

Minutes of the Topsfield Conservation Commission Special Meeting Thursday July 15th, 2010

Present at the meeting were: Mark Erickson (ME), Jim MacDougall (JMD), George Hall (GH), Jennie Merrill (JM), Jud Pratt (JP), and Holger Luther (HL)

Attendees were: Dick Gandt, Walter Harmer, Roy Baessler, Joe Geller, Gregg Demers, and Ralph Stump.

Agenda: Ratification of an Emergency Certification and discussion and action on the Rail Trail Order of Conditions (NoI file #307-0663)

At 7:48 Chairman GH opened the meeting beginning with the discussion and action on the Rail Trail NoI. He asked if everyone had read the master list of findings and conditions that the administrator had compiled and e-mailed to everyone. HL pointed out that he inserted a couple of changes recommended by the administrator – one in paragraph 28 of the “Prior to Activities/Construction” section in which the words “from Washington Street to the Wenham Town Line” was added after the words “Rail Trail properties”, and the same language in paragraph 36 of the “After Activities/Construction” section.

JM recommended a couple of editorial amendments in the “Special Findings” section – adding the phrase “and/or” to paragraph 5 right after the word “within”, interchanging a couple of words in paragraph 16 and removing quote marks in paragraph 17. JP recommended that the words “repairs made be added to paragraph 13 of the “Prior to Activities/Construction” section right after the phrase “(and feasible)”.

GH asked if there were other recommendations. There were none. HL then moved that the findings as amended be adopted. The motion was seconded by JM. It was adopted unanimously. HL then moved to grant the Rail Trail Order of Conditions as amended. JM seconded the motion. The motion was approved unanimously.

HL brought up the Emergency Certification for the removal of a dead tree on Ralph Stump’s property on Valley Road. The tree overhangs a barn and needs to be removed as soon as feasible.

JM moved to ratify the Certification, HL seconded the motion that was approved unanimously.

The meeting was adjourned by vote at 8:15 PM

The amended master list of findings and conditions in support of the OoC for File #307-0663 has been appended to these minutes.

Respectfully submitted:

Holger Luther

Appendix: Master list of Findings and Conditions as amended at the TCC meeting on 7/15/2010. Amendments are shown in red.

ATTACHMENT TO ORDER OF CONDITIONS TOWN OF TOPSFIELD CONSERVATION COMMISSION

TCC refers to the Topsfield Conservation Commission

DEP refers to the Massachusetts Department of Environmental Protection

Act refers to the Massachusetts Wetlands Protection Act, MGL Ch. 131, § 40

Bylaw refers to the Topsfield Wetlands General Bylaw, Ch. 62

APPROVED PLANS OF RECORD:

“Rail Trail Wetlands 2010,” pages 1 through 9, Prepared by James MacDougall from the Town Maps, with wetland boundary flags added by GPS, Dated June 9, 2010.

ADDITIONAL FINDINGS:

1. This parcel *does not* include habitat of rare wildlife, *nor* does it contain certified vernal pools, according to the October 1, 2008 Map of Estimated Habitats of Rare Wildlife and Certified Vernal Pools, published by the Massachusetts Natural Heritage and Endangered Species Program.
2. The Notice of Intent for “Grading and placement of crushed stone and stone dust along abandoned railroad bed to serve as recreational trail and control of invasive species,” was filed on June 9, 2010 under the Massachusetts Wetlands Protection Act, MGL c. 131, §40, and under the Topsfield Wetlands General Bylaw, c. 62. Proposed activities to construct the “Rail Trail” would take place partly within Buffer Zone Resource Areas partly within Bordering Land Subject to Flooding, and/or partly within Riverfront Area. Two perennial stream crossings exist in this section – at School Brook and at the Ipswich River.
3. The section of the Rail Trail between Washington Street and Summer Street has been completed, with the section within Buffer Zone Resource Area near Washington Street under Order of Conditions #307-0630 (Certificate of Compliance not yet sought). The subject of this Order is the section from Summer Street in Topsfield to the Topsfield/Wenham Town line.
4. From the Notice of Intent (NoI), the project, “involves the construction and maintenance of a 1.9-mile recreational path along the former MBTA railroad bed. The rail trail is referred to as the “Topsfield Linear Common.” The Town of Topsfield has a 99-year lease for the construction of the rail trail from the Massachusetts Bay Transportation Authority, which owns the property.”
5. Resource Areas within and/or adjacent to the subject trail length include Bordering Land Subject to Flooding (as shown on the June 2, 1994 FEMA FIRM maps), Riverfront Area of School Brook, Cleaveland Brook (Bylaw Perennial Stream), and the Ipswich River,

Bordering Vegetated Wetlands (adjacent to but not within the proposed work footprint), at least one area that appears to be a Vernal Pool, and Buffer Zone (Resource Area under the Bylaw). At several locations along the length of the trail area two or more of these Resource Areas overlap.

