

The Falmouth Conservation Commission
MEETING MINUTES - WEDNESDAY, AUGUST 05, 2020, 7:00 P.M.

In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20, relating to the 2020 novel Coronavirus outbreak emergency, **the August 05, 2020 public meeting of the Falmouth Conservation Commission shall be physically closed to the public to avoid group congregation.**

Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Falmouth Community Television.
2. Real-time public comment can be addressed to the Conservation Commission utilizing the Zoom virtual meeting software for remote access. This application will allow users to view the meeting and send a comment or question to the Chair via the Chat function. Submitted text comments will be read into the record at the appropriate points in the meeting.
 - a. Zoom Login instructions:
 - i. Instructions and the meeting link for this specific meeting can be found at the following web address:
<http://www.falmouthmass.us/1092/Conservation-Commission>
 - ii. Please plan on 10-15 minutes of preparation time to log in though it may be less if you have previously used Zoom on the device you will use to access this meeting.
3. Additionally public comments may be sent in advance of the meeting to concom@falmouthma.gov at **least 5 hours prior** to the beginning of the meeting. Documents and audio or video files may also be submitted via email. Submitted email comments and documents will be made a part of the meeting record and may be read into the record, summarized or displayed during the meeting at the discretion of the chair.
4. Applicants, their representatives and individuals with enforcement matters before the Conservation Commission may appear remotely and are not required to be physically present. Applicants, their representatives and individuals with enforcement matters before the Conservation Commission may contact the Conservation Department to arrange an alternative means of real time participation if unable to use the Zoom virtual meeting software. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to concom@falmouthma.gov so they may be displayed for remote public access viewing.

Present: Jamie Mathews, Chair
 Russell Robbins, Vice-Chair
 Betsy Gladfelter
 Maurie Harlow-Hawkes
 Courtney Bird
 Steve Patton
 Kevin O'Brien

Mark Gurnee, Alternate
Peter Walsh, Alternate
Pat Harris, Alternate
Jennifer Lincoln, Administrator
Kevin Newton, Agent

Mr. Mathews opened the meeting at 7:00 p.m.

Mr. Mathews instructed the public on how to use the Chat function for questions or comments on any of the hearings. All submissions will be read into the record.

OTHER BUSINESS

1. A request from T3C to approve the Conservation Restriction and Municipal Certificate for Pariah Dog Farm.

Jessica Whritenour (Executive Director – 300 Committee) Matthew Churchill (owner of the Pariah Dog Farm) has agreed to let the 300 Committee purchase a Conservation Restriction (CR) on the property. USDA is willing to help us purchase the property if we have a Municipal Certificate (MC) from the Conservation Commission. Once the CR and MC are signed they will be sent to the Select Board and then to the State for the final agreement. The property includes a residential structure that is excluded from the purchase. The 9.38 acres are in a long, skinny stretch of land. The highlights of the conservation values pursued include permanent protection of open space and working farmland and 98% of Prime Farmland soils. It's important for Falmouth to remain in farming because it is consistent with the Town's conservation policy. 10% of the water supply on the property is in Zone II. The State now allows us to have the MC signed by a duly designated member of the Conservation Commission. It no longer is necessary for all members to sign.

Mr. Robbins: **Move to approve the Municipal Certificate for Pariah Dog Farm.**

Ms. Harlow-Hawkes: **Second.**

Ms. Lincoln: Are we to approve both the CR and the MC?

Ms. Whritenour: No just the MC.

Ms. Harlow-Hawkes: Will there be organic farming only on the property.

Ms. Whritenour: Mr. Churchill is an organic farmer, but it is not a requirement of the MC.

Ms. Harlow-Hawkes: Because the property is in Zone II I could not support it without the guarantee of organic farming.

Ms. Harris: On the MC it states that there are 10.45 acres and you mentioned that it is 9:38 acres.

Ms. Whritenour: That needs to be corrected. It is 10.45 acres.

Mr. Bird to Ms. Harlow-Hawkes: Are you offering an amendment to the motion?

Ms. Harlow-Hawkes: **Move to accept the MC with organic farming only.**

Mr. Bird: **Second.**

Ms. Whritenour: I will have to talk to the owner. I have concerns that it would be a problem with the agreement use.

Mr. Mathews: How long have you been working on this?

Ms. Whritenour: For a number of years. The Committee from USDA allowed us to do this because we can get a Farm Service Loan for the property and there has to be an interchange of money before this can be completed. The owner can't just donate the property. All this came together over the past several months.

Mr. Mathews: If the amendment is approved we would not be able to sign the Certificate.

