

**CONSERVATION COMMISSION MEETING  
AMESBURY CITY HALL AUDITORIUM, 62 FRIEND STREET  
Monday, SEPT. 15, 2014 Meeting called to order at 6:32 P.M.**

**Present:** Alan Corey, Suzanne Egan, Kinsey Boehl, Steve Langlois, Michael Bik.

**Absent:** None.

**Also Present:** John Lopez, Agent; Paul Bibaud, Recording Secretary.

**MINUTES: Aug. 4, 2014: Continued to 10-6-14 meeting.**

**Administration:**

**NOI #002-xxxx 115 Whitehall Road - Withdrawn.**

**Tree Removal and Excavation: Heritage Park Lower Millyard Project Bzenas (EPA)**

**John Lopez:** Applicant (city of Amesbury) is requesting an emergency certificate be issued for the removal of a number of trees and associated excavation in support of the clean up of a contaminated waste site with PCBs.

**Bill Scott, Community Development director, City of Amesbury:** We're here under 310 CMR 10.06 to request an emergency certification to remove contaminants from 31 Water St. along the Back River and Powow River. These were discovered in the fall of 2013, but the extent was not known at that time. Further testing occurred, we reduced the Heritage Park project and the NOI goes to the inner extent of this area and does not include the shoreline area. Our plans were amended and we were intending on looking at doing this for the riverfront project. As more testing occurred with both our LSP, with DEP and the EPA, it was more recently discovered as to the extent and nature of the PCBs, so both DEP and EPA partnered to respond to the site and work is going to be conducted by EPA which requires clearing of the area and the removal of the contaminants. I have Ted Bzenas of the EPA here. He will go over the situation in more detail. The presentation is just to give you context.

**Ted Bzenas, EPA out of Boston:** I usually do emergency response and time critical clean ups for hazardous waste and oil. The situation here came to EPA's attention in November of 2013 with a request from the Ma. Dept. of Environmental Conservation through their brownfields program, asking us to come inspect the property and do a preliminary assessment site investigation for hazardous materials with the hope of doing a time critical removal action, if the levels met our criteria. The site involved is 31 Water Street. The consultant, your LSP John Higgins from HEA had done some sampling out here for hazardous materials and found PCBs at lower levels that resulted in a clean up over a larger part of 31 Water Street, along with other parts of the property for levels that were below 50 PPM of PCBs, which is above the state's regulatory limit in hazard number of 1 PPM. 50 PPM is a level that is used for determining whether the waste gets into a different regulatory category. This was in the lower end of that. The work by everyone to get that soil removed has been completed. The shoreline piece was cut out, because some higher levels were found there that exceeded the 50 PPM, putting it into a different category and EPA was asked to come in and look at that. I came in May and collected samples. The green areas on the map were sample borings done with a geo-probe sampler down to ten feet below the ground surface. The red areas are surface soil samples, shallow to 6 inches.

The data showed that in this area, we found high elevated levels of PCBs, up to 780 PPM which far exceeds any of the state's standards and does require disposal as a hazardous waste in a secure land fill. That was enough of a trigger for the property to fall into what we call a time-critical removal action, based on the threat to human health and the environment. After collecting my samples, I spoke with my management and talked it over. The project met the criteria, so I developed an Action Memorandum, an EPA document that secures funding and makes a proposal for clean up. I proposed putting aside half a million dollars for the clean up. I'm optimistic it won't take all that money, but I like to have extra for the possible unforeseen scenarios. Time frame will be mid September and hopefully conclude by Thanksgiving in late November.

In the time-critical world, we don't come into the project with a complete set of plans or even complete characterization of the extent of contamination. We have a strategy, proposals, and implement those in the field. That is where we are right now. Following that round of samples, I did another sample collection round, right down the middle of the bike path every 25 feet. That data is starting to come in now. It is consistent with what we saw before. I don't expect too many other areas that would require extensive excavation.

The excavation in some places will be down to eight feet. The rest of the property, most likely, will be down 18 inches. That area is heavily treed with lots of vegetation, so it must be cleared to accomplish our excavation. The criteria for potential hazards are taken from the Code of Federal Regulations, which has the criteria that gives EPA the authority to take emergency and time-critical actions to clean up the environment. Out of 8 criteria, this site meets six criteria, especially in ecosystems, not so much drinking water supplies.

**Suzanne Egan:** So this is an emergency certification that material has obviously been there a while. I understand the imminent threat, but what is the emergency? In terms of time, I'd assume that this material has been there for many years.

**Ted Bazenat:** It has been there for many years. There are two ways to address that. 1. it wasn't discovered until recently or did we know the levels were this high. The levels that were identified earlier during the previous clean up for the rest of the park far exceeded the imminent hazard level of 1 PPM that the state has, and it nearly 800 PPM I wouldn't say there is an acute health hazard, but there certainly is a chronic health hazard, and this is an area where we have had pedestrian access, bike path and construction already in the past. Tying that in with the project schedule and the timing for the field seasons, it is important that I get this piece of the clean up action started quickly or I won't be able to complete the work, certainly in this field season to start with. In terms of exemption, the exemption isn't to the letter of the regulations or letter of the laws. EPA is held to those regulations. The exemption is for the permit process. If need be, based on the situation, EPA can move ahead without going through the formal permit process while still adhering to all the regulatory pieces to the extent practicable. The time sequence for clean up: in the last week, we did sign on a contractor to do the work. It takes time to put contracts in place with all federal agencies, but we're all set with this one. The contractor visited the site with me last week and began preliminary planning for getting the site prepared to do the work. My expectation is that workers will mobilize at the site either at the end of this week or early next week. The order of work, barring complications, is starting with preparing the site, ie: removing the fences, start to look at the clearing of the river banks so we can get a good visual of what we plan to do there, then finalizing the excavation and reconstruction plans with the army corps of engineers. I had asked the corps to come in to give me a hand with the planning and strategies for the excavation in particular the water management, since it is a tidal

area. We got a couple proposals from the army corps, and will meet with them tomorrow morning at our regular planning meeting for Heritage Park and we'll come up with a strategy.

**John Lopez:** How many days for the actual clean up activities?

**Ted Bezenas:** No firm answer right now until we come up with the strategy. The reason is, one of the proposals that I had was to excavate at low tide times, doing a section at a time at low tide, backfill it, then essentially be done because the tide is coming back in. If that is the sequence that works out best, in terms of time, water and money management, then that may extend things quite a bit if we can only work at low tides. If we can excavate steadily over 8 hour days, depending on how long site prep takes, then the excavation should only take 7-10 days. The deep part would be about 8 feet deep for a length of approx. 70-100 feet. The rest of the property will only be about 18 inches deep, with a stockpile of soil behind it. Then the soil is excavated and stockpiled, it is then sent out for disposal.

**John Lopez:** The emergency cert that the commission could issue is relevant for 30 days. It can go to 60 days, pursuant to the immediate response actions approved by DEP's Bureau of Waste Site Clean Up. Unless DEP extends that time period upon request, this emergency cert, by law, will be forwarded to DEP the same time it is forwarded to you. Does the applicant (Bill Scott for Amesbury) intend to draft a letter requesting an extension beyond 60 days to accompany the copy of the emergency cert sent to DEP?

**Bill Scott:** Actually, at the end of the letter requesting emergency certification, it states that the work will exceed the 30 day limitation, however the city will work with the state DEP provided an extension is maybe necessary prior to the expiration of the 30 days. So there was an immediate response notice on this, but we intend to get a letter to clarify that and before we get into next week, we'll get that to the commission.

**John Lopez:** So that letter will be independent to the emergency cert letter for tonight?

**Bill Scott:** Correct. We have 30 days according to the emergency cert. We need evidence of immediate response action to get the 60, so we'll get that to get to the 60 day period. There is a kayak launch planned for that area, so we're working to re-adjust our focus from the larger river walk project just to this, because EPA came into this project this was originally river walk plans, and that would've been done in 2016. Because of the immediate nature of this, we're going to focus all of our efforts to getting restoration information to the ConCom and getting a set of plans hopefully by your next meeting. We're looking a straight forward restoration and in longer term, river walk plans and other things. We're hoping to beat the weather.

**Scott Boehl:** As you are digging, is there an active sampling plan? The turn around on sample time might cause your schedule to slip, right?

**Ted Bezenas:** Good point. EPA has a mobile lab that I can bring to the site to check for PCB analysis, with a turn around of, if it is in the morning, I can get results by afternoon. I have a request put in for the lab, so it shouldn't be an issue.

