 p.m. continuance.

Letourneau said she had stated that in her opinion restoration and replication were not identical and therefore Chapter 195-2.B(5) would not apply to this NOI.

Letourneau said her second point had been that under Chapter 195-2.B(1) the Ordinance states “new project,” and that in her opinion if this were a new project it is nevertheless a state mandated clean-up; that the Commission could declare that it is not a new project or use the waiver.

Mosher referenced Chapter 195-2.B(1) stating that this would have to be waived because the applicant would have to be in the No Disturb Zone to clean it and Mass. General Law stipulates that it has to be cleaned. Mosher said that he agreed with the semantic difference between restoration and replication. Mosher then added that the wildlife functions of this wetland would be improved because animals and plants would thrive better if the contamination were brought to state standards than they would in oily water.

An unidentified citizen asked for a Point of Information regarding whether a restoration had to be larger than the original. Haro replied that the proposal said it may be larger depending on the water table, but that the regulations state equal to or larger.

Haro closed the public hearing with respect to the Greenfield Wetlands Protection Ordinance.

MOTION: Moved by DeHoyos, seconded by Letourneau and voted 4-0, to approve the Notice of Intent Greenfield File #09-05, from Russell Haddleton, President of the Mackin Construction Company, as submitted and to waive Chapter 195-2.B(5) as not applicable by reason that this is a proposed *in situ* restoration and not a replication; and to waive Chapter 195-2.B(1) for the following reasons:

- 1. This is a State mandated clean-up. It would not serve the interests of the Massachusetts Wetlands Protection Act (the ACT), MGL Ch. 131 §40, or the Greenfield Wetlands Protection Ordinance (the Ordinance), Chapter 195, to have a contaminated resource area and 25 foot buffer area adjacent to and abutting areas that have been cleaned.**
- 2. The explanatory note in the Ordinance states that this provision, §195-2.B (1), was put into the Ordinance to preserve the long term viability of the resource area. The applicant has proposed to clean the wetland and the 25 foot buffer zone; and to restore that wetland *in situ*; and to restore and enhance the 25 foot buffer zone. By cleaning and restoring *in situ* and enhancing a resource area that wildlife may have begun to adapt to or use regularly, this provision is served.**

3. **The applicant has proposed a restoration and enhancement using indigenous species with a monitoring plan to combat invasive species. A wetland with vegetative biodiversity will better be able to provide prevention of pollution and flood storage.**
4. **The resource area and the buffer zone after it has been cleaned of contaminants, cleared of invasive species and restored will provide better habitat for wildlife sustainability than the previously contaminated resource area and buffer zone. The cleaned and restored bank will provide better habitat for nesting species.**

Haro said that he and Kunkel had compiled the draft list of Special Conditions that the Commission members had submitted. Kunkel said that the Special Conditions had been interwoven throughout the Standard Boiler Plate Conditions. Haro said he and Kunkel had organized the conditions into the categories: **Prior to Construction, During Construction** which includes **Monitoring of *In Situ* Restoration**, and **Upon Completion of Construction**.

Haro read the Special Conditions listed under **Prior to Construction** from the document entitled "Attachment A". The following conditions were adopted during the discussion which followed the reading:

A. PRIOR TO CONSTRUCTION:

- 1.) On-site restoration and post-restoration evaluations and monitoring of the site for the two-year post-construction period will be performed at least twice per year by a **Wetlands Scientist (WS) with a minimum of 5 years experience in wetland replication/restoration**. The WS is assumed to be Ms. Amy Ball of the Horsley Witten Group, as stated in the Notice of Intent; an alternate individual of similar qualification, if required, may be considered by the Commission. The proposed Environmental Monitor (EM) is not a Wetlands Scientist, but may visit the site during Construction, Restoration and interim periods Post-restoration to perform nominal monitoring tasks, with regular reporting to and consultation with the WS. The EM is assumed to be Eric Nelson of SVE.
- 2.) The applicant shall submit to the Commission a copy of the contract between the applicant and the EM and the WS to assure the Commission that these site inspections shall take place and that the reports shall be submitted. Any dollar amounts may be removed for confidentiality.
- 3.) Prior to the commencement of construction there shall be a Pre-construction conference at the site. The Applicant, the Applicant's EM, the WS and the members of the Conservation Commission shall be present at that site visit. The Applicant, the Applicant's Consultant and the WS at that site visit shall submit signed letters stating that they have read and understand the Order of Conditions.
- 4.) With 24 hour advance notice Members of the Commission and/or its agent shall have the right to enter onto the property to evaluate the premises and ensure compliance with these conditions and performance standards stated in the Order, the Act, and 310 CMR, 10.00 and may acquire any additional information, measurements, photographs, observations and/or materials or may require submittal of any data or information deemed necessary by the Commission for that evaluation.
- 5.) If contamination of the wetland and its surrounding resource area is found to be more extensive than expected with the scope of the present Notice of Intent, an amendment of the Notice of Intent must be requested of the Conservation Commission at a Public Hearing.

