



# WPA Form 3 – Notice of Intent

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File Number

Document Transaction Number

Amesbury  
City/Town

**Important:**  
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



**Note:**  
Before completing this form consult your local Conservation Commission regarding any municipal bylaw or ordinance.

## A. General Information

1. Project Location (**Note:** electronic filers will click on button to locate project site):

<u>34 Birchmeadow Rd</u>	<u>Amesbury</u>	<u>01913</u>
a. Street Address	b. City/Town	c. Zip Code
<u>Latitude and Longitude:</u>	<u>42.855166</u>	<u>70.985456</u>
	d. Latitude	e. Longitude
<u>45</u>	<u>13</u>	
f. Assessors Map/Plat Number	g. Parcel /Lot Number	

2. Applicant:

<u>Sharon and Jay</u>	<u>McDermot</u>
a. First Name	b. Last Name
<u>c. Organization</u>	
<u>34 Birchmeadow Rd</u>	
d. Street Address	
<u>Amesbury</u>	<u>MA</u>
e. City/Town	f. State
<u>978-500-4026</u>	<u>01913</u>
h. Phone Number	g. Zip Code
<u>i. Fax Number</u>	<u>samcd1@comcast.net</u>
	j. Email Address

3. Property owner (required if different from applicant):  Check if more than one owner

<u>a. First Name</u>	<u>b. Last Name</u>
<u>c. Organization</u>	
<u>d. Street Address</u>	
<u>e. City/Town</u>	<u>f. State</u>
<u>g. Zip Code</u>	
<u>h. Phone Number</u>	<u>i. Fax Number</u>
<u>j. Email address</u>	

4. Representative (if any):

<u>a. First Name</u>	<u>b. Last Name</u>
<u>c. Company</u>	
<u>d. Street Address</u>	
<u>e. City/Town</u>	<u>f. State</u>
<u>g. Zip Code</u>	
<u>h. Phone Number</u>	<u>i. Fax Number</u>
<u>j. Email address</u>	

5. Total WPA Fee Paid (from NOI Wetland Fee Transmittal Form):

<u>176</u>	<u>75.50</u>	<u>100.50</u>
a. Total Fee Paid	b. State Fee Paid	c. City/Town Fee Paid



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City/Town

## A. General Information (continued)

6. General Project Description:

see attached

7a. Project Type Checklist: (Limited Project Types see Section A. 7b.)

- 1.  Single Family Home
- 2.  Residential Subdivision
- 3.  Commercial/Industrial
- 4.  Dock/Pier
- 5.  Utilities
- 6.  Coastal engineering Structure
- 7.  Agriculture (e.g., cranberries, forestry)
- 8.  Transportation
- 9.  Other

7b. Is any portion of the proposed activity eligible to be treated as a limited project (including Ecological Restoration Limited Project) subject to 310 CMR 10.24 (coastal) or 310 CMR 10.53 (inland)?

- 1.  Yes  No      If yes, describe which limited project applies to this project. (See 310 CMR 10.24 and 10.53 for a complete list and description of limited project types)

2. Limited Project Type

If the proposed activity is eligible to be treated as an Ecological Restoration Limited Project (310 CMR 10.24(8), 310 CMR 10.53(4)), complete and attach Appendix A: Ecological Restoration Limited Project Checklist and Signed Certification.

8. Property recorded at the Registry of Deeds for:

Essex South

a. County

11571

c. Book

b. Certificate # (if registered land)

136

d. Page Number

## B. Buffer Zone & Resource Area Impacts (temporary & permanent)

- 1.  Buffer Zone Only – Check if the project is located only in the Buffer Zone of a Bordering Vegetated Wetland, Inland Bank, or Coastal Resource Area.
- 2.  Inland Resource Areas (see 310 CMR 10.54-10.58; if not applicable, go to Section B.3, Coastal Resource Areas).

Check all that apply below. Attach narrative and any supporting documentation describing how the project will meet all performance standards for each of the resource areas altered, including standards requiring consideration of alternative project design or location.



**WPA Form 3 – Notice of Intent**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

MassDEP File Number

Document Transaction Number

Amesbury

City/Town

**B. Buffer Zone & Resource Area Impacts (temporary & permanent) (cont'd)**

For all projects affecting other Resource Areas, please attach a narrative explaining how the resource area was delineated.

Resource Area	Size of Proposed Alteration	Proposed Replacement (if any)
a. <input type="checkbox"/> Bank	1. linear feet	2. linear feet
b. <input type="checkbox"/> Bordering Vegetated Wetland	1. square feet 0	2. square feet 0
c. <input checked="" type="checkbox"/> Land Under Waterbodies and Waterways	1. square feet 0 3. cubic yards dredged	2. square feet

Resource Area	Size of Proposed Alteration	Proposed Replacement (if any)
d. <input type="checkbox"/> Bordering Land Subject to Flooding	1. square feet 3. cubic feet of flood storage lost	2. square feet 4. cubic feet replaced
e. <input type="checkbox"/> Isolated Land Subject to Flooding	1. square feet 2. cubic feet of flood storage lost	3. cubic feet replaced

- f.  Riverfront Area
1. Name of Waterway (if available) - **specify coastal or inland**
2. Width of Riverfront Area (check one):
- 25 ft. - Designated Densely Developed Areas only
  - 100 ft. - New agricultural projects only
  - 200 ft. - All other projects

3. Total area of Riverfront Area on the site of the proposed project: \_\_\_\_\_ square feet

4. Proposed alteration of the Riverfront Area:

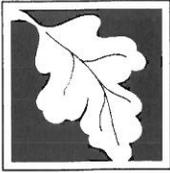
a. total square feet \_\_\_\_\_ b. square feet within 100 ft. \_\_\_\_\_ c. square feet between 100 ft. and 200 ft. \_\_\_\_\_

5. Has an alternatives analysis been done and is it attached to this NOI?  Yes  No

6. Was the lot where the activity is proposed created prior to August 1, 1996?  Yes  No

3.  Coastal Resource Areas: (See 310 CMR 10.25-10.35)

**Note:** for coastal riverfront areas, please complete **Section B.2.f.** above.



WPA Form 3 - Notice of Intent

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

MassDEP File Number

Document Transaction Number

Amesbury

City/Town

B. Buffer Zone & Resource Area Impacts (temporary & permanent) (cont'd)

Check all that apply below. Attach narrative and supporting documentation describing how the project will meet all performance standards for each of the resource areas altered, including standards requiring consideration of alternative project design or location.

Online Users: Include your document transaction number (provided on your receipt page) with all supplementary information you submit to the Department.

Table with 3 columns: Resource Area, Size of Proposed Alteration, Proposed Replacement (if any). Rows include Designated Port Areas, Land Under the Ocean, Barrier Beach, Coastal Beaches, Coastal Dunes.

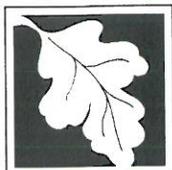
Table with 3 columns: Resource Area, Size of Proposed Alteration, Proposed Replacement (if any). Rows include Coastal Banks, Rocky Intertidal Shores, Salt Marshes, Land Under Salt Ponds, Land Containing Shellfish, Fish Runs, Land Subject to Coastal Storm Flowage.

4. Restoration/Enhancement
If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.2.b or B.3.h above, please enter the additional amount here.

a. square feet of BWV b. square feet of Salt Marsh

5. Project Involves Stream Crossings

a. number of new stream crossings b. number of replacement stream crossings



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Provided by MassDEP:

MassDEP File Number

Document Transaction Number

Amesbury

City/Town

## C. Other Applicable Standards and Requirements

- This is a proposal for an Ecological Restoration Limited Project. Skip Section C and complete Appendix A: Ecological Restoration Limited Project Checklists – Required Actions (310 CMR 10.11).

### Streamlined Massachusetts Endangered Species Act/Wetlands Protection Act Review

1. Is any portion of the proposed project located in **Estimated Habitat of Rare Wildlife** as indicated on the most recent Estimated Habitat Map of State-Listed Rare Wetland Wildlife published by the Natural Heritage and Endangered Species Program (NHESP)? To view habitat maps, see the *Massachusetts Natural Heritage Atlas* or go to [http://maps.massgis.state.ma.us/PRI\\_EST\\_HAB/viewer.htm](http://maps.massgis.state.ma.us/PRI_EST_HAB/viewer.htm).

- a.  Yes  No **If yes, include proof of mailing or hand delivery of NOI to:**

Natural Heritage and Endangered Species Program  
Division of Fisheries and Wildlife  
1 Rabbit Hill Road  
Westborough, MA 01581

2008  
b. Date of map

If yes, the project is also subject to Massachusetts Endangered Species Act (MESA) review (321 CMR 10.18). To qualify for a streamlined, 30-day, MESA/Wetlands Protection Act review, please complete Section C.1.c, and include requested materials with this Notice of Intent (NOI); *OR* complete Section C.2.f, if applicable. *If MESA supplemental information is not included with the NOI, by completing Section 1 of this form, the NHESP will require a separate MESA filing which may take up to 90 days to review (unless noted exceptions in Section 2 apply, see below).*

- c. Submit Supplemental Information for Endangered Species Review\*

1.  Percentage/acreage of property to be altered:

(a) within wetland Resource Area \_\_\_\_\_ percentage/acreage

(b) outside Resource Area \_\_\_\_\_ percentage/acreage

2.  Assessor's Map or right-of-way plan of site

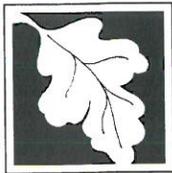
2.  Project plans for entire project site, including wetland resource areas and areas outside of wetlands jurisdiction, showing existing and proposed conditions, existing and proposed tree/vegetation clearing line, and clearly demarcated limits of work \*\*

(a)  Project description (including description of impacts outside of wetland resource area & buffer zone)

(b)  Photographs representative of the site

\* Some projects **not** in Estimated Habitat may be located in Priority Habitat, and require NHESP review (see <http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/regulatory-review/>). Priority Habitat includes habitat for state-listed plants and strictly upland species not protected by the Wetlands Protection Act.

\*\* MESA projects may not be segmented (321 CMR 10.16). The applicant must disclose full development plans even if such plans are not required as part of the Notice of Intent process.