**John Lopez:** I'd like the commission to be carried in a motion to either approve the emergency cert, which the applicant has made a strong case for it. If the ConCom feels otherwise, then the emergency cert would not be issued, requiring the applicant to submit a Notice of Intent.

**Motion** was made by Suzanne Egan grant the emergency certification proposed by the city of Amesbury for the property located at 31 Water Street. Motion was seconded by Michael Bik. Vote was unanimous.

## **ENFORCEMENT ORDER – 12 South Hunt Road (Amesbury Lands Associates)**

**John Lopez:** This is an enforcement order that was issued by myself. The commission has a copy of it. It was issued on Aug. 29, 2014 to the Amesbury Land Associates, care of Kevin Jacques and Mary Carroll Fowler. The violations are stipulated under Section 2 under extent and type of activity. Procedurally, I have the legal authority to issue an enforcement order, but the ConCom is responsible for ratifying it, if in fact you support it. So I'm asking for the commission to ratify the enforcement order issued Aug. 29, 2014.

**Motion** was made by Suzanne Egan to ratify this enforcement order. Motion was seconded by Scott Boehl. Vote was unanimous.

**John Lopez:** Following that, Mr. Chairman, we have an amended order dated today, Sept. 15, 2014. On the top right side of the order it says amended enforcement order #1, issued to Amesbury Land Associates, same two individuals (Mr. Jacques and Ms. Fowler). I understand that These two individuals are no longer associated with Amesbury Land Associates, however, taking my direction from the chief enforcement official at DEP, I'm told legally that unless and until I receive notification in writing from the trustee of Amesbury Land Associates stating that the two individuals are relieved of their responsibilities and identifying a new individual, I have to go with the two names identified. Moving on, Section two "Intent and type of activity", we've identified the extent of the issues. The enforcement order also includes a Cease and Desist provision as did the original. Moving along through the EO, you'll see an attachment to the amended EO Sept. 15, 2014, and this lays out a number of directives, in which the trustee of Amesbury Land Associates would be bound to meet, such as retaining the services of an environmental consultant to assess the extent of the impact, it requires that written notice, such as a copy of a contract, be submitted to the commission, for example, no later than Sept. 22, 2014. The goal is to have a draft restoration report identifying the extent of the violations and the impact to environmental wetland resources and a draft plan submitted to the ConCom no later than Oct. 28, 2014, for the ConCom's review and approval (or denial) as modified at the Nov. 3, 2014 meeting. So this is to modify the motion we just ratified.

**Suzanne Egan:** Is this enforcement order regarding the activity that occurred, or the fact that it was the activity that occurred that caused the damage to the jurisdictional areas, or just the fact that they entered on city property and used that?

**John Lopez:** It is just relevant to the extent of violations under the wetlands protection act, and the city of Amesbury's wetlands ordinance. Trespass is a legitimate concern and topic for discussion, but not as part of the ConCom deliberations.

**Motion** by Suzanne Egan to ratify the amended EO. Motion was seconded by Michael Bik. Vote was unanimous.

## **ENFORCEMENT ORDER – WHITTIER BRIDGE REPLACEMENT / I-95 MA DOT Improvement Project**

**John Lopez:** At my request, the DOT staff assigned to the Whittier Bridge Project are here to brief the commission on a recent site visit held with DEP, the regional section chief and the regional director, myself, on violations relevant to the wetlands protection act. Commissioners, this was a project that was exempt from local jurisdiction, so it is relevant to the wetlands protection act.

**Jess Kenney, Ma. DOT:** We're here to talk about the violations. Walsh – McCourt, the design build entity is here to TALK ABOUT VIOLATIONS. There were additional salt marsh and BVW impacts in Amesbury. We contacted DEP and they have been out to the site several

times and they are handling the enforcement, but we wanted to come here at John's request to update the commission.

**Steve Delgross, with Walsh-McCourt Joint Venture, responsible for the construction.** On the Amesbury side of the bridge, there are three new bridge piers going in on each side, north and southbound. The northbound foundations are in. This location here is where the northern pier 3 is going in for the new southbound structure. What happened was, we set up a conveyor on barges tucked in this area, to take the pre-trench material... we run into boulders trying to get our copper dam in, so we went after the boulders in the pre-trench and tried to convey that onto land using the conveyor from the barge. Unfortunately, when we set up our environmental controls, we did not do a very good job, and we have since met with DEP many times, met with MaDOT and we have come up with a restoration plan, which phase one is already started, and phase two will be completed this week. All the material that is presently stockpiled there will be removed from the 200 foot buffer zone and stockpiled about 250 feet from the water's edge.

**John Lopez:** Could you brief the ConCom on the time frame and the initial directives that DEP provided you?

**Steve Delgross:** We moved in the equipment in the week of July 28, started using the conveyor the week of Aug. 4, and we had our last meeting with DEP was the 8<sup>th</sup> of September, and Kevin Slattery, who is with HNTB, is our wetland scientist and he prepared recommendations based on our meetings with DEP to restore the area, and that is with DEP now. We are in the process of working with them, stage one to remove the material but ultimately to come up with an ultimate restoration plan for the area.

**Alan Corey:** So did the conveyor fail?

**Steve Delgross:** Let me show you some drawings. This conveyor was set up under the bridge, in an effort to convey the material onto land. Due to the river currents and the conveyor not being long enough, we wound up conveying material into a salt marsh area and wetlands area.

**John Lopez:** So all that dirt would be populated with vegetation?

**Steve Delgross:** Correct. Now what you have is, all that material is out of the salt marsh. The vast majority is out of the wetlands, and this week we'll get it out of the bordering vegetated wetlands. DEP is monitoring it and Kevin is monitoring it as well. We've augmented Kevin's time with another environmental consultant. This is what it looks like now. We've done a good job of getting it back close to where it was. We will probably look into more restoration in the spring. John asked us to come in and give you background as to what happened and where we were headed, so at least you'd be informed as to what is going on, and know it is under the direction of DEP and MaDOT. From now on, all excavation will be done on the barges and brought over to our trestle area and removed from the barges on the Newburyport side of the river.

**John Lopez:** Would any of this activity require an amended order of conditions?

**Jess Kenney:** I think DEP is going to issue an Enforcement Order. So they would not permit any of this work. So work will not be permitted at all. They will issue an enforcement order, and that will direct some of the steps we're taking now, but they said they will not permit it, and we can't permit it under the wetlands protection act. So there won't be a permit, but the EO will serve as the permit.

**John Lopez:** I assume we're talking about an administrative consent order, with penalty, which is DEP's version of our Enforcement Order. So all work will be done that consent order. There are no actions needed tonight from ConCom, this is just for your edification.

**DEP Appeal – Negative Determination of Applicability for two properties that can be heard together: one for 146 Pleasant Valley Road and the other for 149 Pleasant Valley Road.**

**John Lopez:** This was a Negative Determination of Applicability for the removal of ten trees at 146 Pleasant Valley Road, and twenty-seven trees at 149 Pleasant Valley Road.

The issue before ConCom was the trees being located on a severely eroding riparian bank. The trees are essentially suspended from the eroding bank just by their root system. The concern here was that if a big storm came through, that the force of the wind on the trees would cause them to fall, which would remove significant portions of the bank. The mitigating circumstance here also is that Pleasant Valley Road is threatened, as well, so there is a public safety component.

Although for the record, that portion of the concern was not addressed by the ConCom because it is outside of the guise of the wetlands protection act in the Amesbury ordinance. Our concern was mostly on preserving the riparian bank. The DEP has appealed the commission's negative determination of applicability, meaning in all likelihood, that a NOI would be submitted for this project. Also, DEP understands the severity of the issue, so we look at this in terms of both short and long term. Short term: DEP will probably require notices of intent, and a select number of trees will be proposed for removal. DEP would find that far more palatable

Than the entire removal. The long term: would consist of some of protective armoring of the shoreline and that portion of the bank. There is a similar project that was approved in Haverhill. DEP staff analyst that we're working with was responsible for shepherding that project through the process. It's a complicated project, involving army corps of engineers, coast guard, DEP and a lot of money. That is where things stand now. A site visit was held with DEP last Friday, in the presence of the property owners, myself, DEP analyst and Amesbury Director of Public Works. All these short and long term plans were discussed. The city is working with DEP on a long term solution. But it is very complicated and it is a severely eroding bank. We don't want to armor the entire bank to the Merrimack, but there is a need to take action.