Ms. Harris: Yes, because it changes the terms of agreement. A restriction on the type of farming could also change money values.

Ms. Lincoln: It's not in Zone II. It's partially in the water resource district. Ms. Lincoln posted a GIS image. The larger portion of the property is not in the water resource area.

Ms. Gladfelter: 10%?

Ms. Whritenour: 10% is in Zone II.

Ms. Lincoln: It's in the water resource protection district – not in Zone II.

Mr. O'Brien: I'm reluctant to wreck all the efforts that have gone on so far. I would like to support the measure.

Mr. Gurnee: There is no issue or intent to allow public access?

Ms. Whritenour: There is a farm stand that the public will be going to, but they're not promoting public access. There is a potential to connect with other land bank properties.

Mr. Walsh: I agree with Kevin. There is a danger to procrastinating and going back and forth. There is a danger of losing support.

Mr. Robbins: I support the original motion.

Mr. Patton: Ms. Harlow-Hawkes motion makes sense if the owner is amenable.

Mr. Mathews: I think it's a legalese problem.

Ms. Gladfelter: This could go on for months. If it's not allowed to go forward the land could be sold for housing. I agree with Kevin and Peter.

Mr. Mathews called for the vote on the amendment. (7 full time members only)

Gladfelter, no; Bird, aye; O'Brien, no; Robbins, no; Patton, aye; Mathews, aye; Harlow-Hawkes, aye. 4 aye, 3 no. The amendment is passed.

Ms. Lincoln: The Municipal Certificate is negated.

Ms. Whritenour: If Mr. Churchill is willing to agree then it will have to go back to USDA.

Ms. Harris: There are so many parties involved. It's anybody's guess.

Ms. Gladfelter: When you don't meet certain deadlines, funds are no longer available.

Ms. Whritenour: I'll get in touch with the owner and his lawyer tomorrow.

2. Florence Sylvia Woodlands 9.3 acre Conservation Restriction:

a. Vote of intent for the Conservation Commission to hold 9.3 acre Conservation Restriction on land owned by T3C.

b. Vote of intent for the Conservation Commission to serve as co-applicant with the T3C for April 2021 Town Meeting CPC funding in the amount of \$200,000 for CR purchase.

Ms. Whritenour: The 9.3 acres will be purchased from Jerry Sylvia. We need the support of the Conservation Commission to move forward and would like you to partner with us. This is all private funding – no State grant. We will leverage \$400,000 from a Community Preservation grant. We will present it to Town Meeting at the end of 2021. The Conservation Restriction has not been drafted yet. This is a concept and if you agree you will own it. We will begin the CR draft. This will be a public and private partnership. There is public access here and a small parking area off Millstone Road. It has paths on the property. BSS has designed the plan and

there is an easement for the driveway of the owner of the house. Lot B and Parcel B on the plan show the proposed property. There will be passive recreational use, i.e. hiking. Holding the CR is part 1 and part 2 is that the Commission will partner with us on the Community Preservation grant.

Mr. Mathews: We are considering Part A.

Ms. Lincoln: I think it's a great project. I hope the Board moves forward with this.

Mr. Robbins: No questions or comments.

Ms. Gladfelter: Good project.

Mr. Bird: Is the easement for the driveway ongoing with the deed? If he sells the property does it remain in effect?

Ms. Whritenour: The 300 Committee will own the land and the easement will remain.

Mr. O'Brien: No questions or comments.

Ms. Harlow-Hawkes: No questions or comments.

Ms. Gladfelter: Move to accept Part A.

Mr. Bird: Second.

Mr. Mathews: Gladfelter, aye; Bird, aye; O'Brien, aye; Robbins, aye; Patton, aye; Mathews, aye; Harlow-Hawkes, aye. Unanimous, so moved.

Mr. Bird: **Move to accept Part B.**

Ms. Harlow-Hawkes: **Second.**

Mr. Patton: The CPC schedule may be a little different. I'm not sure when people will be submitting applications next.

Mr. Robbins: If it's possible you could lose it, we could move it. Keep the date of 2021.

Mr. Mathews: It's a concept. You may not be sure of a date.

Ms. Whritenour: We have been told that the CPC deadline is August 19th for the 2021 Town meeting. That is part of the process (submitting to CPC) and a final decision will be made in October.

Mr. Bird: So we will be supporting a motion with that date?

Ms. Whritenour: Yes. It's up to CPC to advance it to the next stage.

Mr. Mathews called for the vote.

Mr. Mathews: **Gladfelter, aye; Bird, aye; O'Brien, aye; Robbins, aye; Patton, aye; Mathews, aye; Harlow-Hawkes, aye.** Unanimous, so moved.