Massachusetts Department of Environmental Protection  
 Bureau of Resource Protection - Wetlands  
**WPA Form 3 – Notice of Intent**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

MassDEP File Number

Document Transaction Number

Amesbury  
 City/Town

**C. Other Applicable Standards and Requirements (cont'd)**

(c)  MESA filing fee (fee information available at [http://www.mass.gov/dfwele/dfw/nhesp/regulatory\\_review/ mesa/ mesa\\_fee\\_schedule.htm](http://www.mass.gov/dfwele/dfw/nhesp/regulatory_review/ mesa/ mesa_fee_schedule.htm)).  
 Make check payable to "Commonwealth of Massachusetts - NHESP" and **mail to NHESP** at above address

*Projects altering 10 or more acres of land, also submit:*

(d)  Vegetation cover type map of site

(e)  Project plans showing Priority & Estimated Habitat boundaries

(f) OR Check One of the Following

1.  Project is exempt from MESA review.  
 Attach applicant letter indicating which MESA exemption applies. (See 321 CMR 10.14, [http://www.mass.gov/dfwele/dfw/nhesp/regulatory\\_review/ mesa/ mesa\\_exemptions.htm](http://www.mass.gov/dfwele/dfw/nhesp/regulatory_review/ mesa/ mesa_exemptions.htm); the NOI must still be sent to NHESP if the project is within estimated habitat pursuant to 310 CMR 10.37 and 10.59.)

2.  Separate MESA review ongoing. a. NHESP Tracking # b. Date submitted to NHESP

3.  Separate MESA review completed.  
 Include copy of NHESP "no Take" determination or valid Conservation & Management Permit with approved plan.

3. For coastal projects only, is any portion of the proposed project located below the mean high water line or in a fish run?

a.  Not applicable – project is in inland resource area only      b.  Yes     No

If yes, include proof of mailing, hand delivery, or electronic delivery of NOI to either:

South Shore - Cohasset to Rhode Island border, and the Cape & Islands:

Division of Marine Fisheries -  
 Southeast Marine Fisheries Station  
 Attn: Environmental Reviewer  
 1213 Purchase Street – 3rd Floor  
 New Bedford, MA 02740-6694  
 Email: [DMF.EnvReview-South@state.ma.us](mailto:DMF.EnvReview-South@state.ma.us)

North Shore - Hull to New Hampshire border:

Division of Marine Fisheries -  
 North Shore Office  
 Attn: Environmental Reviewer  
 30 Emerson Avenue  
 Gloucester, MA 01930  
 Email: [DMF.EnvReview-North@state.ma.us](mailto:DMF.EnvReview-North@state.ma.us)

Also if yes, the project may require a Chapter 91 license. For coastal towns in the Northeast Region, please contact MassDEP's Boston Office. For coastal towns in the Southeast Region, please contact MassDEP's Southeast Regional Office.



**C. Other Applicable Standards and Requirements (cont'd)**

**Online Users:**  
Include your document transaction number (provided on your receipt page) with all supplementary information you submit to the Department.

4. Is any portion of the proposed project within an Area of Critical Environmental Concern (ACEC)?
- a.  Yes  No If yes, provide name of ACEC (see instructions to WPA Form 3 or MassDEP Website for ACEC locations). **Note:** electronic filers click on Website.
- b. ACEC
5. Is any portion of the proposed project within an area designated as an Outstanding Resource Water (ORW) as designated in the Massachusetts Surface Water Quality Standards, 314 CMR 4.00?
- a.  Yes  No
6. Is any portion of the site subject to a Wetlands Restriction Order under the Inland Wetlands Restriction Act (M.G.L. c. 131, § 40A) or the Coastal Wetlands Restriction Act (M.G.L. c. 130, § 105)?
- a.  Yes  No
7. Is this project subject to provisions of the MassDEP Stormwater Management Standards?
- a.  Yes. Attach a copy of the Stormwater Report as required by the Stormwater Management Standards per 310 CMR 10.05(6)(k)-(q) and check if:
1.  Applying for Low Impact Development (LID) site design credits (as described in Stormwater Management Handbook Vol. 2, Chapter 3)
  2.  A portion of the site constitutes redevelopment
  3.  Proprietary BMPs are included in the Stormwater Management System.
- b.  No. Check why the project is exempt:
1.  Single-family house
  2.  Emergency road repair
  3.  Small Residential Subdivision (less than or equal to 4 single-family houses or less than or equal to 4 units in multi-family housing project) with no discharge to Critical Areas.

**D. Additional Information**

- This is a proposal for an Ecological Restoration Limited Project. Skip Section D and complete Appendix A: Ecological Restoration Notice of Intent – Minimum Required Documents (310 CMR 10.12).

Applicants must include the following with this Notice of Intent (NOI). See instructions for details.

**Online Users:** Attach the document transaction number (provided on your receipt page) for any of the following information you submit to the Department.

1.  USGS or other map of the area (along with a narrative description, if necessary) containing sufficient information for the Conservation Commission and the Department to locate the site. (Electronic filers may omit this item.)
2.  Plans identifying the location of proposed activities (including activities proposed to serve as a Bordering Vegetated Wetland [BVW] replication area or other mitigating measure) relative to the boundaries of each affected resource area.



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 3 – Notice of Intent**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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 City/Town

**D. Additional Information (cont'd)**

3.  Identify the method for BVW and other resource area boundary delineations (MassDEP BVW Field Data Form(s), Determination of Applicability, Order of Resource Area Delineation, etc.), and attach documentation of the methodology.

4.  List the titles and dates for all plans and other materials submitted with this NOI.

Plan of land

a. Plan Title

Clinton F. Goodwin

Clinton F. Goodwin

b. Prepared By

c. Signed and Stamped by

Oct. 19, 1962

1"=40'

d. Final Revision Date

e. Scale

see attached

f. Additional Plan or Document Title

g. Date

5.  If there is more than one property owner, please attach a list of these property owners not listed on this form.
6.  Attach proof of mailing for Natural Heritage and Endangered Species Program, if needed.
7.  Attach proof of mailing for Massachusetts Division of Marine Fisheries, if needed.
8.  Attach NOI Wetland Fee Transmittal Form
9.  Attach Stormwater Report, if needed.

**E. Fees**

1.  Fee Exempt: No filing fee shall be assessed for projects of any city, town, county, or district of the Commonwealth, federally recognized Indian tribe housing authority, municipal housing authority, or the Massachusetts Bay Transportation Authority.

Applicants must submit the following information (in addition to pages 1 and 2 of the NOI Wetland Fee Transmittal Form) to confirm fee payment:

2. Municipal Check Number

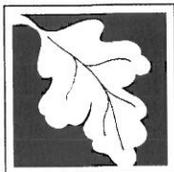
3. Check date

4. State Check Number

5. Check date

6. Payor name on check: First Name

7. Payor name on check: Last Name



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Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

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## F. Signatures and Submittal Requirements

I hereby certify under the penalties of perjury that the foregoing Notice of Intent and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge. I understand that the Conservation Commission will place notification of this Notice in a local newspaper at the expense of the applicant in accordance with the wetlands regulations, 310 CMR 10.05(5)(a).

I further certify under penalties of perjury that all abutters were notified of this application, pursuant to the requirements of M.G.L. c. 131, § 40. Notice must be made by Certificate of Mailing or in writing by hand delivery or certified mail (return receipt requested) to all abutters within 100 feet of the property line of the project location.

*Shirley A. McDevitt*

1. Signature of Applicant

9/12/16

2. Date

3. Signature of Property Owner (if different)

4. Date

5. Signature of Representative (if any)

6. Date

### For Conservation Commission:

Two copies of the completed Notice of Intent (Form 3), including supporting plans and documents, two copies of the NOI Wetland Fee Transmittal Form, and the city/town fee payment, to the Conservation Commission by certified mail or hand delivery.

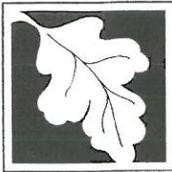
### For MassDEP:

One copy of the completed Notice of Intent (Form 3), including supporting plans and documents, one copy of the NOI Wetland Fee Transmittal Form, and a **copy** of the state fee payment to the MassDEP Regional Office (see Instructions) by certified mail or hand delivery.

### Other:

If the applicant has checked the "yes" box in any part of Section C, Item 3, above, refer to that section and the Instructions for additional submittal requirements.

The original and copies must be sent simultaneously. Failure by the applicant to send copies in a timely manner may result in dismissal of the Notice of Intent.



**Massachusetts Department of Environmental Protection**  
**Bureau of Resource Protection - Wetlands**  
**NOI Wetland Fee Transmittal Form**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

**Important:** When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



**A. Applicant Information**

1. Location of Project:

34 Birchmeadow Road

a. Street Address

Amesbury

b. City/Town

c. Check number

d. Fee amount

2. Applicant Mailing Address:

Sharon and Jay

a. First Name

McDermot

b. Last Name

c. Organization

34 Birchmeadow Road

d. Mailing Address

Amesbury

e. City/Town

MA

f. State

01913

g. Zip Code

h. Phone Number

i. Fax Number

j. Email Address

3. Property Owner (if different):

a. First Name

b. Last Name

c. Organization

d. Mailing Address

e. City/Town

f. State

g. Zip Code

h. Phone Number

i. Fax Number

j. Email Address

**B. Fees**

Fee should be calculated using the following process & worksheet. **Please see Instructions before filling out worksheet.**

**Step 1/Type of Activity:** Describe each type of activity that will occur in wetland resource area and buffer zone.

**Step 2/Number of Activities:** Identify the number of each type of activity.

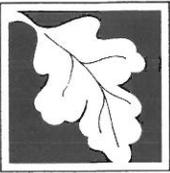
**Step 3/Individual Activity Fee:** Identify each activity fee from the six project categories listed in the instructions.

**Step 4/Subtotal Activity Fee:** Multiply the number of activities (identified in Step 2) times the fee per category (identified in Step 3) to reach a subtotal fee amount. Note: If any of these activities are in a Riverfront Area in addition to another Resource Area or the Buffer Zone, the fee per activity should be multiplied by 1.5 and then added to the subtotal amount.

**Step 5/Total Project Fee:** Determine the total project fee by adding the subtotal amounts from Step 4.

**Step 6/Fee Payments:** To calculate the state share of the fee, divide the total fee in half and subtract \$12.50. To calculate the city/town share of the fee, divide the total fee in half and add \$12.50.

To calculate filing fees, refer to the category fee list and examples in the instructions for filling out WPA Form 3 (Notice of Intent).



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**NOI Wetland Fee Transmittal Form**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

**B. Fees** (continued)

Step 1/Type of Activity	Step 2/Number of Activities	Step 3/Individual Activity Fee	Step 4/Subtotal Activity Fee
category 5 (dock)	1	176.00	176.00

**Step 5/Total Project Fee:** \_\_\_\_\_

**Step 6/Fee Payments:**

Total Project Fee:	176.00
State share of filing Fee:	a. Total Fee from Step 5 75.50
City/Town share of filing Fee:	b. 1/2 Total Fee less \$12.50 100.50
	c. 1/2 Total Fee plus \$12.50

**C. Submittal Requirements**

- a.) Complete pages 1 and 2 and send with a check or money order for the state share of the fee, payable to the Commonwealth of Massachusetts.