**Adjudicatory Hearing – 68 Lake Attitash Road (MA DEP Office of Appeals and Dispute Resolution)**

**John Lopez:** This is an adjudicatory hearing based on an appeal to a DEP decision to uphold the ConCom's decision on an issuance of an Order of Conditions approving a fence. DEP upheld the commission's determination, issued a superseding negative determination, that was appealed, and it went to the office of appeals and dispute resolution. The office of appeals, at the prompting or request of DEP senior counsel, the trial was dismissed. The presiding officer determined that the appellant's argument lacked a persuasive argument. So the fence stays and no further action is required.

**Appeal (Dow) NOI # 002-1097 68 Lake Attitash Road (Hallessey)**

**John Lopez:** This is an appeal on an Order of Conditions approving the removal of four trees and associated landscaping to serve as mitigation. A site visit was held, approx. one week ago, with DEP. The DEP finding on that is pending.

**Appeal (Dow)- NOI #002-1099- 70 Lake Attitash Road (Bears)**

**John Lopez:** This is an appeal in reference to an Order of Conditions approving the removal of two trees. DEP dismisses the appeal, stating that the applicant has not proven that she is an aggrieved party or even an abutter. They've given the appellant an opportunity to reply providing

supporting evidence and persuasive argument supporting her claim that she is an aggrieved abutter. To date, there are no further proceedings. This has been dismissed.

### **Enforcement Action – 20 Woodwell Circle (Tonks)**

**John Lopez:** This comes through an enforcement order that the commission requested. However, the following morning, I received word from the property owner, Mr. Tonks, who is here tonight to explain to the ConCom the status of his NOI. This is for the unauthorized installation of a dock at 20 Woodwell.

**Brett Tonks, owner at 20 Woodwell Circle:** I requested to address the commission this evening for 3 reasons. 1. to apologize for being behind the 8 ball on putting together a proper approval. We didn't fully understand the required process for approval. 2. I wanted to thank ConCom for your patience. I thought I could handle it myself but I found out I was in over my head. It took some time for me to find the right engineering firm to help me properly process the paperwork. We've since been put in touch with Jim Babbin at Cammett Engineering, who did most of the work for the Orders of Conditions surrounding the entire housing development that we are a part of. 3. update the commission on where we were and to ask a couple questions of you. Mr. Babbin is putting together our NOI, and he suggested that I question the commission about if there was any kind of objection to the dock that we put in on the merits of the dock itself, or if we were just dealing with having to go through the process. He suggested that if we go through this process, then there are changes to be made and we have to go through it again, it is running up an unnecessary expense related to the approval. I don't know if that is an appropriate question to ask you without any materials with me. I have some things, but they certainly are not formal.

**Suzanne Egan:** I would suggest that it would not be appropriate. We'd need a filing before us before that, or at least a presentation as to what it is.

**John Lopez:** I suggest that this be held off for the Notice Of Intent hearing, once you submitted all the paperwork. That is a legal process. When do you intend to submit your notice of intent?

**Brett Tonks:** My hope is that I'd be in position for the Oct. 6 meeting. I can't promise that but I am assuring ConCom that I'm working toward that.

**John Lopez:** The deadline for submitting for the Oct. 6 hearing is today.

**Brett Tonks:** Then I don't think we're going to make that. We installed the dock in late spring, after having spoken with the office of ConCom as well as the harbor master, and understood that we didn't have to go through any process. When we received our violation, the dock has stayed in. We're going to have it removed in October for the season, and wouldn't plan to return it until spring. So we'll be through this process by the time the dock will be put back in.

**Kinsey Boehl:** It's been several months that this has been on the table. I think last meeting, we discussed issuing an Enforcement Order. I don't think that ever happened, right?

**John Lopez:** No. I spoke to Mr. Tonks the next morning, and he informed me that the NOI was on its way, so I thought we'll have him appear before the commission and brief him. The question of an EO is still open, and an EO would require the applicant to submit a NOI by a specific time.

**Kinsey Boehl:** I think it has been three months now, and the deadline is today, we still haven't seen the NOI, and we haven't issued an EO. I think we should issue an EO, per the minutes of the last meeting. I think it was for the removal of the dock, which the applicant is going to do anyway at the end of the season, but the applicant is standing here saying "I will do it, I will do it..." and we've heard that several times now.

**Steve Langlois:** So you'd like to see the dock taken out now, and a NOI date set.

**Kinsey Boehl:** Correct.

**Suzanne Egan:** If the dock is coming out, do we have any concern about any damage to the jurisdictional areas? Is there a certain procedure on what needs to be done / followed?

**John Lopez:** There are, and Mr. Tonks has a copy of DEPs guidelines for small docks and piers. They recommend that docks be stored for winter at a distance greater than 100 feet from a resource. We'd ask him to do that, or through an EO, we'd require him to store his dock greater than 100 feet.

**Suzanne Egan:** I guess I would concur with issuing an enforcement order to require removal and storage of the dock at greater than 100 feet. But if the dock is out, I don't see the point of requiring the filing of a NOI.

**John Lopez:** A person needs to file a NOI to put in a dock. He's going to do that.

**Steve Langlois:** The big issue is whether or not we want him to pull the dock out now, because it is basically non-compliant. That would be my only thought for doing an EO. But I do agree that the dock probably should come out now.

**John Lopez:** Now the question is, is the dock coming out due to an EO or through the applicant's agreement?

**Kinsey Boehl:** I'd say through an EO.

**Brett Tonks:** I know you have to do what you have to do. If you ask me to take it out, I'll take it out. I'd prefer you don't issue an EO. I came to talk to you, but if that is what you need to happen, I will make it happen.

**John Lopez:** The commission could also say that if the dock is not removed by (date specified), and EO will be issued. I'd visit the site on that given date and time, if the dock is in the water, the EO would be issued. If the dock is out of the water, then there would be no EO, as long as it is stored correctly. Whatever the commission wants, it would have to be done in a motion.

**Brett Tonks:** I can have it out in two weeks. I have a guy coming to help me with that and store it under my deck. I'll work on the NOI and have it at that time also.

**Motion was made by Kinsey Boehl** to issue an EO if the dock is not removed in two weeks on Sept. 29 and submittal of his NOI on Oct. 1. If the dock is in water on Sept. 29, then an EO requiring the immediate removal of the dock, by an appropriate person who knows what he is doing, will be issued. Motion was seconded by Suzanne Egan. Vote was unanimous.

#### **CONTINUED BUSINESS:**

**RDA – 35 Water Street – 40 Water Street, 17 Chestnut Street (Remediation of Amesbury Former MGP temporary construction access... as well as:**

**NOI #002- 1079 – 39 Water Street, 33 Oakland Street, Amesbury (Former MGP Phase IV Remedy Implementation) (Boston Gas Co. DBA National Grid)**

**John Lopez:** This is a request for determination of applicability and a Notice of Intent in support of the remediation of a contaminated waste site on the Powow River. Many commissioners were not sitting on the ConCom at the time, but this was opened I believe in Oct. of 2013, and the commission approved it's consultant, Mill River, Dan Oppenheimer and company, to address the issues. It has been a long, hard process, with significant progress made. But the applicant and the commission's consultant are here to brief the commission (and new members of). The commission has received a copy of Mill River's recommendations via the electronic e-mail.