6. The Rail Trail is to be built upon what was formerly the Boston-Haverhill Railroad track. The rail bed ballast is a linear 50-foot wide stretch of real estate that has existed since its construction *circa* 1850, and was used and maintained thereafter for approximately 100 years.
7. The work/activities in the Notice of intent are proposed entirely within the central 14 (fourteen) feet of the existing rail bed. No work/activities are proposed and no alterations are proposed in any of the adjoining Resource Areas.
8. The NOI states that the trail, “is approximately 8 feet wide with 3 foot shoulders on either side,” and that, “The finished trail grade will not be different than the level of ties so there will be no grade changes and no impact on flood storage.” With reference to construction activities, the NOI states that, “Soils will be managed consistent with the Massachusetts Department of Environmental Protection guidance document, titled: *Best Management Practices for Controlling Exposure to Soil during the Development of Rail Trails*. Included in the proposed project details are that, “the existing surface of the trail will be lowered approximately 8 inches by removal of the ties and the soil and gravel between the ties (the ties are approximately 8 inches thick),” and that the grades will be restored, “by placing a 4-inch layer of processed gravel, covered by a 4-inch layer of stone dust.”
9. No fill in excess of existing topography/elevations is proposed for placement in the rail bed that traverses the floodplain areas.
10. Deposits of yard debris and water from constructed property drainage systems have created an isolated wetland area adjacent to and onto the rail bed between Summer Street and Route 1/Boston Street. This isolated area is less than 5,000 square feet in size and, therefore, is not a jurisdictional area.
11. Wetlands boundaries along the length of the Rail Trail section were flagged voluntarily by wetland scientist Jim MacDougall during the spring of 2010, at the locations as indicated on the approved Plans of Record.
12. The Iron Horse Preservation Society has and is performing trail preparation activities including removal of spikes, rails, ties, and associated metal components of the old rail line along the length of the trail between Summer Street and the Wenham Town line under Negative Determination of Applicability TCC #2010-02.
13. On June 19, 2010, the Topsfield Conservation Commission walked the length of the proposed Rail Trail from Summer Street to the Wenham Town line, noting Resource Areas and reviewing Wetlands Resource Area flags, noting areas with current and/or potential erosion and other potential concerns during or after the proposed work activities.

14. The hearing was opened on June 23, 2010 at the regularly scheduled Conservation Commission meeting. The Commission discussed the nature of Resource Areas adjacent to and within the proposed activity areas and details of the proposed work. Of particular concern are the area of collapsed culverts near Wenham, areas of erosion adjacent to the Ipswich River Bridge, other areas of current and/or potential erosion, and the need to have an area in the center of the trail area without filter fabric to allow for turtle egg laying. Abutters present expressed concerns about areas along the rail bed that are wet, especially in the spring, potential for contamination of surface water from chemicals in the rail trail bed, and what might be offered as mitigation for the work/alterations being proposed. The hearing was continued to July 9, 2010, with the written consent of the Applicant in order for the DEP file number to be issued and for the TCC to contemplate mitigation possibilities.
15. The DEP file number was posted on the DEP website on or about June 25, 2010. As of July 12, 2010, the comment remains, "Under review."
16. At the continuation of the hearing on July 9th, the discussion centered on potential for contamination of water from remnants of chemicals, e.g. creosote, in the ballast of the rail bed. TCC concluded that due to the amount of time that has passed since the ties were laid and if recognized best management procedures are followed, contamination would be minimal and insignificant. **Additional abutter** concerns were that herbicides have been used over the years in the rail bed, and that soil remaining between the ties (potentially containing chemicals) after the ties have been removed may be used as fill instead of clean fill, especially in areas where there are shallow drinking wells. Another concern was that the proposal lacks procedural details, especially site-specific details. Discussion about the status of temporary access roads after construction led to the conclusion that there should be a condition requiring that all temporary access roads into the rail trail site from Valley Road be raked and seeded with meadow mix after they no longer are used for construction purposes. The TCC closed the hearing and scheduled a TCC meeting for July 15, 2010 to finalize special conditions and to vote to issue the Order of Conditions.
17. The Buffer Zone is a Resource Area protected by the Topsfield Wetlands General Bylaw (See Bylaw, Section 62-2 JURISDICTION. e), "Land within one hundred (100) feet of Freshwater Wetlands, Bodies of Water, Land Under Water, or Banks." Thus, the Buffer Zone has values that are "...interests protected by this By-Law". (See Bylaw, Section 62-1 PURPOSE and Bylaw Regulations R:10-4.e. Buffer Zones). In order to avoid significant and cumulative effects on the values of the Resource Areas, including Buffer Zones, on and near this property, conditions are imposed herein that the Commission deems necessary to protect those values (See Bylaw, Section 62-1 PURPOSE).
18. The proposed "Rail Trail" project would create a recreational resource for the residents of Topsfield, in particular, (hence the name "linear Common"), and an area-wide recreational resource for North Shore residents generally. The recreational asset of this project is entirely consistent with one of the ten interests protected by Topsfield's General Wetlands Bylaw.
19. This Order of Conditions is issued under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and under the Topsfield Wetlands General Bylaw, Chapter 62.