Department of Environmental Protection  
 Box 4062  
 Boston, MA 02211

- b.) **To the Conservation Commission:** Send the Notice of Intent or Abbreviated Notice of Intent; a copy of this form; and the city/town fee payment.

**To MassDEP Regional Office** (see Instructions): Send a copy of the Notice of Intent or Abbreviated Notice of Intent; a copy of this form; and a copy of the state fee payment. (E-filers of Notices of Intent may submit these electronically.)

# LEGAL NOTIFICATION

## AMESBURY CONSERVATION COMMISSION

In accordance with the Wetland Protection Act (Massachusetts General Law, Chapter 131, § 40 and the Amesbury Wetland Protection Bylaw, (Article 34):

The applicant Sharon/Jay McDermot has filed a WPA Form 3 Notice of Intent  
Name Form Name

With the Amesbury Conservation Commission for the proposed Replacement of dock

Description of work-Intent  
Project at 34 Birchmeadow Road, Amesbury, MA 01913.  
Address of Property

A Public Hearing will be held at the Amesbury City Hall on Monday, October 3, 2016,  
~~September 19, 2016~~,  
month/day/year

*Corrected to be made by Sharon McDermot*

at 6:30 p.m. at which time all persons and organizations having interest may be heard.

Copies of the application may be examined and/or purchased at the Conservation Commission Office, 62 Friend Street, Amesbury or by calling (978)388-8110.

**Steven Langlois, Chair  
Amesbury Conservation Commission**

**Publish: (No later than 5 days prior to public hearing)**

Please send invoice to:

Your Name  
Street Address  
City/Town, State, Zip Code  
Telephone #1  
Telephone #2

Sharon M<sup>c</sup>Dermot  
34 Birchmeadow Rd  
Amesbury MA 01913  
978-500-4026  
978-500-4644

**NOTIFICATION TO ABUTTERS**  
**UNDER THE**  
**MASSACHUSETTS WETLANDS PROTECTION ACT**  
**AND AMESBURY WETLANDS PROTECTION BYLAW**

In accordance with the Massachusetts General Laws, Chapter 131, Section 40, and the Amesbury Wetlands Protection Bylaw, you are hereby notified of the following:

The Amesbury Conservation Commission will hold a public hearing on  
October 3, 2016  
~~September 19, 2016~~, at 6:30 PM, located at City Hall 62 Friend Street,  
(date) (time) (hearing location),  
Amesbury, to consider a NOI submitted by Sharon & Jay  
(application) (applicant)  
McDermot, to Replace dock  
(applicant) (brief description of the proposed project)  
\_\_\_\_\_ at  
34 Birchmeadow Road  
(project location)

Hearings begin at 6:30. For more information concerning the date, time or place of hearing, contact the Conservation Commission at 978-388-8110.

Arrangements to examine copies of the filing may be made by calling the Conservation Commission at 978-388-8110. Copies may be available for a fee.

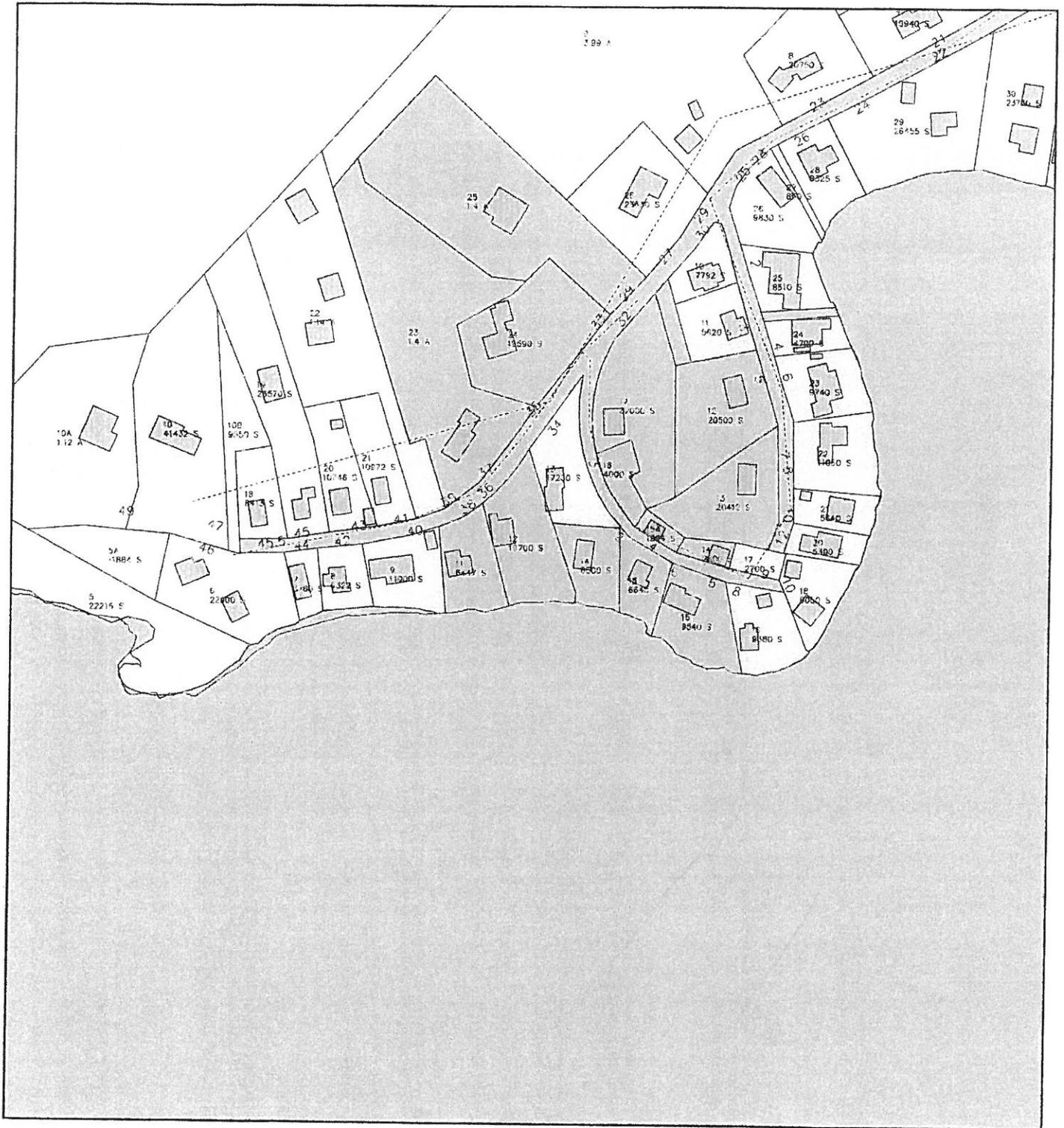
Further information regarding the hearing, or the Wetlands Protection Act, may be obtained from the Conservation Commission at 978-388-8110.

NOTE: Notice of the public hearing, including its date, time, and place will be posted in Town Hall not less than 48 hours in advance.

NOTE: Notice of the public hearing, including its date, time, and place will be published in the Newburyport Daily News not less than 5 business days prior to the public hearing.

NOTE: You may also contact the Amesbury Conservation Commission or the Department of Environmental Protection (DEP) Wetlands Division- Northeast Regional Office (NERO) for more information about this application or the Wetlands Protection Act. The DEP, Northeast Regional Office can be reached at 617-654-6500.

# 34 BIRCHMEADOW RD 45/13 100 FT



Information on this Map is  
Compiled and Maintained for  
Assessing Purposes Only

GEOGRAPHIC INFORMATION SYSTEM  
VISION APPRAISAL TECHNOLOGY



**ABUTTERS LISTING FOR 34 BIRCHMEADOW RD 45/13 100 FT  
AMESBURY, MA**

AV PID	Map	Lot	Unit	Location	Owner's Name	Co_Owner's Name	Address	City	ST Zip	Book/Page
6203	46	12		5 BIRCH LN	CARRIER DOUGLAS M		10 LINDEN STREET #3L	READING	MA 01867	33135/ 449
6202	46	13		7 BIRCH LN	PELLETIER STEVEN T	ANDREA J PELLETIER T/E	7 BIRCH LN	AMESBURY	MA 01913	13437/ 185
6234	45	25		29 BIRCHMEADOW RD	SMITH HARRY A	DEBORAH J SMITH T/E	29 BIRCHMEADOW RD	AMESBURY	MA 01913	07858/0288
6206	45	17		32 BIRCHMEADOW RD	WERTH RUSSELL D	ALLYN J WERTH (TE)	32 BIRCHMEADOW RD	AMESBURY	MA 01913	33344/ 175
6232	45	24		33 BIRCHMEADOW RD	MORAN JEAN M		33 BIRCHMEADOW RD	AMESBURY	MA 01913	14740/ 271
6231	45	23		35 BIRCHMEADOW RD	NIHAN STEVEN D		35 BIRCHMEADOW RD	AMESBURY	MA 01913	29156/ 46
6217	45	12		36 BIRCHMEADOW RD	NIHAN FAMILY TRUST	ROBERT & PATRICIA NIHAN (LIFE	133 EMPIRE ST	LYNN	MA 01902	32065/ 514
6218	45	11		38 BIRCHMEADOW RD	HOLBROOK JOHN W	JEAN V HOLBROOK J/T	38 BIRCHMEADOW RD	AMESBURY	MA 01913	07869/0466
6215	45	14		2 STAR LN	NAGLE MARIE BERNICE		2 STAR LN	AMESBURY	MA 01913	16099/ 51
6207	45	16		3 STAR LN	NAGLE MARIE BERNICE TRUSTEE	CASS OLE TRUST	2 STAR LN	AMESBURY	MA 01913	13666/ 599
6214	45	15		4 STAR LN	BELISLE PAULINE T	MARCIA MORRIS J/T	4 STAR LN	AMESBURY	MA 01913	20933/ 163
6830	45	15	A	5 STAR LN	BELISLE PAULINE T	MARCIA MORRIS J/T	4 STAR LN	AMESBURY	MA 01913	20933/ 163
6213	46	15		6 STAR LN	JENNINGS ROBERT G	JENNINGS LENORE GILBERT T/E	6 STAR LANE LK ATT	AMESBURY	MA 019135	10955/ 259
6209	46	14		7 STAR LN	JENNINGS ROBERT G	JENNINGS LENORE GILBERT T/E	6 STAR LANE	AMESBURY	MA 01913	10955/ 259

Parcel Count: 14

THE BOARD OF ASSESSORS OF THE TOWN OF  
AMESBURY, MA HEREBY CERTIFIES THAT THIS  
LIST OF ABUTTERS IS THE MOST RECENT  
APPLICABLE TAX LIST AS REQUIRED BY CHAPTER  
40A, SECTION 11 OF THE MASSACHUSETTS  
GENERAL LAWS AS AMENDED

*Mary E. Mansfield*  
August 5, 2016

SHARON McDERMOT 04-99  
JAY L McDERMOT  
PH. 978-388-6248  
34 BIRCHMEADOW RD.  
AMESBURY, MA 01913

53-7402/2113

4714

DATE Sept 12, 11 

PAY TO THE ORDER OF Commonwealth of MA Dept of Education

\$ 75.50

DOLLARS

Heat Reactive Ink

Money - for 50%



AMESBURY, MASSACHUSETTS  
the Provident Bank.com

*Sharon McDermot*

MEMO

⑆2⑆⑆374020⑆ ⑆2 303280⑆ ⑆7⑆⑆⑆

LOOK FOR FRAUD-DETECTING FEATURES INCLUDING THE SECURITY SQUARE AND HEAT-REACTIVE INK. DETAILS ON BACK.