**Jim Ash, I am the licensed site professional representing National Grid for the clean up job we're doing on National Grid's property.** I have colleagues here from both National Grid and from GEI, and also LEC Jeff Bridge, who did the legwork with the commission with the

applications, the RDA and NOI. I'll give a short summary of the history of the project, to show why we're out here and what we're doing. Then we'll hear from the peer reviewers, Dan Ottenheimer (Mill River) who has reviewed the project for the past 6 months during the RDA and NOI. We'll answer questions about the remediation project. The white outline you see on this display is the site boundary surrounding the project area. National Grid's property is this portion. It is on the other side of Powow River from where we are now, at the end of Water Street. Bartley Machine and Manufacturing occupy these buildings here. Most of the property is in the wetland, with about a 20 foot drop from the developed portion to the wooded wetland area. This was a manufactured gas plant site over a hundred years ago. They used to make gas out of coal and oil, rather than natural gas that we have now get from the ground. Once that was discovered, manufactured gas plants went out of business. We didn't have environmental rules about waste disposal in those days as we do now. A lot of the by-products associated with that process were spilled or released into the ground, and remained there to this day. We started investigation of this property in 2004, under the Ma. contingency Plan. So for the past ten years, we've been collecting data and submitting reports to DEP about the process of investigating the extent of contamination, the risks posed by it, and now most recently, what we plan to do to clean it up. The clean up we're proposing consists of digging up the upper 3 feet of wetland soil. This extends into two adjacent properties: one owned by the city of Amesbury and one owned by a private property owner. We'll dig up the top 3 feet of soil, haul that away, and replace it with clean soil and reconstruct the wetland. We'll have to construct extensive controls in order to make the project safe and prevent discharges into the environment. Those will include a sheet pile wall on one bank, all the way around the project along the riverfront and key into another bank, intended to keep the river out of our excavation, and keep any soil / sediment that we're generating from migrating into the river. Once the project is over, that sheet pile wall gets pulled back out after we've replanted wetlands species, etc. One of the final elements, there is a small area in the uplands where contamination is present at depth, being dense non aqueous phase liquid, coal tar, that is present in soil well below the surface. Our long term remedy is to remove that from existing wells that we capture the denapple over a long period of time. Essentially it is in two phases: clean up the wetland and replace it, and over a long period of time, remove denapple from those wells. The project is scheduled to take place next winter (2015 and 2016). It'll probably be about a 6 month process entirely, although the intensive work will take place over about 2-3 months. That intensive work would include trucks hauling away, replacing soil and that sort of thing. Then replicating wetland, clean it up, eliminating controls would take time beyond the initial intensive work. We filed a NOI for the wetland portion of the work and RDA for adjacent parcels, where we will be putting lay down of equipment and materials to conduct the work. We met with ConCom in Oct. of 2013. At the city's request, a peer review was conducted of both of our applications, done by Mill River, starting in late 2013 to early 2014. Since that time, they've had an opportunity to visit the site. We've had two rounds of comments back from them, supplied supplemental information in both cases. In fact, tonight we're providing the ConCom with additional supplemental information to respond to additional requests from Mill River. Unless there are detailed questions about the MCP process and our work, I'll turn this over to Dan Ottenheimer.

**Dan Ottenheimer, owner of Mill River Consulting:** I'll do a short presentation on what our findings were and our process of working on your behalf with the applicant, and then I'll take any questions you might have. With me this evening is Curt Young, owner of Wetlands Preservation, and also a third member of our team who is not here, but specializes in hazardous

waste clean up, so we could have a comprehensive approach to this in analyzing this application, from an engineering perspective, from a wetlands restoration and enhancement perspective, and hazardous waste perspective. National Grid is proposing this hazardous waste remediation project. There is both surface and subsurface contamination at this location. The project is pretty large in scope and crosses a number of properties. I commend National Grid. Their overall approach to cleaning up over 100 years of contamination ought to be publicly acknowledged and commended. The project is going to remove contamination in the soil and the water through excavation, through dredging and de-watering, they will re-establish some of the soil that they take out and put many new plantings in there. There will be long term oversight of some of those planting activities. They also propose some construction controls and overall controls of the whole project. We found that we appreciate the intent and scope of the project. We know it will lead to a greatly improved environment. We make clear that there is both surface and subsurface contamination at this site and they propose, in the application before the commission, is just to deal with surface contamination. As a result of multiple meetings and feedback, they have modified the project in ways that we felt was very beneficial, ie: reducing the footprint from what was originally proposed, they clarified some of the impacts to the resource area that they previously were not clear on, they enhanced some of their implementation plans and oversight, they fine tuned some of the resource area remediation plans and we've received submissions in June and again this evening of new material and we'll be looking at this evening's submission this coming week. Overall, the project is prudent and result in removal of historic contamination on the edge of the Powow River, resulting in a net enhancement of a number of resources associated with both state and Amesbury wetland regulations. We do see two areas of concern which we recommend the ConCom focus on: 1. relates to the de-watering treatment and discharge system. Essentially, one area where they want to remove a lot of contamination is very wet. They will pump the water out of there, clean it, treat it, and discharge it back. That's the best way to address that.

**Kinsey Boehl:** What are the contaminants specifically?

**Dan Ottenheimer:** (spoke away from the microphone inaudibly).

So because of that laundry list, some of that material is going to be pumped and mixed in with soil and water that is going to be pumped up into a small treatment area and then discharged back. We have suggestions related to that, because that is an area that needs focus. That is one of our suggestions for the commission to focus on. The whole process will be about 6 months, but the de-watering will be only one piece of that project. During that time of collecting water, treating it and discharging it back is going to happen during the winter and will be happening in newly disturbed material. Both of those have the possibility of enhancing pollution loads and potentially causing operational problems. So we're recommending enhanced sampling and oversight requirements, over and above what is normally required under other regulatory requirements. That would be taking samples of what comes out of their treatment plant before it goes back into the ground, to make sure it meets the standards that exist for discharge.

**Suzanne Egan:** Is that a typical process where they do the discharge back into the wetlands? Why isn't it taken away to be treated off site and not put back into the wetlands?

**Dan Ottenheimer:** They're going to be dealing with a significant amount of water... tens of hundreds of gallons an hour. So it is not something that you can transport off site.

Jim can speak to what is normally done.

(a voice from the audience far from the microphone speaks his answer over several minutes).

Dan continues: Once they go down to once a month sampling, I don't think that is frequent

enough for a very short term operation that may only operate for about three months. If there is some activity that causes the facility to not operate correctly, you might not know for 29 days, and it might continue to discharge inappropriately. So our recommendation to the commission is that we enhance the sampling frequency and there is an individual who is licensed to operate the treatment plant, and also a visiting frequency that was reported to us as being about once a month, and we also recommend that that frequency be increased well.

**Steve Langlois:** When you're doing this process, who is the overseer of the end result of the water? Who actually watches it?

**(again the person responding does so from the audience far from the podium and microphone, inaudibly).**

**Suzanne Egan:** What is your recommendation?

**Dan Ottenheimer:** Weekly. Also, related to that, we ask for the commission to be copied on all the sample results. We also added a condition that if any of the parameters exceed the standards that they have in the general permit that they are issued, that they cease work, shut off the treatment system, and contact people including the commission, figure out what happened, develop a game plan to prevent that from occurring again. Most hazardous waste treatments operate directly with a laboratory and there is no reason to change that path. That is one major area to think about. The second area of concern is that it is a relatively large area. They are going to be digging up much of this and taking contaminated material out and bringing a bunch of clean soil in, then re-establishing the vegetation, which is a great thing. But there is going to be a lot of restoration work happening here, taking lots of time for that to develop and make sure that it is properly planted and established. So we encourage the commission to think about some mechanism to have long term monitoring over that, to make sure the planting plans they developed and invasive species control plan that they developed actually get implemented and are successful. I believe you have a 5 year window under the army corps restoration process and a more reduced window under the state of Ma. restoration process. All these monitoring suggestions are reflected in our recommendations.

**Steve Langlois:** As for monitoring, is it going to be five years or three years?

**Dan Ottenheimer:** I don't know if ConCom can condition something beyond the terms of the Order of Condition. So it will probably be a three year review under the state, then the army corps has a different set of rules to comply with a different planting success ratio measured in a 5 year window. So in addition to those two major areas of focus, we have one last overall concern that relates to the approach being taken to deal with the subsurface contamination, material below the ground that they are not digging out. The applicant proposes to leave much of it in place and to continue the current approach of hand removal. So they have some wells there, and they take a little hand pump, and they pump out some of that sludge type material. They've been doing that at a pace of several gallons a year, so it isn't a rapid clean up. We recommend that ConCom consider calling this matter to the attention of DEP and ask them to just confirm that what they are proposing is the correct approach. ConCom should be looking at what is being asked of them, the RDA and the NOI, which doesn't speak to that subsurface contamination. Our concern is that sometime in the future, after this has been re-established and re-vegetated, National Grid or whoever might own this has to file another NOI to dig out that material. I think it is prudent for ConCom to just feel comfortable that that has been thought through, that they are taking the correct approach in dealing with the subsurface remediation, so that this doesn't have to be dug up once again. So we recommend ConCom think about as letter to DEP asking them to review and make sure that the approach being proposed for subsurface material is a prudent final

step. So, as a result of our work, we recommend the ConCom to consider voting at a future meeting on 5 potential action items: 1. adopt a statement of findings as to what has gone on here. 2. To potentially send that letter to DEP. 3. They submitted a request for RDA, and we encourage ConCom to issue a negative determination on that. 4. They are requesting a number of waivers from Amesbury regulations, and we are suggesting ConCom endorse those. 5. They submitted an NOI, and we suggest ConCom issue an Order of Conditions with some typical Amesbury general conditions and project-specific conditions as well.

