

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

LAND COURT DEPARTMENT
CIVIL ACTION NO.

)
BENJAMIN T. CARROLL, JORDAN A.)
CARROLL, THOMAS J. ROONEY, and MARY)
ANN ROONEY, and STEVEN A. RUSCONI AND)
TERESA M. RUSCONI, AS TRUSTEES OF)
THE STEVEN A. RUSCONI M&A LIVING)
TRUST, DATED THE 11TH DAY OF OCTOBER,)
1999 AND TERESA M. RUSCONI AND STEVEN)
A. RUSCONI AS TRUSTEES OF THE)
TERESA M. RUSCONI M&A LIVING TRUST,)
DATED THE 11TH DAY OF OCTOBER, 1999,)

Plaintiffs,

v.

)
TOWN OF FALMOUTH CONSERVATION)
COMMISSION, BLACK BEACH HARBOR)
HEAD CIVIC ASSOCIATION, INC., AND)
FREDERICK L. WIRTH AND GERALDINE)
WIRTH,)

Defendants.

COMPLAINT

INTRODUCTION

This is a civil action in the nature of *certiorari*, pursuant to M.G.L. c. 249, § 4 involving questions of right, title, and interest in land, and for declaratory relief, pursuant to M.G.L. c. 231A, and injunctive relief, pursuant to M.G.L. c. 185 § 25, appealing a decision of the Town of Falmouth Conservation Commission issued under the Falmouth Wetlands Protection Bylaw, Chapter 235 (“Bylaw”) and seeking a declaration as to the property rights in land owned by the Defendants Frederick L Wirth and Geraldine Wirth.

PARTIES

1. The Plaintiffs, Benjamin T. Carroll and Jordan A. Carroll of North Easton, MA with a local address of 357 West Falmouth Hwy, Falmouth MA. The Plaintiffs are parties in interest aggrieved (see Town of Falmouth Wetlands Regulations, hereinafter “FWR”, FWR 10.10(1)) by an order of the Town of Falmouth Conservation Commission discussed herein.

2. The Plaintiffs, Thomas J. Rooney and Mary Ann Rooney of 137 Fox Lane, Falmouth, MA. The Plaintiffs are parties in interest aggrieved (see FWR 10.10(1)) by an order of the Town of Falmouth Conservation Commission discussed herein.

3. The Plaintiffs, Steven A. Rusconi and Teresa M. Rusconi, as Trustees of the Steven A. Rusconi M&A Living Trust, Dated The 11th Day Of October, 1999 and Teresa M. Rusconi and Steven A. Rusconi as Trustees of the Teresa M. Rusconi M&A Living Trust, Dated The 11th Day Of October, 1999, of South Weymouth, MA with a local address of 138 Fox Lane, West Falmouth, MA. The Plaintiffs are parties in interest aggrieved (see FWR 10.10(1)) by an order of the Town of Falmouth Conservation Commission discussed herein.

4. The Defendant, Town of Falmouth Conservation Commission (the “Commission”) is a body politic of the Town of Falmouth and presently consists of the following Commissioners: Jamie Mathews, Chair; Courtney Bird, Vice Chair; Elizabeth Gladfelter, Member; Maureen Harlow-Hawkes, Member; Kevin O’Brien, Member; and Stephen Patton, Member.

5. The Defendant, Black Beach Harbor Head Civic Association, Inc. also referred to as the Black Beach Harbor Head Association (hereinafter referred to as the “Applicant”), is a Massachusetts Nonprofit Corporation with its principal office located at 28 Gilbert Lane, West Falmouth, Barnstable County, Massachusetts 02574.

6. The Defendants, Frederick L. Wirth and Geraldine Wirth (collectively, the “Wirths”), are individuals who, upon information and belief, reside at 230 New Canaan Avenue Norwalk, CT 06850. The Wirths are the owners of property located at 139 Little Bars Neck Road, Falmouth, MA 02540 (the “Property”).

JURISDICTION & VENUE

7. The Land Court has original, concurrent jurisdiction over claims arising out of any right, title or interest in land, or arises under or involves the subdivision control law, the zoning act or municipal zoning, or subdivision ordinances, by-laws or regulations, in the land court pursuant to M.G.L. c. 249, § 4.

8. The Land Court has original, concurrent jurisdiction over actions for declaratory relief pursuant to M.G.L. c. 235A §1.

9. The Land Court has original, concurrent jurisdiction over actions for injunctive relief pursuant to M.G.L. c. 185 § 25.

10. Venue is proper as this action was taken in Barnstable County, where the subject disputed property is located, where the Falmouth Conservation Commission operates, and where the Falmouth Conservation Commission issued the Order of Conditions dated January 10, 2024, that is the subject matter hereof.

FACTS

11. The Plaintiffs hereby repeat and reallege the foregoing paragraphs of this Complaint as if fully set forth herein.

12. The Town of Falmouth (“Town”) has adopted the Bylaw for the purpose of protecting, “the wetlands, related water resources and adjoining land areas in Falmouth by controlling activities deemed by the Conservation Commission as likely to have a significant or

cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution control, fisheries, shellfish, wildlife and plant species and habitats, agriculture, aesthetics, recreation and aquaculture values. These values, collectively, are the resource area values protected by this bylaw.” See Bylaw, § 235-1 (A) (emphasis added).

13. In defining the purpose of the Bylaw, the Town has also specifically stated that, “In the Black Beach/Great Sippewissett Marsh District of Critical Planning Concern, the following resource area values are expressly protected: prevention of flood damage by limiting of development in flood hazard zones, prevention of damage to structures and natural resources as a result of erosion, improvement of water quality, protection and enhancement of existing vegetative cover in order to maintain water quality and wildlife habitat, protection of wildlife, waterfowl and plant habitat and the maintenance of existing populations and species diversity, prevention of loss or degradation of critical wildlife and plant habitat, prevention of new stormwater runoff discharges and the improvement of existing stormwater runoff discharges, protection of coastal ecosystems which support the continued viability of harvestable shellfish and finfish habitat, public access to water and land, improvement of groundwater recharge, and the minimization of the impact of new development, reconstruction and/or expansion on the resource area values protected by this bylaw.” See Bylaw, § 235-1 (B) (emphasis added).

14. The Plaintiffs have interests protected under the Bylaw for, *inter alia*, access to water and land (Black Beach and the Great Sippewissett Marsh) as well as recreation and personally, have been adversely affected by the Applicant’s Notice of Intent application and the Commission’s Order of Conditions dated January 10, 2024. On the same token, the Plaintiffs’ properties have been adversely affected by the Applicant’s Notice of Intent application and

Commission's Order of Conditions dated January 10, 2024. The Plaintiffs have rights to pass and repass over a portion of the Defendant Wirth's property by grant, implication, and prescription. Further, the land where the proposed gate is to be constructed was, and the Plaintiffs allege, is now, within a portion of Little Neck Bars Road, which is a way within the Town of Falmouth that is a public way, by statute and as the result of greater than 20 years' use by the members of the public, which use has been and is open, notorious, and under a claim of right by the members of the public. The Plaintiffs specifically allege that Little Neck Bars Road, and the portion of said road which formerly was laid out across the Wirth's property, is, *inter alia*, a public way by prescription.

15. The Applicant is a nonprofit corporation that has alleged in previous complaints filed with this Honorable Court that it "maintains the appearance of the Black Beach Harbor Head Civic Association subdivision ("Association")". See Complaint filed in Docket No. 2127CV00257 filed with the Barnstable County Superior Court on or about July 16, 2021 (regarding the erection of a similar gate in the same subject and disputed area as the Applicant's Notice of Intent submitted to the Commission on or about November 22, 2023, for the purpose of preventing "seasonal pedestrian access from the Bikeway, over the Property, over the Association's private subdivision ways, and to certain beach-front property owned by the Town...", but was denied by the Commission; a decision that was affirmed by Barnstable County Superior Court.

16. The Association consists of several ways referenced as "private ways" known as Little Neck Bars Road, Black Beach Hills Road, Gilbert Lane, and Drift Road.

17. The Association is situated in West Falmouth between Black Beach and the Shining Sea Bikeway, both public resources.

18. The locus of this project is situated in an area of road with a width of approximately 25 feet connecting the cul-du-sac of Little Neck Bars Road (the “Public Way”) to and over the Shining Sea Bikeway.

19. The locus of this project is over a section of road, which may properly be addressed as Little Neck Bars Road.

20. Little Neck Bars Road has had numerous names since the 1700s, including but not limited to, Old Chapaquoit Road, North Shore Road, and/or Harbor Head Road.

21. Little Neck Bars Road was the original means of accessing Hog Island, now known as Chapaquoit Island before the construction of the Chapaquoit Bridge in or around 1889.

22. Little Neck Bars Road was laid out in a manner consistent with the laws of its time.

23. The Public Way has been in use since before the enactment of Chapter 203 of the Acts of 1846.

24. The Public Way has a history of being used for economic endeavors by various residents, including by not limited to the farming of livestock, the harvesting of fish and shellfish, and the harvesting of saltgrass or salt marsh hay.

25. The Public Way is a public ancient way.

26. The Public Way is a statutory way.

27. The public has a right to pass and repass over the Public Way.

28. The Public Way has consistently and historically been used by residents and the public to access, Black Beach, Chapaquoit Beach, and the Great Sippewissett Marsh, all public resources of the Town of Falmouth openly, notoriously, and under a claim of right for well in excess of 20 years.

29. In or around 1872, a railroad was constructed over a portion of the Public Way.

30. The railroad did not deter, interrupt, or prevent the way's use as a public way and from its construction in 1872 until 1955, cars, carriages, and pedestrians crossed the railroad tracks, over the Public Way routinely as this was a primary means of access to the homes located within the Association, Black Beach, Chapaquoit Beach, and the Great Sippewissett Marsh.

31. In 1955, a fatal accident on the railroad tracks prompted the New Haven Railroad Company to cease regular vehicle access over the railroad tracks.

32. Vehicular use over the railroad tracks, now the Shining Sea Bikeway has been used since 1955 as emergency access for residents of the Association and the public.

33. At all times since its creation, the public has regularly and routinely and without interruption crossed the railroad tracks (now the Shining Sea Bikeway) over the Public Way to access Black Beach, Chapaquoit Beach, Chapaquoit Island, and the Great Sippewissett Marsh, primarily by foot or bicycle.

34. At all times material, residents of BBHHA have also used the Public Way to access the amenities available in West Falmouth.

35. In modern times, the Public Way has been mapped as a 25-foot-wide way spanning from the BBHHA over the Shining Sea Bikeway, and connecting to route 28A also known as West Falmouth Highway.

36. If it is determined by this Court that the Public Way is the property of the Wirths, the public has used the way openly and notoriously, under a claim of public right and in a manner adverse to the Wirths and previous owners' interests for a period far greater than 20 years.

37. On or about November 22, 2023, the Applicant, with permission of the Wirths, filed a Notice of Intent ("NOI"), identified as MassDEP File No. 25-4921 with the Commission giving the following general project description, "The proposed project is the installation and

maintenance of a proposed safety gate and fence approximately 11 feet long adjacent to the property line.” In summary, the Applicant is requesting to install a gate and fence on the Public Way. Please find a true and accurate copy of the Applicant’s NOI, attached hereto as **Exhibit A**.

38. In support of the Applicant’s NOI, the Applicant submitted a site plan prepared by Merrill Engineers and Land Surveyors dated November 20, 2023, and a 30-page document titled, “Notice of Intent Submittal” also dated November 20, 2023. Please find a true and accurate copy of the Applicant’s said site plan and said Notice of Intent Submittal, attached hereto as **Exhibits B** and **C**. It should be noted that the Applicant did not submit to the Commission a safety report or traffic study in support of its proposed “safety” gate.

39. The proposed gate is to be located in a district of critical planning concern mapped as the Black Beach/Great Sippewissett Mash District of Critical Planning concern.

40. The proposed gate is located in an AE-18 Flood zone.

41. The proposed gate is located within a 100-foot buffer of a salt marsh.

42. The proposed gate is located within the town of Falmouth Wind Borne Debris District.

43. The Applicant’s site plan submitted to the Commission with its NOI fails to account for the 25-foot historic way incorporated into the August 4, 1970, site plan approved by the Planning Board for the subdivision of the Property. A true copy of said site plan dated August 4, 1970, is attached hereto as **Exhibit D**.

44. The Applicant’s site plan submitted to the Commission with its NOI fails to include the mapped 25-foot way shown on a site plan approved by the Planning Board on September 2, 1969, for the subdivision of 132 Little Neck Bars Road. A true copy of said site plan dated September 2, 1969, is attached hereto as **Exhibit E**.

45. The Applicant's site plan submitted to the Commission with its NOI fails to include the mapped 25-foot historic way shown on a site plan approved by the planning board on March 12, 1962, for the installation of waterlines throughout the Public Way. A true copy of said site plan dated March 12, 1962, is attached hereto as **Exhibit F**.

46. The location of the proposed gate is encumbered by numerous easements allowing public access and by the public's rights in the Public Way.

47. The Applicant's site plan submitted to the Commission with its NOI fails to include reference to any easements private property owners or the public have over the Public Way.

48. The Public Way has been held out by the Applicant and the Wirths as the private, fee simple property of the Wirths in the NOI filed with the Commission on or about November 22, 2023.

49. The Applicant is not the owner of the Public Way.

50. The Wirths are not the owners of the Public Way.

51. The Wirths do not and have never had standing to request a NOI for work within the Public Way.

52. The Wirths do not and have never had the ability to construct any gate, signs, or obstruction or interference to access over the Public Way.

53. The Applicant does not, nor ever has had standing to request a NOI for work within the Public Way.

54. The Applicant does not, nor even has had the ability to construct any gate, signs, or obstruction to or interference with access over the Public Way.

55. The Commission was not provided all information available to the Applicant and the Wirths regarding the ownership status of the Public Way. At the Commission's December 20,

2023, public hearing (the “Public Hearing”), the Commission considered the Applicant’s NOI (without all information available to the Applicant and the Wirths regarding the ownership status of the Public Way).

56. During the Public Hearing, Commission Member Gladfelter noted and is memorialized in the Public Hearing minutes, “a letter from the applicants have stated that there will be no lock on the fence, and she would like the letter to be part of the record.” Commission Member Harlow-Hawkes, “agreed that it should be in the record that the fence will not be locked.” See a true and accurate copy of the minutes of the Public Hearing attached hereto as **Exhibit G**.

57. During the Public Hearing, Chair Mathews noted that “The Commission’s jurisdiction is only through the Massachusetts Wetlands Protection Act and the Falmouth Wetlands Bylaw.” See Public Hearing minutes, Exhibit G.

58. During the Public Hearing, the Applicant’s counsel stated that “there are no performance standards regarding public access.” See Public Hearing minutes, Exhibit G.

59. On January 10, 2024, the Commission issued an Order of Conditions (“OOC”) allowing the erection of the proposed gate and fence with several standard and special conditions. Please find a true and accurate copy of the Commission’s January 10, 2024, OOC, attached hereto as **Exhibit H**.

60. The OOC also states the Commission’s findings, one of which specifically states, “In the Falmouth Enterprise, dated December 1, 2023, the article referenced the following statement by Belle McDougall, Treasurer of the BBHA [the Applicant], ‘*The association plans to install the gate without a lock because the purpose of the gate is safety, not keeping people out.*’” See OOC, Exhibit H (original emphasis maintained).

61. In the OOC, the Commission also lists several “Interests”. Public access to water and land, which is a resource value expressly permitted in the Bylaw, § 235-1 (B), is not listed.

62. On January 22, 2024, the Applicant filed an appeal with the MassDEP concerning the Commission’s Order of Conditions.

63. The Applicant’s appeal to the MassDEP concerns four of the special conditions imposed by the Commission in its OOC:

No. 3: The gate shall swing into and towards Little Neck Bars Road and not into and towards the bike path.

No. 4: There shall not be a lock on the gate, the gate shall remain unlocked at all times.

No. 5: There shall be no blocking of the gate at any time, with any material, object or structure.

No. 6: There shall be no signs on the gate and fence.

64. In January 2024, after the Commission issued its OOC, the Applicant filed a request for mediation with the Commission pursuant to FWR 10.10(2). It is unknown to the Plaintiffs whether or not the Commission has chosen to move forward with such mediation.

65. On January 19, 2024, counsel for the Plaintiffs requested mediation on behalf of Thomas and Mary Rooney. Such request for mediation was denied.