**PART A, SPECIAL CONDITIONS PURSUANT TO THE MASSACHUSETTS
WETLANDS PROTECTION ACT AND REGULATIONS AND THE TOPSFIELD
WETLANDS GENERAL BYLAW AND REGULATIONS:**

GENERAL CONDITIONS:

1. This Order of Conditions in its entirety – ALL 21 PAGES, INCLUDING THE 11-PAGE DEP PERMIT AND THIS 10-PAGE ATTACHMENT – shall be recorded at the Registry of Deeds or Land Court for the district in which the land is located, within the chain of title of the affected property; and **written proof of recording shall be received by the TCC prior to the commencement of any work approved in this OoC.**
2. **This Order of Conditions (OoC) authorizes removal of rail bed ties, removal of soil, placement of clean fill to restore elevations, grading, placement of crushed stone and stone dust, re-vegetation and other stabilization activities, and related activities, and control of invasive species, along the abandoned railroad bed to serve as recreational trail, (The Project), as described in the Notice of Intent and approved plans filed with the TCC, modified during the hearing process, and conditioned in this Order of Conditions.**
3. It is the responsibility of the Applicants to procure all other applicable federal, state, and local permits and approvals associated with this project. These permits may include but are not necessarily limited to the following:
 - a. Section 404 of the Federal Water Pollution Control Act (P.L. 92-500, 86 stat 816), U.S. Army Corps of Engineers.
 - b. Water Quality Certification in accordance with the Federal Water Pollution Control under authority of section 27(5) of Chapter 21 of the Massachusetts General Laws as codified in 314 CMR 9.00.
 - c. The Town of Topsfield –
4. Approval of the submitted materials that resulted in this Order of Conditions does not constitute compliance with any laws or regulations other than the Massachusetts Wetlands Protection Act, MGL Chapter 131, § 40 and Wetlands Regulations 310 CMR 10.00, and the Topsfield Wetlands General Bylaw Chapter 62 and Regulations.
5. In order to allow for the required appeal period, no work approved in this Order may commence until ten (10) business days have lapsed from the date of issuance of this Order.
6. The TCC holds all contractors and employees performing work authorized by this OoC accountable for compliance with the Order's requirements. You shall include this OoC in all construction contracts dealing with The Project and **you shall ensure that a copy of the OoC is on the site while any activities regulated under this OoC are being performed. The applicant and all persons involved with work must read and understand this Order of Conditions.**

7. **Any revision to the Plan of Record shall be submitted to the TCC.** If the Commission/Administrator deems changes significant, but not increasing impacts, an amendment to the Order of Conditions shall be required. If impacts to Resource Area(s) would be increased, a new Notice of Intent filing shall be required.
8. If you transfer title to the property prior to obtaining a Certificate of Compliance, you shall so notify the TCC in writing and include with the notice a buyer's statement that he/she has read this OoC and understands that this OoC applies to a successor in interest to the property. The successor in interest to the property shall arrange an on-site conference between the TCC, himself/herself, the engineer and the contractor prior to commencement of any work remaining to be done.
9. The TCC and the DEP have the right to enter the property to inspect and monitor compliance with this OoC.
10. If conditions in this Order of Conditions are in conflict, the stricter condition shall prevail.