That is what we've done to date. This is our general finding.

( more speaking a distance from the microphone, inaudible for at least ten minutes)

**Dan Ottenheimer:** We're comfortable in recommending it for a negative determination for request for Applicability. On the Then on the NOI, we're comfortable recommending that you issue an Order of Conditions with some conditions that we've outlined in draft form to your Agent, and we'll finalize those over the coming week.

**Suzanne Egan:** Regarding the notification to DEP: Do you still recommend that we send a letter to DEP and what is the result that the ConCom should be looking for?

**Dan Ottenheimer:** We comprised a team of three people: myself, a wetlands restoration specialist and a hazardous waste remediation specialist. The Hazardous waste specialist felt that there are certainly more aggressive means that could be done to clean up this coal tar material than is being described as just simple hand bailing. We think it is in the city of Amesbury's best interest to make sure that the appropriate clean up activities are happening, while their perspective is that they have done everything they can and have discussed it with DEP. We believe that there potentially are other approaches that might be prudent, and they might involve digging some or all of it out, or digging and putting in more active recovery like vacuum systems, or pumps or something to draw that out. If that is what someone chooses to do, it will involve damaging the resource area that they and the commission have spent a lot of time re-establishing. So we think the prudent course is to make sure that there are not going to be activities in the future that are going to involve going in there again and digging it out. Let's do what needs doing now and not be forced to do so ten years from now.

**Suzanne Egan:** My second question would be do you have a proposal for how the commission would encourage DEP to respond in a timely manner?

**Dan Ottenheimer:** I believe the commission would do it's due diligence by requesting the DEP, whether they respond or do anything with it, I don't know. They are short staffed. But I think you will have done your part if you express your concerns to DEP and ask them to do whatever is prudent under their regulations.

**Steve Langlois:** Any abutter comments?

**Rick Bartley, my family owns the property that is being proposed as the staging area at 35**

**Water Street:** We did extensive remediation on our property over the past 20 years. We were cleaned up as of 5 years ago. We've got regulatory closure from DEP for our property. So our concern is that nothing happens here that would jeopardize that status. We're in negotiations right now with National Grid to grant access. We haven't reached agreement as yet as to whether we would have access, so due to the nature of negotiations right now, I can't get into too much, but the fact is that we're still at an impasse in our discussions.

**Steve Langlois:** So the project is starting in the winter of 2015 with the first basic steps taken at that time.

**Suzanne Egan:** It seems like it would be appropriate to have an Order of Conditions drafted for the commission to review, incorporating the request from the third part review, and that we can

review at our next meeting? At that point, we certainly should take note that the agreement with National Grid (the abutter) is not set yet. Just in case there are any issues that need to be incorporated in the Order of Conditions as a result of that.

**Steve Langlois:** So we've got a negative determination that has been recommended by the third party reviewer and endorsing a Notice of Intent. That is the draft OoC. I'm fine with that.

**John Lopez:** If the ConCom is leaning in that direction, I would include in the motion that a draft OoC be written consistent with Mill River's recommendations for review and approval of the commission at the Oct. 6 meeting.

**Suzanne Egan:** "So moved" as a **motion**.

Motion was seconded by Michael Bik.

**Steve Langlois:** So basically, we're granting the draft of the negative determination pursuant to Mill River information. We also can condition the RDA. We want to review it one more time. Vote was unanimous.

**Motion to continue** this to the October 6 meeting was made by Suzanne Egan and was seconded by Michael Bik. All in favor.

### **NOI #002-1102 67 Haverhill Road – Jackson Lumber**

**John Lopez:** This was the subject of a conceptual phase review that the commission approved. Unfortunately, I missed one e-mail in this whole process, and the conceptual phase review didn't happen. I apologize. However, this NOI is a follow up to an emergency cert that was issued back in Feb. for some drainage issues in the parking lot. The emergency cert required a NOI. The applicant is here to follow up on that. This was for drainage improvements at the Jackson Lumber site.

**Philip Christianson, here for Jackson Lumber:** The way the plan is oriented, the big building is the main building you go into for the retail center. In the back are two large buildings here and sheds where the lumber is located. There have been lots of problems with flooding on that property, as well as unstable base under the asphalt, causing the asphalt to break up and, in one case, a truck went through the asphalt during severely wet weather. What we propose is drainage improvements there. We're not increasing the amount of impervious area, not proposing new structures or new paving, only to improve what is there. So it is really under the regulations as a redevelopment project. Areas to be paved are shown in green. Then we'll install catch basins and sub drains and drainage pipes to ultimately have a discharge in this end of the property. We've located the wetlands around the entire property, and shown on this plan with a 100 foot buffer extending out to here and here. So wetlands are on this side and down here. Wetlands were flagged by Norris Environmental. The catch basins will have deep sumps and hoods in them. Overall, it'll be an improvement in the water quality that ultimately gets into the wetland. The main intent is to stabilize that asphalt so it won't fail and stop flooding.

**Steve Langlois:** Does a deep sump work differently than an infiltrator?

**Philip Christianson:** The deep sump catch basins are ones that have a four foot sump located under the outlet pipe elevation, whereas an infiltrator would put water back into the ground. It's a deeper sump to collect sediment that comes in and has a hood on it so any oil and grease stays on top of the water that is in that sump and doesn't get out through the pipes and doesn't get into the wetlands.

**Steve Langlois:** Where does it go out?

**Philip Christianson:** We have to clean them out every once in awhile. It will have a maintenance plan with it and will be submitted. There won't be a need for silt fencing within the

site itself, but a little down at the end near the discharge point near the wetlands. So silt fence in that area only.

**John Lopez:** DEP has issued comments stating ‘no comment’. I think the project as proposed is fine. The commission always has at its discretion the option to go with a peer review or not. We’re talking about a parking lot and storm water management issues.

If you did ask for a peer review, I think just a review pursuant to ma. Storm Water standards would suffice. We don’t need to address much for wetlands impact. I feel the product as proposed is fine. ConCom has many options, but you can issue an Order of Conditions approving the work, or it can go with a storm water review. It is important to get this project done before winter sets in. This is an improvement. November 15 is normally the cut off date for asphalt companies to stop work for the winter. So if the ConCom elects not to pursue a peer review, you could approve the work, you could issue an Order of Conditions approving the work pursuant to the submitted plan, or you could elect to continue and require me to complete a draft Order of Conditions for the commission’s review and approval at the Oct. 6 meeting. But if the commission is satisfied with this, it may be appropriate just to approve it tonight.

**Kinsey Boehl:** How long is the project going to last for the removal and repaving and the drainage work installation?

**Philip Christianson:** Probably two to two and a half weeks.

**John Lopez:** So worst case scenario, if the commission approves this Oct. 6, then you have a two week appeal period, so then you’d be into mid November by the time you finish. It may be much better to issue an approval this evening, if that is how ConCom is feeling.

**Motion** was made by Michael Bik to issue an Order of Conditions approving the work pursuant to storm water protection for #002-1102 at 67 Haverhill Road and issue an Order of Conditions for the plans submitted, dated July 25, 2014.

Motion was seconded by Suzanne Egan. Vote was all in favor.

**Motion** was made by Michael Bik to close the public hearing. Motion was seconded by Suzanne Egan. All in favor.

**RDA 24 Merrimack Street (Noon/Boyah) Continued to Oct. 6 meeting.**

**NOI DEP # 002-1087 19 and 21 R Evans Place (Saba)**

**John Lopez:** This is a project for a subdivision and has undergone quite a number of BSC reviews, plans have been made. This could be considered a success story in that 98 to 99% of the site has been removed from the buffer zone. There is a small portion of a detention basin that remains. Within the last BSC report, there were a number of minor issues that BSC recommended be included in the Order of Conditions, or be incorporated into the final plan. The ConCom has two options: 1. condition those plans. The applicant is here tonight to the ConCom that the most recent round of plans, which the ConCom received electronically, incorporates the last two BSC comments. He is here tonight with his full citations for the plan. So unless there are any other outstanding issues, the ConCom could consider this ripe for approval this evening.