66. The Applicant’s NOI was defective because it failed to establish ownership of the Public Way.

67. The Applicant’s NOI omitted material information essential to the Commission’s assessment of public access.

68. The Commission failed to consider the public interest and public access to water and land, which is a resource value expressly permitted in the Bylaw, § 235-1 (B).

69. Regardless of the Commission's decision, the Applicant does not have authority to construct a fence or gate in the area of the locus as it is a public way.

70. The Wetlands Protection Act requires an Applicant filing a notice of intent to be the subject property owner or to have the express consent of the property owner pursuant to 310 CMR 10.05(4).

71. The Town of Falmouth requires an applicant filing a notice of intent to be the subject property owner or to have the express consent of the property owner pursuant to Town Code 234-4.

72. Pursuant to M.G.L. c. 86 § 5, the Applicant and property owner must seek further approval from "the county commissioners or of the selectmen or road commissioners or of the person for whose use such private way was laid out", to construct its proposed gate.

73. The Commission does not, and has never had authority to permit the construction of a gate over a public way.

74. The project is not a minor activity within the meaning of 310 CMR 10.02 (b).

75. The Commission has properly adopted performance standards for the permitting of projects affecting public access in the Black Beach/ Great Sippewissett Marsh District of Critical Planning Concern.

76. The Commission regulations state, "no project shall be permitted which will have any Adverse effect on land under the Ocean, or if proposed on Land under a Salt pond, on lands within 100 feet of the mean high water line of a Salt pond, or on land under a body of water adjacent to a Salt pond, shall be permitted which will have any Adverse effect on the marine fisheries or Wildlife habitat of the Salt pond, *or ability of the public to access the land and waters of the Salt pond.*" FWR 10.39(12) (emphasis added).

77. The proposed gate does not comply with the Commission's bylaws.
78. The proposed gate does not comply with the Commission's regulations.
79. The proposed gate will have an adverse impact on the ability of the public to access the land and waters of the Salt Pond. The Plaintiffs and many other neighbors in this area are aggrieved by the Commission's OOC allowing a gate and fence across the Public Way, a historic right of way.
80. The Plaintiffs are adversely and directly impacted by the Commission's OOC.
81. The Plaintiffs properties have been adversely impacted by the Commission's OOC.
82. The Plaintiffs have duly performed all conditions precedent to be performed before bringing this action.

COUNT I
WRIT OF CERTIORARI (M.G.L. c. 249, § 4)

83. The Plaintiffs hereby repeat and reallege the foregoing paragraphs of this Complaint as if fully set forth herein.
84. The Applicant's NOI and supporting materials, specifically its site plan, omits specific facts about the historic right of way, open for public use to Falmouth's resources, Black Beach and the Great Sippewissett Marsh.
85. Because of the Applicant's omissions to the Commission, the Commission's decision contains substantial errors of law that affect the Plaintiffs' material rights and their right, title, or interest in the Wirth's property and the Public Way.
86. Neither the Applicant nor the Wirths had or have standing to file a notice of intent or receive an order of conditions affecting the Public Way.
87. The Commission did not have authority to issue an order of conditions affecting the Public Way because neither the Applicant nor the Wirths own the Public Way.

88. The Plaintiffs' interests are protected under the Falmouth Wetlands Protection Bylaw, Chapter 235, §§ 1A – B.

89. The Plaintiffs, personally, have been adversely affected by the Applicant's NOI application and Commission's decision.

90. The Plaintiffs' properties have been adversely affected by the Applicant's NOI application and Commission's decision.

91. The decision of the Defendant, the Falmouth Conservation Commission, and its members, is:

- (a) in excess of its authority and jurisdiction under the Falmouth Wetlands Protection Bylaw, Chapter 235 and its regulations.
- (b) based upon error of law;
- (c) made upon unlawful procedure;
- (d) made upon failure to make necessary findings of fact Falmouth Wetlands Protection Bylaw, Chapter 235 and its regulations;
- (e) made upon failure to implement its mandatory authority under the Falmouth Wetlands Protection bylaw Chapter 235 Falmouth Wetlands Protection Bylaw, Chapter 235 and its regulations;
- (d) unsupported by substantial evidence in the record;
- (e) unwarranted by facts submitted by the Plaintiffs; and
- (f) arbitrary, capricious and abuse of discretion and otherwise not in accordance with the law.

WHEREFORE, the Plaintiffs demand judgment against the Commission under M.G.L. c. 249, § 4, and whatever else this Honorable Court deems just and proper under the circumstances and applicable law.

COUNT II
DECLARATORY RELIEF

92. The Plaintiffs hereby repeat and reallege the foregoing paragraphs of this Complaint as if fully set forth herein.

93. Little Neck Bars Road, including the locus of this project is a statutory way and is a public way by prescription.

94. Because Little Neck Bars Road and the Public Way is a statutory way, the public has a right to pass over their way.

95. The subject and disputed area has been used consistently and continuously in an open and notorious manner by the public for far greater than 20 years.

96. If this Honorable Court determines that the Wirths are the fee simple owner of the subject and disputed area, the public has used said area adversely to the owner's interests for far greater than 20 years.

97. The Plaintiffs have the right to use a portion of the Wirth's property by grant, by implication, and by prescriptive use.

98. An actual controversy exists between the parties as to the propriety of the Commission's decision.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court enter final relief as follows:

A. Order that the Public Way, Little Bars Neck Road including as it extends through the Shining Sea Bikeway, is a statutory way; or

B. In the event this Honorable Court does not find Little Neck Bars Road to be a statutory way, the Plaintiff's hereby request this Honorable Court find it is a way by prescription; or

C. In the event this Honorable Court does not find Little Neck Bars Road to be a way by prescription, the Plaintiffs' hereby request this Honorable Court find the public and/or the Plaintiffs have an appurtenant easement, or an easement by implication, or a prescriptive easement to pass and repass over the Wirth's Property, Little Neck Bars Road, and the Public Way; and

D. Whatever else this Honorable Court deems just and proper under the circumstances and applicable law.

COUNT III
INJUNCTIVE RELIEF

99. The Plaintiffs hereby repeat and reallege the foregoing paragraphs of this complaint as if fully set forth herein.

100. The laws of justice and equity require an order of this Court enjoining the work described in the OOC until the disposition of this action.

WHEREFORE, the Plaintiffs demand injunctive relief against any individual or entity that attempts to begin work under the OOC, and whatever else this Honorable Court deems just and proper under the circumstances and applicable law.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully requests that this Honorable Court to:

A. On Count I, enter Judgment in favor of Plaintiffs and against the Commission;

B. Annul the Order of Conditions of the Commission issued in favor of BBHHA's NOI on January 10, 2024;

C. Grant the declaratory relief as requested by Plaintiffs and against the Defendants in Count II and enters final relief as follows:

- (1) Order that the Public Way, Little Bars Neck Road including as it extends through the Shining Sea Bikeway, is a statutory way; or
- (2) In the event this Honorable Court does not find Little Neck Bars Road to be a statutory way, the Plaintiff's hereby request this Honorable Court find it is a public way by prescription; or
- (3) In the event this Honorable Court does not find Little Neck Bars Road to be a way by prescription, the Plaintiffs' hereby request this Honorable Court find the public and/or the Plaintiffs have an appurtenant easement, or an easement by implication, or a prescriptive easement to pass and repass over the Wirth's Property, Little Neck Bars Road, and the Public Way; and
- (4) Whatever else this Honorable Court deems just and proper under the circumstances and applicable law.

D. Award the Plaintiffs their attorneys' fees, expenses, and costs of this action; and

E. Grant the Plaintiffs any other relief this court deems just and proper under the circumstances and applicable law.

Respectfully submitted,
For the Plaintiffs,

BENJAMIN T. CARROLL, JORDAN A. CARROLL, THOMAS J. ROONEY, and MARY ANN ROONEY, and STEVEN A. RUSCONI AND TERESA M. RUSCONI, AS TRUSTEES OF THE STEVEN A. RUSCONI M&A LIVING TRUST, DATED THE 11TH DAY OF OCTOBER 1999 AND TERESA M. RUSCONI AND STEVEN A. RUSCONI AS TRUSTEES OF THE TERESA M. RUSCONI M&A LIVING TRUST, DATED THE 11TH DAY OF OCTOBER, 1999,

By their Attorney,

/s/ Benjamin T. Carroll

Benjamin T. Carroll BBO# 703280

Kenney & Conley, P.C.

100 Grandview Road, Suite 218

Post Office Box 9139

Braintree, MA 02185-9139

781-848-9891

benjamin@kenneyconley.com

Dated: March 6, 2024

Exhibit A



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 #:
eDEP Transaction #:1597572
City/Town:FALMOUTH

A.General Information

1. Project Location:

a. Street Address	139 LITTLE NECK BARS ROAD		
b. City/Town	FALMOUTH	c. Zip Code	02540
d. Latitude	41.59447N	e. Longitude	70.63900W
f. Map/Plat #	25 03	g.Parcel/Lot #	001 004

2. Applicant:

☐ Individual ☒ Organization

a. First Name		b. Last Name	
c. Organization	BLACK BEACH HARBOR HEAD ASSOCIATION		
d. Mailing Address	P.O. BOX 692		
e. City/Town	WEST FALMOUTH	f. State	MA
g. Zip Code	02574		
h. Phone Number		i. Fax	
j. Email			

3. Property Owner:

☐ more than one owner

a. First Name	FREDERICK	b. Last Name	WIRTH
c. Organization			
d. Mailing Address	230 NEW CANAAN AVENUE		
e. City/Town	NORWALK	f.State	CT
g. Zip Code	06850		
h. Phone Number		i. Fax	
j.Email			

4.Representative:

a. First Name	TIMOTHY	b. Last Name	SANTOS
c. Organization	MERRILL ENGINEERS AND LAND SURVEYORS		
d. Mailing Address	448 NORTH FALMOUTH HIGHWAY, UNIT A4		
e. City/Town	NORTH FALMOUTH	f. State	MA
g. Zip Code	02556		
h.Phone Number	508-563-2183	i.Fax	
j.Email	tsantos@merrillinc.com		

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

a.Total Fee Paid	110.00	b.State Fee Paid	42.50	c.City/Town Fee Paid	67.50
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6.General Project Description:

THE PROPOSED PROJECT IS THE INSTALLATION AND MAINTENANCE OF A PROPOSED SAFETY GATE AND FENCE APPROXIMATELY 11 FEET LONG ADJACENT TO THE PROPERTY LINE.

7a.Project Type:

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Single Family Home | 2. <input type="checkbox"/> Residential Subdivision |
| 3. <input type="checkbox"/> Limited Project Driveway Crossing | 4. <input type="checkbox"/> Commercial/Industrial |
| 5. <input type="checkbox"/> Dock/Pier | 6. <input type="checkbox"/> Utilities |
| 7. <input type="checkbox"/> Coastal Engineering Structure | 8. <input type="checkbox"/> Agriculture (eg., cranberries, forestry) |
| 9. <input type="checkbox"/> Transportation | 10. <input type="checkbox"/> Other |

7b.Is any portion of the proposed activity eligible to be treated as a limited project subject to 310 CMR 10.24 (coastal) or 310



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 #:
eDEP Transaction #:1597572
City/Town:FALMOUTH

CMR 10.53 (inland)?

1. ☐ Yes ☒ No

If yes, describe which limited project applies to this project:

2. Limited Project

8. Property recorded at the Registry of Deeds for:

a. County:

BARNSTABLE

b. Certificate:

c. Book:

34516

d. Page:

296

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

1. Buffer Zone & Resource Area Impacts (temporary & permanent):

☒ This is a Buffer Zone only project - 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)

Resource Area	Size of Proposed Alteration	Proposed Replacement (if any)
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a. ☐ Bank

1. linear feet

2. linear feet

b. ☐ Bordering Vegetated Wetland

1. square feet

2. square feet

c. ☐ Land under Waterbodies and Waterways

1. Square feet

2. square feet

3. cubic yards dredged

d. ☐ Bordering Land Subject to Flooding

1. square feet

2. square feet

3. cubic feet of flood storage lost

4. cubic feet replaced

e. ☐ 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 any)

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.



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 #:
eDEP Transaction #:1597572
City/Town:FALMOUTH

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)

Resource Area	Size of Proposed Alteration	Proposed Replacement (if any)
---------------	-----------------------------	-------------------------------

a. <input type="checkbox"/> Designated Port Areas	Indicate size under	Land under the ocean below,
---	---------------------	-----------------------------

b. <input type="checkbox"/> Land Under the Ocean		
--	--	--

	1. square feet	
--	----------------	--

	2. cubic yards dredged	
--	------------------------	--

c. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes, below	
---	---	--

d. <input type="checkbox"/> Coastal Beaches		
---	--	--

	1. square feet	
--	----------------	--

	2. cubic yards beach nourishment	
--	----------------------------------	--

e. <input type="checkbox"/> Coastal Dunes		
---	--	--

	1. square feet	
--	----------------	--

	2. cubic yards dune nourishment	
--	---------------------------------	--

f. <input type="checkbox"/> Coastal Banks		
---	--	--

	1. linear feet	
--	----------------	--

g. <input type="checkbox"/> Rocky Intertidal Shores		
---	--	--

	1. square feet	
--	----------------	--

h. <input type="checkbox"/> Salt Marshes		
--	--	--

	1. square feet	
--	----------------	--

	2. sq ft restoration, rehab, crea.	
--	------------------------------------	--

i. <input type="checkbox"/> Land Under Salt Ponds		
---	--	--

	1. square feet	
--	----------------	--

	2. cubic yards dredged	
--	------------------------	--

j. <input type="checkbox"/> Land Containing Shellfish		
---	--	--

	1. square feet	
--	----------------	--

k. <input type="checkbox"/> Fish Runs		
---------------------------------------	--	--

	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above	
--	---	--

	1. cubic yards dredged	
--	------------------------	--

l. <input type="checkbox"/> Land Subject to Coastal Storm Flowage		
---	--	--

	1. square feet	
--	----------------	--

4.Restoration/Enhancement

☐ Restoration/Replacement

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 entered the additional amount here.

a. square feet of BVW

b. square feet of Salt Marsh

5.Projects Involves Stream Crossings

☐ Project Involves Streams Crossings



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 #:
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City/Town:FALMOUTH

If the project involves Stream Crossings, please enter the number of new stream crossings/number of replacement stream crossings.

a. number of new stream crossings

b. number of replacement stream crossings

C. Other Applicable Standards and Requirements

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 of Endangered Species program (NHESP)?

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

b. Date of map:FROM MAP VIEWER 2021

If yes, the project is also subject to Massachusetts Endangered Species Act (MESA) review (321 CMR 10.18)....

c. Submit Supplemental Information for Endangered Species Review * (Check boxes as they apply)

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

3. ☐ Project plans for entire project site, including wetland resource areas and areas outside of wetland 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

c. ☐ MESA filing fee (fee information available at: <http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/regulatory-review/mass-endangered-species-act-mesa/mesa-fee-schedule.html>)

Make check payable to "Natural Heritage & Endangered Species Fund" 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

d. 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/eea/agencies/dfg/dfw/laws-regulations/cmr/321-cmr-1000-massachusetts-endangered-species-act.html#10.14>; 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 Number

b. Date submitted to NHESP



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 #:
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City/Town:FALMOUTH

3. ☐ Separate MESA review completed.

Include copy of NHESP "no Take" determination or valid Conservation & Management Permit with approved plan.

* Some projects **not** in Estimated Habitat may be located in Priority Habitat, and require NHESP review...

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

a. ☒ Not applicable - project is in inland resource area only

b. ☐ Yes ☐ No

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

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

North Shore - Hull to New Hampshire:

Division of Marine Fisheries -
Southeast Marine Fisheries Station
Attn: Environmental Reviewer
836 S. Rodney French Blvd
New Bedford, MA 02744

Division of Marine Fisheries -
North Shore Office
Attn: Environmental Reviewer
30 Emerson Avenue
Gloucester, MA 01930

If yes, it 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.

3. 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 DEP Website for ACEC locations). **Note:** electronic filers click on Website.

b. ACEC Name

4. 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

5. 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

6. 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, Explain why the project is exempt:

1. ☒ Single Family Home

2. ☐ Emergency Road Repair



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 #:
eDEP Transaction #:1597572
City/Town:FALMOUTH

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

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 by regular mail delivery.

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.
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.

a. Plan Title: b. Plan Prepared By: c. Plan Signed/Stamped By: d. Revised Final Date: e. Scale:

SITE PLAN FOR
PROPOSED SAFETY
GATE AND FENCE

DEANA BOUMITRI,
PLS

TIMOTHY SANTOS, PE

August 20, 2023

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.