SHARON McDERMOT  
34 BIRCHMEADOW RD.  
AMESBURY, MA 01913-5516

53-7402/2113

1381

DATE Sept 11, 11 

PAY TO THE ORDER OF City of Amesbury

\$ 264.00

DOLLARS

Heat Reactive Ink

Two hundred & sixty - four 00/100



AMESBURY, MASSACHUSETTS  
the Provident Bank.com

*Sharon McDermot*

MEMO

⑆2⑆⑆374020⑆ ⑆2 20002⑆ ⑆38⑆⑆

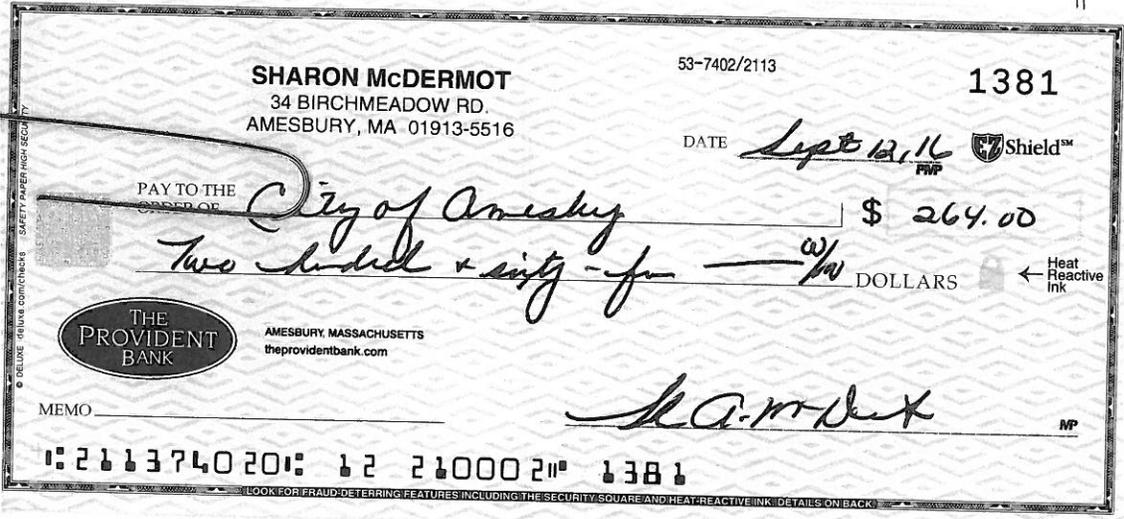
LOOK FOR FRAUD-DETECTING FEATURES INCLUDING THE SECURITY SQUARE AND HEAT-REACTIVE INK. DETAILS ON BACK.

# CITY OF AMESBURY

## SCHEDULE OF DEPARTMENTAL PAYMENTS TO TREASURER

No. \_\_\_\_\_ Dept. Conservation Commission Date Sept. 13 2016

FROM WHOM	SOURCE	AMOUNT	TOTAL
<p><i>Sharon McDermot</i>                      34 Birchmeadow Rd                      Amesbury, Ma 01913-5516</p>	<p>1000017446000                       NOI FILING Fee</p>	<p>264.00</p>	<p>264.00</p>
			<p>264.00</p>



No. \_\_\_\_\_ Date Sept - 13 2016

To the Departmental Officer making the Payment:

Received of Conservation Commission, the sum of Two hundred dollars & 00/100 Dollars

for the \_\_\_\_\_ ending \_\_\_\_\_ for collections as per schedule of this date, filed in my office.

*NOI  
 DOCK  
 McDermot's*

Treasurer  
Barbara Foley  
 Department Signature

Appendix  
Approved Plans and Other  
Correspondence

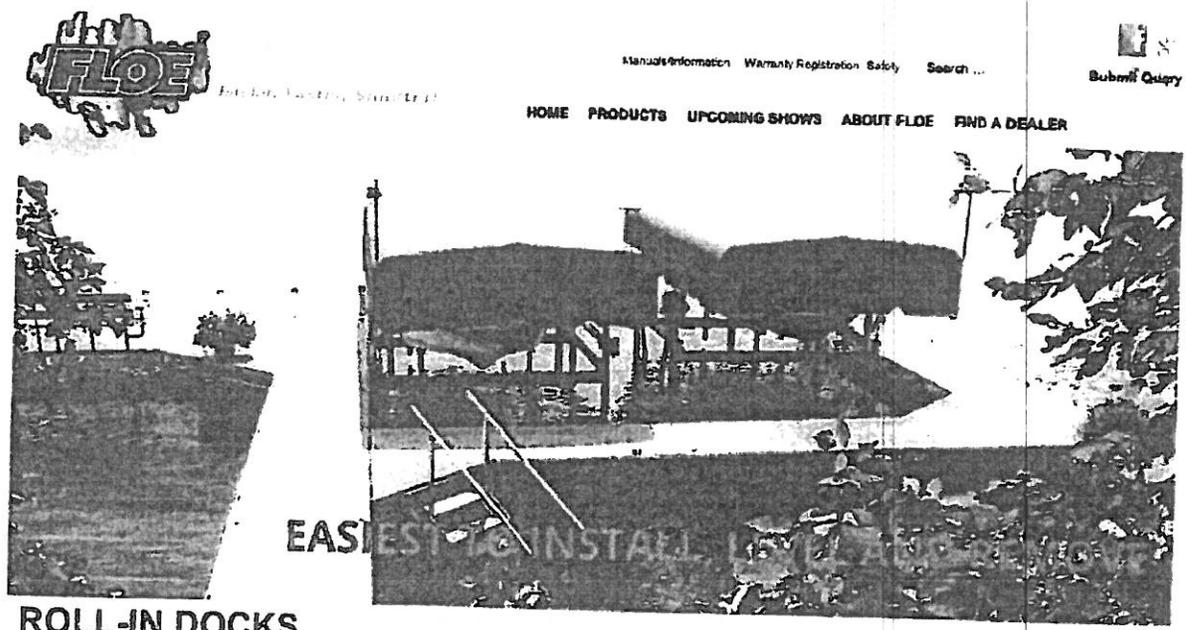
6 A.

## Appendix

### Proposed Work Description

Install (and remove annually/seasonally) a modular roll-in dock system. The modular dock is constructed of aluminum. The dock also has perforated wheels that fill up with water to give the dock ballast which works as anchors for the dock. The dock also has support posts at the shore that are placed perpendicular to the dock system. This creates holding power for the placement of the dock. The dock does not touch the shoreline. The dock does not puncture or perforate the lake bed in any way due to the wheels on the dock system. The dock is also constructed with an open design that allows water to flow through the dock itself. This eliminates the concern of waves pounding against the dock. The dock will be positioned at the end of the stairway to the lake and will not touch the shoreline.

6A



## ROLL-IN DOCKS

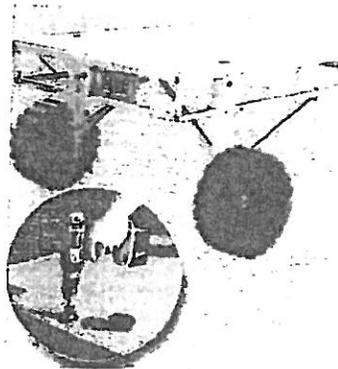
- Roll-In Docks
  - Deck Components
  - Components
  - Sample Layouts
  - Storage/Removal
- Sectional Docks
- Floating Docks
- Dock Accessories
- Design-a-Dock
- F.A.Q.
- Photo Gallery
- Video Gallery

Home » Docks » Roll-In Docks

### ROLL-IN DOCKS

6 Reasons why more people buy FLOE modular roll-in aluminum boat docks than any other in the world:

1. Gorgeous shoreline appeal
2. Rock solid stability
3. Easiest to level
4. Modular design
5. Easiest to install and remove
6. For 33 years, FLOE's quality and innovation have been and continue to be the benchmark for the dock and boat lift industry



#### Easy-Level™ Leveling System Easier, Faster, Smarter

- Effortlessly level each dock section independently from the top with a cordless drill or FLOE's leveling tool.
- "Topside" aluminum screw-jack system on each wheel kit versus one leveling system at the end of the dock with mid-section support posts
- If one wheel drops into a hole or sinks into the mud, it can easily be leveled
- Eliminates having to lift and level the heavy mid-section of a boat dock that uses potentially dangerous and unsightly support posts
- Screw-jacks also eliminate winches, broken cables and binding pipes found on other docks
- Topside adjustment hole is neatly finished with a flat plastic cap

PLAY VIDEO

#### FLOE'S SECRET TO MODULAR PORTABILITY: LEVEL™ WHEEL KITS ON EVERY SECTION

#### QUICK-CONNECTS™ AND EASY-LEVEL™

How It Works:

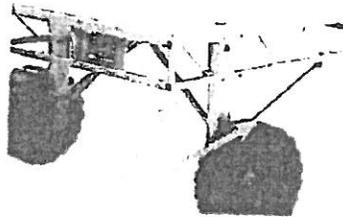
- Links modular dock sections together versus hard bolting
- Quickly add or disconnect sections



- Can be added anywhere to make it easy to create custom dock configurations such as slips.
- Disconnected dock sections can be moved independently to make installation and removal easy.
  - In the "Locked" position dock sections are held securely in place and close together.
  - In the "Transport" position dock sections have a gap so they can pivot. This allows multiple sections to be pulled in and out of the water with ease.



PLAY VIDEO



Double Braced Easy-Level™ Support Legs

- Roll-in Dock sections are safer because they are more stable with double bracing on each wheel kit.
- Eliminates the side-to-side sway common with other docks.
- More rigid and durable than other lake docks that use vertical non-braced pipes especially when transporting over rough terrain.
- No high maintenance cable or chain to tension.
- Kits are available to accommodate water depths up to 8 1/2 feet.