**Ben Osgood:** As John said, we submitted revised plans dated today for the minor revisions that BSC wanted. The PLB actually voted to approve this, subject to the changes and a couple other conditions. BSC comments were minor, we just had to provide more details for the pocket wetlands we’ve designed so they could be constructed a little more easily, verify some areas on the infiltration, etc. Those have been incorporated into sheets 12 and 15 of the plans dated and submitted today. The most recent revision on the plans were dated July 24. It is a cluster

subdivision. The majority of the work is outside of the buffer zone. We changed the storage and detention ponds into a constructed wetlands to create a more natural. Instead of putting water into infiltrators then into the ground, we've used open areas on the lots, so we made it more low impact development, more environment friendly with less hard structure but more natural structure. We added a loop trail through the area. We're proposing a wooden boardwalk to sit on sleepers. The areas are narrow where we propose to cross. They can be crossed without a center sleeper on one of two wetland crossings. Those are the changes that we've made.

**Nick Cracknell, 13 Picard Street:** The detention basin goes with the street acceptance as part of the storm water management system, as well as the drainage structure or the constructed wetland that is located within the common open space. Sixty percent of the parcel is preserved under the Common Open Space in the cluster. It is our understanding that the project is now in full compliance with everyone including Dominic and Jillian from BSC and all their recommendations per our last meeting.

(no abutters were present tonight to speak).

**John Lopez:** One recommendation I have is for the environmental monitor. I think that Horsley -Witten is serving as environmental monitor for a number of our sites. I would request that the commission, if so moved, to issue an Order approving the project as proposed and modified, and that Horsley-Witten be identified as the commission's environmental monitor.

**Motion** was made by Michael Bik to approve NOI # 002-1987, 19 and 21 R Evans Place, and to have Horsley-Witten Group to be there as the environmental monitor. Motion was seconded by Alan Corey. Vote was unanimous.

**Motion** to close was made by Kinsey Boehl #002-1087, 19 and 21 R Evans Place. Motion was seconded by Suzanne Egan. Vote was unanimous.

### **NOI #002-1095 56-58 South Hampton Road (Couillard)**

**John Lopez:** This is in support of a NOI for a proposed wetland crossing and associated storm water management. This was continued from the previous hearing. You have before you a draft attachment to the OoC. This was drafted in accordance with the plans that the PLB has approved and also incorporated into the draft language a lot of the concerns that the BSC, ConCom's consultant, had expressed in their most recent review. It also addresses some of the waivers that are required, on page 6, Waiver Section 15. The city planner is here tonight to discuss this project as it relates to the PLB and the modifications that have taken place, as is the applicant and his representative being present also.

**Nipun Jain, City Planner:** The PLB has been working closely with John Lopez and the ConCom's consultant to listen to what your wishes are to be addressed in the project, based on the regulations. In the last ConCom peer review letter, there were some issues that were identified which we worked to resolve with all involved to make those either amendments or modifications to the final document or plan. As a result, John and I wrote this OoC to incorporate recommendations from your consultant BSC, as well as recommendations from the PLB, so that there is a streamlined order as it relates to this project. This first is about the preferred choice of crossing, the limited access project regulations are being met because the PLB did approve what was the minimal cross section required for getting from South Hampton Road to the uplands in this project, based on public safety and environmentally sensitive design. That is a primary basis for the NOI that is here before you. The second was the replication area regulations as it relates to 2:1. We've worked closely with the DPW director and other city staff, John and your consultant, to identify what is the best approach, because there are limited or different

opportunities, and in this case, from an ecological and environmental perspective, we believe it is more beneficial in the context of the regulations to have some work be done that benefits the water shed and the other connected environmental resources connected to the site. That is why you will see conditions in your order that stipulate that there will be a memorandum of agreement with the city through the ConCom. There is already a memorandum of agreement with the city through the PLB on storm water. We did the replication from the proposed 1.2 to 1.5, so it has been brought closer to the regulations, but with the MOA on the environmental and ecological improvements that the city seeks to the commission, I think you would achieve the overall benefit and purpose of the 2:1 replication as stated in the regulations. So that was #2, which I believe was the other important aspect your review consultant had pointed out. The third was the overall monitoring aspect: how you are doing the crossing and the wetland replication area, given the context of the site and the proposed design, that there should be equitable monitoring on the site, as it relates to construction activities. These recommendations have been rolled into this, and weekly monitoring will be required for the work within the wetlands replication area. The other work will be on a bi-weekly basis, which is what is required. If there is the need, based on unusual circumstances, then the agent will be able to monitor and check as needed. We believe all of these three different aspects of concern are now adequately addressed. We request that the commission approve the project as has the PLB, based on revisions made to plans and to technical data and the supporting environmental documentation.

**John Lopez:** One last further change I'd like to make to the most recent draft order that is in front of you, the attachment to the OoC: On condition 11 on page 4, concerning environmental monitor, second line: "this company at the applicant's expense, the Amesbury ConCom shall designate a consulting company to act as an environmental monitor. This company must be able to provide the monitoring expertise, etc." The ConCom can identify any consultant that it wants, but as I stated in the last meeting, Horsley-Witten is a good option. I would respectfully request that the commission alter condition #11 to say "the Horsley-Witten Group shall provide environmental monitoring expertise.

**Nipun Jain:** If I may, we also support that recommendation, from the PLB's perspective. We're trying to create streamlined administration of your permits, the PLB permits, as that it facilitates construction activity. The PLB supports the choice of Horsley-Witten Group for its inspection of the storm water, rather than having two different consultants on the same project.

**Kinsey Boehl:** So this draft OoC in front of us does not require the 2:1 replication?

**John Lopez:** Correct, it'll be 1.5 to 1, with other stipulations, yes.

**Suzanne Egan:** Can you point out where those other stipulations are?

**Nipun Jain:** The additional conditions, looking at page 6 in the WAIVER section, it stipulates what is the basis for supporting the waiver from 2:1. There are two MOAs with the city: one in regards to the storm water, one with regards to the environmental. We have them in principle, we don't have them finalized condition. #17 states that the applicant shall sign two originals of the memorandum of agreements with the city and the form prepared and agreed upon by the city.

**Suzanne Egan:** Is this the only information we have regarding the MOA?

**Nipun Jain:** We can talk about the principles on which those MOAs have been discussed with the city and agreed to by staff, depts., and the developer.

**Suzanne Egan:** That would be important, if we're talking in terms of a mitigating factor for approving a waiver. It'd be important for ConCom to understand what is involved in those.

**Nipun Jain:** PLB worked with the developer to define what the storm water improvements and storm water watershed would be, and the developer agreed to provide work in the storm water

watershed, or to provide funds to DPW to the extent of \$20K to make improvements in the overall stream channel or storm water watershed that is associated with this development with this environmental area. That is already in place. We're finalizing the legal terms as to how to write it as a proper document. That is one. Two is on similar lines. Again, the developer and DPW and city staff had been trying to identify the area in the same ecological and environmental watershed, which would be most beneficial. Given that that is a work that we need to still finalize with DPW, but both parties agree that it is beneficial to the project, in terms of improvements to the existing environmental resources offsite. We established the same set of formal formula for this aspect. Can additional work be done on the site? Absolutely. But if the purpose of the regulations is to benefit the overall environmental area and benefit the neighborhood, then this is a more practical approach. It's unique and cannot be applied in every circumstance.

**Suzanne Egan:** My concern is that that memorandum of agreement is not through the commission. I'd be concerned with the commission not having reviewed it and not making sure that there is proper enforcement.

**Nipun Jain:** You know the basic terms, as a commission, of what those requirements will be. It's a matter of writing "whereas the developer, Roland Couillard, at this address, agrees to this, whereas the city, through the DPW and the Amesbury Conservation Commission agree to this set of plans on this work, dated such and such. We can write that legal document, but the basic terms of what work is required to be done by the developer and work with the DPW has already been agreed upon. I told you about the limit of \$20K or work to that amount will be done on an area that is identified by the city, with the developer. That is the premise or principle of that agreement.

**John Lopez:** And that can also be conditioned.

**Nipun Jain:** It has already been conditioned in appropriate language that is suitable for the order. I didn't want to start to take terms from the MOA and plant them here. I thought #17 actually covers that. It says "in the form prepared and agreed to by the city." There is already agreement. It's not in a formal manner between the developer and city staff. There is no disagreement of that at all. When I say staff, John is also aware of those agreements, and he has been working closely on this aspect with myself and the DPW director. So there is no confusion on the principles on which the MOA will be drafted. Therefore, #17 actually helps you confirm that there will be no change in intention from what is already agreed upon by the stakeholders. If that condition is not met, he cannot start. So you have all the leverage in the world under this order.