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 #:
eDEP Transaction #:1597572
City/Town:FALMOUTH

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. Payer name on check: First Name

7. Payer name on check: Last Name

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.

Black Beach Harbor Head Association

11/20/2023

1. Signature of Applicant

2. Date

Frederick Wirth

11/20/2023

3. Signature of Property Owner(if different)

4. Date

Timothy Santos

11/20/2023

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:

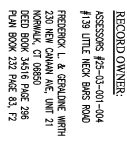
One copy of the completed Notice of Intent (Form 3), including supporting plans and documents, one copy of the NOI Wetland Fee Transmittal Form, and a copy of the state fee payment to the MassDEP Regional Office (see Instructions) by certified mail or hand delivery.

Other:

If the applicant has checked the "yes" box in Section C, Items 1-3, 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.

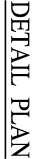
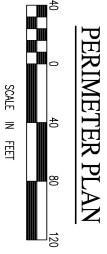
Exhibit B



- NOTES:
1. TROPOSPHERE AND DENTAL WETLANDS SHOWN HEREON IS BASED ON THE DATA OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AND LAND SURVEYORS DURING APRIL OF 1923.
2. ALL ELEVATIONS ARE BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1929.
3. SUBJECT SITE IS IN THE "D" DISTRICT AS DEPICTED ON THE TOWN OF FALMOUTH ZONING MAP.
4. LAND AND RESOURCES ARE SHOWN HEREON ARE COMPILED FROM A SITE PLAN PREPARED FOR 12.1212 NEXUS ASS. PAVO, FALMOUTH, MA, LAST DATED 9/21/71 BY DR. MARTIN DUNBARING, LAND SURVEYOR, 1000 STATE STREET, FALMOUTH, MA 01905, AS SUPPLEMENTED BY MASS GOV. RECORD INFORMATION.
5. EXISTING UTILITIES, WATER SUPPLY, HAVE BEEN OBTAINED BASED ON THE RECORDS OF THE MASS DEPARTMENT OF PUBLIC UTILITIES. PLANS AND ARE TO BE CONSIDERED APPROXIMATE. EXISTING UTILITIES AND LAND SURVEYORS SHALL GUARANTEE THE LOCATION OF THE UNDERGROUND UTILITIES SHOWN OF THE ALL EXISTING UTILITIES AND LAND SURVEYORS SHOWN HEREON ARE SHOWN FROM RECORDS OF STATE DEPT. OF PUBLIC UTILITIES.
6. EXISTING STREET, STREETS, COMPLEMENTS SHOWN HEREON, THEN FROM RECORDS OF STATE DEPT. OF PUBLIC UTILITIES.
7. LAND AND RESOURCES SHOWN HEREON ARE BASED ON THE TOWN OF FALMOUTH ZONING OF RECORD.
8. LAND AND RESOURCES SHOWN HEREON ARE BASED ON THE TOWN OF FALMOUTH ZONING OF RECORD.

FLOOD NOTE: BY GRAPHIC PLOTTING ONLY. THIS PROPERTY IS LOCATED IN ZONE AE [EL 18] OF THE FLOOD INSURANCE RATE MAP AS SHOWN ON COMMUNITY MAP No. 25001007071, WHICH BEARS AN EFFECTIVE DATE OF JULY 16, 2014, AND IS IN A SPECIAL FLOOD HAZARD AREA.

1. SITE IS NOT WITHIN AN ALEC (AREA OF CRITICAL ENVIRONMENTAL CONCERN).
2. SITE IS NOT WITHIN AN ALEC OF ESTIMATED HEIGHT OF PINE WILDFIRE FOR NEARBY MAP. ESTIMATED HEIGHT OF PINE WILDFIRE FOR USE WITH THE WA WILDFIRE PROTECTION ACT REGULATIONS (310 CMR 10).
3. SITE DOES NOT CONTAIN A CERTIFIED WETLAND POOL FOR NEARBY MAP "CERTIFIED WETLAND POOLS".
4. SITE IS NOT WITHIN A PROPOSED HARBOR FOR NEARBY MAP "PROPOSED HARBORS OF FISHING SPACES UNDER THE MASSHUSSETTS ENDANGERED SPECIES ACT REGULATIONS (201 CMR)10".
5. SITE IS NOT LOCATED WITHIN A STATE PROTECTED ZONE 1 (GROUND WATER RESOURCE PROTECTION AREA).
6. SITE IS LOCATED WITHIN THE TOWN OF PLUMBEACH UNDER THE OPEN SPACE PLANNING CONCEPT (TOP).
7. SITE IS LOCATED WITHIN THE TOWN OF PLUMBEACH AND BOWNE DEBARS DISTRICT.



01/20/77	
CONVERT BOUND PAGES	07
PER MONTH	00
500	00
DECEMBER 1976	00
CONGRESS FILE	00
POST AND MAIL FEES	00
POST FEES	00
DATE	00
CONGRESS DATE	00
FILE SYMBOL	00

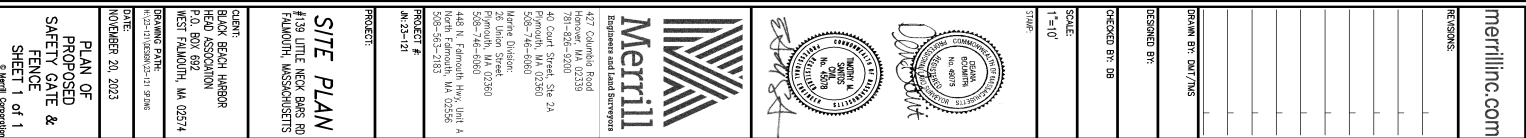


Exhibit C

November 20, 2023

Notice of Intent Submittal

#139 Little Neck Bars Road, Falmouth, MA

(508) 746-6060 / 26 Union Street, Plymouth, MA 02360
merrillinc.com / (781) 826-9200 / 427 Columbia Road, Hanover, MA 02339

Table of Contents

NOTICE OF INTENT

#139 Little Neck Bbars Road
Falmouth, MA

1. Notice of Intent Application
 - a. WPA Form 3A
 - b. Wetland Fee Transmittal Form
 - c. Wetland Fee Category Summary
2. Project Narrative
3. Figures
 - a. Figure 1- USGS MAP
 - b. Figure 2- ASSESSORS MAP
 - c. Figure 3- FEMA MAP
 - d. Figure 4- NHESP MAP
 - e. Site Photos
4. Abutter Notification
 - a. Affidavit of Services
 - b. Abutters List
 - c. Notification to Abutters



Notice of Intent Application



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 #:

eDEP Transaction #:1597572

City/Town:FALMOUTH

A.General Information

1. Project Location:

a. Street Address	139 LITTLE NECK BARS ROAD		
b. City/Town	FALMOUTH	c. Zip Code	02540
d. Latitude	41.59447N	e. Longitude	70.63900W
f. Map/Plat #	25 03	g.Parcel/Lot #	001 004

2. Applicant:

☐ Individual ☒ Organization

a. First Name		b.Last Name	
c. Organization	BLACK BEACH HARBOR HEAD ASSOCIATION		
d. Mailing Address	P.O. BOX 692		
e. City/Town	WEST FALMOUTH	f. State	MA
h. Phone Number		g. Zip Code	02574
		i. Fax	j. Email

3. Property Owner:

☐ more than one owner

a. First Name	FREDERICK	b. Last Name	WIRTH
c. Organization			
d. Mailing Address	230 NEW CANAAN AVENUE		
e. City/Town	NORWALK	f.State	CT
h. Phone Number		g. Zip Code	06850
		i. Fax	j.Email

4.Representative:

a. First Name	TIMOTHY	b. Last Name	SANTOS
c. Organization	MERRILL ENGINEERS AND LAND SURVEYORS		
d. Mailing Address	448 NORTH FALMOUTH HIGHWAY, UNIT A4		
e. City/Town	NORTH FALMOUTH	f. State	MA
h.Phone Number	508-563-2183	g. Zip Code	02556
		i.Fax	j.Email

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

a.Total Fee Paid	110.00	b.State Fee Paid	42.50	c.City/Town Fee Paid	67.50
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6.General Project Description:

THE PROPOSED PROJECT IS THE INSTALLATION AND MAINTENANCE OF A PROPOSED SAFETY GATE AND FENCE APPROXIMATELY 11 FEET LONG ADJACENT TO THE PROPERTY LINE.

7a.Project Type:

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Single Family Home | 2. <input type="checkbox"/> Residential Subdivision |
| 3. <input type="checkbox"/> Limited Project Driveway Crossing | 4. <input type="checkbox"/> Commercial/Industrial |
| 5. <input type="checkbox"/> Dock/Pier | 6. <input type="checkbox"/> Utilities |
| 7. <input type="checkbox"/> Coastal Engineering Structure | 8. <input type="checkbox"/> Agriculture (eg., cranberries, forestry) |
| 9. <input type="checkbox"/> Transportation | 10. <input type="checkbox"/> Other |

7b.Is any portion of the proposed activity eligible to be treated as a limited project subject to 310 CMR 10.24 (coastal) or 310



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City/Town:FALMOUTH

CMR 10.53 (inland)?

1. ☐ Yes ☒ No If yes, describe which limited project applies to this project:
2. Limited Project

8. Property recorded at the Registry of Deeds for:

a. County:	b. Certificate:	c. Book:	d. Page:
BARNSTABLE		34516	296

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

1. Buffer Zone & Resource Area Impacts (temporary & permanent):

☒ This is a Buffer Zone only project - 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)

Resource Area	Size of Proposed Alteration	Proposed Replacement (if any)
---------------	-----------------------------	-------------------------------

a. ☐ Bank

1. linear feet

2. linear feet

b. ☐ Bordering Vegetated Wetland

1. square feet

2. square feet

c. ☐ Land under Waterbodies and Waterways

1. Square feet

2. square feet

3. cubic yards dredged

d. ☐ Bordering Land Subject to Flooding

1. square feet

2. square feet

3. cubic feet of flood storage lost

4. cubic feet replaced

e. ☐ 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 any)

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.



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 #:
eDEP Transaction #:1597572
City/Town:FALMOUTH

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)

Resource Area	Size of Proposed Alteration	Proposed Replacement (if any)
---------------	-----------------------------	-------------------------------

a. ☐ Designated Port Areas

Indicate size under

Land under the ocean below,

b. ☐ Land Under the Ocean

1. square feet

2. cubic yards dredged

c. ☐ Barrier Beaches

Indicate size under Coastal Beaches and/or Coastal Dunes, below

d. ☐ Coastal Beaches

1. square feet

2. cubic yards beach nourishment

e. ☐ Coastal Dunes

1. square feet

2. cubic yards dune nourishment

f. ☐ Coastal Banks

1. linear feet

g. ☐ Rocky Intertidal Shores

1. square feet

h. ☐ Salt Marshes

1. square feet

2. sq ft restoration, rehab, crea.

i. ☐ Land Under Salt Ponds

1. square feet

2. cubic yards dredged

j. ☐ Land Containing Shellfish

1. square feet

k. ☐ Fish Runs

Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above

1. cubic yards dredged

l. ☐ Land Subject to Coastal Storm Flowage

1. square feet

4.Restoration/Enhancement

☐ Restoration/Replacement

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 entered the additional amount here.

a. square feet of BVW

b. square feet of Salt Marsh

5.Projects Involves Stream Crossings

☐ Project Involves Streams Crossings



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If the project involves Stream Crossings, please enter the number of new stream crossings/number of replacement stream crossings.

a. number of new stream crossings

b. number of replacement stream crossings

C. Other Applicable Standards and Requirements

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 of Endangered Species program (NHESP)?

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

b. Date of map:FROM MAP VIEWER 2021

If yes, the project is also subject to Massachusetts Endangered Species Act (MESA) review (321 CMR 10.18)....

c. Submit Supplemental Information for Endangered Species Review * (Check boxes as they apply)

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

3. ☐ Project plans for entire project site, including wetland resource areas and areas outside of wetland 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

c. ☐ MESA filing fee (fee information available at: <http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/regulatory-review/mass-endangered-species-act-mesa/mesa-fee-schedule.html>)

Make check payable to "Natural Heritage & Endangered Species Fund" 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

d. 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/eea/agencies/dfg/dfw/laws-regulations/cmr/321-cmr-1000-massachusetts-endangered-species-act.html#10.14>; 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 Number

b. Date submitted to NHESP



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 #:
eDEP Transaction #:1597572
City/Town:FALMOUTH

3. ☐ Separate MESA review completed.

Include copy of NHESP "no Take" determination or valid Conservation & Management Permit with approved plan.

* Some projects **not** in Estimated Habitat may be located in Priority Habitat, and require NHESP review...

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

a. ☒ Not applicable - project is in inland resource area only

b. ☐ Yes ☐ No

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

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

North Shore - Hull to New Hampshire:

Division of Marine Fisheries -
Southeast Marine Fisheries Station
Attn: Environmental Reviewer
836 S. Rodney French Blvd
New Bedford, MA 02744

Division of Marine Fisheries -
North Shore Office
Attn: Environmental Reviewer
30 Emerson Avenue
Gloucester, MA 01930

If yes, it 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.

3. 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 DEP Website for ACEC locations). **Note:** electronic filers click on Website.

b. ACEC Name

4. 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

5. 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

6. 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, Explain why the project is exempt:

1. ☒ Single Family Home

2. ☐ Emergency Road Repair



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 #:
eDEP Transaction #:1597572
City/Town:FALMOUTH

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

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 by regular mail delivery.

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.
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.

a. Plan Title: b. Plan Prepared By: c. Plan Signed/Stamped By: c. Revised Final Date: e. Scale:

SITE PLAN FOR
PROPOSED SAFETY
GATE AND FENCE

DEANA BOUMITRI,
PLS

TIMOTHY SANTOS, PE

August 20, 2023

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.



**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 #:

eDEP Transaction #: 1597572

City/Town: FALMOUTH

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:

9178
2. Municipal Check Number
eDEP Online Filing
4. State Check Number
Merrill Engineers & Land Surveyors
6. Payer name on check: First Name

11-20-23
3. Check date
11-20-23
5. Check date
7. Payer name on check: Last Name

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.

1. Signature of Applicant

11/19/2023
2. Date

3. Signature of Property Owner (if different)

5. Signature of Representative (if any)

4. Date
11/20/23
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 Section C, Items 1-3, 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

WPA Form 3 - Notice of Intent

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

Provided by MassDEP:
MassDEP File #:
eDEP Transaction #:1597572
City/Town:FALMOUTH

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. Payer name on check: First Name

7. Payer name on check: Last Name

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.