- 6.) **Prior to the initiation of any on-site activities**, the applicant shall submit to the Commission a receipt from the Franklin County Registry of Deeds of the recording of this Order of Conditions.
- 7.) **Prior to the initiation of any on-site activities**, the applicant shall properly post DEP file number as stated in the general conditions. This sign shall not be posted on a live tree.
- 8.) **Prior to the initiation of any work**, the Conservation Commission will be provided with the name, address, phone number and the contact person of the contractor.
- 9.) **Prior to the initiation of any work**, pre-construction photographs of all work sites indicated on the plans shall be submitted to the Commission. Photographs shall also be taken after construction and shall be submitted to the Commission.
- 10.) **Prior to the initiation of any work**, the area shall be checked for significant wildlife species including amphibians, reptiles and small mammals. Should any active nests be located within the limit of work, the Conservation Agent or Chair of the Commission shall be contacted.
- 11.) **Prior to the initiation of any remediation**, all debris within the proximity of Wetland 4 (including outside the 100 ft. buffer zone) **which will not be accessible (without disturbance to resource areas) by the appropriate equipment or procedures required for its removal after the initial restoration of Wetland 4 is complete** shall be removed from the site prior to or during construction.
- 12.) The geotextile/sedimentation/siltation barriers shall constitute a limit-of-work unless another limit of work line has been approved by this Order.
- 13.) The Commission reserves the right to impose additional conditions to mitigate any impacts which could result from site erosion, or any noticeable degradation of surface water quality discharging from the site. *(For example, should additional installation of erosion control measures be required by the Commission, they shall be installed within 48 hours of the Commission's request.)*
- 14.) This Order of Conditions, the Notice of Intent for which it was issued, the Environmental Monitoring Log and all other construction-related documents shall be kept available at the site. All contractors working at the site shall be made aware of the provisions contained within this Order of Conditions and adhere to all Special Conditions herein. At all times, the site foreman, supervision engineer or construction manager shall have access to a copy of these documents at the site and ensure that the project is in direct compliance with the requirements of this Order.

MOTION: Moved by Letourneau, seconded by DeHoyos, and voted 4-0 to accept with changes the Special Conditions under the section Prior to Construction.

DeHoyos read the Special Conditions listed under **During Construction** (without rereading the Conditions moved from the previous section) from the document entitled "Attachment A". The following conditions were adopted during the discussion which followed the reading:

B. DURING CONSTRUCTION:

- 15.) The applicant and all other parties subject to this Order shall comply with all orders and instructions of the EM, including orders to cease all activity within the Commission's jurisdiction when non-compliance with the Order is observed. The applicant and all other parties subject to this Order shall not resume activity until such time as the Commission

has authorized the resumption of activity, which authorization may be written or verbal, direct or through the EM. Failure to comply with this Condition can constitute a violation of this Order and can result in enforcement actions taken by the Commission.