PLAY VIDEO

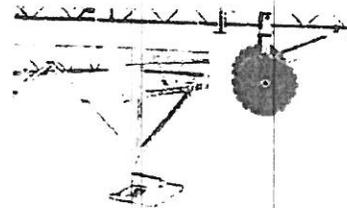
#### Multiple Anti-Sway Wheel Kits

- Wheel kits on every section versus one at the end of a long dock eliminates stress on long, unsupported mid sections.
- Easier to lift the shore-end of the dock when installing and removing.
- You lift less than half of the weight of one section no matter how long your dock is.
- Add a shore-end wheel kit to eliminate lifting when you roll your dock in and out.

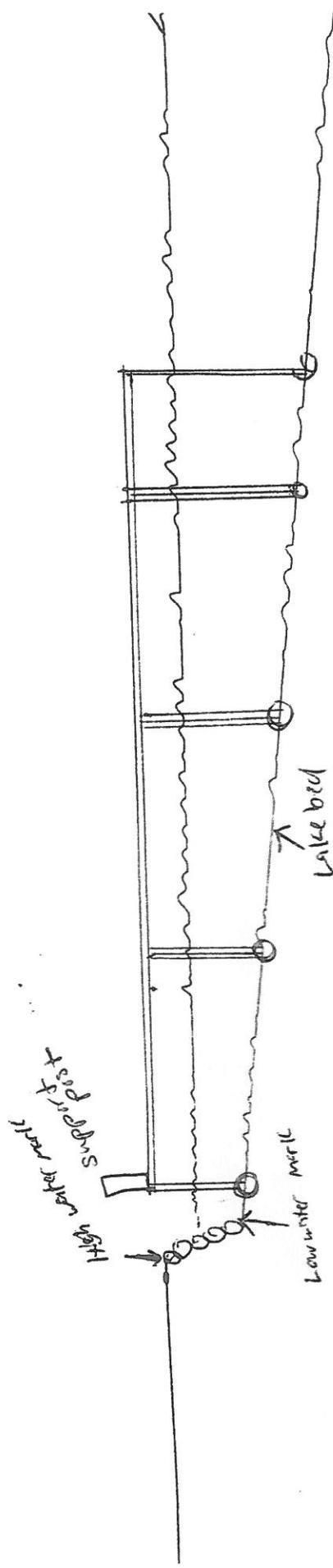
PLAY VIDEO

#### Wheel and Sand Pad Choices

- Standard wheel is drilled and fills with water for ballast. The standard wheel is for use in seasonal and permanent applications. Works best in firm to moderately soft applications where the anticipated settling will be no greater than 6" into dense mud.
- Mud wheel is not drilled and adds buoyancy to ease installation and removal. The mud wheel should only be used in dense mud applications where the anticipated settling will be more than 4".
- Sand pad is available for installations where portability is not a concern and/or a necessity. Wide-based sand pads provide substantial support and stability. The sand pads pivot to conform to changing bottom contours.



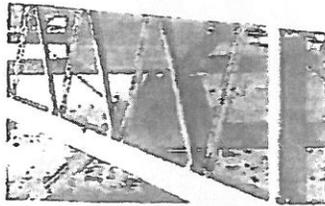
# Side View



1.5" = 10'  
Scale

6A

being 6' out on the water. If you plan to have the dock higher or lower out of water, add or subtract that amount to the depth measurement.



**Deck Structure**

- Bridge-Type Truss
- Highest strength-to-weight ratio available
- Open design allows large waves to flow through the dock section rather than pounding against it
- Webbing is welded on the inside for a sharp clean appearance

PLAY VIDEO



**WANT THE BEST? GO WITH THE FLOE!  
MADE IN THE USA**



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Vacuum Thermforming

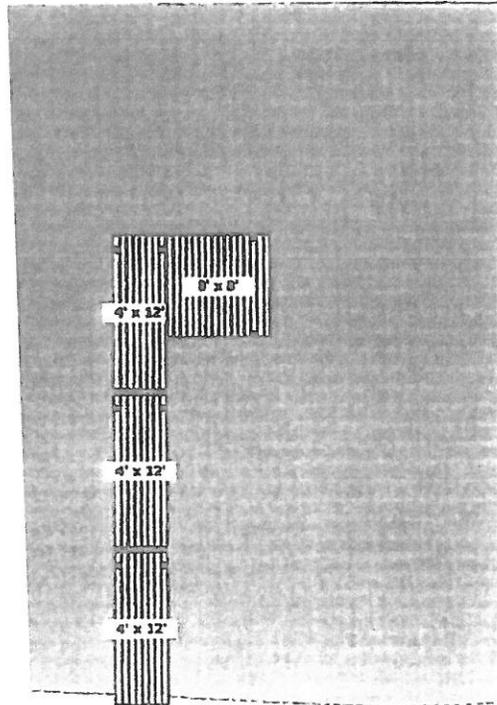
[Cargo Max™ EXT 1-57](#)  
[Rear Aluminum Tailgate Ramp](#)  
[Tire/Tongue Jack](#)  
[Video Gallery](#)  
[Testimonials](#)  
[Contact Us](#)

[Aluminum Trailers](#)  
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[Features](#)



[Boat Lifts](#)  
[Accessories](#)  
[Boat Lift Selector](#)  
[Canopies](#)  
[Drive Trains](#)  
[Easy-Level™ Leveling System](#)

[Docks](#)  
[Design-a-Door](#)  
[Deck Accessories](#)  
[Benchies](#)  
[Burners & Closets](#)



Zoom Out





80 Mass.App.Ct. 1112

Unpublished Disposition

Only the Westlaw citation is currently available.

NOTE: THIS OPINION WILL NOT APPEAR  
IN A PRINTED VOLUME. THE DISPOSITION  
WILL APPEAR IN A REPORTER TABLE.

NOTICE: Decisions issued by the Appeals Court pursuant to its rule 1:28 are primarily addressed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, rule 1:28 decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28, issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent.

Appeals Court of Massachusetts.

Jay L. McDERMOT and another<sup>1</sup>

v.

Marie Bernice NAGLE & others.<sup>2</sup>

No. 10-P-1703.

October 26, 2011.

By the Court (CYPHER, BROWN & HANLON, JJ.).

MEMORANDUM AND ORDER  
PURSUANT TO RULE 1:28

\*1 The parties cross-appeal from a Land Court judgment resolving the dispute concerning their respective rights to the use of land known as the "driftway" for access to Lake Attitash in Amesbury. The parties—the plaintiffs; defendant Nagle; and defendants Belisle and Morris (the Belisle defendants)—each own land abutting the driftway. We affirm.

*Background.* The plaintiffs filed a complaint in the Land Court on March 23, 2005, seeking a declaratory judgment as to their rights in the driftway, and sought to enjoin the defendants from interfering with their use of the driftway. The defendants each filed counterclaims, and Nagle filed a cross claim against the Belisle defendants. On June 28, 2007, the Land Court judge allowed summary judgment

for the plaintiffs on their declaratory judgment count, ruling that they have a right to pass and repass over the entire length of the driftway on foot or with vehicles in order to access Lake Attitash. Following a view of the property and the trial conducted the same day on October 14, 2008, the judge ordered a judgment on June 8, 2009, disposing of the parties' remaining claims. The Belisle defendants moved to alter or amend the judgment, and on August 4, 2010, the judge issued an amended judgment.

*Discussion.* 1. *The amended judgment.* In addressing the principal issue raised in the motion of the Belisle defendants to alter or amend the judgment—that the judge had failed properly to determine their fee interest in the driftway—the judge undertook a detailed analysis of the rights of the parties in accordance with G.L. c. 183, § 58, the "derelict fee statute," and applied those principles as explicated in *Murphy v. Mart Realty of Brockton, Inc.*, 348 Mass. 675, 679–681 (1965), in particular considering the sequence in which these properties were conveyed from common grantors. He first concluded that because the deed to what now is the Nagle property did not refer to the driftway as a boundary, the deed conveyed only the easement rights described (a thirty-foot right of way on the easterly side over other land of the grantors), and not a fee in the right of way. Next, he determined that the deed to what now is the property of the Belisle defendants referred to the driftway as its western boundary, and concluded that their title therefore includes the entire fee in the driftway adjacent to their property. Finally, the judge determined that the title to the property now owned by the plaintiffs was the last to be conveyed by the original grantors and therefore included the remaining fee interest in the portion of the driftway adjacent to that property.<sup>3</sup> Accordingly, the judge ordered that the property of each party "includes the right to pass and re-pass over the entire length of Driftway on foot or with vehicles for the purpose of accessing Lake Attitash."

On appeal, the Belisle defendants argue that the plaintiffs do not have an easement over the driftway, but fail to support the assertion with reasoned appellate argument, and we conclude there is nothing that requires further discussion. See Mass.R.A.P. 16(a)(4), as amended, 367 Mass. 921 (1975); *Department of Rev. v. Ryan R.*, 62 Mass.App.Ct. 380, 389 (2004).

\*2 The arguments of the defendants fail to show any factual or legal error in the judge's application of G.L. c.

183, § 58, to the parcels at issue in this case. Nor is there merit in Nagle's argument that the judge erred in allowing summary judgment for the plaintiffs on their claim that they have a right to pass and repass over the entire driftway.<sup>4</sup> Thus, in view of the judge's determination of the plaintiffs' rights in the driftway pursuant to § 58, it is not necessary to consider the arguments of the defendants challenging the judge's determination that if the plaintiffs did not have a granted right they would have established a prescriptive right over the driftway.

In his decision following the trial, the judge examined four issues in dispute by the parties. First, he declined to rule on whether the plaintiffs had a right to maintain a dock and boats in Lake Attitash, a "great pond." He determined that he was without jurisdiction to consider rights of public use of the lake because they are matters of regulation by municipal and State agencies and the defendants had not exhausted available administrative remedies. Although the Belisle defendants continue to press the point on appeal, they have not addressed the judge's determination as to exhaustion of remedies, and thus their argument is waived.

Next, in a thorough analysis of the responsibilities and rights of the holders of dominant and servient estates,

the judge ruled that there was no right to construct, repair, or improve a retaining wall or a stairway where the driftway abuts Lake Attitash. There is no merit to the Belisle defendants' arguments to the contrary. The judge further ordered that personal property and vehicles may temporarily be left on the driftway, but only for the time the owner is making actual use of the driftway, and that personal property may not otherwise be stored there. This determination has not been challenged by the parties in this appeal.

*Conclusion.* The judge carefully considered and resolved the parties' disputes in his detailed amended judgment. We therefore think it appropriate to repeat his suggestion: "The Court strongly suggests that the parties resolve their differences and live as neighbors. The Parties should attempt to strictly abide by this court order while at the same time granting one another some measure of flexibility for minimal and temporary infractions."