VOTE MINUTES

7/22/2020

Mr. Bird: Move to adopt the minutes as corrected.

Ms. Gladfelter: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

REQUEST FOR A CONTINUANCE UNDER A NOTICE OF INTENT

Brian P. Halligan, 110 Oyster Pond Road, Falmouth, MA – For permission to conduct invasive

plant species management and native plant restoration.

Ms. Lincoln: The applicant has requested a continuance until August 26, 2020.

Ms. Gladfelter: At the request of the applicant I move to continue the hearing until August 26, 2020.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Kamran Khodakhah, 13 Fells Road, Falmouth MA- For permission to reconstruct an existing patio, construct elevated access stairs with a platform over the coastal bank, abandon an existing path and re-establish native vegetation within the path, manage invasive plants, and install mitigation plantings.

Ms. Lincoln: The applicant has requested a continuance until September 16, 2020. The applicant had to have a rare plant survey done and it has been completed and sent to MESA. They are waiting for comment.

Mr. Bird: At the request of the applicant I move to continue the hearing until September 16, 2020.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Scott Tynell, 163 Bay Road, North Falmouth, MA- For permission to conduct shellfish aquaculture within Rand's Canal and Megansett Harbor.

Ms. Lincoln: The applicant has requested a continuance until September 2, 2020.

Ms. Harlow-Hawkes: **At the request of the applicant I move to continue the hearing until September 2, 2020.**

Mr. Bird: **Second.**

Ms. Gladfelter: This started on January 8, 2020.

Ms. Lincoln: He's waiting to hear from the Building Department to find out if he has to go to Zoning.

Mr. Robbins: How long has he been waiting to hear from the Building Department?

Ms. Lincoln: He's been waiting to get letters from two attorneys. He has received one and is waiting for another.

Mr. Robbins: I know it's been in the Building Department for awhile.

Mr. Mathews called for the vote.

Mr. Mathews: **Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.**

Dana Brown, 17 White Pine Lane, East Falmouth, MA – For permission to raze an existing single family dwelling and to reconstruct a new single family dwelling and new Title V septic system.

Ms. Lincoln: The applicant has requested a continuance until August 26, 2020. We met with the

applicant on Zoom and there are changes to the plan.

Mr. Bird: At the request of the applicant I move to continue the hearing until August 26, 2020.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so move.

Wendy Hill and Susan Condon, 268 Surf Drive, Falmouth, MA – For permission to install a tight tank wastewater holding tank and to abandon the existing cesspool.

Ms. Lincoln: The applicants have requested a continuance until August 12, 2020.

Mr. Bird: At the request of the applicants I move to continue the hearing until August 12, 2020.

Ms. Gladfelter: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so move.

REQUESTS FOR DETERMINATION OF APPLICABILITY

John Lucking, 82 Meadow Neck Road, East Falmouth, MA – For permission to vista prune according to FWR 10.18(10)(b).

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to coastal bank, inland bank BVW, salt marsh, and within flood zone AE 12. Staff met on site with David of Hamilton Tree to review the scope of work. Vista prune will include the maintenance of a 4' wide path. Poison ivy to be removed from the sides of the path. Applicant has had previous vista prunes approved by the Conservation Commission. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Mr. Patton: Second.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Susan C. Boni, 50 Loop Road, Falmouth, MA – For permission to remove a fallen tree, to remove invasive plant species, and to prune native plant species.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to coastal bank, BVW, salt marsh, land under the ocean, and within flood zone VE17 and AE15. Staff met on site Susan Boni to review scope of work. Work to consist of removing sassafras trees growing within mitigation area and removing bittersweet growing in native vegetation. Vegetation growing into 3 foot wide path historically maintained is to be pruned back. Mitigation plantings are doing outstanding and have grown into mature form. Plantings within vista window are to be pruned to 6 feet in height to maintain view of water. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Julie Yamnitsky, 123 Oyster Pond Road, Falmouth, MA – For permission to vista prune according to FWR 10.18(10)(b).

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to coastal bank, BVW, and within flood zone AE 13. Vista prune to be performed by Clipper Landscaping (Mike Searling). Vista window to extend over 127 Oyster Pond. Letter of approval was submitted from the owner of 127 Oyster Pond with the application. Vista window is to be according to FWR 10.18(10)(b) and shall not exceed 25' in width. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Nancy Andrade, 26 Clara Belle Road, East Falmouth, MA – For permission to upgrade to a new Title V sewage disposal system with no increase in design flow.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to coastal bank, land under the ocean, land containing shellfish, salt marsh, and within flood zone VE 14. This RDA is to abandon the existing septic system and to install a new Title V sewage disposal system. No increase in design flow. The system components are proposed as far away from the resource areas as possible. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Doreina Ramos, 83 Pinecrest Beach Drive, Falmouth, MA – For permission to vista prune according to FWR 10.18(10)(b).