PRIOR TO ACTIVITIES/CONSTRUCTION:

11. **Prior to commencement of any activities permitted with this Order of Conditions, the Applicant/Rail Trail Committee shall retain and designate a qualified professional (e.g. wetlands scientist or engineer), subject to TCC/Administrator approval, to be the Environmental Monitor for the project.**
 - a. **The Environmental Monitor shall prepare a Sedimentation and Erosion Control and Stabilization Plan (SECS Plan), monitor implementation of the plan, and submit monitoring reports to the TCC.**
 - b. **The SECS Plan shall include:**
 - i. **As is applicable, best management practices and a reporting schedule as necessary for compliance with Massachusetts Storm-water Standards, and an EPA Storm-water Pollution Prevention Plan as required by the National Pollution Discharge Elimination System Construction General Permit.**
 - ii. **An evaluation and identification (with references to the Plans of Record) of areas along the rail trail bed from Summer Street to the Topsfield/Wenham Town line, including the areas adjacent to the Ipswich River, that have erosion concerns and/or an expectation of such concerns during and/or after construction activities.**
 - iii. **Representative pre-activity photographs of the identified areas.**
 - iv. **A narrative, and cross-sections where useful, detailing measures to be taken to reduce and correct current sedimentation/erosion problems and to prevent problems during and after construction. Examples of measures are use of sedimentation fencing, geotextile fabric installation in areas of current erosion, establishment of vegetation to stabilize soils, etc.**
 - v. **Suggested long-term maintenance needed for the identified areas.**
 - c. **Written Monitoring Reports shall be submitted to the TCC at least every other week after commencement of construction until deemed no longer necessary by TCC/Administrator, and shall include:**

- f. The **limits of work** are demarcated by the sedimentation barriers, which shall remain in place until all construction activity is complete and the TCC or the Conservation Administrator has granted authorization for their removal.
- g. A written **construction schedule** of project activities, along with the **names, addresses, business and home phone numbers** of the project supervisor and an alternate shall be submitted to the TCC prior to the commencement of work.

DURING ACTIVITIES/CONSTRUCTION:

- 15. All contractors and their employees shall be aware of the limit of work boundaries and construction requirements of this Order of Conditions.**
- 16. Erosion and sedimentation control measures shall be employed to prevent discharge of sediments into Resource Areas beyond the erosion control/limit of work line.**
 - a. Site clearing, grading, and construction shall be scheduled to avoid periods of high groundwater and heavy rain.
 - b. All stockpiles of soils existing for more than one day shall be surrounded by a row of silt fence installed as specified in Special Condition #A- 14e. (above), and shall be covered.
 - c. Construction areas shall be stabilized at the close of each construction day.
 - d. Best Practical Measures shall be used to prevent soil erosion, including, but not limited to:
 - i. **In case of rain**, ceasing all activity that might cause soil erosion and immediately stabilizing disturbed soil with suitable mulch.
 - ii. If **soil will be bare for more than 30 days**, seeding with non-invasive [esp. NO Echinochloa crus-galli – Barnyard Grass or Japanese Millet (FACU)] annual grasses.
 - iii. When **bare soils** are not at final grade and vegetated by the **30th of September** of any year, planting with a seed mix of non-invasive perennial grasses.
- 17. Erosion control structures and sedimentation barriers shall be inspected regularly and after every significant rainfall, kept free of accumulated silt and debris, replaced as necessary, and otherwise maintained in proper functioning condition until the area is permanently stabilized and their removal is authorized by the TCC.
- 18. All rail ties shall be removed from portions of the rail bed bordering on or within any Wetlands Resource Area. Removed ties shall not be stockpiled on the rail bed or adjacent thereto for any period in excess of 24 (twenty-four) hours.**
- 19. Ballast or other “spoils,” including soil removed from between the rail ties, generated during construction activities shall not be used as backfill elsewhere on the project and shall be transferred to an appropriate off-site location authorized for that purpose. Disposal of spoils shall be in accordance with the laws of the Commonwealth of Massachusetts.**