1. Signature of Applicant

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 Section C, Items 1-3, 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
WPA Form 3 - Notice of Wetland Fee Transmittal
Form

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

Provided by MassDEP:
MassDEP File #:
eDEP Transaction #:1597572
City/Town:FALMOUTH

A. Applicant Information

1. Applicant:

a. First Name
c. Organization BLACK BEACH HARBOR HEAD ASSOCIATION
d. Mailing Address P.O. BOX 692
e. City/Town WEST FALMOUTH f. State MA g. Zip Code 02574
h. Phone Number i. Fax j. Email

2. Property Owner:(if different)

a. First Name FREDERICK b. Last Name WIRTH
c. Organization
d. Mailing Address 230 NEW CANAAN AVENUE
e. City/Town NORWALK f. State CT g. Zip Code 06850
h. Phone Number i. Fax j. Email

3. Project Location:

a. Street Address 139 LITTLE NECK BARS ROAD b. City/Town FALMOUTH

Are you exempted from Fee? ☐ (YOU HAVE SELECTED 'NO')

Note: Fee will be exempted if you are one of the following:

- City/Town/County/District
- Municipal Housing Authority
- Indian Tribe Housing Authority
- MBTA

State agencies are only exempt if the fee is less than \$100

B. Fees

Activity Type	Activity Number	Activity Fee	RF Multiplier	Sub Total
A.) WORK ON SINGLE FAMILY LOT; ADDITION, POOL, ETC.;	1	110.00		110.00

City/Town share of filing fee	State share of filing fee	Total Project Fee
\$67.50	\$42.50	\$110.00



Wetland Fee Category Summary

CATEGORY 1 : [\$110]

- a) Work on Single Family Lot: addition, pool, etc.
- b) Site work w/o house
- c) Control vegetation single-family house (SFH): removal, herbicide, etc.
- d) Resource improvement
- e) Work on septic system separate from house
- f) Monitoring well activities minus roadway

CATEGORY 2 : [\$500]

- a) Construction of single family house (SFH)
- b) Parking lot
- c) Beach nourishment
- d) Electric Generating Facility activities
- e) Inland Limited Projects minus road crossings
- f) New agricultural or aquacultural projects
- g) Each crossing for driveway to SFH
- h) Any point source discharge

CATEGORY 3 : [\$1050]

- a) Site preparation (for development) beyond NOI scope
- b) Each building (for development) including site
- c) Road construction not crossing or driveway
- d) Hazardous clean up

CATEGORY 4 : [\$1450]

- a) Each crossing for development or commercial road
- b) Dam, sluiceway, tide-gate work
- c) Landfill
- d) Sand & gravel operation
- e) Railroad line construction
- f) Control vegetation in development (SFH)
- g) Bridge (SFH)
- h) Water level variation
- i) Hazardous waste alterations to resource area
- j) Dredging
- k) Package treatment plant & discharge

CATEGORY 5 : [\$4/LINEAR FOOT] [min \$50, max \$1,000]

- a) Docks, piers, revetments, dikes, etc. (coastal or inland)

CATEGORY 6 : [\$2/LINEAR FOOT] [max \$200 for SFH, max \$2,000 for any other]

- a) Delineation of wetland resources



FALMOUTH CONSERVATION COMMISSION

59 Town Hall Square, Falmouth, Massachusetts 02540
(508) 495-7445 FAX (508) 495 -7449

Filing Fee Schedule (effective January 1, 2019)

Administrative Review (AR)	\$50.00
Request for Determination of Applicability (RDA)	\$100.00 + \$16.00 = \$116.00
RDA Resource Area Confirmation	\$250.00

Notice of Intent (NOI)

• Category 1 (single family - additions, pool, etc)	\$100.00 + \$16.00 = \$116.00
• Category 1(a) (single family – Construction, including raze/rebuild)	\$200.00 + \$16.00 = \$216.00
• Category 2 (Commercial/Other Conservation)	\$300 + \$16.00 = \$316.00
• Category 3 (Coastal Projects – Including docks, dredging and seawall/revetments)	\$550.00 + \$16.00 = \$566.00
• Category 4 (Road Crossings)	\$450.00 + \$16.00 = \$466.00
• Category 5 (All other not included)	\$2.50/linear foot

Continuance Fees

• For review of revised plans	\$75.00
• For additional site visit	\$50.00

Amended Order of Conditions	\$100.00 + \$16.00 = \$116.00
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Extension Permit	\$100.00
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Certificate of Compliance Fees

• First Request	\$50.00
• Second Request	\$100.00
• Third Request	\$150.00
• Search Fee	\$17.74 per hour

ANRAD	\$2.00/linear foot
-------	--------------------

Application after the Fact	Double the listed fee
Re-Issuance of a Permit	\$25.00

Advertising Fee	\$16.00
Administrative Review (AR)	\$50.00

General Information

1. Permit fees shall be calculated by the Commission according to the schedule below. The fees shown include the \$16.00 advertising fee, (subject to change). Fees should be made payable to the Town of Falmouth
2. Please be advised that the following reflect the Falmouth Wetlands Bylaw fee only, additional fees associated with the Massachusetts Wetlands Protection Act (WPA) may also apply.
3. No Certificate of Compliance shall be issued under the Falmouth Wetlands Bylaw if any required fee has not been paid to the town.
4. Permit fees are payable at the time of the application and are non-refundable.



Project Narrative

#139 Little Necks Bars Road in Falmouth is a private residential property. The original construction dates back to the early 2000's according to Town of Falmouth Assessor's records. With an area of 22,601 square feet, the lot contains a single-family house, decks, gravel driveway, developed lawn and landscaped areas. The property is located within Flood Hazard Zone AE (El.18) as indicated on the effective Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (Firm). The wetland resource areas concerning the proposed project include a salt marsh and land subject to coastal storm flowage.

The proposed project is the installation and maintenance of a proposed safety gate and fence approximately 11 feet long adjacent to the property line in the northeast corner of the property. The proposed work is located within the buffer zones to the saltmarsh located on #132 Little Neck Bars Road on the opposite side of the cul-de-sac. There are no mitigation or restoration plantings required for this project as there is not increase in impervious surfaces and no vegetation is proposed to be removed.

The proposed work will not have any adverse impacts or adverse consequential impacts on the following resource areas as described below:

Natural Heritage and Endangered Species Program (NHESP) Applicability

The proposed work is not located within Priority and Estimated Habitats of Rare Wildlife, as indicated on the accompanying map published by the Natural Heritage and Endangered Species Program. Therefore, the proposed project is not subject to NHESP or MESA Project Review as part of the Notice of Intent Application.

Wetland Resource Areas

Land Subject to Coastal Storm Flowage

The proposed project area is located within Flood Hazard Zone AE (EL. 18), as indicated on the FEMA Flood Map Panel number, 25001C0707J, which bears an effective date of July 16, 2014. As such, the proposed project is located within land subject to coastal storm flowage.

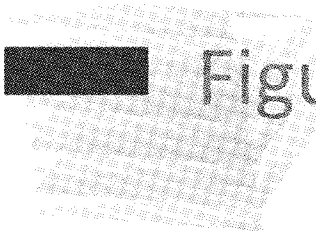
The proposed gate and fence is located within land subject to coastal storm flowage. The proposed work will not have an adverse effect on the landform's ability to provide storm damage prevention and flood control. There will be no adverse impacts to adjacent properties as a result of redirected surface runoff and the interests of storm damage prevention and flood control will be protected.

Salt Marsh

The proposed project takes place in the 100-buffer to the Salt Marsh, no work is proposed within the resource area. A preconstruction meeting will take place with the owner, contractors, and Conservation Agent prior to any site work commencing. The proposed work will not have an adverse effect on the Salt Marsh and there will be no loss of the resource area.

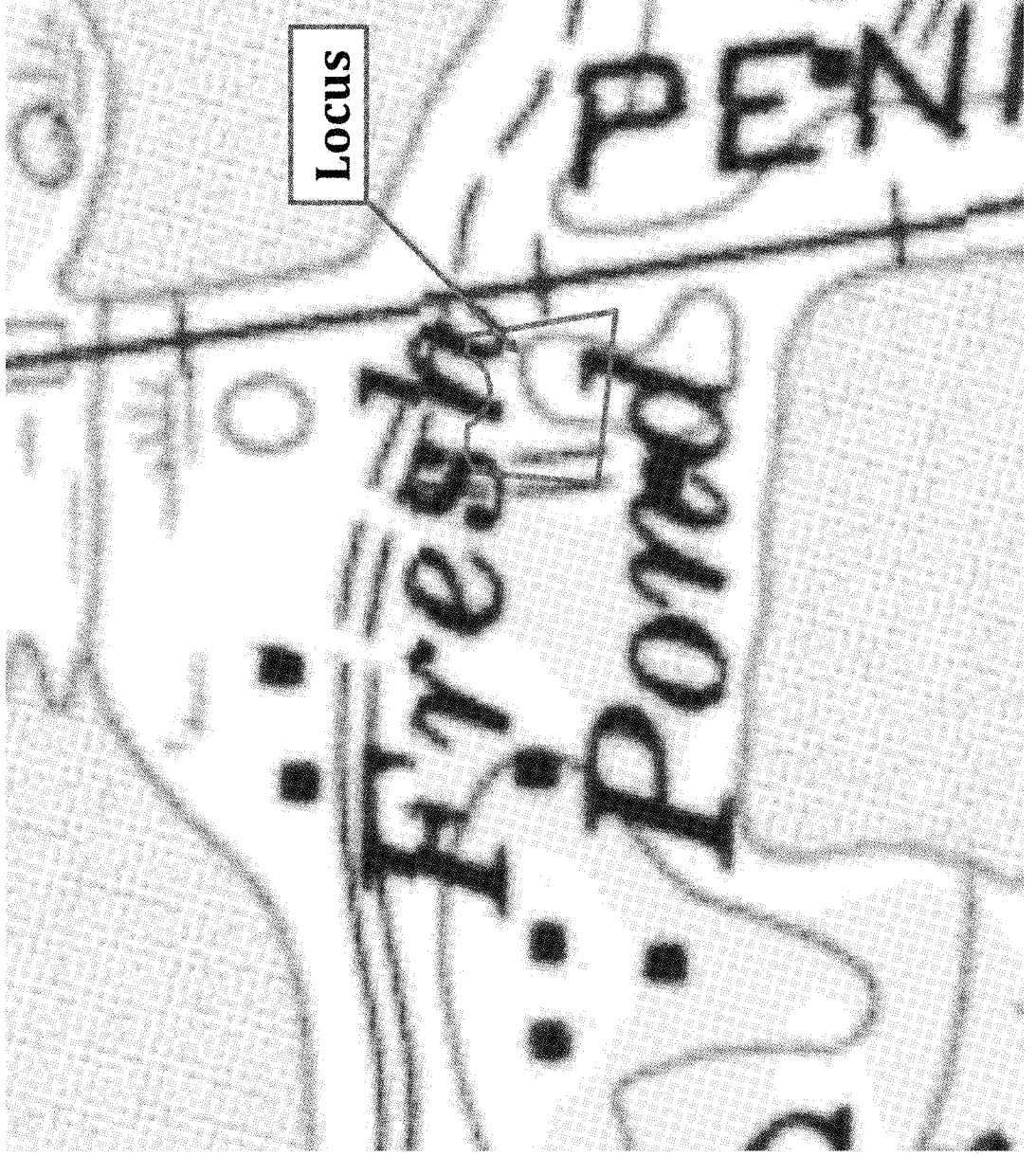
Conclusion

The proposed project is within the buffer zone to the salt marsh on the adjacent property, #132 Little Neck Bars Road. The proposed work will have no adverse effects on the resource areas and will continue to provide protection in the event of a 100-year storm event. The proposed project will not increase the amount of impervious area on the site as it is the installation of a proposed safety gate and fence. The proposed project will provide the same level of protection as the existing conditions and the interests of storm damage prevention, flood control, the prevention of pollution and wildlife habitat will be restored and protected. As such, the proposed project meets the performance standards of the Falmouth Wetlands Protection Bylaw and the MA Wetlands Protection Regulations.