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to an inland bank and land under water body. Staff met on site with homeowner and arborist to review vista window and applicable regulations. Staff discussed the extensive shrubby habitat on bank. Shrubby vegetation on the bank shall not be cut as it does not impact the view. Upper Cape Tree will be performing the work. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Paul J. Maggiore, 101 Falmouth Heights Road, Falmouth, MA – For permission to convert the existing roof of a gazebo to a flat deck with no increase in structure and to construct a staircase.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to land under the ocean, coastal bank, and within flood zone AE15. This RDA is to remove the roof of an existing gazebo and to construct a deck on top of the gazebo. A staircase is also proposed to provide access to the deck. This proposed project is on top of existing impervious surface. No mitigation required. LOW shall be established to protect resource areas. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Mr. Patton: Second.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Thomas W. and Diane M. Lewis, 41 Madeline Road, East Falmouth, MA – For permission to upgrade to a new Title V sewage disposal system with no increase in design flow.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to coastal bank, land under the ocean, land containing shellfish, salt marsh, and within flood zone AE12/13. This RDA is to upgrade to a Title V septic system. Tank is proposed in the only feasible location for the septic tank to be located at elevation where the effluent can be pumped via gravity. Proposed tank is closer than the current system is located to both the bank and salt marsh. There is no proposed increase in design flow. Leaching field is proposed as far away from the resource areas as possible. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Colonial Gas Company d/b/a National Grid, 54 Chapoquoit Road, Falmouth, MA – For permission to install a 208 foot gas main extension in order to provide a service connection to the barn at 54 Chapoquoit Road.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to salt marsh, coastal beach, and within flood zone AE16. This RDA is to extend the gas main from Chapoquiot Road to provide service to a barn at 54 Chapoquiot Road. A two foot wide trench is proposed to be excavated resulting in a 208 foot extension of the gas main. Erosion control measures will be installed and maintained for the duration of the project. Upon completion of the work, the trench will be backfilled and the site will be restored to preexisting conditions. All work is proposed within existing road layout and within area previously cleared per NOI. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: **Move to accept staff's recommendation.**

Ms. Harlow-Hawkes: **Second.**

Mr. Bird: The gas main is going through a sensitive area. Will there be hay bales?

Mr. Newton: Chapoquiot Road is already cleared.

Ms. Lincoln: They are proposing a hay bale line.

Ms. Harlow-Hawkes: Isn't there gas on the street side of the sidewalk?

Ms. Lincoln: The street side of the sidewalk?

Ms. Harlow-Hawkes: On page 13 on the plan it shows a gas line going down Chapoquiot Road. There are several intrusions into the vegetation.

Ms. Lincoln: It's through the utility area.

Mr. Newton: I asked the representative about that. It goes through the area of the water main.

Ms. Harlow-Hawkes: Will there be de-watering?

Mr. Newton: I do not see a de-watering plan.

Ms. Lincoln promoting Dana Pesty to a panelist.

Dana Pesty (Colonial Gas Company) The RDA doesn't show the Tudor property. The service line is under a previous NOI. The de-watering will be done in the upland of the resource area. It's not going to nearby vegetated areas.

Ms. Harlow-Hawkes: That's the salt marsh side. How are you going across that?

Ms. Pesty: There are no areas of salt marsh on the existing property.

Ms. Harlow-Hawkes: The plan shows it going down along the north side and east to west of Chapoquiot Road.

Ms. Pesty: There are upland areas on the property. It won't discharge to the salt marsh.

Ms. Lincoln: There is a trench on the opposite side of the road and a de-watering basin on College Light Opera's (CLO) property. The adjacent property is privately owned. Is the de-watering basin in the road layout or on CLO property?

Ms. Pesty: It's on CLO property.

Ms. Harlow-Hawkes: They will have to have a hose for de-watering across Chapoquiot Road. The gas line must be staked in the field.

Ms. Lincoln: Okay.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

CONTINUED REQUEST FOR A DETERMINATION OF APPLICABILITY Mark Factor,

Mark Factor, 207 Coonamessett Circle, Falmouth, MA – For permission to vista prune according to FWR 10.18(10)(b).