**Suzanne Egan:** I understand. I just think that clarity is important so that everyone understands the terms of an agreement so there isn't any confusion. I'd hate to see you work out something like this, everybody signs it and votes, then 2 weeks from now, there is some confusion as to what those terms of the agreement are. Like the commission signing and order with references that we've never seen.

**Nipun Jain:** Mr. Lopez, you are clear on what we have talked about re: the principles on which these MOAs are being drafted. (John = yes), So you can clear up any confusion on the part of the commissioners. What you, me, Rob and Pete have agreed to is what will be in the final document. I appreciate the comments and will work on this to make sure what you desire does happen.

**John Lopez:** Another option is that the commission could form a subcommittee of two members to work with staff toward this end.

**Nipun Jain:** The commission already has a chair and a vice chair, correct?

**John Lopez:** We have a chair. The vice chair is a vacant position.

**Nipun Jain:** I think a representation between a commissioner and you, we can make sure that there is no deviation from those principles and get it done right.

**Steve Langlois:** I'll be there at a meeting. Who will be my second? Suzanne, how about you? You think there is not enough information into that particular part that is definitely saying "this is what you'll do for us" so that it is nailed down?

**Suzanne Egan:** I think that the applicant is asking for a waiver from the requirements of the ordinance. So a waiver is something we have to consider. If we agree to that, because of the mitigation that has been proposed, and we have that in vague terms in a memorandum of agreement, I'm just concerned that since we haven't seen that, then we're setting our standard for granting a waiver on the fact that there is going to be an agreement signed later on the vague terms...as opposed to clearly...

**Matt Sherrill:** It's a significant waiver and it is unique to this project. We wouldn't grant the same to another project.

**Suzanne Egan:** I think I would be more comfortable to make it an explicit condition, with clear language which currently is not as strong as it could be.

**Matthew Watska, serving as counsel for the applicant:** My perspective on it is that what the applicant has agreed to do is pay \$20K so that those funds are available for the city to use as it sees fit, in a way that can best enhance environmental protection in the city. What I can see the commission wanting to ensure is that the decision about how those funds are going to be spent will be made with the commission's input. But in terms of the condition and the special condition, it is very simple. The MOU is going to say that the applicant agrees to pay \$20K for the city to use for environmental protection purposes. Then the actual feet on the ground decision about how the money is going to get spent is going to be with the ConCom's input with the DPW director, John, and the PLB weighing in and deciding how best to spend the money. So the MOU is about stating that the applicant is agreeing to pay \$20K in lieu of the extra .5 percent.

**Steve Langlois:** What if another project comes along and someone wants to do something, and we're going to give you this, it gets kind of fuzzy. If the \$20K is going to enhance the existing conditions of the wetland, or whatever the wetlands messing up down in that area, that's fine, but at this point in my waiver knowledge, granting \$20K to do something at Lake Attitash so we can do 1.5 here, maybe that's my educational ...

**John Lopez:** The law requires that the mitigation take place within the hydrological unit in question.

**Matthew Watska:** It is my understanding that the \$20K was arrived at with a particular set of work that was anticipated that would have the most impact on this particular watershed or sub watershed immediately downstream.

**Suzanne Egan:** Is the \$20K for A? Then is there another...

**John Lopez:** It's a total of \$20K.

**Kinsey Boehl:** Do we also run into tricky situations here, because we're also assigning specific values to land restoration. What is the square footage of land that makes up the difference of the 1.5 X1 to the 2:1? What is the square footage?

**Matthew Watska:** Phil, how many square feet is the wetland alteration? It's just under 5000 square feet. So it is 17 square feet short of 5000 of wetland replication.

**John Lopez:** And 5000 triggers a water quality cert, but you'll note that condition 16 requires the applicant to submit for a water quality cert.

**Suzanne Egan:** It sounds like there is a little bit of confusion as to what the agreement actually is, and that is why I'm glad you are up here making a representation. So you have two MLAs that are stated here, A+B, and that is what I was trying to determine as to what exactly that is. Your representation to the commission is that your client is entering into an MOA and providing \$20K in mitigation for both of those things, making it \$40K?

**Matthew Watska:** My understanding is that it was a single \$20K payment.

**Kinsey Boehl:** What does the city understand?

**Matthew Watska:** Apparently, Nipun and Mr. Couillard ... (private discussion between applicant and attorney, inaudibly).

**Suzanne Egan:** Essentially, we will need something to reflect an agreement, because I don't think there is an agreement here. At least that is how I feel. I can understand doing something like this, and it makes sense if they want to pay some money to do some mitigation offsite that has the same environmental impact, then that makes sense to me. But unless there are terms of an agreement and less confusion...

**Matthew Watska:** To keep it simple, my understanding is that Mr. Couillard has agreed to pay \$20K under a memorandum of agreement with the city, for the city to use as it sees fit. Since there was some confusion here, he has agreed to have the wetland replication increased back up to 2:1, so it completely meets the commission's standard, and still pay the \$20K, rather than have two \$20K payments.

**Suzanne Egan:** I would like that submitted to the commission.

**Kinsey Boehl:** If we approve it as stated, we're not making a decision. We're letting Buzz and his representative make the decision. Correct? Without seeing anything. I may not be calculating this right, but it looks like we're looking at \$8 per square foot? Is that the value we're assigning for the difference in the replication value?

**Nick Cracknell:** There was some confusion between the applicant and the agent and planner, in respect to the wetland mitigation waiver. What the applicant is revising his request to be is to remove waiver 15C entirely, and he will provide and revise the plans to show a 2:1 wetland replication area. So the waiver will be removed, no worry about it being \$8 or \$9, it won't be mitigation requested or required. He will revise the plans to reflect a 2:1 wetland replication area. The \$20K that the PLB has in an MOA is unrelated to wetland replication entirely, and it pertains to the storm water management system that has been proposed, without the sidewalks or street lights and the curbing for the open drainage. That is to be used downstream. So 15C can be struck from the draft order, and the plans will be revised ...

**John Lopez:** What about 15 B?

**Nick Cracknell:** That will be struck as well, that is the MOA.

**Suzanne Egan:** Thank you, but I would like to see this submittal, so I'm not prepared to vote on this tonight. I want to see it.

**Kinsey Boehl:** So now what I'm hearing is that you want to do the 2:1 now.

**Matt Sherrill:** Suzanne, can you make a suggestion as to what you want?

**Motion by Suzanne Egan:** I would move to continue this and have the applicant provide to the commission the revised plan showing 2:1 mitigation, and a copy of the agreement that the MOA for the proposed storm water management needs to be incorporated into our order of conditions.

**Matthew Watska:** If I may, before you vote: Because the submittal of the plan that increases the wetland replication from 1.5 to 1 to 2:1 is a very minor plan change. I respectfully request the commission to vote to approve the project and simply have the condition that requires the plans submitted for final approval by the agent that shows a 2:1 replication. The numbers are simple.

The area is more than available. I don't think it is warranted here to have the hearing continued for another month simply to have a plan change that adjusts it by 2500 square feet of wetland replication.

**John Lopez:** Point of correction, the next meeting is Oct. 6, so it is 2 weeks.

**Matthew Watska:** Regardless, it is a simple thing that can be provided into a condition, we get the order signed, and we get started on all the different things that need to get done.

**Steve Langlois:** Suzanne, could you please react to that?

**Suzanne Egan:** I suppose it is up to the agent, if you feel... so for the memorandum of agreement, in the OoC that has been presented to us tonight, if we go to page 6, it says WAIVERS at the top of the page: I take it this waiver will be struck. Is there a waiver request before us, and if so, what is it?

**Nipun Jain:** I will answer 15A, which is the MOA on the storm water. The PLB has already seen it. From what I've heard so far, there were two things brought up. You would like to look at the MOA that the city has...

**Suzanne Egan:** I'm asking a question about the OoC that has been submitted to us tonight. That is that now this waiver section has changed. So I don't feel comfortable approving an OoC with something I don't understand what the applicant and what the waiver is? What is the waiver request and what is the mitigation or what the waiver is being asked for?