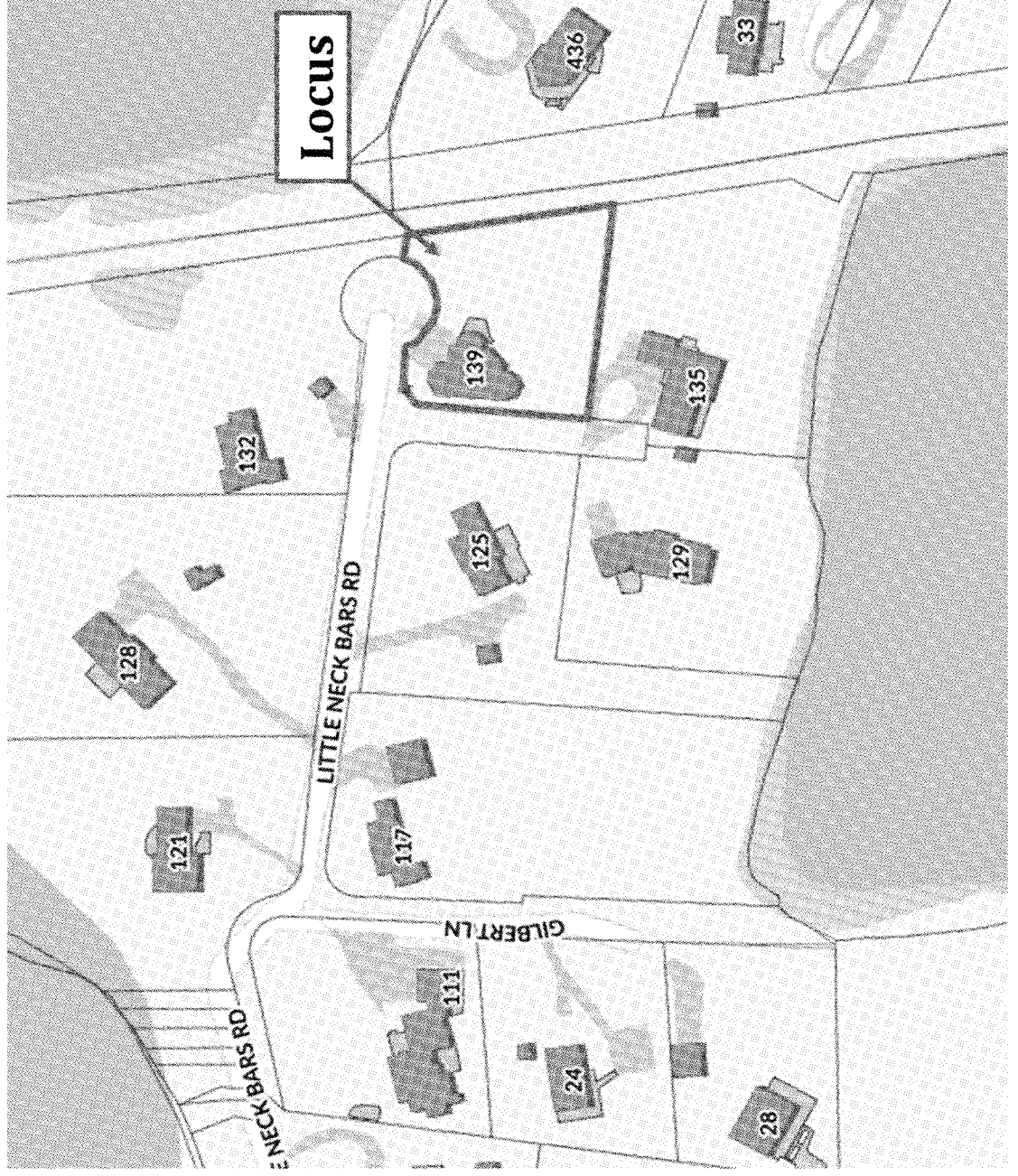


Figures

USGS Map

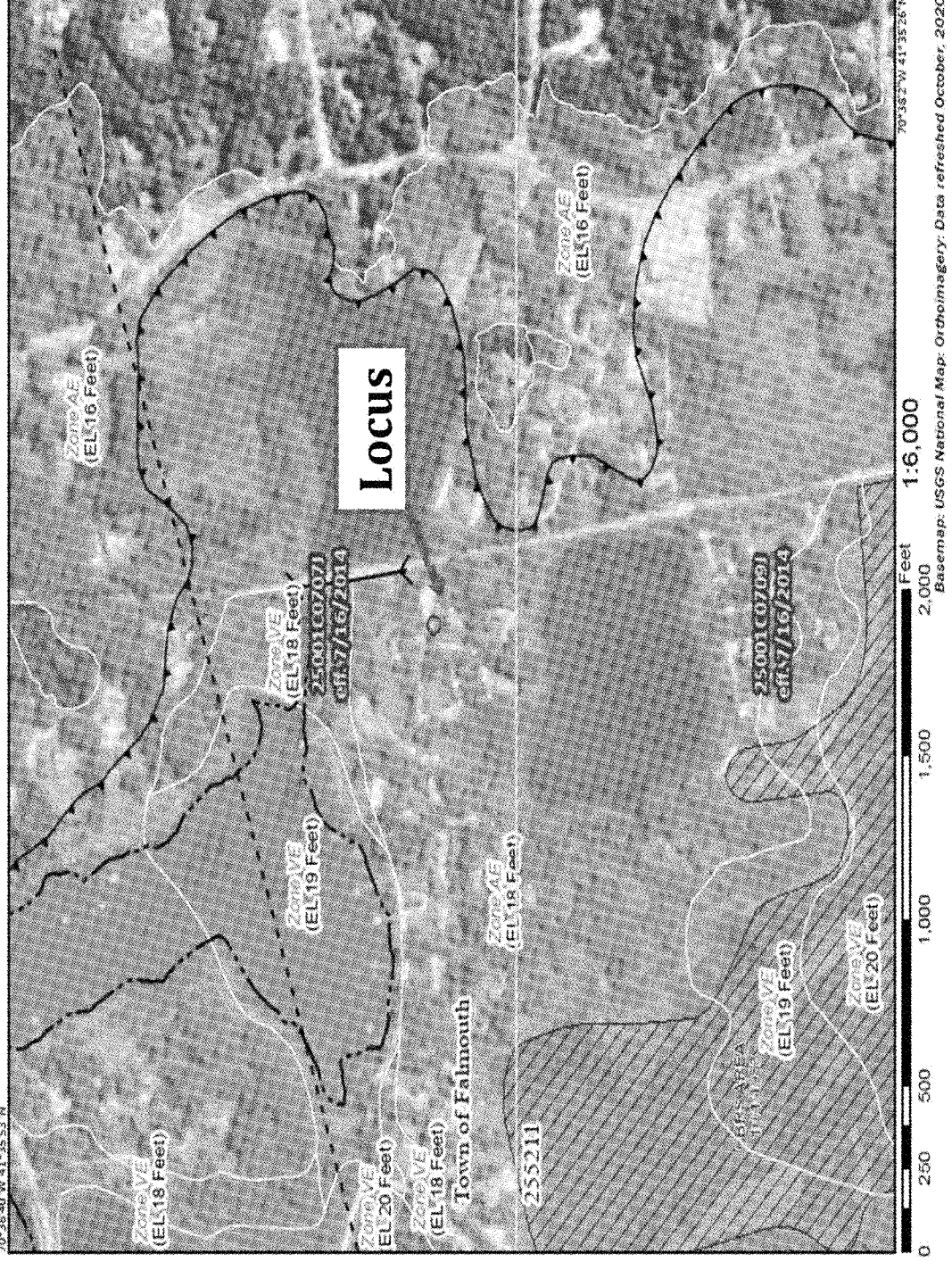


Locus Map

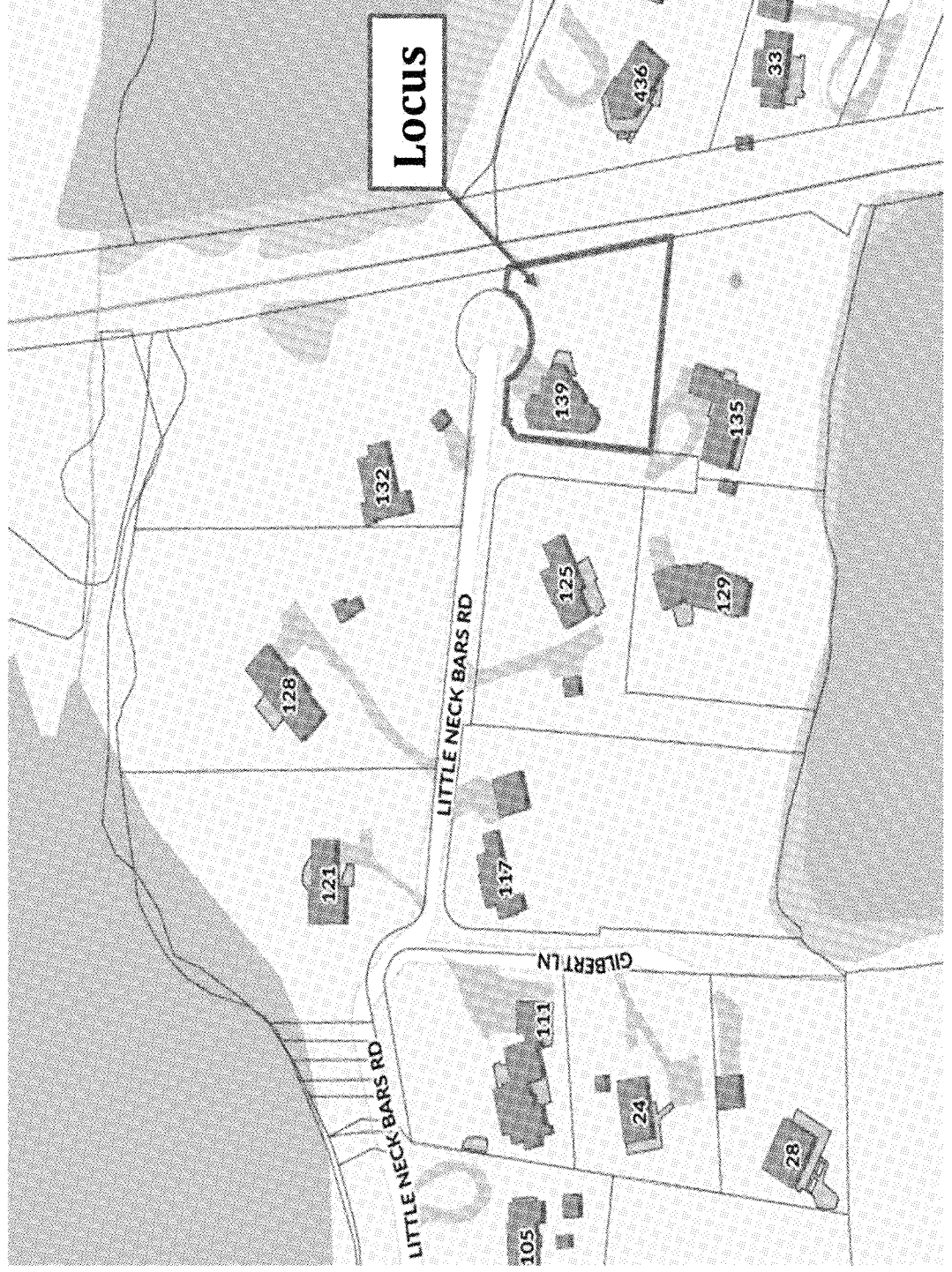


FEMA Flood Map

National Flood Hazard Layer FIRMette



NHESP Map



Site Photos



view of path from cul-de-sac



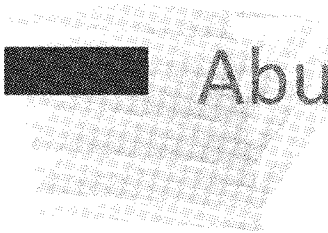
view of path from cul-de-sac



path view of bike path



view of path from bike path



Abutter Notification

AFFIDAVIT OF SERVICE

Under the Town of Falmouth Wetlands Protection Bylaw and
the Massachusetts Wetlands Protection Act

I, Timothy Santos of Merrill Engineers and Land Surveyors, as a representative for the applicant, hereby certify that on November 21, 2023 under Falmouth Wetland Protection Regulations, the second paragraph of M.G.L., Chapter 131, Section 40, and the DEP Guide to Abutter Notification dated April 8, 1994, in connection with the following matter:

A Notice of Intent filed under the Massachusetts Wetlands Protection Act and the Town of Falmouth Wetlands Protection Bylaw by: Black Beach Harbor Head Association with the Town of Falmouth Conservation Commission on November 21, 2023 for the property located at #139 Little Neck Bars Road.

The form of the notification and a list of the abutters to whom it was given and their addresses are attached to this Affidavit of Service.



Name

November 21, 2023

Date



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

Town of Falmouth, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 01/03/2023
Data updated 07/21/2022

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

COMMONWEALTH OF MASS DEPT OF
TRANSPORTATION
10 PARK PLZ
BOSTON, MA 02116-3933

ROME LAWRENCE C ROME VICTORIA H
401 SCHOOL HOUSE LN
STAFFORD, PA 19087

BAILEY TRUSTEE ROBERT B BAILEY TRUSTEE
ELAINE M
81 RICHDALE RD
NEEDHAM, MA 02494

BATTER III JOHN F BATTER LISA H
77 CHERRY BROOK RD
WESTON, MA 02493

SCRANTON JR TRUSTEE WILLIAM J SCRANTON
TRUSTEE ANN K
PO BOX 809
W FALMOUTH, MA 02574-0809

HOGAN MATTHEW J HOGAN LAURIE I
PO BOX 964
W FALMOUTH, MA 02574

KENNEDY JANE P
25 BIRCH RD
DARIEN, CT 06820

MOORE STEPHEN D R MOORE SUSAN MADDEN
36 FILLMORE LN
WALPOLE, MA 02081

NOTIFICATION TO ABUTTERS

Under the Massachusetts Wetland Protection Act and the Town of Falmouth Wetlands Protection Bylaw

In accordance with the second paragraph of M.G.L., Chapter 131, Section 40 you are hereby notified of the following:

- A. The name of the applicant is Black Beach Harbor Head Association and the address is #139 Little Neck Bars Road.
- B. The applicant has filed a **Notice of Intent** with the Falmouth Conservation Commission and is seeking permission to perform work in an area subject to protection under the Massachusetts Wetlands Protection Act (MGL Chapter 131, Section 40).

The proposed project is the installation and maintenance of a proposed safety gate and fence approximately 11 feet long adjacent to the property line.

- C. The date of the hearing is December 13, 2023 at 7:00 p.m.
- D. Copies of the Notice of Intent and plan may be examined at the Falmouth Conservation Commission during normal business hours. For more information call 1-508-495-7445. You may also contact the firm or representative that provided you with this notice.

Firm name: Merrill Engineers and Land Surveyors phone: 1-508-563-2183

Notice of the public hearing, including date, time and place will be published at least 5 days in advance in The Falmouth Enterprise.

Notice of the public hearing, including date, time and place will be posted at Falmouth Town Hall at least 48 hours in advance.

You may also contact the nearest Department of Environmental Protection Regional Office for more information about this application or the Wetlands Protection Act.

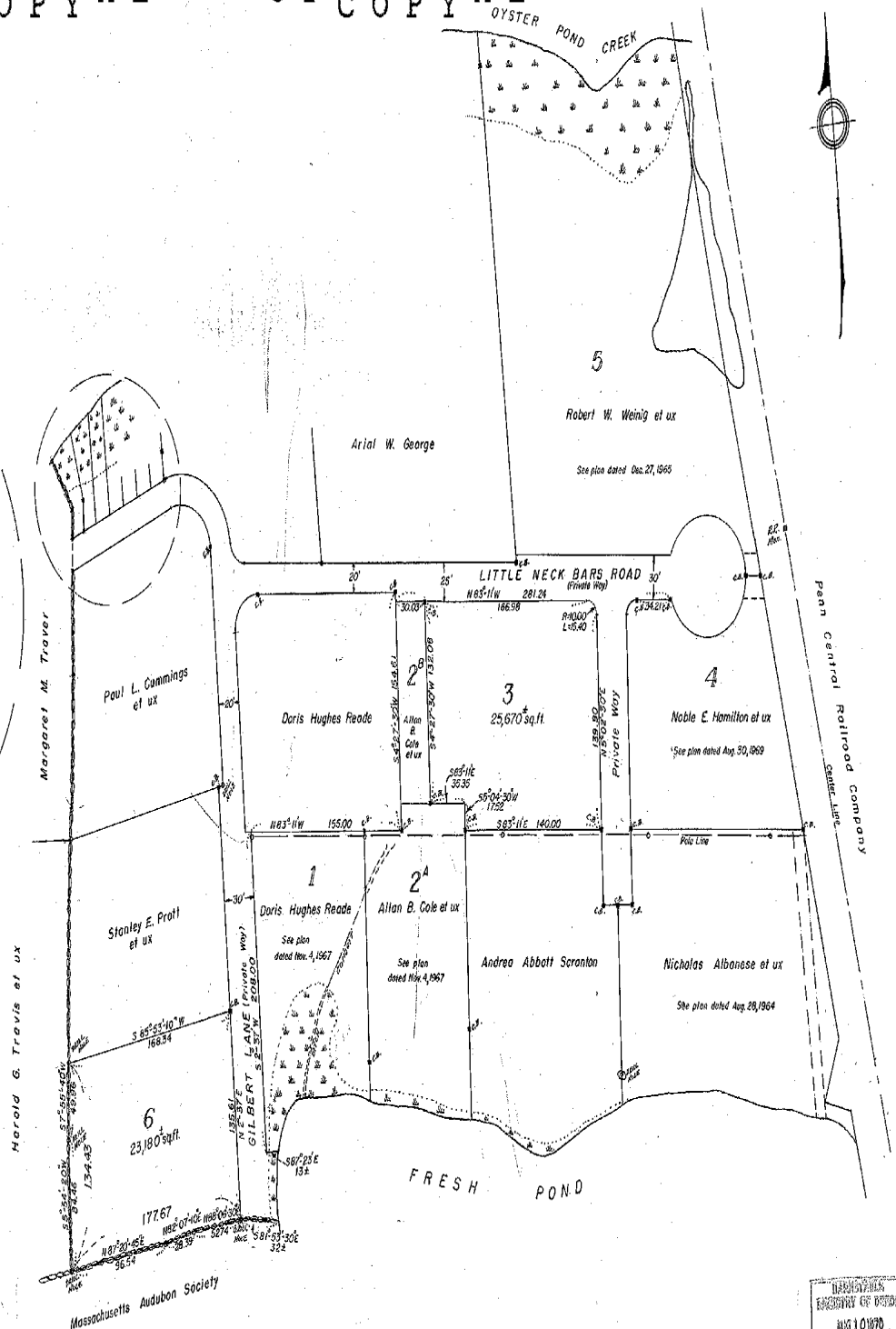
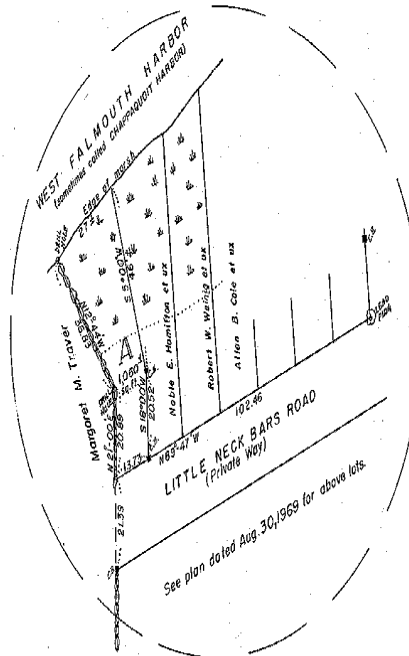
Southeast Regional Office: 1-508-946-2800

Exhibit D

239-97
OF COPIAL
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OF COPIAL
OF COPIAL

1981



PLAN OF LAND OF
HAROLD G. TRAVIS ET UX
WEST FALMOUTH, MASS.

Scale 1 inch = 50 Feet July 15, 1970

I certify that this plan was made in accordance with
Falmouth Subdivision Regulations and that the permanent
points shown on the plan are in existence on the ground.

Robert W. Griffin
7-15-70

Robert W. Griffin
Reg. Land Surveyor
16 Cragsfield Rd.
Falmouth (Cape Cod) Mass.

"It is a recording of the Falmouth Planning
Board held 4 August 1970 and
voted;

"Approval under the subdivision control
law not required."

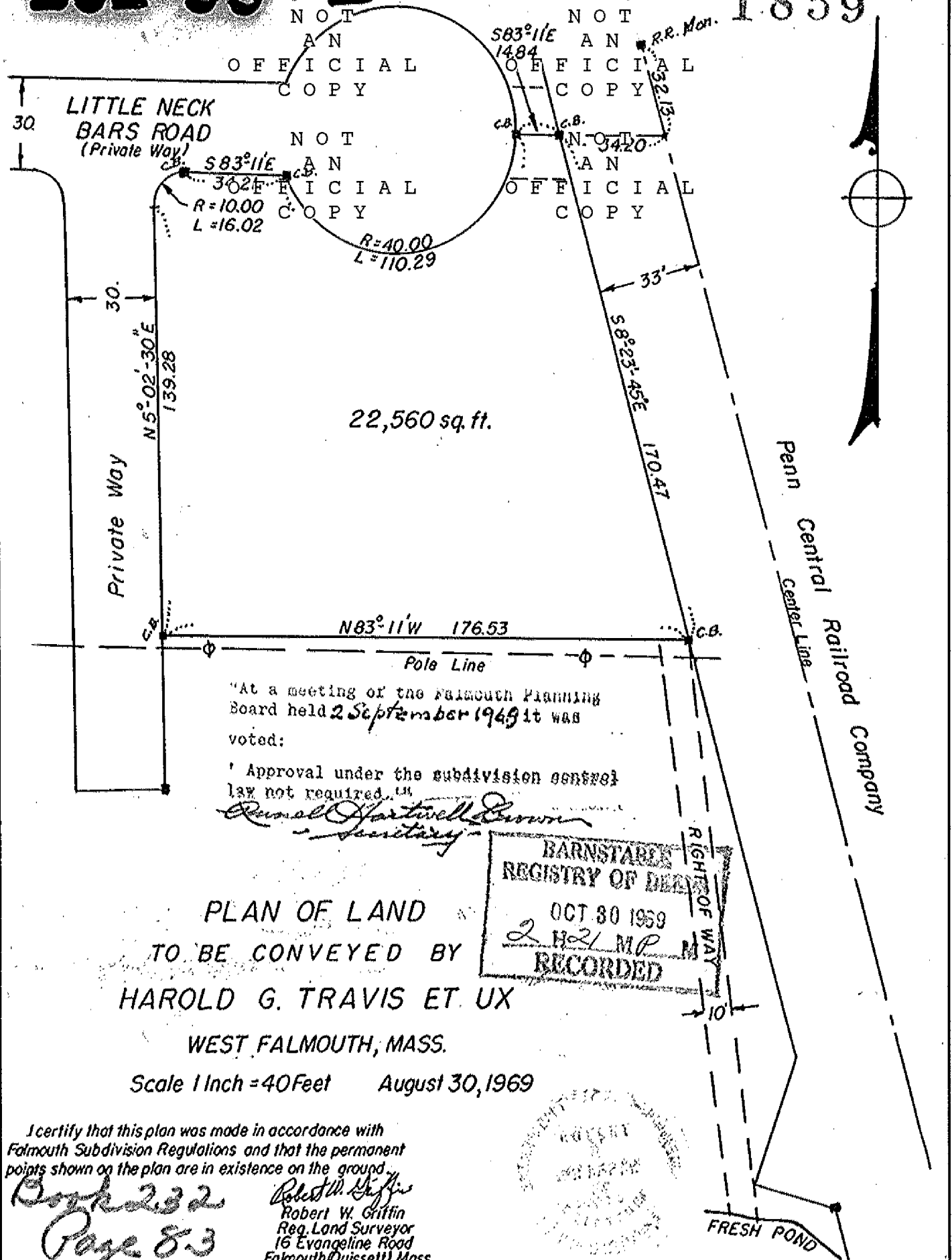
Arnold Hartshorn
Secretary



Exhibit E

232-83 F2

1859



NOT AN OFFICIAL COPY

NOT AN OFFICIAL COPY

NOT AN OFFICIAL COPY

NOT AN OFFICIAL COPY

22,560 sq. ft.