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to land under water bodies, inland bank, and BVW. This RDA is to conduct vista pruning according to FWR 10.18(10)(b). Staff met onsite with Steve Buckhoff of Seaside Arborists. Reviewed regulations with Steve. No trees are to be removed. Sucker growth within window may be removed. Greenbrier encroachment onto lawn area may be mown back in order to provide vista view. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

Ms. Harlow-Hawkes: Move to accept staff's recommendation.

Mr. Patton: Second.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

REQUESTS FOR A HEARING UNDER A NOTICE OF INTENT

Terrance and Megan Rogers, 35 Rose Meadow Lane, Falmouth, MA – For permission to construct a swimming pool and appurtenant concrete apron.

Ms. Lincoln promoted Terry Rogers to a participant. The plan is by John Doyle.

Terrance Rogers (Applicant) We want to install an in-ground pool off the side of the house. It will be 35x16 with a 56x34 apron around it. There will be a limit of work and erosion control will be set up.

Ms. Lincoln: We have been working with the Rogers on different areas for the pool. There is a secondary coastal bank and a salt marsh. The pool will be over 180-sq.ft from the salt marsh and it maintains a 50-ft setback from the coastal bank. It's in an area that has been previously disturbed. No mitigation is required.

Mr. Newton: It's good to clarify the area of the pool.

There were no further questions from the members of the Commission.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No. The neighbors are in full support of the pool.

Ms. Harlow-Hawkes: Move.

Mr. Bird: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Brian P. Halligan, 110 Oyster Pond Road, Falmouth, MA – For permission to conduct invasive plant species management and native plant restoration.

The hearing is continued until August 26, 2020.

Sandra Klein, 53 Bryant Point Road, North Falmouth, MA – For permission to install and restore mitigation plantings in order to close an expired Order of Condition (SE #25-3256).

Ms. Lincoln moved Mr. Rogers to an attendee and promoted Matt Costa as a panelist.

Matt Costa (Cape & Islands Engineering) The mitigation plantings are to close an expired Order from 2004-2006. They want to put an addition on the house and the mitigation was never done. The area where it was supposed to be planted grew back with non-native vegetation. The owner is in a care facility. The house was given to the children and they tried to put the mitigation in the lawn area. I met with Jen and it was suggested that they remove the non-native vegetation and plant where the original mitigation was supposed to be planted. Resource areas include land under the ocean, land containing shellfish, salt marsh, coastal bank, land subject to coastal storm flowage. The coastal bank runs along the side of the property on the shoreline. The original mitigation area is X hatched on the plan. We would be working around the existing vegetation. They would like to install the original required mitigation in a little different area. There is a steep slope. Erosion control measures will be utilized until the mitigation is established.

Ms. Lincoln: In the darker green area on the plan – remove those plants and start over.

Mr. Costa: We'll remove the ones that need to be removed.

Ms. Lincoln: A monitoring plan will be required.

Mr. Newton: No questions or comments.

Mr. O'Brien: No questions or comments.

Mr. Gurnee: No questions or comments.

Ms. Harlow-Hawkes: There should be temporary irrigation so that the mitigation will survive. They are not taking out turf?

Ms. Lincoln: Right.

Ms. Harris: No questions or comments.

Mr. Walsh: No questions or comments.

Mr. Robbins: No questions or comments.

Mr. Patton: No questions or comments.

Ms. Gladfelter: It is a steep slope. How did it come into existence? Was the house built on fill?

Mr. Costa: I can't answer that. Because of the shape of the land form there could have been re-grading around the left side of the house that caused a steep coastal bank. It's not a natural slope.

Ms. Gladfelter: You wonder what was done to create it.

Mr. Costa: I know that the topography has not changed since the house was built.

Ms. Gladfelter: Was it built in the 50's and 60's?

Mr. Costa: That sounds right.

Mr. Bird: No questions or comments.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No.

Ms. Gladfelter: Move to close the hearing and take it under advisement.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Elizabeth Colt, Colt-Simonds Family Trust, 24 Millfield Street, Woods Hole, MA – For permission to construct two 8'x8' additions to the existing porch, to reconstruct the existing porch and steps, to install mitigation plantings, to install two drywells, to remove and replace existing walkways, and to undertake minor landscaping activities including invasive plant management.

Ms. Lincoln moved Mr. Costa to an attendee and promoted David Martin and Beth Colt to panelists.

David Martin (Engineer) There is an existing porch which we would like to rebuild, replace the steps as well as extend the porch 8x8 on each end. There is a bulkhead and concrete walk. We will remove the walk out to the street and replace it with blue-stone pavers. We will install two dry wells. South of the garage there is bittersweet and porcelain berry that we would like to take out and replace with the plants noted on the plan. There is a new bulkhead between the walkway and the house. Mitigation is not required.