- 16.) At no time shall sediments be deposited in a wetland or water body. All activities shall be undertaken in such a manner as to prevent erosion and siltation of adjacent water bodies and wetlands.
- 17.) No work shall take place other than that authorized by the Conservation Commission and shown on the above referenced plans and as described in the Notice of Intent and addenda. Any specific conditions in this Order which differ from the plans shall supersede the plans.
- 18.) Delineation flags and/or markers shall not be moved and/or removed and shall remain for the life of the project, except those directly impacted by the remediation and they shall be replaced upon completion of the restoration for the duration of the Order.
- 19.) Site grading and construction shall be scheduled to avoid periods of heavy rainfall and periods of high surface water. The EM shall be responsible for installing the erosion controls and inspecting them on a regular basis and shall monitor and insure the effectiveness of erosion controls. Repairs and improvements shall be made to erosion controls as they are needed. During remediation and restoration activities, the EM shall submit weekly reports to the Commission on the condition of the erosion controls. Inspections shall be made immediately after any significant rainfall event (specified as greater than or equal to 0.2 inches of rainfall within a 24 hour period) to assess any impacts to erosion and sediment control systems while they are in place.
- 20.) Any failures of the erosion controls due to significant rainfall or other events, and any repairs or remediation made in response to these events, will be reported immediately to the Conservation Commission by the EM. The Commission reserves the right to require additional erosion and/or damage prevention controls it may deem necessary.
- 21.) All disturbed areas shall be graded, loamed and seeded prior to November 30, of each year. No disturbed areas or stockpiled materials will be left unprotected or without erosion control during the winter.
- 22.) During all phases of construction, all disturbed or exposed areas shall be brought to finished grade and either loamed and seeded for permanent stabilization, or stabilized through the use of erosion control blankets or in a way approved by the Commission. All disturbed areas, slopes and proposed landscape areas shall be loamed and seeded or as specified. Loaming and seeding shall occur within 30 days of final grading. Seed stock and plants shall be native plants and seed as specified in the approved plan for the resource area and shall emphasize the natural flora and be of proven value to local wildlife. Seeding shall be completed within 48 hours of spreading loam. Areas that cannot be permanently stabilized within 30 days of disturbance shall be stabilized by temporary measures acceptable to the Commission.
- 23.) All soils, aggregate, debris, fill, excavated material, construction material and building material stockpiling shall be stockpiled far enough away from designated wetlands or other resource areas, and at a location to prevent sediment from surface runoff entering these resource areas. At no time shall any debris or other material be buried or disposed of within the line marked on plan as wetland, other than that fill which may be allowed by this Order and as shown on the above referenced plans. ***This condition is ongoing and does not expire upon completion of this project or the issuance of a Certificate of Compliance.***

- 24.) The areas of construction shall remain in a stable condition at the close of each construction day. Erosion control measures shall be inspected at this time, and maintained or reinforced as necessary. All such devices shall be inspected, cleaned or replaced during construction and shall remain in place until such time as stabilization of all areas that may impact resource areas is permanent. These devices shall also be inspected to assure that the maximum control has been provided. Entrapped silt shall be removed to an area outside the buffer zone and resource areas, and be maintained or reinforced as necessary.
- 25.) No future work of any kind, including but not limited to site grading, clearing, or cutting of vegetation, shall be allowed beyond the limit of work line shown on the above referenced plan(s). Any proposed construction not shown on the plan within 100 feet as delineated on wetland boundary map as shown on plans as submitted shall require additional review and approval by this Commission.
- 26.) Any changes made in the above referenced plan(s), unless specified otherwise in the Order, which will alter an area subject to protection under the Wetlands Protection Act, or any changes in activity subject to regulation under M.G.L. Chapter 131, Section 40, shall require applicant to inquire of the Commission, in writing, whether the change is significant enough to require the filing of a new Notice of Intent.
- 27.) The EM shall make full reports to the Commission as to the status of the project. At a minimum, a report shall be submitted when a) all erosion control devices are in place; b) the start of the construction; c) in the fall of 2009 at the end of the growing season; d) in the spring of 2010 when the ground has sufficiently thawed for growing to take place. If the pre-restoration phase of the project continues past the summer of 2010, the EM shall submit reports as for c) and d) for as long as the remediation shall last. These reports should include at a minimum, when inspections of the site were done, the progress of construction, potential issues with erosion/siltation control and problems occurring within the limits of work area.

MOTION: Moved by DeHoyos, seconded by Letourneau, and voted 4-0 to accept the Special Conditions under the Section During Construction with changes.