"At a meeting of the Falmouth Planning Board held 2 September 1969 it was voted:

'Approval under the subdivision control law not required.'

Russell Hartwell Brown
Secretary

PLAN OF LAND
TO BE CONVEYED BY
HAROLD G. TRAVIS ET UX
WEST FALMOUTH, MASS.

Scale 1 Inch = 40 Feet August 30, 1969

I certify that this plan was made in accordance with Falmouth Subdivision Regulations and that the permanent points shown on the plan are in existence on the ground.

Book 232
Page 83

Robert W. Griffin
Robert W. Griffin
Reg. Land Surveyor
16 Evangeline Road
Falmouth (Quissett), Mass.

BARNSTABLE
REGISTRY OF DEEDS
OCT 30 1969
2 H-21 M.P.
RECORDED



Exhibit F

168-9

1720

NOT
AN
OFFICIAL
COPY

NOT
AN
OFFICIAL
COPY

Sophie W. Baptiste

Harold G. Travis et ux

NOT
AN
OFFICIAL
COPY

NOT
AN
OFFICIAL
COPY

N.Y.N.H. & H. RAILROAD

LITTLE NECK 3/8 BARS ROAD

S 83° 11' 00" E
170.11

R 25°
122.00
R 42°
22.14

Doris Hughes Reade
(B. 1100 P. 531)

Harold G. Travis et ux

BARNSTABLE
REGISTRY OF DEEDS
MAR 12 1962
12401 M.Y.M.
RECORDED

WAY

S 83° 11' 00" E
140.00

Pole Line

Harold G. Travis et ux

N 5° 06' 20" E
190.45

29,000 ± sq. ft.

50.45

30.
15. S 84° 53' 40" E

Harold G. Travis et ux

109.61
S 5° 06' 20" W

20±
add. in
stone



FRESH

POND

"At a meeting of the Falmouth Planning Board held 6 Feb., 1962 it was voted:

' That the within plan is approved for record under the provisions of Chapter 674, of the Acts of 1953. '"

March 8, 1962
I, Felicio M. Franco, Jr., Clerk of the Town of Falmouth, Massachusetts, hereby certify that the notice of approval of this plan by the Falmouth Planning Board has been received and recorded at this office and no appeal was received during the twenty (20) days next after such receipt and recording of this plan.

Signed Felicio M. Franco, Jr.
Town Clerk

Plan of Land of

Harold G. Travis et ux

West Falmouth

Scale 1" = 50' ~ Dec. 9, 1961

Charles A. White, C.E.

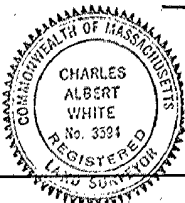


Exhibit G

The Falmouth Conservation Commission
MEETING MINUTES - WEDNESDAY, DECEMBER 20, 2023, 7:00 P.M.

Covid protocols have been extended to allow for continued expanded remote participation, **the December 20, 2023 public meeting of the Falmouth Conservation Commission shall be physically closed to the public to avoid group congregation.**

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

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

Present: Jamie Mathews, Chair
 Elizabeth Gladfelter
 Courtney Bird
 Maurie Harlow-Hawkes
 Kevin O'Brien
 Melissa Freitag
 Steve Patton
 Jennifer Lincoln, Administrator
 Alissa Bergeron, Agent

Also present: Justin Shannahan – IT/Support, Kristan Patenaude – Recording Secretary

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

Mr. Mathews instructed the public on how to use the Chat function for questions or comments on any of the hearings. All submissions will be read into the record. He announced that anyone is welcome to be heard on any specific hearing. When asked if anyone would like to comment they are to let it be known via the public chat function that they want to be heard and they will be promoted to a panelist. They are to confine their remarks to 3 minutes.

VOTE MINUTES: December 6, 2023

Mr. Patton moved to approve the December 6, 2023, meeting minutes, pending any changes made this evening. Seconded by Mr. Bird.

Voting: Gladfelter, aye; Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 7-0-0, so moved.

REQUESTS FOR A CONTINUANCE UNDER A DETERMINATION OF APPLICABILITY

Megan McGoff, 46 Miami Avenue, Falmouth, MA – For permission to construct an addition, remove a shed, and install drywells.

Mr. Bird moved to continue this item to January 10, 2024, at request of the applicant. Seconded by Mr. Patton.

Voting: Gladfelter, aye; Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 7-0-0, so moved.

REQUESTS FOR DETERMINATION OF APPLICABILITY

MacDougall's Cape Cod Marine Service Inc., 145 Falmouth Heights Road, Falmouth, MA – For permission to replace 4 pilings on an existing, licensed pier.

Ms. Bergeron stated that staff is recommending a negative 3 under the State and a negative 2 under the bylaw. Resource area boundaries are not confirmed.

Mr. Bird moved to accept staff's recommendations. Seconded by Mr. Patton.

Voting: Gladfelter, aye; Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 7-0-0, so moved.

Megan McGoff, 46 Miami Avenue, Falmouth, MA – For permission to construct an addition, remove a shed and install drywells.

This item was previously continued.

Woods Hole Oceanographic Institution, 45 Water Street, Woods Hole, MA – For permission to replace the timber fender boards along the existing bulkhead.

Ms. Gladfelter recused herself from this item.

Ms. Bergeron stated that staff is recommending a negative 3 under the State and a negative 2 under the bylaw. Resource area boundaries are not confirmed.

Mr. Bird moved to accept staff's recommendations. Seconded by Ms. Freitag.

Voting: Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 6-0-0, so moved.

Robert Kretschmar, Trustee, Robert Kretschmar Realty Trust, 2 Burgess Street, Falmouth, MA – For permission to hand repoint spalled areas of the seawall, replace the wale beam, and repair or replace tie rods as needed.

Ms. Bergeron stated that staff is recommending a negative 3 under the State and a negative 2 under the bylaw. Resource area boundaries are not confirmed.

Mr. Bird moved to accept staff's recommendations. Seconded by Mr. Patton.

Voting: Gladfelter, aye; Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, abstain; Freitag, aye; Patton, aye; 6-0-1, so moved.

Joseph Zampitella, 87 Nauset Avenue East, Falmouth, MA – For permission to construct a porch and install mitigation plantings.

Ms. Gladfelter exited the meeting due to technical difficulties.

Ms. Bergeron stated that staff is recommending a negative 3 under the State and a negative 2 under the bylaw. Resource area boundaries are not confirmed.

Mr. Bird moved to accept staff's recommendations. Seconded by Mr. Patton.

Voting: Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 6-0-0, so moved.

Sandra Fournier, 131 Allen Avenue, Falmouth, MA – For permission to reconstruct and enlarge an existing deck.

Ms. Bergeron stated that staff is recommending a negative 2 under the State and under the bylaw. Resource area boundaries are not confirmed.

Mr. Bird moved to accept staff's recommendations. Seconded by Ms. Freitag.

Voting: Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 6-0-0, so moved.

Dave Calhoun, 375 Sandwich Road, 0 Sandwich Road off (Map/Parcel: 27 06 031 000), and 45 Pitch Pine Lane, Falmouth, MA – To confirm there are no wetland resources located on the locus site jurisdictional under the Massachusetts Wetlands Protection Act and the Falmouth Wetlands Bylaw.

Ms. Bergeron stated that staff is recommending a negative 1 under the State and a negative 6 under the bylaw. Staff visited the sites and confirmed there are no wetland resources on the sites.

Ms. Freitag noted that the Staff report notes that there is box turtle core habitat on parts of the sites. She asked if there may have been wetlands on the site at one time. Ms. Lincoln explained that this area could possibly have been an isolated wetland, but it would not have been jurisdictional under the State. Andrew Thibault, Goddard Consulting, stated that no wetland soils were found on the site.

Ms. Harlow-Hawkes moved to accept staff's recommendations. Seconded by Mr. Patton.
Voting: Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye;
6-0-0, so moved.

CONTINUED REQUESTS FOR DETERMINATION OF APPLICABILITY

Fredrick and Shirley Weidman, 23 Debbie Lane, East Falmouth, MA – For permission to pump dry, fill, and abandon the existing cesspools; and to install a new Title V sewage disposal system.

Ms. Bergeron stated that staff is recommending a negative 3 under the State and a negative 2 under the bylaw. Resource area boundaries are not confirmed.

Mr. Bird moved to accept staff's recommendations. Seconded by Ms. Harlow-Hawkes.
Voting: Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye;
6-0-0, so moved.

Fredrick and Shirley Weidman, 24 Debbie Lane, East Falmouth, MA – For permission to pump dry, fill, and abandon the existing cesspool; and to install a new Title V sewage disposal system.

Ms. Gladfelter rejoined the meeting.

Ms. Bergeron stated that staff is recommending a negative 3 under the State and a negative 2 under the bylaw. Resource area boundaries are not confirmed.

Mr. Bird moved to accept staff's recommendations. Seconded by Ms. Harlow-Hawkes.
Voting: Gladfelter, aye; Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 7-0-0, so moved.

REQUESTS FOR A HEARING UNDER A NOTICE OF INTENT

James and Linda Hussey, 45 Clipper Lane, Falmouth, MA – For permission to reconstruct the garage and deck, remove part of the existing patio, and install mitigation plantings.

Ms. Gladfelter moved to table this item to later in the meeting. Seconded by Ms. Harlow-Hawkes.

Voting: Gladfelter, aye; Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 7-0-0, so moved.

MacDougall's Cape Cod Marine Service, Inc., 145 Falmouth Heights Road, Falmouth, MA – For permission to perform improvement and maintenance dredging.

Raul Lizardi, Cape & Islands Engineering, explained that the proposed project is maintenance and improved dredging in a portion of the marina. Over time, sediments have flowed down to a corner and been deposited. The applicant would like to dredge two areas. A total of 350 cubic yards of material is proposed to be dredged from both areas. A double silt boom will follow the outside area of work. The work will be completed from the land and by barge. Material will be drained on site and then transported to an offsite location. This proposed project will help the water depth to allow for use of existing docks and a travel area.

Ms. Lincoln stated that the Commission needs to determine if improvement dredging is appropriate in this area.

Ms. Freitag stated that this seems to be a lot of disruption for one slip.

There was no public comment at this time.

Ms. Gladfelter moved to close the hearing and take it under advisement. Seconded by Mr. Bird. Voting: Gladfelter, aye; Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 7-0-0, so moved.

Eileen O'Connell, Trustee, Eileen F. O'Connell Revocable Living Trust, 26 Shaker Lane, Falmouth, MA – For permission to construct two additions and a porch, and to install mitigation plantings.

Raul Lizardi explained that this proposal is for additions to an existing house. All of the work is proposed within Zone A of the coastal bank. The additions amount to approximately 350 s.f. of increased development, requiring 1,050 s.f. of mitigation plantings. These plantings are proposed in three areas of the site. In 1991, the property was redeveloped with a single-family home and an Order of Conditions contained a limit of work for the project. All of the land east of that limit of work was supposed to remain in a natural state. Vista pruning was later allowed in some of this area, but this pruning will not continue on the site. Staff is recommending that the natural state area become restoration and be counted toward mitigation. An existing kayak rack on the site was not permitted and the applicant will remove it and restore the area.

There was no public comment at this time.

Ms. Gladfelter moved to close the hearing and take it under advisement. Seconded by Mr. Bird. Voting: Gladfelter, aye; Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 7-0-0, so moved.

Sarah Turano-Flores, Nutter McClennen & Fish, LLP, 24 Willis Lane, Falmouth, MA – For

permission to reconstruct an existing, licensed dock and to remove a timber wave break.

Ryan Cavanaugh, Coastal Engineering, explained that the project includes removing a fixed timber pier to the north of the site and replacing it with a fixed pier and seasonal floating dock, and removing a timber wave break to the south. The existing pier is currently licensed and is shaped like a “T”. Currently the water is accessed via two aluminum ladders. The pier is 5’ wide and 71’ long with a 16’ wide head at the end of it. The pier is accessed from the shoreline by a set of stairs. The pier has signs of deterioration such as fungal decay and overall general weathering. The current pier is pile supported to minimize impacts to the resource areas. There are three piles within the salt marsh, 11 piles in the land under ocean, and all of the piles are located in an area known to contain quahogs. The existing pier utilizes steel grating in an effort to prevent shading above the salt marsh. The proposed pier is a similar “T” shape, with a fixed timber pier with a gangway to a floating dock. This will be accessed by a ramp from the shoreline. The pier will be slightly reduced in size, at 4’ wide and an overall length of 60’, including the floating dock. Changing to a seasonal floating dock will overall reduce the impact by 76 s.f. and will remove two piles from the land under ocean. The seasonal floating dock will better protect the resource areas by reducing the overall impact, as it will be removed seasonally. This pier will also utilize steel grating in an effort to minimize shading above the salt marsh. As for the construction of the pier, all the work is proposed to be done from the water, with the occasional need for pedestrian access down a path that accesses the pier. The second part of the project is to remove an existing timber wave break. This is currently on the coastal beach and is not functioning as it needs to be. The small path will be used as access for construction equipment.

Ms. Lincoln noted that this is located in a velocity zone and the current float is already larger than allowed by the regulations. Staff cannot recommend that this float be made 8’x20’ in the velocity zone. There will likely be a time of year restriction placed on the timber wave break portion of the project. Mr. Cavanaugh noted that the applicant believes that there is a greater benefit from the proposed project, even with a slightly larger float, to the resource areas than the existing pier.

Ms. Bergeron stated that the height ratio for the dock will need to be altered to meet recommendations from DMF. She requested a copy of the Chapter 91 license.

Ms. Harlow-Hawkes suggested larger spans between the pilings to move it outside of the salt marsh area. Mr. Cavanaugh stated that this might be difficult for a timber pier.

Ms. Freitag asked why there is a section of timber decking proposed in the middle of the steel grating. She also asked how the work on the pilings will be done without damaging the area. Mr. Cavanaugh stated that mats could be placed on the path temporarily to protect the area.

Ms. Gladfelter asked that methodologies for the removal and construction be placed on a revised plan.

Mr. Mathews stated that he would like to see the old boardwalk on the site ripped up and restored after construction.

There was no public comment at this time.

Ms. Gladfelter moved to continue this hearing to January 17, 2024, at request of the applicant. Seconded by Mr. Bird.

Voting: Gladfelter, aye; Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 7-0-0, so moved.

James and Linda Hussey, 45 Clipper Lane, Falmouth, MA – For permission to reconstruct the garage and deck, remove part of the existing patio, and install mitigation plantings.

Mr. Bird moved to untable this item. Seconded by Ms. Gladfelter.

Voting: Gladfelter, aye; Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 7-0-0, so moved.