*Amended judgment of August 4, 2010, affirmed.*

#### All Citations

80 Mass.App.Ct. 1112, 955 N.E.2d 934 (Table), 2011 WL 5061628

#### Footnotes

- 1 Sharon A. **McDermot**.
- 2 Pauline T. Belisle and Marcia Morris.
- 3 The judge also determined that where the property of the Belisle defendants abuts the property of the plaintiffs, each landowner owns to the centerline of the driftway.
- 4 We do not consider an assertion of the plaintiffs that the judge erred in his application of the derelict fee statute and that the judge should have found that they own the fee in the western half of the driftway between their property and that of the Belisle defendants, as well as the fee across the full width of the driftway opposite their property and north of any portion in which the Belisle defendants own a fee interest. There is no indication that the plaintiffs raised this issue in the Land Court.

End of Document

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Healey,  
Deshaies  
Gagliardi &  
Woelfel, PC

John P. Healey (1936-2007)  
\*Robert J. Deshaies  
Paul J. Gagliardi  
\*John R. Woelfel  
\*Harold Owen Beede  
\*Michael A. Tucker  
\*ADMITTED IN MA & NH

ATTORNEYS

24 Market Street • Amesbury, Massachusetts 01913 • (978) 388-1787 • Fax: (978) 388-9727

June 3, 2016

Via email [Philip.DiPietro@state.ma.us](mailto:Philip.DiPietro@state.ma.us) & First Class Mail

Phil DiPietro, Env. Engineer  
Massachusetts Department of Environmental Protection  
205B Lowell Street  
Wilmington MA 01887

**Re: McDermot Application for Superceding Determination of Applicability - BRP WW06  
Application for C. 91 Simplified License - No. W13-3982**

Dear Mr. DiPietro:

It was a pleasure meeting you at the DEP site visit at 34 Birchmeadow Road in Amesbury, June 1, 2016. As I mentioned I have been engaged to represent Mr. and Mrs. Jay and Sharon McDermot of Amesbury, Massachusetts in matters concerning the DEP's / Amesbury Conservation Commission's site visit to the area at which the McDermots have been pursuing a Simplified License, and **Application for Superceding Determination of Applicability**, to maintain an existing (pre-1984 / pre-1963) pier or dock in the Great Pond known as Lake Attitash in Amesbury, Massachusetts.

As I mentioned I would, in response to the neighbor Pauline Belisle's attorney's contention that the McDermots allegedly cannot place a dock / pier in Lake Attitash without Ms. Belisle's consent, I offer the following:

You may already be familiar with the Massachusetts Appeals Court decision of *Tindley v. Department of Environmental Quality Engineering*, 10 Mass.App.Ct. 623 (1980), in which the Appeals Court overturned the Gloucester Harbormaster's denial of a permit for a moored float and ramp extending from a right-of-way out onto the Annisquam River. Just as in the McDermot family's situation, waterfront neighbors had objected to the issuance of the permit on the basis that the parties who applied for the permit did not own any shoreline property, but only had the right to use a right-of-way over the objecting neighbor's land to access the water. One ruling by the Appeals Court within that case, which is important in the application of Massachusetts law to the McDermot family's situation, is that, where the applicants for the permit had legal rights to access the water over a right-of-way, and the land beneath the water was not owned by other private landowners (i.e., the "project" of maintaining the float and ramp did not involve "private flats of other than the applicant"),

Phil DiPietro, Env. Engineer  
Massachusetts Department of Environmental Protection  
June 3, 2016  
Page 2

the issuance of the permit by the harbormaster **did not require the consent of the landowner over which the right-of-way was located**, and offshore of whose land the float would be maintained. The provision in MGL c. 91 §10A that states,

“Nothing in this section shall be construed as authorizing the placement of floats or rafts and appurtenant anchors or bottom moorings on private flats of other than the applicant if objected to by the owner or owners thereof”

does not pertain in the McDermots’ situation, because, as in the *Tindley* case, the objecting neighbors (Mses Belisle & Morris, here) do not own the “flats” or the lake-bottom over which the dock is situated— in our case because Lake Attitash is a “Great Pond.” I note that the DEP Chapter 91 Simplified Waterways License Application requires, *if the applicant is not the adjacent landowner*, only the *identification* of the adjacent landowner; **the Ch. 91 Application for the Simplified License does not require that landowner's signature**. The *Tindley* decision still stands as the current state of precedent law in the Commonwealth on these issues. A copy is enclosed for your convenience.

As I stated and as I’m sure you know, Lake Attitash is a Great Pond, and that being the case the shoreline property owners [such as Mses Belisle & Morris] “have no private property in the waters of the pond, or in the soil under them, below the natural low-water mark.” *Brooks Pond Conservation Ass’n, Inc. v. Starr*, 79 Mass.App.Ct. 1130, n.4 (2011) (unpublished decision) (quoting *Potter v. Howe*, 141 Mass. 357, 359 (1886)). To my understanding, the walkway and float maintained and used by the McDermots are all beyond the natural low water mark. As the Land Court Judge reiterated in the judicial decision of the case between the McDermots and Mses Belisle & Morris, “The parties all hold the same rights to use the flats and water of the lake [Attitash], as does the public.” *McDermot v. Nagle, Belisle, et al*, 2009 WL 1580263, (Mass.Land Ct. 2009). The trial judge’s conclusion in the *Tindley* case was that the right to maintain a float or dock out in the water beyond the right-of-way was, “necessary for the [permittees’] enjoyment of their easement rights.” The Appeals Court in *Tindley* also ruled that the harbormaster had no authority to base his permitting decision on his opinion as to whether the placement and use of the float and ramp were a reasonable use of that particular easement. It is well-established law in the Commonwealth that, “When an easement or other property right is created, every right necessary for its enjoyment is included by implication.” *Tindley, supra*, at 628 (citing several Mass. SJC decisions). See also *Scioletti v. Thomas*, 2010 WL 5480706, p. 1 n.1. (Mass.Land Ct. 2010) (“... the plaintiffs’ easement consists of a right of access to [the] Pond to effectuate their public trust rights of fishing, fowling, and navigating”); *Brown v. Ryan*, 2008 WL 123868 (Mass.Land Ct. 2008) (easement over another’s land creating right to access water body implicates boating as reasonable use of easement; boating implicates maintenance and use of float and walkway-ramp in water to facilitate easement holder's boating).

Phil DiPietro, Env. Engineer  
Massachusetts Department of Environmental Protection  
June 3, 2016  
Page 3

The McDermots have also presented evidence that the dock at issue has been at this location since 1963 or earlier, and has not been significantly altered since then or at least since as early as 1984. This may mean that it is not necessary to obtain Conservation Commission approval. 310 CMR 910(3)(c)(1). See, e.g., deeds and Affidavits of owners enclosed.

I will confirm with my clients but it is my understanding that the dock the McDermots plan to maintain offshore of the right of way also complies with the basic qualifications for a Simplified Waterways License (310 CMR 9.07 3)(b); *i.e.*, the dock:

- "consists entirely of a dock, pier... or other small-scale structure that is accessory to a residential use..."; that
  - "is water-dependent and pile-supported (e.g., by wooden or metal posts) or bottom-anchored, without any fill";
  - "totals no more than 600 square feet below the... ordinary high water shoreline for inland waters";
  - "is not a marina (i.e., does not serve ten or more vessels)";
- and is not within an ACEC ("Area of Critical Environmental Concern").

I also expect to confirm with the McDermots that the dock does not contain creosote-treated wood or CCA-treated wood.

Should you have any questions or concerns, or need any other follow-up, please contact me. Thank you for your attention to this matter.

Sincerely,



Harold Owen Beede

Enclosures

F:\HOB\McDermot\Dock\642\_13-0422LetterOfRepn-DEP-DiPietro.wpd

cc: Sarah Bellino, Esq.  
John Lopez, Amesbury Conservation Agent  
Mr. and Mrs. Jay & Sharon McDermot

▷

Appeals Court of Massachusetts, Essex.  
W. Dexter TINDLEY, Jr.  
v.  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENGINEERING et al.

Argued Dec. 7, 1979.  
Decided Oct. 21, 1980.

Property owner brought action seeking review of decision by the Department of Environmental Quality Engineering, which granted easement owners a permit to build foot ramp and attach boat to be held by bottom moorings in river, and set aside action of city harbor master in refusing to grant such permit. Easement owners granted such permit and another easement owner filed counterclaims requesting among other things, declaration determining extent of their easement rights. The Superior Court, Essex County, Adams, J., entered judgment affirming decision of Department and declaring that defendants' easement rights extended over flats in question, and property owner appealed. The Appeals Court, Goodman, J., held that: (1) owners of easement had right to moor float and maintain ramp on easement, and (2) on counterclaim, genuine issue of material fact existed as to reasonableness of use of easement, precluding summary judgment.

Reversed and remanded.

West Headnotes

[1] Water Law 405 ⚡ 1249

405 Water Law  
405VI Riparian and Littoral Rights

405VI(A) In General  
405k1246 Right to Wharf Out, Build Docks,  
and Support Shore  
405k1249 k. Authorization by public  
authority to construct, and application therefor; permits. Most Cited Cases  
(Formerly 270k43(3) Navigable Waters)

Statute providing that nothing in statutory chapter on waterways shall be construed as authorizing placement of floats or rafts and appurtenant anchors or bottom moorings on private flats of other than applicant if objected to by owner or owners thereof substitutes, for standing to contest grant of permit to another, an assurance to owner that such a grant does not affect assertion of his property rights in appropriate judicial forum. M.G.L.A. c. 91, § 10A.

[2] Water Law 405 ⚡ 1249

405 Water Law  
405VI Riparian and Littoral Rights  
405VI(A) In General  
405k1246 Right to Wharf Out, Build Docks,  
and Support Shore  
405k1249 k. Authorization by public  
authority to construct, and application therefor; permits. Most Cited Cases  
(Formerly 270k43(3) Navigable Waters)

The Department of Environmental Quality Engineering did not violate its statutory responsibility in refusing to adjudicate conflicting property claims of owner of private flat by river and parties who were granted permit to build foot ramp and attach boat to be held by bottom moorings on their easement on owner's property. M.G.L.A. c. 91, § 10A.

[3] Easements 141 ⚡ 40

411 N.E.2d 187  
10 Mass.App.Ct. 623, 411 N.E.2d 187  
(Cite as: 10 Mass.App.Ct. 623, 411 N.E.2d 187)

Page 2

141 Easements  
141III Extent of Right, Use, and Obstruction  
141k39 Extent of Right  
141k40 k. In general. Most Cited Cases

When an easement or other property right is created, every right necessary for its enjoyment is included by implication.

[4] Water Law 405 ↪ 1290

405 Water Law  
405VI Riparian and Littoral Rights  
405VI(B) Transfers, Reservations, and Exceptions of Riparian Rights  
405k1281 Easements Over Riparian Lands and for Access to and Use of Waters  
405k1290 k. Right to construct or install and use ramp, dock, or other structures as incident to access easement. Most Cited Cases  
(Formerly 270k43(2) Navigable Waters)

Owners of easement had right to moor a float and maintain ramp on easement as a portion of right-of-way was impassable mud at low tide and mooring float and maintaining ramp was necessary to make right-of-way passable and usable for its entire width.