Beth Colt (applicant) (audio problem)

Ms. Lincoln: There is an echo when you speak – turn the audio down a little.

Ms. Colt I'm happy to answer any questions.

Ms. Lincoln: Staff picked up that the stairs are moving closer to the resource areas.

Mr. Martin: Yes, so we can comply with the building code requirement. We are moving away from the resource areas.

Ms. Lincoln: Could you incorporate one stair into the deck area?

Mr. Martin: I must have misunderstood what you said when we met.

Ms. Lincoln: If so, I apologize but I know you can move it back.

Mr. Martin: I don't know if that will meet the code. I'd like to comply with both.

Ms. Lincoln: What is normal maintenance on the bulkhead?

Mr. Martin: Ben Carson got two irons that were at an angle flush to the ground.

Ms. Lincoln: Okay. Cedars are to be planted instead of privet. As for the switch grass, putting more shrubs in to increase the wildlife habit would be good.

Mr. Martin: Can you make that a condition?

Ms. Lincoln: Yes.

Mr. Newton: No questions or comments.

Ms. Gladfelter: We've had recent cases that were not allowed to move closer to the resources than the primary structure. I hope you can come in with an alternative.

Ms. Colt: The deck is narrower. We are making the stairs over because I fell on the existing stairs and broke my ankle. The porch was made to match what is there. It may mean the end of the project.

Mr. Bird: The steps are moving closer by 1-ft, correct?

Ms. Colt: Yes.

Mr. Bird: We can make a finding that it is a diminimus encroachment. If these were new stairs it would be different. But this is minor. I would like to see a methodology on the invasive control. Will it be done by a licensed applicator?

Mr. Martin: There is a clear description on the plan. We will get advice on the applicator from a plant person.

Mr. Bird: I see it now. When you are ready we need to know who the applicator is.

Ms. Lincoln: That can be a condition.

Mr. O'Brien: I'd like to agree that it's insignificant. We made the exact opposite finding with a porch and we have to be consistent.

Ms. Lincoln: At a recent hearing the engineer tried to move closer to the resource area with a pool and we ruled against it because of a 2-ft encroachment. It may seem unfair to the applicant but it is a regulation.

Mr. Martin: The existing garage is the controlling setback.

Ms. Lincoln: That is not considered the primary structure.

Mr. Mathews: This is one big room.

Mr. Martin: They are porches and not enclosed. It's an expansion on each end of a porch.

Mr. Mathews: Could the stairway go to the southeast side?

Mr. Martin: The property is to the northwest.

Ms. Colt: We'd be happy to add mitigation.

Ms. Lincoln: What about putting them by the pavers?

Mr. Martin: I don't think that would work.

Mr. Gurnee: I agree with Courtney. 1-ft is diminimus. The porch has a railing. Could you move the stairs back 1-ft?

Ms. Harlow-Hawkes: Are we going to be consistent?

Ms. Harris: I have heard the word diminimus before and I'm not supportive of it. Go back to the architect and re-design them.

Mr. Walsh: I agree with Mark. We don't like diminimus.

Mr. Robbins: I agree with Courtney.

Mr. Patton: We have to be consistent. I'm sure they can find a way.

Ms. Harlow-Hawkes: I go along with Pat. We don't want to go down a slippery slope. We have to be consistent.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No. Go back to the architect and discuss the problem. How much time do you need?

Ms. Colt: Until the 26th.

Ms. Gladfelter: At the request of the applicant I move to continue the hearing until August 26, 2020.

Mr. Bird: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Kamran Khodakhah, 13 Fells Road, Falmouth MA- For permission to reconstruct an existing patio, construct elevated access stairs with a platform over the coastal bank, abandon an existing path and re-establish native vegetation within the path, manage invasive plants, and install mitigation plantings.

The hearing is continued until September 16, 2020.

CONTINUED HEARINGS UNDER A NOTICE OF INTENT

Wendy Hill and Susan Condon, 268 Surf Drive, Falmouth, MA – For permission to install a tight tank wastewater holding tank and to abandon the existing cesspool.

The hearing is continued until August 12, 2020.

Scott Tynell, 163 Bay Road, North Falmouth, MA- For permission to conduct shellfish aquaculture within Rand's Canal and Megansett Harbor.

The hearing is continued until September 2, 2020.

Dana Brown, 17 White Pine Lane, East Falmouth, MA – For permission to raze an existing single family dwelling and to reconstruct a new single family dwelling and new Title V septic

system.

The hearing is continued until August 26, 2020.