**Nipun Jain:** The waiver is the first paragraph, which is to go and fill beyond 2500 and up to 4983. That is the only waiver. Everything else is no longer applicable, if the applicant agrees to do 2:1, which would meet the requirements, and if it meets requirements, then B is not warranted and A is already in place with the PLB.

**Nick Cracknell:** So A, B, and C can be deleted from the order...A as well, because it is already in place under the subdivision approval from the PLB. So you really only need the first sentence of 15, because more than 2500 square feet of wetlands are being altered.

**Suzanne Egan:** So the only thing that we would do is need the revised plans. What we're doing with an OoC is approving a plan. So my question to John is: do you have enough information or can we delegate the authority to you to approve the plan submitted if revised to show the 2:1 mitigation?

**John Lopez:** You could, although I think that is something the commission should retain. The commission can't delegate its decision making authority to the agent to that extent.

**Suzanne Egan:** So you don't feel comfortable for us to vote on this on the condition that you review the plan to ensure that there is the 2:1 mitigation? (John = correct. The ConCom could require a modified plan showing 2:1 then send it back to our consultant for verification).

**Alan Corey:** So we could approve this with a condition that a plan be submitted to our consultant and approved?

**John Lopez:** A plan can always be conditioned to be submitted prior to for review and approval by the commission.

**Suzanne Egan:** So the grant has no operative effect until BSC approves it.

**John Lopez:** Correct. I don't know what the net gain is to that but that is one avenue that ConCom could take.

**Suzanne Egan:** The gain would be that this doesn't come back to us.

**John Lopez:** Then that is the gain.

**Steve Langlois:** So we've got the 2:1 mitigation, so the only thing left is that...

**Suzanne Egan:** The only thing left is we don't have any plan showing the 2:1 mitigation. All we have is a statement that it will be a 2:1 mitigation, but there are no plans.

**Alan Corey:** So we couldn't make a motion to approve the NOI with the condition that the plan be submitted to BSC for review and approval of the 2:1 mitigation area. Then it doesn't come back to us.

**Steve Langlois:** Then would you set a date? It might be tough to do it in 2 weeks?

**Suzanne Egan:** You don't necessarily have to, because once we approve it, nothing is operative until they submit their plans, and BSC signs off on it.

**Kinsey Boehl:** So they would confirm that we are enforcing it 2:1 per the bylaw.

**Motion** was made by Suzanne Egan to adopt the attachment to the OoC with the revision that page 6, section 15 is amended by deleting B and C, but not A. I won't strike 17 in part two, because we are incorporating the MOA for the storm water management in it into our OoC, which is a pretty typical permitting aspect is that all permits granted within the city are wrapped up within each other. So the memorandum of agreement that will be submitted to the commission would be the one noted in A. So I'll keep 17. To clarify the motion, I move that we grant an OoC consistent with the attachment to the OoC submitted with the modification that section 15 after the word SUBDIVISION PLAN, there is a period, and strike B and C, with the condition that the plan be submitted with the 2:1 mitigation to BSC and that Horsley-Witten be designated as environmental monitor. Motion was seconded by Alan Corey. Vote was unanimous.

**Motion to close by Suzanne Egan, seconded by Alan Corey. Vote was unanimous.**

#### **Request for Certificate of Compliance DEP #002-1071 for 159 Kimball Road**

**John Lopez:** This is pursuant to a NOI that was an OoC that was approved for the remodeling of a house. All work was done as approved, with the exception that the applicant did not construct an approved garage, placing a shed in its place. Work on modification is minimal at best. I recommend that the Cert of Compliance be approved.

**Motion to approve a Certificate of Compliance** was made by Alan Corey. Motion was seconded by Michael Bik. Vote was unanimous.

#### **NOI #002-1096, 127 Kimball Road (Scimone) – Continued to October 6<sup>th</sup> meeting.**

#### **RCOC 60 Merrimack Street (Hatters Point Condominium Association)**

**John Lopez:** This is a request for a CoC in which a lot of the documentation is missing or cannot be found. What we do know is that the project as built has experienced two unapproved modifications: 1. the installation of a road approximately 70 feet from where it was approved. 1. Also a number of parking spaces have been added. The caveat here is that, according to the applicant, the actual amount of asphalt or impervious surface is actually smaller than what was approved. So the commission has to decide how best to proceed: to issue the CoC, to withhold the CoC pending further mitigation that is being offered, or any combination of the above, including fines. Regarding that mitigation, the applicant claims that there is less than the approved amount of asphalt used, so they have not as yet proposed any mitigation.

**Steve Langlois:** What year was this first permitted?

**Scott David, manager of Hatters Point:** 1997.

**Steve Langlois:** There's no records, things were burned, etc. My opinion is that we will issue the CoC but watch out with your next project. If anything that you do wrong, it'll come down on you. So we just want your respect. Anything you change, we want to know about it.

**Scott David:** With all due respect, I was brought into this situation in 2010. By that time, Mr. Sullivan, the original developer, had passed away. He came before all these boards and commissions. He did what he felt like and made all these deals, then he died. He left the homeowners association the responsibility to clean up all this.

**Steve Langlois:** I don't think he made any deals, but back in those days, projects got started and at the time there were no third party reviewers, no monitors, and half the time the contractors never even looked at the plans they were given. So those days are over. There is nothing we can do about this. We don't have the time or the resources to do it.

**John Lopez:** One point I will make is that I met with Mr. David a few weeks ago, and at that time, I asked him of the outstanding work that could be done, is there anything that he could offer or could do, and he suggested the installation of a flapper valve. He indicated at the time that that would be a relatively minor thing to do, but it hasn't been done.

**Scott David:** There is an outlet pipe into the river that, after I met John and speaking with Charlie Wear, that I was willing to say that we'll produce that, which I've already ordered two of them, and we will complete that. We think it's important to the project that it have that valve there. This is a check valve, basically, for storm water, to keep it from flowing back in. It the river water out. If the water was ever to the level of the pipe, it keeps river water from going back into the storm water management. I agreed that we would take care of that.

**John Lopez:** That would be under a notice of intent that you would propose that.

**Steve Langlois:** For him to install a flapper valve, does he need to get a permit?

**John Lopez:** It has to be part of a Notice of Intent, so that would be part of the next project, for Phase II.

**Kinsey Boehl:** Could you talk a little bit about what will be done in Phase II?

**Scott David:** The developer that we're in talks with will continue to finish the project. It was already pre-approved for another up to 65 units. The developer is in the stages of filing with the PLB this week for a Site Plan Review for an additional 45 units, which will include everything that wasn't finished here is already part of the new plan. Charlie Ware has been on this project for 15 years, and it is part of the new plans that will come before you to finish all this that was left unfinished. It will get finished, I promise.

**Motion** was made by Alan Corey to approve the CoC for Hatters Point. Motion was seconded by Michael Bik. Vote was unanimous.

## **NEW BUSINESS:**

### **RCoC 485 Main Street (Conant)**

**John Lopez:** This was an approved OoC authorizing landscaping and some modifications in the property owner's yard. All work was done in substantial compliance, with no issues. One approved aspect of the job which was not done was the installation of a small wall. It is minimal, so I recommend that a CoC be issued.

**Motion** was made by Suzanne Egan to move that the CoC be issued for 485 Main Street. Motion was seconded by Alan Corey. Vote was unanimous.

### **RDA – 33 Mill Street (Clean Soils Envir.) – Continued to October 6, 2014 meeting.**

**Notice of Intent:**

**NOI #002-1107 – Locke Hill Lot 4 (Couillard)**

**NOI #002-1106 – Locke Hill Lot 5 (Couillard)**

**NOI #002-1105 - Locke Hill Lot 6 (Couillard)**

**NOI #002-1104 – Locke Hill Lot 12 (Couillard)**

**NOI #002-1103 – Locke Hill Lot 13 (Couillard)**

**John Lopez:** I recommend that this be remanded to BSC for a peer review pursuant to the Wetlands Protection Act, The Amesbury Wetlands Ordinance, and Massachusetts Storm Water Standards.

**Motion** was made by Kinsey Boehl to assign each of these NOIs for lots 4, 5, 6, 12 and 13 to BSC for a third party review for all lots. Motion was seconded by Suzanne Egan. Vote was all in favor.

**Motion to continue this to Nov. 3 meeting by Suzanne Egan, seconded by Kinsey Boehl. AIF.**

**Motion to adjourn** was made by Kinsey Boehl. Motion was seconded by Alan Corey. Vote was all in favor.

**Meeting was adjourned at 9:45 P.M.**