[5] Judgment 228 ↪ 181(15.1)

228 Judgment  
228V On Motion or Summary Proceeding  
228k181 Grounds for Summary Judgment  
228k181(15) Particular Cases  
228k181(15.1) k. In general. Most Cited Cases  
(Formerly 228k181(15))

In action brought by property owner seeking review of decision by Department of Environmental

Quality Engineering which granted easement owners a permit to build a foot ramp and attach a float to be held by bottom moorings in river and in which easement owners counterclaimed for declaration of extent of their easement rights, substantial fact issue existed as to reasonableness of use of easement, precluding summary judgment. M.G.L.A. c. 30A, § 14; c. 91, § 10A.

\*\*188 \*623 George P. Laventis, Gloucester, for plaintiff.

Maria J. Krokidas, Boston, for Robert J. Fossa and others.

Malcolm Pittman, Asst. Atty. Gen., for Dept. of Environmental Quality Engineering.

Before HALE, C. J., and GOODMAN and GRANT, JJ.

GOODMAN, Justice.

This action was brought by the plaintiff seeking review (G.L. 30A, s 14) of a decision by the Department of Environmental Quality Engineering (the DEQE) \*624 which granted Robert J. Fossa and Barbara Fossa (the Fossas) a permit pursuant to G.L. c. 91, s 10A, to build a foot ramp and attached float to be held by bottom moorings in the Annisquam River [FN1] and set aside the action of the harbormaster of the city of Gloucester in refusing to grant such a permit. The Fossas seek to build these structures on flats owned by the plaintiff [FN2] between the high and low water mark over which the Fossas claim an easement under a recorded deed which grants them "a right of way to the Annisquam River over a parcel of land eight (8) feet in width." Also a defendant is one Mehran Juskalian who claims an easement identical to that of the Fossas. The defendants, Juskalian and the Fossas, filed counterclaims requesting among other things, a declaration under G.L. c. 231A determining the extent of their easement rights. The plaintiff and

the counterclaimants filed motions for summary judgment with supporting affidavits. The Superior Court entered judgment on these motions, affirming the decision of the DEQE and declaring that "the defendants' easement rights" extend over the flats in question. The plaintiff appealed.

FN1. All the parties agree that this is the effect of the DEQE decision.

FN2. For a discussion of the property rights in flats, see *Boston Waterfront Dev. Corp. v. Commonwealth*, -- Mass. --, -- - -- (Mass.Adv.Sh. (1979) 1992, 1994-2001), 393 N.E.2d 356 (1979). See also *Newburyport Redevelopment Authy. v. Commonwealth*, -- Mass.App.Ct. -- (Mass.App.Ct.Adv.Sh. (1980) 287), 401 N.E.2d 118 (1980).

1. The Permit under G.L. c. 91, s 10A. The plaintiff's attack on the decision of the DEQE relies on the provision in the fourth paragraph of that section set out in the margin.[FN3] His position that the objection of the "owner" is fatal to the Fossas' permit was also the basis of the harbormaster's refusal to grant the permit and resulted in the Fossas' appeal to the DEQE. See G.L. c. 91, s 10A, second and third paragraphs. \*625 We do not read the fourth paragraph so woodenly. The plaintiff's reading would \*\*189 permit the owner of a servient estate, merely by objecting to the harbormaster or the DEQE, to prevent the owner of an easement from exercising a right to moor floats or rafts, even though that right may have been specifically granted. It would indeed be extraordinary if the Legislature intended so drastic a curtailment of the rights of an easement holder. See *Opinion of the Justices*, 365 Mass. 681, 685-690, 313 N.E.2d 561 (1974). It would also be anomalous for the Legislature to impose the responsibility of adjudicating property interests-traditionally left to the courts-on the harbormaster, whose powers are narrow, see, e. g., *Scituate v. Maxwell*, 339 Mass. 436, 440-441, 159

N.E.2d 344 (1959), or on the DEQE, whose area of expertise is far removed from such adjudication. See G.L. c. 91, s 10.

FN3. "Nothing in this section shall be construed as authorizing the placement of floats or rafts and appurtenant anchors or bottom moorings on private flats of other than the applicant if objected to by the owner or owners thereof." G.L. c. 91, s 10A, fourth paragraph, inserted by St.1967, c. 543.

Further, the legislative history of the fourth paragraph indicates no intent to accomplish such results. The fourth paragraph emerged as a compromise, fashioned by a conference committee, between the final House version and the final Senate version of the bill which eventuated in s 10A. Both the House and the Senate versions, when referred to the conference committee, contained two paragraphs. In both bills the first paragraph set out the powers of the harbormaster substantially as now set out in the first paragraph of s 10A. The Senate version of the second paragraph provided, as does the present statute, a right to appeal action by the harbormaster under the first paragraph by a "person aggrieved by a refusal to" issue a permit. The House version, however, gave such right of appeal not only to a person refused a permit, but also to any person aggrieved by the grant of a permit. It seems significant to us that the bill reported by the conference committee and passed by the House and Senate retained the Senate version ("any person aggrieved by a refusal" only) but added the fourth paragraph (as well as the three subsequent paragraphs presently in the statute).[FN4]

FN4. The course of the legislation may be gleaned from an examination of the following material: 1967 House Doc. No. 3754 (the original bill); 1967 House Journal 107, 1252, 1290 (the introduction and early consideration of the bill in the House); 1967 House Doc. No. 4826 (the bill substituted for No.

3754, see 1967 House Journal 1747); 1967 House Journal 2027, 2350, and 1967 Senate Journal 1678-1679, 1721 (regarding the disagreement on who should have a right to appeal); and 1967 Senate Journal 1811-1812 and 1967 House Journal 2437-2438 (where the respective houses enacted s 10A as presently constituted, except for the change in nomenclature effected by St. 1975, c. 706, s 124).

[1] \*626 In these circumstances, it seems hardly likely that the Senate would acquiesce in a fourth paragraph that went quite beyond a right of appeal and gave an absolute veto to an owner of private flats despite whose objection a permit had been granted. This legislative history leads us to believe that the fourth paragraph gives to a person aggrieved by the grant of a permit to another something less, rather than something more, than standing to appeal to the DEQE. The fourth paragraph, as we read it, substitutes, for standing to contest the grant of a permit to another, an assurance to an owner in the plaintiff's position that such a grant does not affect the assertion of his property rights in an appropriate judicial forum. This interpretation finds support in the subsequent fifth paragraph of s 10A, also added by the conference committee, which declares that action by a harbormaster or the DEQE under s 10A does not affect laws administered by the division of motor boats, the division of marine fisheries, etc.

[2] Thus, we see no violation of DEQE's statutory responsibility in refusing to adjudicate the conflicting property claims. In the case at bar, the DEQE ruled "that the existence of a dispute as to whether the Applicants' easement over the land in question is sufficiently broad to encompass the installation of the proposed temporary float and moorings is not a proper reason for the Gloucester Harbormaster or for (the department) to deny approval of the proposal under G.L. Chapter 91, section 10A." It further found that "the Applicants have asserted\*\*190 a colorable [FN5]

claim to the right \*627 to carry out the proposed work. It is not the proper role of either this Department or the Gloucester Harbormaster to act as a judicial arbiter in a dispute over private property rights." Perhaps out of an abundance of caution, the DEQE further imposed a condition in its decision that it "applies only to the substantive navigational, safety and environmental aspects of the proposed work. It does not grant any property rights or exclusive privileges, nor does it authorize any injury to private property or invasion of private rights."

FN5. In context, "colorable" appears to mean nothing more than "disputed" though we need not decide that. Whatever the extent of the phrase "colorable claim," it obviously extends to the claim made under the deeds in this case.

This seems to us to be sensible administration with which we cannot quarrel. Indeed, it is justified by the phraseology of the fourth paragraph, for in determining that the defendants are not complete strangers to the private flats here involved, the DEQE has determined (in terms of the fourth paragraph) that these are not "private flats of other than the applicant" so that the owner's consent does not come into play.

2. Easement Rights. The plaintiff attacks the declaration of the defendants' easement rights in par. 1.b of the judgment [FN6] on the ground that the granted easement does not, as a matter of law, permit mooring a float and maintaining a ramp on the right of way.[FN7]

FN6. This paragraph reads: "1.b. The defendants' easement rights extend either to the low water mark or to a point one hundred rods below the high water mark, whichever is shorter."

FN7. The plaintiff makes no argument in his

brief before us, as he did in the court below, that the defendants' easements "to the Anisquam River" do not extend as set out in the judgment. (See note 6.) See *Old Colony St. Ry. v. Phillips*, 207 Mass. 174, 179-181, 93 N.E. 794 (1911); *Michaelson v. Silver Beach Improvement Assn.*, 342 Mass. 251, 260-261, 173 N.E.2d 273 (1961) ("words of similar import ... convey title to the low water mark"). See also *Valentine v. Piper*, 22 Pick. 85, 94 (1839) (presumption in grant is that it extends to low water mark); Frankel, *Law of Seashore Waters and Water Courses: Maine and Massachusetts* 50-51 (1969).

[3][4] From the affidavits, it is undisputed that the portion of the right of way from the uplands to the low water mark is impassable mud at low tide. Accordingly, the defendants have "the right to make (the right of way) passable and usable for its entire width having due regard to the rights and interests of others. This follows from the general principle \*628 that 'when an easement or other property right is created, every right necessary for its enjoyment is included by implication.' *Sullivan v. Donohoe*, 287 Mass. 265, 267, 191 N.E. 360 (1934)." *Guillet v. Livernois*, 297 Mass. 337, 340, 8 N.E.2d 921 (1937). See *Churchill v. Harris*, 257 Mass. 499, 502, 154 N.E. 87 (1926). Their easements thus permit the defendants to place such structures on the right of way as are reasonably necessary to its use, having due regard for the plaintiff's rights and interests.

[5] Beyond this, however, the parties interpret par. 1.b of the judgment as declaring the scope of the defendants' "easement rights" to include the right to maintain the ramp and moor the float for which the Fossas received permission from the DEQE. This is also reflected in the judge's conclusion that "(t)he float in question is necessary for the defendants' enjoyment of their easement rights." But reasonableness of use was a question of fact, *Murphy v. Mart Realty of Brockton, Inc.*, 348 Mass. 675, 679, 205 N.E.2d 222

(1965); *Meehan v. Barry*, 97 Mass. 447, 450 (1867); *Churchill v. Harris*, 257 Mass. at 502, 154 N.E. 87; *Guillet v. Livernois*, 297 Mass. at 341, 8 N.E.2d 921, and created a triable issue which the affidavits did not obviate. Thus, the declaration on summary judgment in par. 1.b was erroneous. *Community Natl. Bank v. Dawes*, 369 Mass. 550, 553, 340 N.E.2d 877 (1976). *Lurensky v. Merchants Beef Co.*, -- Mass.App.Ct. -- [FNa], 406 N.E.2d 1050 (1980), and cases cited.