REQUESTS TO AMEND THE EXISTING ORDER OF CONDITIONS

The Christine M. Moynihan Trust, 335 Shore Street, Falmouth, MA – For permission to add a cantilevered 4’x12’ generator and a/c platform.

Ms. Lincoln moved David Martin and Beth Colt to attendees and promoted Matt Costa to a panelist.

Matt Costa (Cape & Islands Engineering) This is to include a utility platform that is 4x12. It will be placed on the side of the house and elevated above the existing driveway. No mitigation is required.

Ms. Lincoln: No questions or comments.

Mr. Newton: No questions or comments.

There were no further questions or comments from the members of the Commission.

Mr. Mathews: Why was this request not in the original plans?

Mr. Costa: I don’t know.

Ms. Gladfelter: Move to close the hearing and take it under advisement.

Mr. Bird: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O’Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

VOTE ORDER OF CONDITIONS

The 123 Penzance Road Nominee Trust, 123 Penzance Road, Woods Hole, Falmouth, MA

Quorum: Jamie, Russ, Betsy, Maurie, Courtney, Mark, Steve, Kevin, Peter, Pat

Mr. Mathews: This is the beach nourishment project.

Ms. Lincoln: Yes. They have done this one or two times in my tenure. They must make sure of the compatibility of grain size.

Ms. Gladfelter: They want to put 200-sq.yds of sand per year.

Ms. Lincoln: They wanted to do this every year in perpetuity. We don’t allow that. There will be a monitoring requirement.

Ms. Gladfelter: A reminder to them about the kinds of oil to be used in the machinery.

Ms. Lincoln: Also – machine is not on the beach overnight.

Mr. Bird: Move to adopt the Order of Conditions as discussed..

Mr. Patton: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O’Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Mark Parker, 272 Acapesket Road, Falmouth, MA

Quorum: Jamie, Russ, Betsy, Maurie, Courtney, Mark, Steve, Kevin, Peter, Pat

Ms. Lincoln: This is the re-design of the house. There were concerns about the oak trees that will be taken down. Pat had questions about the designer retaining wall. The design is a lot different than the previous design.

Ms. Harlow-Hawkes: The healthy trees are not a threat to the house. They should stay. They are building a retaining wall with a blue-stone patio on top.

Ms. Gladfelter: I agree with Maurie re the trees. They are large trees. Two of them are not overtopping the house and one on a coastal bank.

Ms. Lincoln shared the site plan. There are 4 oaks in question.

Ms. Gladfelter: There is one down south on the plan.

Ms. Harlow-Hawkes: By the landscape wall.

Ms. Lincoln: The 15" oak and the two 10" oaks should remain.

Ms. Harlow-Hawkes: The new house is further away from the trees and they're healthy. There are not going to be many trees left if they take them down.

Mr. Bird: (audio problem)

Ms. Lincoln: The 18" and 12" oak are to be removed.

Ms. Harlow-Hawkes: They are the only trees on the lot besides the one on the coastal bank.

Mr. Mathews: We can't remove two 10", two 18" and one 12" oak trees. We should condition measures that will protect the trees.

Ms. Gladfelter: The question that Pat had?

Ms. Harris: It's a structure in an A zone?

Ms. Lincoln: Yes but they are stepping them down to help with grading.

Mr. Mathews: There is wall H and wall G.

Ms. Harlow-Hawkes: Why do they have those walls?

Mr. Mathews: For a flat lawn.

Mr. Gurnee: There is no change in the lawn.

Ms. Gladfelter: It will be as flat as it is.

Ms. Harlow-Hawkes: Can we condition that there can be no walls.

Ms. Lincoln: Yes.

Ms. Gladfelter: Please circle on the plan toward the slope of the bank mitigation plants. They should be delineated from the lawn by a single rail fence or a 1-ft wall.

Mr. Newton: I don't think mitigation is required.

Mr. Mathews: Should we allow the walls?

Ms. Harris: Is it a retaining wall?

Ms. Lincoln: It's strictly a landscape feature. No wall H and no wall G.

Ms. Gladfelter: Move to adopt the Order of Conditions as discussed.

Mr. Bird: Second.

Mr. Mathews: Mathews, aye; Robbins, no; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. 9 yes, 1 no. The motion is passed.

Charles Nickerson, Estate of Mary A. Nickerson, 89 Teaticket Path, Teaticket, MA

Quorum: Jamie, Russ, Betsy, Maurie, Courtney, Mark, Steve, Kevin, Peter, Pat

Ms. Lincoln: This is Wayne Tavares' project. Staff had concerns about the height of the dock but DMF is happy with it so we are too.

Mr. Newton: They are pruning the junipers by one third.