Mosher read the Special Conditions listed under **During Construction: monitoring *in situ* restoration** from the document entitled "Attachment A". The following conditions were adopted during the discussion which followed the reading:

C. DURING CONSTRUCTION: Monitoring of *in situ* Restoration

- 28.) The Commission reserves the right to require a report at any time it feels the situation warrants one when in the opinion of the Commission the Project may not be in compliance with this Order.
- 29.) Any construction fencing installed to protect the site from intrusion by personnel or equipment during the two year restoration period will either be raised at least 6 inches off the ground or otherwise include regular breaks (*e.g.* 1 ft. wide, every 50 feet) to provide unhindered access by wildlife to and from the wetland.
- 30.) A daily log of all observations and activities performed by the contractor performing the restoration, the EM, and the WS will be maintained on site and made available to the Conservation Commission upon request. A copy of the log will be provided to the Commission at the end of the restoration period.

- 31.) Soils from the site, that the WS has determined are free of invasives or their seeds and that have been determined to contain no levels of petro-chemical contamination set above the limits by the state, should be mixed with replacement soils to establish, as near as possible, a like in-kind replacement of soil.
- 32.) If, after testing, no soil is found on the site which meets the standards set in Condition 31, the condition may be waived.
- 33.) At the end of the two-year restoration period, a comprehensive report will be drafted by the WS and provided to the Conservation Commission which includes: a) a final assessment of the success of the restoration, b) estimated value of the restored wetland in terms of hydrology, resource functionality, vegetation quality, and wildlife habitat, and c) assessment of potential functionality of the restored Wetland 4 as vernal pool habitat.

MOTION: Moved by Letourneau, seconded by DeHoyos, and voted 4-0 to accept the Special Conditions under the Section During Construction: Monitoring *in situ* restoration with changes.

Mosher read the Special Conditions listed under **Upon Completion of Construction** from the document entitled "Attachment A". The following conditions were adopted during the discussion which followed the reading:

D. UPON COMPLETION OF CONSTRUCTION

- 34.) All exposed soils and other fills shall be permanently stabilized at the earliest practicable date. **Only upon completion of this project, and when The Commission and/or its Agent is assured that there is complete stabilization of all areas**, shall erosion control measures be removed. The sediment collected by these devices shall be removed and placed at an upland location, in a manner that will prevent its later erosion in a waterway or wetland.
- 35.) Within 30 days of final grading, (or within 30 calendar days after the commencement of the following growing season if the project is completed after October 31st), all disturbed areas shall be permanently stabilized with rapidly growing cover and a minimum of 4 to 6 inches of organic topsoil, if necessary and a USDA, Natural Resources Conservation Service-approved seed mixture should be used in accordance with the measures outlined in "Vegetative Practices in Site Development: Massachusetts Conservation Guide, Volume II," or other acceptable stabilization method to assure long-term stabilization of disturbed areas. Maintenance of these areas shall be in a manner that assures permanent stabilization and precludes any soil erosion and shall be the responsibility of the owner of record of the property or the responsibility of the applicant.
 - a. *This condition is ongoing and does not expire upon completion of this project.*
 - b. *With the issuance of a Certificate of Compliance this condition shall be cross-referenced on the deed.*
- 36.) Upon completion of the project, the applicant shall submit as built plans to the Conservation Commission as well as a statement from the EM that the project is in substantial compliance with the approved plans and this Order of Conditions.

MOTION: Moved by Letourneau, seconded by Mosher, and voted 4-0 to accept the Special Conditions under the Upon Completion of Construction with changes.

Other Business:

The Commission asked Kunkel to write Mr. Santos, 23 Woodland Drive, a letter asking him to address the potential violations that they had seen during the site visit to Butternut Street.

Project Monitoring: None

Enforcement: None

Site Visits: None

Set Next Meeting Date and Time: April 28, 2009 7:00 p.m. Greenfield Police Station.

Adjournment:

MOTION: Moved by Mosher, seconded by DeHoyos, and voted 5-0 to adjourn at 10:25 p.m.

Respectfully Submitted,

Ralph Kunkel
Conservation Agent

Alex Haro
Chair