FNa. Mass.App.Ct.Adv.Sh. (1980) 1403.

\*\*191 Accordingly, the judgment is reversed, and the case remanded to the Superior Court for further proceedings in accordance with this opinion. Such proceedings may include the entry of a partial summary judgment (see Mass.R.Civ.P. 54(b), 365 Mass. 821 (1974)), incorporating paragraphs 1.a and 1.c of the judgment.[FN8]

FN8. These paragraphs read:

"1.a. General Laws c. 91, s 10A does not require the plaintiff's consent before a float permit may be issued on application by the defendants."

"1.c. the decision of the Department of Environmental Quality Engineering in this action is affirmed."

We note that paragraph two of the judgment is directed to the harbormaster who, however, is not a party to this action. No question has been raised as to that paragraph of the judgment. We assume, of course, that if called upon the harbormaster would act in accordance with this opinion.

So ordered.

COMMONWEALTH OF MASSACHUSETTS

AFFIDAVIT

Essex, ss.

February 9, 1963

I, Herbert N. Gurney, 4 Winter Street, Amesbury, Massachusetts, on oath depose and say, that I was the owner of a summer cottage and land of the Birches, Lake Attitash in the Town of Amesbury, Massachusetts, from February 6, 1947 to October 18, 1962. I further state that my land did not border on Lake Attitash but that during this entire period of time that I used the right of way to the water which is shown on certain plans as a driftway. That during the period of my occupancy of the premises at said Lake Attitash I trimmed the bushes on the said right of way to the water, that I maintained steps to the water, and that I had a dock and boat on the shore of the driftway, and that during a certain period of time I had two settees on the shore where I could sit down and watch the water activities.

Herbert N. Gurney

Subscribed and sworn to this ninth day of February, 1963, before me,

Louise E. Basler  
Notary Public

*My Commission Expires 1/1/1963*

EXHIBIT  
10-EP 15 P

**PLAN** We, Herbert N. Gurney and Mathilda E. Gurney, husband and wife, joint tenants, both of Amesbury, Essex County, Massachusetts, hereunto for consideration said grant in Walter F. Randall and Helen L. Randall, husband and wife, as joint tenants, and not as tenants by the entirety, both of Boxford in said County of Essex, with nullum in futurum

Land, with the buildings thereon, located near the northerly end of Lake Attitash in said Amesbury and the southerly side of the Road to the Birches, and on the westerly side of a Right-of-Way 12 feet in width and bounded and described as follows:

Beginning at the northeasterly corner thereof at an iron pipe in the southerly side of the "Road to the Birches" so-called; thence running S. 19°-58'-50" W. by the westerly side of a Right-of-Way 12 feet in width 70.09 feet to a point; thence by a curve to the left having a radius of 271.60', 159.70' to an iron pipe at a drift-way; thence S. 17°-30' W. by the westerly side of the drift-way 18.60 feet to an iron pipe and at land of George W. and Phyllis L. Jones; thence turning and running N. 68°-38'-10" W. by said land of Jones 48.78 feet to an iron pipe at land of owner unknown; thence N. 78°-22' W. by said land 34.94 feet to an iron pipe at land of George E. and Annie K. Nihan; thence running N. 70°-00'-50" W. by said land of Nihan 155.45 feet to an iron pipe marking an angle in said line; thence turning and running N. 59°-41'-30" E. by said land of George E. and Annie K. Nihan and land of William A. and Barbara M. Nihan 154.62 feet to an iron pipe in the southerly side of the "Road to the Birches" and point of beginning. Said parcel is subject to a Right-of-Way 20 feet in width across part of the northerly end and contains an area of 17,230 square feet be the same more or less.

The abovescribed premises are shown on "Plan of Land in Amesbury, Mass. as surveyed for Herbert N. Gurney, Scale 1" = 40', September 1962, Clifton F. Gannett, Reg. Prof. Eng." to which plan reference is to be had for a more particular description.

Being the same premises conveyed to the grantors by deeds of Anna O. Martin, executrix of the will of William W. Martin, recorded with Essex South District Registry of Deeds, Book 3510, Page 317, and Leeland D. Lord, executor of the will of Fred F. Kendall, recorded in said Registry, Book 3510, Page 316,

Subject to an easement to the use of Electric Light Co. in and over the premises

and all other matters therein

Witness our hands and seals this 10th day of October, 1962  
Mathilda E. Gurney  
Herbert N. Gurney

The Commonwealth of Massachusetts

Essex ss. October 10, 1962

Then personally appeared the above named Herbert N. Gurney and Mathilda E. Gurney and acknowledged the foregoing instrument to be their free act and deed, before me

Mass. Excise Stamps \$ 4.95 affixed and cancelled on back of this instrument

Anthony W. Pichler  
 Notary Public - Essex County, Mass.

My commission expires January 12, 1968

U. S. Docum. Stamps \$ 4.95 affixed and cancelled on back of this instrument

RECORDED OCT 19, 1962, 10 M. PAST 8 A. M. #1

EXHIBIT  
 49 P

COMMONWEALTH OF MASSACHUSETTS

AFFIDAVIT

Essex, ss.

May 24, 1969

I, Walter E. Benulis, Silver Brook Road, Boxford, Massachusetts, on oath depose and say, that I was the owner of a summer cottage and land at the Birches, Lake Attitash in the Town of Amesbury, Massachusetts, from October 19, 1962 to May 24, 1969. I further state that my land did not border on Lake Attitash but that during this entire period of time that I used the right of way to the water which is shown on certain plans as a driftway. That during the period of my occupancy of the premises at said Lake Attitash I trimmed the bushes on the said right of way to the water, that I maintained steps to the water, and that I had a dock and boat on the shore of the driftway, and that during a certain period of time I had two settees on the shore where I could sit down and watch the water activities.

*Walter E. Benulis*

Subscribed and sworn to this twenty-fourth day of May, 1969, before me,

*Laurie S. ...*  
Notary Public

My commission expires October 17, 1970



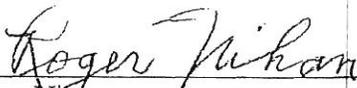
**Re: The "Driftway" off of Star Lane at Lake Attitash, Amesbury**

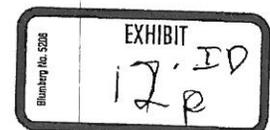
NOW COMES the undersigned and swears and attests to the following:

1. I am Roger Nihan, presently of 158 Hart Street, Beverly, Massachusetts 01915.
2. In 1992, I sold a piece of property located off Birchmeadow Road and Star Lane in Amesbury, Massachusetts, near Lake Attitash, to Jay and Sharon McDermot.
3. I acquired that property in or about 1978 from George Nihan.
4. During the time I owned that property, from 1978 through 1992, I and family members used the Driftway that runs from Star Lane to the Lake to go to and from the Lake, frequently and continuously over the years, despite protest by neighbors including Marie Bernice Nagle.
5. During a period of time when I rented out the house on my property, those renters also used the Driftway to go back and forth to the Lake.
6. We did not request or get "permission" from anyone else to use the Driftway; we used the Driftway because it was our understanding that we had a right of access to the Lake over the Driftway.
7. The neighbors on both sides of the Driftway knew that we went back and forth to and from the Lake over the Driftway.

The above statements are based upon my personal knowledge, information and belief, and as far as those statements that are based upon information and belief, I swear and affirm that I believe that information to be true.

Signed under the pains and penalties of perjury on this day, March 17, 2005.

  
\_\_\_\_\_  
Roger Nihan



22

THAT I, GEORGE E. NIHAN,

of Auburn, ~~York~~ <sup>original</sup> Androscoggin County, State of Maine (being unmarried), for consideration paid, grant to ROGER NIHAN

158 HART ST

of Beverly Farms, Mass. ~~Essex~~ <sup>Essex</sup> with quit claim covenant the land in Amesbury, ~~Essex~~ <sup>Essex</sup> County, ~~State of Massachusetts~~ <sup>Commonwealth</sup> of Massachusetts;

Land with the buildings thereon, located near the Northerly end of Lake Attitash in said Amesbury and the Southerly side of the Road to the Birches, and on the Westerly side of a right-of-way twelve (12') feet in width and bounded and described as follows:

Beginning at the Northeasterly corner thereof at an iron pipe in the Southerly side of the "Road to the Birches", so-called; thence running S 19° 58' 50" W by the Westerly side of a right-of-way twelve (12') feet in width seventy point nine (70.09') feet to a point; thence by a curve to the left having a radius of 271.60', 159.70' to an iron pipe at a Drift-way; thence S 17° 30' W by the Westerly side of the Drift-way 18.60 feet to an iron pipe and at land of George W. and Phyllis L. Jones; thence turning and running N 68° 38' 10" W by said land of Jones 48.78 feet to an iron pipe at land of owner unknown; thence N 72° 22' W by said land 34.94 feet to an iron pipe at land of George E. and Annie K. Nihan; thence running N 7° 00' 50" W by said land of Nihan 135.45 feet to an iron pipe marking an angle in said line; thence turning and running N 59° 41' 30" E by said land of George E. and Annie K. Nihan and land of William A. and Barbara M. Nihan 154.52 feet to an iron pipe in the Southerly side of the "Road to the Birches" and point of beginning. Said parcel is subject to a right-of-way twenty (20') feet in width across part of the Northerly end and contains an area of 17,230 square feet by the same, more or less.

The aforescribed premises are shown on "Plan of Land in Amesbury, Mass. as surveyed for Herbert N. Gurney, Scale 1" = 40", September 1962, Clinton F. Goodwin, Reg. Prof. Eng." to which plan reference is to be had for a more particular description.

Being the same premises conveyed to this Grantor from Walter E. Benulis and Helen L. Benulis by deed dated May 8, 1969 and recorded in Essex County Registry of Deeds in Book 5610, Page 228.

500-19-5  
65906

~~Witness my hand and seal this~~

Witness my hand and seal this 8<sup>th</sup> day of June, 1978

*[Handwritten signature]*

The State of Maine

ANDROSCOGGIN, ss. June 8<sup>th</sup> 1978

Then personally appeared the above named George E. Nihan

and acknowledged the foregoing instrument to be his (free act and deed,

Before me, *[Signature]* Justice of the Peace - Attorney at Law - Notary Public

1204 S QUITCLAIM DEED WITH COVENANT Notary Public My Commission Expires 7/8/84

EXHIBIT 2