Tom Bunker, BSS Design, stated that the entire lot is within the flood zone. The existing patio was added without permission. The proposal includes razing and rebuilding the garage with a second floor and expanding a deck behind the garage. Half of the patio needs to be removed, as it extends closer to the wetlands. 128 s.f. of patio will remain and are calculated for in the mitigation calculations. Two trees were previously removed from the property and will be replaced.

Ms. Lincoln stated that final approval of tree placement will need to be made by Staff in the field.

Ms. Freitag stated that she was concerned that there seems to be no wetland left on the site. Ms. Bergeron noted that it does not seem like any vegetation has been present or removed from the area of the site with the fence. The area seems to have been lawn for at least 20 years. Ms. Freitag asked if wetland restoration can be required. She asked that the applicant be asked if additional restoration would be considered.

Ms. Gladfelter agreed that it seems strange for the fence to run into the wetland area of the site. A low post and rail could be considered to mark the mitigation plantings. Mr. Bunker stated that the applicant may consider removing the bottom 6"-8" of the fence to allow wildlife to pass through. Ms. Freitag asked that the section of fence within the wetland be removed.

There was no public comment at this time.

Ms. Gladfelter moved to close the hearing and take it under advisement. Seconded by Mr. Bird.

Voting: Gladfelter, aye; Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, nay; Patton, aye; 6-1-0, so moved.

CONTINUED REQUESTS FOR A HEARING UNDER A NOTICE OF INTENT

Gary V. and Janet L. Vacon, 40 Bridge Street, Falmouth, MA – For permission to reconstruct an existing, licensed pier.

It was noted that Mr. O'Brien is not on the quorum for this item.

Mike Borselli, Falmouth Engineering, explained that revisions have been made to the plan, including that the float be reduced to its licensed size of 30'. Dimensions of the dock have been added to the plan. The existing pilings as they relate to the reduced number of piles have also been shown on the plan. Stone located on the edge of the wetlands on the site will be removed by the applicant and replanted with beach grass. Portions of the patio were previously expanded without permission, and the plan has been revised to request after the fact permission for some of the patio, 227 s.f., and clipping off one edge of the patio. The patio area proposed to be preserved will be mitigated for.

Ms. Lincoln noted that the buffer of the property has been cut and should not be. Mr. Borselli stated that this information has been relayed to the applicant.

There was no public comment at this time.

Ms. Gladfelter moved to close the hearing and take it under advisement. Seconded by Mr. Bird. Voting: Gladfelter, aye; Bird, aye; Mathews, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 6-0-0, so moved.

Black Beach Harbor Head Association, 139 Little Neck Bars Road, Falmouth, MA – For permission to install a gate and eleven linear-feet of fencing along the eastern property line.

Tim Santos, Merrill Engineering, explained that the site is currently developed and completely located within land subject to coastal storm flowage. Associated resource areas include salt marsh. The proposal is to install 11 linear feet of fence along the eastern property line. 7' of the fence is proposed to be black chain-link and a 4' wooden gated fence is also proposed. No vegetation will be disturbed on the site. Four post holes are proposed to be installed.

Ms. Lincoln stated that the DPW Director has requested that, if approved, the fence open into Little Neck Bars Road instead of onto the bike path. Also, the applicants have placed a sign on Town property which needs to be removed.

Ms. Gladfelter stated that a large proportion of the community that is unhappy with any fence in this location, but the proposal meets performance standards. She noted that a letter from the applicants have stated that there will be no lock on the fence, and she would like the letter to be part of the record.

Mr. Bird agreed that the proposal meets performance standards.

Mr. Mathews stated that he would prefer to see an open fence along the entire way to appear more open.

Ms. Harlow-Hawkes agreed that it should be in the record that the fence will not be locked. She would also like it in the record that this was an emergency access for a long time. If the Town

feels that it needs to be an emergency access again, hopefully residents in this area will be agreeable.

Ms. Freitag noted that there is an ancient right of way nearby and extending this fence further could lead to issues in the Land Court. She agreed that this area is an important evacuation access point historically. She stated that she would like to see the fence elevated to allow wildlife to pass under it. Mr. Santos stated that he would agree to that if the fence went around the property, but wildlife can instead just go around this fence section.

Mr. Mathews noted that all correspondence was sent to all Commissioners by Staff and is officially in the record. The Commission's jurisdiction is only through the Massachusetts Wetlands Protection Act and the Falmouth Wetlands Bylaw. All other issues will need to be taken up separately. The Commission must focus on its purview.

Katey Taylor, Executive Director Salt Pond Bird Sanctuaries, stated that the Commission's mission includes protecting public access to Black Beach and Great Sippewissett Marsh. Salt Pond Bird Sanctuaries owns over 27 acres in this neighborhood and is a member-driven, nonprofit conservation group. She noted that, while the proposal includes that gates will not be locked, there is signage that says no access, a guard house, and guards. She stated that it is within the Commission's mission to deal with this public access issue. There are clear intentions by the applicant to stop public access, and she would like to make sure access to members is not stopped in any way. She also questioned that there will be no vegetation disturbance with the installation of a fence and gate. Ms. Lincoln agreed that the Purpose section of the bylaw does include a charge to protect public access to water and land. She spoke to Town Counsel about this, and counsel's opinion is that this is not specific to 139 Little Neck Bars Road. There are other ways to access Black Beach in this area. Granting access over private property is a civil matter. Mr. Santos stated that some minor ground cover may be disturbed, but the post holes will be dug by hand and there will be no tree or shrub removal.

John Rodenhizer, 32 Bowman Lane, stated that the plan does not show a wetland area to the south of the proposed location. The road area is likely the highest elevation and will be needed as access during major storms by both people and animals. A gate will block the wildlife from exiting the peninsula. This is also not handicapped accessible. It would be a travesty to cut off residents with this gate. There are guard shacks at the other access points to Black Beach.

Ben Carroll, 357 West Falmouth Highway, stated that the bylaw empowers the Commission to grant the public access to this particular section of West Falmouth. The Town, through Town Meeting, had the foresight in the 1990s to protect public access as a specific interest in this particular section of West Falmouth. He stated that he believes Town Counsel has given the Commission an incorrect reading of the bylaw. The proposal is a step towards impeding the access to a valuable conservation resource, which is the Great Sippewissett Marsh. It is the interest of this Commission and the plain language of the bylaw to stand up for continued access through the way. Additionally, having alternate means of access is not sufficient. The bylaw protects all means of access and is intended to protect or expand what is available. The Town seems to be taking the position that this is a civil dispute between property owners, which he

believes is incorrect. The Commission has an opportunity to reject the proposal and vote against this fence.

The applicant's attorney, Brian Wall, stated that claims are being made by members of the public that his client disagrees with. This is private property, and his client believes he has a right to install the proposed fence. However, the other issues being raised are outside of the Commission's purview. Regarding the statement in the bylaw that protecting public access is an interest that should be protected in the ACEC, he agreed that this is in the bylaw but believes it needs to be read very carefully. The Commission has the right to adopt performance standards. He has reviewed the regulations and there are no performance standards regarding public access. Further, there is a difference between protecting existing public access and creating public access. If the Commission were to impose conditions requiring his client to allow the public across the property, that would be beyond the Commission's authority and potentially a taking. He suggested that the Commission stay within its purview and review this under the Wetlands Protection regulations. It is clear that the project meets the standards.

Ms. Lincoln read a number of public comments in the chat feature of the meeting.

Tammy Gilbert stated that, according to Chapter 235, Part B of Purpose Statement, the Commission is responsible for protection of public access to water and land in the Black Beach and Great Sippewissett Marsh area. If the Commission is charged with protecting access, it must not allow barriers to access. All actions of the BBHHA over the past year, including signs, security guards, and now a gate, are intentional barriers to erode public access. According to the Commission's purpose statement, it should reject the gate and potentially consider all of the other impediments to access already existing in this neighborhood.

Mary Rooney stated that, per Chapter 235 of the bylaw, the Conservation Commission shall be responsible for the protection of public access to land and water. This will impede public access and exclude people with disabilities. She asked how the public can be assured the gate will never be locked.

Tammy Gilbert stated that there is a very big difference between allowing public access and protecting public access. An unlocked gate still only allows some people to get through, but it restricts others, such as the handicapped, those that are mobility impaired, and families with double strollers. Even if this gate is never locked, the Commission cannot, in good conscience, allow something that impedes access if the objective is to protect access.

Mary Rooney asked if the Town will be liable for restricting people with disabilities.

Susan Work stated that a gate of the proposed dimensions would not allow emergency entrance or egress at the entrance.

Tammy Gilbert stated that installing a gate may very well be illegal. She asked the Commission to pause this request and consult with an attorney who specializes in real estate and land ownership.

Mary Rooney asked how the enforcement of not locking the gate will occur. She noted that the signs have been up without any enforcement for quite some time.

Susan Work asked why the applicant is the BBHHA, but the landowner is Fred Worth. Ms. Lincoln explained that the Commission will often receive an application from an applicant who is not the property owner. The Commission must receive express written permission and the property owner must sign the application. The property owners' signature is on this application

Robert Bowerman stated that there appears to be significant wetlands where the fence will be placed.

Ben Carroll stated that this is not about performance standards. This is about the purpose of the bylaw with the specific interest in protecting public access. This is historic access. The public protects what they care about. The Commission should protect this because it can.

Tammy Gilbert stated that the owner has an easement over his property.

Robert Bowerman stated that the BBHHA, by its own admission, is a homeowner's association that does not own property. Fred Worth is the actual applicant, and this is on his property. I

Tammy Gilbert stated that the other access ways have security guards and signage as well.

Mary Rooney stated that this is not about granting access but preserving historic access. There is an easement in the deed for the property.

Robert Bowerman stated that he finds it disingenuous for Attorney Wall to suggest creating a right of way in a location that has been a 200-year-old right of way, and a continuation of Little Neck Bars Road.

Kathleen Scranton noted that there is past litigation from the 1980s which prohibited a gate being erected on this pathway. Ms. Lincoln stated that there is a Land Court case involving very few property owners in West Falmouth.

John Batter stated that it is clear that removal of vegetation and determining if there are actual wetlands on the site are definitely within the Commission's purview. The question of a gate should be tabled until these other items are cleared up.

Michael McNeil stated that the neighborhood and its residents have been taken advantage of in recent years with people regularly trespassing. It is sad to see people this entitled and ignorant.

Ben Carroll asked that, in the event that the Commission chooses to permit this fence, there be a section in the Order of Conditions regarding this lot and a public benefit. In this way, the neighborhood would have standing if a lock is placed on the gate.

John Rodenhizer reiterated that loss of this access to Black Beach will mean that people will cut across Black Marsh to reach the beach. A new trail will be made through the marsh, instead of simply using the access point that exists.

Ms. Freitag asked if any mitigation is proposed as part of this plan. Mr. Santos stated that mitigation has never been provided for fences before and is not proposed as part of this plan.

Ms. Gladfelter moved to close the hearing and take it under advisement. Seconded by Mr. Bird. Voting: Gladfelter, aye; Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 7-0-0, so moved.

REQUESTS TO AMEND AN EXISTING ORDER OF CONDITIONS

Mario Kula and Josephine D'Angelo, 9 Sycamore Street, Falmouth, MA – Request to amend the Order of Conditions for MA DEP# 25-4785 to reconfigure the proposed dwelling and front walkway.

Raul Lizardi explained that this project was before the Commission previously and an original Order of Conditions was issued approximately one year ago. The proposal is to raze the existing dwelling, remove an existing shed, and build a new dwelling that conforms to the flood zone. The entire property is within the velocity zone. The project went through a Zoning Board of Appeals process twice, both of which failed. A third proposed option for a smaller footprint, 17' wide, is now proposed. This meets setbacks to all property lines and meets lot coverage by zoning. The plan includes a raised slab with three risers to enter the new dwelling. Staff suggested that this acts as a retaining wall and be placed at grade. The applicant is willing to conform to this suggestion. Also, Staff noted that the architectural plans show an 18' width dwelling, but the applicant is aware that 17' is needed to meet zoning requirements.

Ms. Lincoln stated that the architecturals need to be changed to meet the site plan.

In response to a question from Ms. Lincoln, Mr. Lizardi stated that each riser is usually 6.5"-7", making the three risers approximately 2' in total. If these are taken down to grade, this area will become a concrete patio, similar to the back of the home.

Ms. Lincoln read through a number of public comments left in the chat. One member of the public asked how this can be considered as an amendment if the proposal is completely different from the original approval. Ms. Lincoln stated that the Commission can consider if a proposed amendment is within the scope of the original project. It is not within this Commission's purview to determine if this proposal meets zoning requirements. That will be considered by the Building Inspector at the time of an application for a building permit.

Ms. Gladfelter moved to close the hearing and take it under advisement. Seconded by Mr. Bird.

Voting: Gladfelter, aye; Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 7-0-0, so moved.

VOTE ORDERS OF CONDITIONS

- Melissa Odell and Vincent Odell, Jr., 54 Sam Turner Road, Falmouth, MA

It was noted that Mr. Bird is not on the quorum for this item.

Ms. Gladfelter moved to issue an order of conditions, as discussed. Seconded by Mr. Patton
Voting: Gladfelter, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 6-0-0, so moved.

OTHER BUSINESS

The Commission agreed to meet January 4, 2024, at 7am to vote orders of conditions.

The Commission discussed its meeting schedule for the upcoming months.

Ms. Freitag moved to adjourn the meeting. Seconded by Ms. Harlow-Hawkes.
Voting: Gladfelter, aye; Bird, aye; Mathews, aye; O'Brien, aye; Harlow-Hawkes, aye; Freitag, aye; Patton, aye; 7-0-0, so moved.

The meeting adjourned at 9:51 p.m.

Respectfully submitted,
Kristan Patenaude, Recording Secretary

Exhibit H



Falmouth Conservation Commission

59 Town Hall Square, Falmouth, Massachusetts 02540
(508) 495-7445

January 10, 2024

Black Beach Harbor Head Association
P.O. Box 692
West Falmouth, MA 02574

RE: 139 Little Neck Bars Road, Falmouth, MA
DEP# 25-4921

Dear Black Beach Harbor Head Association,

Enclosed please find a copy of the Order of Conditions. Please obtain the plan of reference for your approved project from your representative. This Order is valid for three years from its date of issuance. The original permit will need to be registered at the Registry of Deeds. Proof of Recording must be submitted to the Conservation Commission office.

Please read the Order of Conditions and Plan carefully and refer to them often. Your contractor must have a copy of the Order of Conditions and the Conservation Permit posted on-site throughout the duration of the project. As the property owner it is ultimately your responsibility to ensure that work be done according to all Standard and Special Conditions and according to the Plan of Reference. If you decide to sell your property, please transfer the Order and the Plan of Reference to the new owner.

When all work under the approved permit, including landscaping, has been completed on the project, the proper procedure is for your representative (the engineer) to apply to the Conservation Commission for a Certificate of Compliance. The engineer must submit a signed statement that all work has been completed according to the Plan of Reference and noting any deviation from the plan. The representative (engineer) is the point of contact with the Conservation Commission and should coordinate with you throughout the duration of the project until a Certificate of Compliance is issued. Your representative will register the Certificate of Compliance in the Registry of Deeds. Proof of Recording must be submitted to the Conservation Commission office.

Thank you for taking the time to read this letter. By complying with the Wetland Protection Act and the Falmouth Wetland Bylaw and Regulations you are helping to maintain a high quality of life for yourself and others in the Town of Falmouth.

Sincerely,

Jennifer L. Lincoln
Conservation Administrator

CC: Merrill Engineers and Land Surveyors



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
 25-4921
 MassDEP File #
 1597572
 eDEP Transaction #
 Falmouth
 City/Town

A. General Information

Please note:
 this form has
 been modified
 with added
 space to
 accommodate
 the Registry
 of Deeds
 Requirements

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



1. From: Falmouth
Conservation Commission

2. This issuance is for
 (check one): a. ☒ Order of Conditions b. ☐ Amended Order of Conditions

3. To: Applicant:

a. First Name BLACK BEACH HARBOR HEAD ASSOCIATION b. Last Name
 c. Organization
P.O. BOX 692
 d. Mailing Address
WEST FALMOUTH MA 02574
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

FREDERICK WIRTH
 a. First Name b. Last Name
 c. Organization
230 NEW CANAAN AVENUE
 d. Mailing Address
NORWALK CT 06850
 e. City/Town f. State g. Zip Code

5. Project Location:

139 LITTLE NECK BARS ROAD FALMOUTH
 a. Street Address b. City/Town
25 03 001 004
 c. Assessors Map/Plat Number d. Parcel/Lot Number
 Latitude and Longitude, if known: d m s d m s
 d. Latitude e. Longitude



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

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

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A. General Information (cont.)