Ms. Lincoln: Is anyone concerned about that?

Ms. Harlow-Hawkes: They do re-generate.

Ms. Gladfelter: They should strip the ivy on the oak tree. They're strangling it.

Ms. Gladfelter: Move to adopt the Order of Conditions as discussed.

Mr. Bird: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Jay and Lea Decoteau, 507 Central Avenue, East Falmouth, MA

Quorum: Jamie, Russ, Betsy, Maurie, Courtney, Mark, Steve, Kevin, Peter, Pat

Ms. Lincoln: This is an amended Order to finish an already started 198-sq.ft shed over the turf parking area.

Mr. Newton uploaded a photo of the shed.

Ms. Lincoln: I'm concerned because they started the construction, stopped when they were told to and then continued again. They said it was to secure the building for a possible hurricane.

Mr. Mathews: They protected it by adding to it?

Mr. Newton displayed the picture.

Mr. Mathews: There is significantly more shed than what I saw. The square footage is in lieu of reinforced turf? Is it in the footprint?

Ms. Lincoln: Yes. They are proposing mitigation for the shed at 3 to 1. It's in a Velocity zone.

Ms. Harlow-Hawkes: Pavers are flush to the ground and pervious. This is a large structure in a Velocity zone.

Ms. Harris: How many square feet?

Ms. Lincoln: 198-sq.ft.

Mr. Mathews: 3 to 1 mitigation is necessary because of the patio.

Ms. Harlow-Hawkes: The mitigation planting is almost touching the shed. It's within 10-ft. It has to be moved to do more good to the resources.

Ms. Gladfelter: Maurie suggested that the mitigation be moved.

Ms. Lincoln: It does need to be shifted.

Ms. Gladfelter: The marsh has been mowed. The mitigation in the south is in the road layout. It has to be added to the mitigation on the lot.

Ms. Harlow-Hawkes: The mitigation for the shed should be near the patio which is impervious.

Ms. Lincoln: The patio is 148-sq.ft and the shed is 198-sq.ft.

Ms. Gladfelter: The patio is added to the primary structure.

Ms. Lincoln: We don't consider patios to be part of the primary structure.

Ms. Harlow-Hawkes: It's not flush on the ground.

Ms. Lincoln: Do you want to keep the patio or make it go away?

Ms. Harris: There is a lot going against the shed in our regulations in zone A. Would it have been approved if it had come to the Commission in the correct way?

Ms. Lincoln: This is an amendment to the Order of Conditions. According to the State if you deny an amendment they have no recourse. If you condition it they can appeal it.

Ms. Harris: It has to be a complete denial?

Ms. Lincoln: Yes. They don't have the right to appeal under an amendment.

Ms. Gladfelter: I don't think we would have approved it if had come to us first. This is major.

Mr. Bird: If we deny it do we have to follow with an enforcement order to remove the shed?

Ms. Gladfelter: We might have approved the patio.

Ms. Harlow-Hawkes: Is it moving closer?

Ms. Harris: Yes it is.

Mr. Bird: We need an enforcement order for both the shed and the patio.

Mr. Mathews: Before we vote – should we consider the loss of potential mitigation?

Ms. Gladfelter: No.

Ms. Harlow-Hawkes: They should stop mowing the salt marsh.

Ms. Lincoln: The wall will stop that.

Mr. Bird: Move to accept the amendment as discussed..

Mr. Patton: Second.

Mr. Mathews: Mathews, no; Robbins, no; Gladfelter, no; Harlow-Hawkes, no; Bird, no; Gurnee, no; Patton, no; O'Brien, no; Walsh, no; Harris, no. The amendment is denied.

OTHER BUSINESS

Mr. Mathews: Thank you to Kevin and Alissa for getting the staff reports to us sooner than they used to be. Please pass this on to Alissa.

Mr. Newton: I will.

Vote to proceed with joint statement from local land trusts letter of inclusion.

Ms. Lincoln: The 300 Committee and a group of Land Trusts, i.e. New England Wildlife, Salt Pond Bird Sanctuary and the Conservation Commission want to encourage inclusion in Open Space that is welcome to everyone. They would like the Conservation Commission to vote to accept a statement welcoming all onto Open Space and Conservation land if the Board is comfortable with that.

Mr. Mathews: They want the statement ahead of the letter?

Ms. Lincoln: Yes.

Ms. Gladfelter: Move to proceed with joint statement from local land trusts letter of inclusion.

Ms. Harris: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Mr. Bird: Move to adjourn.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

The meeting adjourned at 9:41 p.m.

Respectfully submitted,

Susan Cronin, Recording Secretary