6. Properly recorded at the Registry of Deeds for (attach additional information if more than one parcel):

BARNSTABLE

a. County

34516

c. Book

b. Certificate Number (if registered land)

296

d. Page

7. Dates:
- | | | |
|--------------------------------|-------------------------------|---------------------|
| 11/22/2023 | 12/20/2023 | 1/10/2024 |
| a. Date Notice of Intent Filed | b. Date Public Hearing Closed | c. Date of Issuance |

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

SITE PLAN

a. Plan Title

MERRILL ENGINEERS AND LAND
SURVEYORS

11/20/2023

d. Final Revision Date

DEANA BOUMITRI, PLS

b. Signed and Stamped by

1" = 10'

e. Scale

f. Additional Plan or Document Title

g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:

- | | | |
|---|--|---|
| a. <input checked="" type="checkbox"/> Public Water Supply | b. <input type="checkbox"/> Land Containing Shellfish | c. <input checked="" type="checkbox"/> Prevention of Pollution |
| d. <input checked="" type="checkbox"/> Private Water Supply | e. <input checked="" type="checkbox"/> Fisheries | f. <input checked="" type="checkbox"/> Protection of Wildlife Habitat |
| g. <input checked="" type="checkbox"/> Groundwater Supply | h. <input checked="" type="checkbox"/> Storm Damage Prevention | i. <input checked="" type="checkbox"/> Flood Control |

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

- a. ☒ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



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Bureau of Resource Protection - Wetlands

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B. Findings (cont.)

Denied because:

- b. ☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
3. ☒ Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) a. linear feet

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	<u> </u> a. linear feet	<u> </u> b. linear feet	<u> </u> c. linear feet	<u> </u> d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	<u> </u> a. square feet <u> </u> e. c/y dredged	<u> </u> b. square feet <u> </u> f. c/y dredged	<u> </u> c. square feet	<u> </u> d. square feet
7. <input type="checkbox"/> Bordering Land Subject to Flooding	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
Cubic Feet Flood Storage	<u> </u> e. cubic feet	<u> </u> f. cubic feet	<u> </u> g. cubic feet	<u> </u> h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	<u> </u> a. square feet	<u> </u> b. square feet		
Cubic Feet Flood Storage	<u> </u> c. cubic feet	<u> </u> d. cubic feet	<u> </u> e. cubic feet	<u> </u> f. cubic feet
9. <input type="checkbox"/> Riverfront Area	<u> </u> a. total sq. feet	<u> </u> b. total sq. feet		
Sq ft within 100 ft	<u> </u> c. square feet	<u> </u> d. square feet	<u> </u> e. square feet	<u> </u> f. square feet
Sq ft between 100-200 ft	<u> </u> g. square feet	<u> </u> h. square feet	<u> </u> i. square feet	<u> </u> j. square feet



Massachusetts Department of Environmental Protection
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B. Findings (cont.)

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. ^{cu yd} nourishment	d. ^{cu yd} nourishment
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. ^{cu yd} nourishment	d. ^{cu yd} nourishment
15. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	a. c/y dredged	b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		
22. <input type="checkbox"/> Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet



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B. Findings (cont.)

* #23. 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.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23. ☐ Restoration/Enhancement *:

a. square feet of BVW

b. square feet of salt marsh

24. ☐ Stream Crossing(s):

a. number of new stream crossings

b. number of replacement stream crossings

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. The work is a maintenance dredging project as provided for in the Act; or
 - b. The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
 - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on _____ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.



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C. General Conditions Under Massachusetts Wetlands Protection Act

8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]
"File Number 25-4921 "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
19. The work associated with this Order (the "Project")
 - (1) ☐ is subject to the Massachusetts Stormwater Standards
 - (2) ☒ is NOT subject to the Massachusetts Stormwater Standards

If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:

- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
 - i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
 - ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
 - iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;

v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.

c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:

i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and

ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.

d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.

e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- g) The responsible party shall:
 - 1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
 - 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
 - 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (if you need more space for additional conditions, please attach a text document):

- 20. For Test Projects subject to 310 CMR 10.05(11), the applicant shall also implement the monitoring plan and the restoration plan submitted with the Notice of Intent. If the conservation commission or Department determines that the Test Project threatens the public health, safety or the environment, the applicant shall implement the removal plan submitted with the Notice of Intent or modify the project as directed by the conservation commission or the Department.



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D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? ☒ Yes ☐ No
2. The Falmouth hereby finds (check one that applies):
Conservation Commission
 - a. ☐ that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw	2. Citation
---------------------------------	-------------

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.
 - b. ☒ that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

Falmouth Wetlands Bylaw / Regulations	CH 235 /
1. Municipal Ordinance or Bylaw	FWR 10.00
3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.
 The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

See Attached



Falmouth Conservation Commission

59 Town Hall Square, Falmouth, Massachusetts 02540
(508) 495-7445

Black Beach Harbor Head Association
139 Little Neck Bars Rd, Falmouth, MA
DEP # 25-4921

FINDINGS

1. The applicant proposes to install a gate and fencing along the eastern property line in the area of an existing path from the bike path to Little Neck Bars Rd. The fence and gate will extend 11 linear feet and will require four (4) holes for posts being dug into the ground.
2. There is a small tree in line with the fence location.
3. The Black Beach Harbor Head Association has installed a sign on Town controlled property stating No Beach Access and Private Roads, the sign must be removed.
4. In the Falmouth Enterprise, dated December 1, 2023, the article referenced the following statement by Belle McDougall, Treasurer of the BBHHA, "*The association plans to install the gate without a lock because the purpose of the gate is safety, not keeping people out*".
5. Resource areas onsite and within Salt Marsh, Land Subject to Coastal Storm Flowage (LSCSF), Black Beach/Great Sippewissett Marsh District of Critical Planning Concern (DCPC).

INTERESTS

1. Storm Damage Prevention
2. Flood Control
3. Prevention of Pollution
4. Protection of Private and Public Water Supply
5. Protection of Groundwater Supply
6. Protection of Fisheries
7. Protection of Wildlife Habitat

STANDARD CONDITIONS

1. Permission is granted to Black Beach Harbor Head Association, 139 Little Neck Bars Road Falmouth, MA, to install a gate and fencing along the eastern property line in the area of an existing path from the bike path to Little Neck Bars Road according to the narrative and plan prepared by Merrill Engineers and Land Surveyors dated November 20, 2023 and entitled "Site Plan" and subject to the following Standard and Special Conditions.
2. This Order is issued pursuant to Mass. General Laws, Chapter 131, sec. 40, the Wetlands Protection Act and Chapter 235 of the Code of Falmouth the Wetlands Bylaw. The Wetlands By-law is more stringent than the Wetlands Protection Act as permitted by that Act. The Conservation Commission reserves the right to impose additional or other conditions to protect the Interests of the Massachusetts Wetlands Protection Act and Falmouth Wetlands Bylaw.
3. The determinations of the Falmouth Conservation Commission are made solely to determine issues arising under the Massachusetts Wetlands Protection Act and the Town of Falmouth Wetlands By-Law, and are therefore concerned exclusively with the question whether any proposed activity will have an adverse effect on the wetlands resource interests listed in the applicable statutes, regulations, by-laws and rules. Nothing contained in this determination is intended in any way to grant to any person any title, easement, or other interest in lands, public or private, and the Falmouth Conservation Commission is without legal authority to make any grant of title, easement or other property interest, or to make any determination of property interests. See Tindley v. D.E.Q.E. 10 Mass. App. Ct. 623 (1980).
4. Any work taking place prior to all administrative and legal appeal periods expiring or during the pendency of any such appeal is at the risk of the applicant and/or owner of the property. At the risk of means that should an administrative agency or court find this order and permit were granted in error, all work will have to be restored to its original condition (at the time work was instituted) at the expense of the applicant and/or owner.
5. Issuance of the Order of Conditions does not relieve the permittee from obtaining all other necessary municipal, county, state or federal permits, permission or other approvals required.
6. By the acceptance and recording of this Order, the applicant hereby grants the commission and its duly authorized agents the right to enter onto the land governed by this Order to examine the project and ensure Compliance. Such visits shall be made in a reasonable manner. The Conservation Commission as well as its staff and agents have the authority to issue an Enforcement Order if work does not comply with the terms or intent of the conditions contained herein or the plans herein referenced.
7. The Order of Conditions expires three (3) years from the original date of issuance. Any Amendments to the Order of Conditions **do not** extend the Original Order. You may request an Extension to the original Order of Conditions, in writing, at least 30 days prior to the expiration. Unless otherwise specified, all Conditions cited herein will apply to any and all Amendments to this Order of Conditions.
8. Prior to any work commencing:
 - a. Proof of recording of this Order of Conditions at the Barnstable County Registry of Deeds must be received by the Conservation Commission.
 - b. At least 10 days advance **written** notification shall be provided to the Conservation Commission.

- c. Copies of any other permits and licenses including building permit, special permit, variances, and Chapter 91 license shall be submitted to Conservation Commission.
 - d. The DEP File Number shall be posted on a sign on the street side of the lot and maintained in a visible condition throughout the project. A copy of this Order of Conditions is to be posted onsite, to be maintained in a visible location and condition throughout the project. Copies of this Order of Conditions are also to be provided to all outside contractors, to be kept onsite during work at all times.
 - e. The Limit of Work must be installed prior to any work, excavation, construction or clearing of vegetation, in order to prevent damage to the Interests of the Act and Bylaw. The Limit of Work shall consist of a single row of staked strawbale/silt fencing.
 - i. **Please be advised that the use of a straw/mulch waddle/sock is not allowed unless approved in writing by the Conservation Administrator. The Conservation Administrator reserves the right to revoke any approval if this method is determined to be ineffective or is not maintained.**
9. The Limit of Work strawbales/silt fencing shall be replaced as necessary and should to be maintained in good condition throughout the entire construction period. Upon completion of all construction and stabilization of the site, strawbales/silt fencing is to be removed and properly disposed of. No fill is allowed to be placed against or outside the Limit of Work at any time. There shall be no work or storage of materials outside the Limit of Work.
 10. The construction site is to be cleaned daily to remove any loose debris and permitted cuttings offsite. Any fill or excavated material not required to backfill and grade to the approved plan of reference shall be immediately removed offsite or to an appropriate upland location noted on the plans.
 11. Any other proposed activities (alteration, fill, excavation, or removal of vegetation) within any Resource Area or within 100 feet of any Resource Area will require that the applicant obtain all necessary permits from the Conservation Commission.
 12. Before work can begin (i.e. clearing or construction) the Town of Falmouth Conservation Commission Contractor Form is to be submitted to the Conservation Department, identifying the General Contractor (GC) and other responsible parties and signed by the GC and all other responsible parties confirming that the signatories thereto have read and understand the Order of Conditions and that they jointly and severally take responsibility for compliance with the OOC on site during the life of the project. These documents shall be submitted with the ten (10) day start work notification required by Standard Condition #8(b).
 13. Any changes to the plan of record noted in Standard Condition 1 above, no matter how minor in scope, including, but not restricted to, changes in the building footprint and appendages such as decks, addition and/or modification of accessory structures, changes in landscape features such as patios, retaining walls, plantings, removal of vegetation, the modification of finished grades, etc. require that the applicant obtain the permission of the Conservation Commission *before* undertaking the modified work. Depending on the scope of the change, said permission may be obtained by filing for an Administrative Approval, an amended Order of Conditions, or entirely new Notice of Intent. Failure to comply with this condition may subject the applicant to an enforcement order and/or fines.
 14. This Order of Conditions will not be fully complied with unless and until a duly executed Certificate of Compliance is recorded or registered, as appropriate, in Barnstable Registry of Deeds. If this Order is

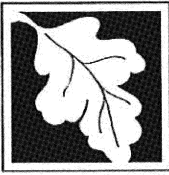
based on a professionally rendered drawing then a letter must be submitted from an engineer or architect certifying full compliance and any deviation from the approved plans, as well as, an "Existing Conditions" plan. This plan shall include ALL structure and landscape features including patios, retaining walls, ornamental plantings, native plantings, AC units, steps, outdoor showers, walkways, etc. Any mitigation trees for the project shall be located and identified to species. Any mitigation shrubs for the project shall be delineated on the plan, labeled as "native buffer shrubs" and the final square footage noted. A request for a Certificate of Compliance shall be made in writing immediately following completion of all work including permanently stabilizing the site with vegetation.

SPECIAL CONDITIONS

1. Prior to the installation of the gate and fence the sign located on Town property shall be removed.
2. There shall be no alteration of existing vegetation to install the gate and fence.
3. There gate shall swing into and towards Little Neck Bars Road and not into and towards the bike path.
4. There shall not be a lock on the gate, the gate shall remain unlocked at all times.
5. There shall be no blocking of the gate at any time, with any material, object or structure.
6. There shall be no signs on the gate and fence.
7. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Department.
8. Prior to conducting any work on the property, pre-construction photos shall be taken and submitted to the Conservation department for review. Photos shall be submitted with the 10-day start work notification required by Standard Condition #8(b).
9. All cuttings/debris, etc. are to be kept out of the Resource Areas.
10. The construction site is to be cleaned daily to remove any loose debris.
11. No Certificate of Compliance will be issued until the entire project is completed and the site is permanently stabilized with vegetation.
12. Special Condition 2, 3, 4, 5, and 6 shall be written into the Certificate of Compliance and shall be registered with and ongoing with the deed.

VOTE AUTHORIZING SIGNATURES OF COMMISSIONERS

In accordance with the unanimous vote of the Falmouth Conservation Commission, Jennifer L. Lincoln, Conservation Administrator is authorized to sign on behalf of each individual Commissioner as reflected in the recorded Land Court Document: 1,393,706 dated 04-03-2020 9:24 Barnstable Land Court Registry



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

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

Provided by MassDEP:

25-4921

MassDEP File #

1597572

eDEP Transaction #

Falmouth

City/Town

E. Signatures

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

Please indicate the number of members who will sign this form.

This Order must be signed by a majority of the Conservation Commission.

1/10/2024

1. Date of Issuance

4

2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Signature _____
 Signature _____
 Signature _____
 Signature _____
 Signature _____

Jennifer L. Lincoln, Conservation
 Administrator

Jamie Mathews, Chair
 Printed Name

Maureen Harlow-Hawkes
 Printed Name

Elizabeth Gladfelter
 Printed Name

Kevin O'Brien
 Printed Name

Signature _____

Printed Name _____

Signature _____

Printed Name _____

Signature _____

Printed Name _____

☒ by hand delivery on

1/10/24
 Date

Timothy Santos

☐ by certified mail, return receipt requested, on

Date _____

For Signature Authorization see
 Doc: 1,393,706
 BARNSTABLE LAND COURT REGISTRY



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

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

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25-4921

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F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

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

Provided by MassDEP:

25-4921

MassDEP File #

1597572

eDEP Transaction #

Falmouth

City/Town

G. Recording Information

Prior to commencement of work, this Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

Falmouth

Conservation Commission

Please be advised that the Order of Conditions for the Project at:

Project Location

MassDEP File Number

Has been recorded at the Registry of Deeds of:

Barnstable

County

Book

Page

for:

Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

DEP File Number: _____

**Request for Departmental Action Fee
Transmittal Form**

Provided by DEP _____

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

A. Request Information

1. Location of Project

a. Street Address _____

b. City/Town, Zip _____

c. Check number _____

d. Fee amount _____

2. Person or party making request (if appropriate, name the citizen group's representative):

Name _____

Mailing Address _____

City/Town _____

State _____

Zip Code _____

Phone Number _____

Fax Number (if applicable) _____

3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Name _____

Mailing Address _____

City/Town _____

State _____

Zip Code _____

Phone Number _____

Fax Number (if applicable) _____

4. DEP File Number: _____

B. Instructions

1. When the Departmental action request is for (check one):

- ☐ Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)
- ☐ Superseding Determination of Applicability – Fee: \$120
- ☐ Superseding Order of Resource Area Delineation – Fee: \$120

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





Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

DEP File Number: _____

**Request for Departmental Action Fee
Transmittal Form**

Provided by DEP _____

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

B. Instructions (cont.)

Send this form and check or money order, payable to the *Commonwealth of Massachusetts*, to:

Department of Environmental Protection
Box 4062
Boston, MA 02211

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.
3. Send a **copy** of this form and a **copy** of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office (see <https://www.mass.gov/service-details/massdep-regional-offices-by-community>).
4. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.