20. Stockpiled soils, generated during reworking of the rail bed during the construction phase, shall be loaded directly onto trucks for offsite disposition or may be placed on and covered with polyethylene sheeting a minimum thickness of 8 mils. And, in all cases stockpiled soils, if generated during the reworking of the rail bed, shall be transported offsite within 24 hours of their generation.
21. Stockpiled material shall be posted with signs and segregated from pedestrian traffic through the use of barriers and caution tape.
22. Any fill material brought to and/or used at the site, in particular that for the purpose of leveling the rail bed, shall be clean bank-run gravel reasonably free of fines and till. No construction debris, asphalt rubble, or excess soil collected from the rail bed (e.g. between where rail ties have been removed) shall be used as fill.
23. As a precaution in the case of a fuel or other chemical spill, a 55 to 90-gallon spill kit shall be onsite at all times and shall include absorbent pads and 2 or 3 bags of “Speedy Dry.”
24. Clean water shall be used to minimize/mitigate fugitive dust emission during the construction phase of the project. If fugitive dust emission cannot be controlled through the application of water, the work in that area shall be terminated until fugitive dust emissions are remediated.
25. Mitigation measures such as the planting of native shrubs and/or groundcover, or the installation of appropriately sized rip-rap shall be required for those areas along the embankment of rail ballast from which debris, yard waste, and fill have been removed. The objective of such measures is to minimize the hydrological impacts on the adjacent resource areas that are the result of the removal of said material.
26. NO service of equipment (e.g. fueling, changing, adding or applying lubricants or hydraulic fluid) shall take place within the 100-foot Buffer Zone. Equipment must be maintained to prevent leakage or discharge of pollutants. Overnight storage of equipment shall be outside of the Buffer Zone.
27. All disturbed areas shall be permanently stabilized within 30 days of final grading, using sufficient topsoil and a non-invasive rapidly growing cover to assure long-term stabilization. The area shall be sufficiently mulched, and loam and seeding held in place by jute netting where necessary.
28. Invasive plant species may be removed, controlled, and killed on the Rail Trail properties **from Washington Street to the Wenham Town Line** in accordance with all relevant Federal, State – **including Massachusetts Department of Agriculture requirements** – and Town laws. The following methods may be used alone and/or in combination to remove, control, and/or kill invasive plant species (list is available from TCC office) from this property, including from Buffer Zone:
 - a. Burning in accordance with State and Town laws.
 - b. Use of chemicals in accordance with manufacturers’ labeling specifications for each chemical use, and in accordance with all relevant Federal, State, and Town laws.

c. Manual means, with hand tools.

- It is the responsibility of the landowner/his designee(s) to learn and know what plants are invasive and what laws are relevant.
 - In order to respond to any phone inquiries, the Topsfield Conservation Commission office shall be notified at least 48-hours prior to each burn or chemical use. A written schedule/plan may be requested at that time.
 - Care shall be taken with disposal of removed plants to prevent the spread of invasive species.
 - The Conservation Commission has additional information and can provide guidance on request.
29. All waste products, refuse, debris, grubbed stumps, slash, excavate, construction materials, etc. shall be contained and ultimately deposited at an approved landfill and shall not be incorporated in any manner into the project site. No mulch shall be placed in wetland resource areas.
30. At no time during or after construction shall fill or other material be placed, slump into, or fall beyond the limit of work as shown on the approved plan. The applicant shall be responsible for inspecting and maintaining all slopes and shall immediately notify the TCC if slumping, erosion, or encroachment occurs.
31. In the event of any problem that may adversely impact protected interests, emergency control measures shall be implemented immediately, and the TCC shall be notified so that guidance and additional protective measures may be required as is necessary.
32. Any activity that might change the water level, temperature, quality, or hydrology of any wetland resource area is prohibited.
33. Any revision to activities/the Plan of Record for the activities under this Order of Conditions shall be submitted to the TCC. If the Commission/Administrator deems the change(s) significant (more than a field change), but not increasing impacts, an amendment to the Order of Conditions shall be required. If impacts to Resource Area(s) would be increased, a new Notice of Intent filing shall be required.
34. The TCC reserves the right to impose additional conditions on this project or this site to mitigate any actual or potential impacts resulting from the work herein permitted.

AFTER ACTIVITIES/CONSTRUCTION:

- 35. All temporary work paths and access roads into the Rail Trail site from Valley Road (and elsewhere as warranted) shall be raked and seeded with meadow mix after they no longer are used for construction purposes.**
- 36. Long-term Invasive plant control activities may be carried out along the Rail Trail from Washington Street to the Wenham Town Line properties and are encouraged,**

in accordance with MA Department of Agriculture permits and requirements and any other applicable Federal, State, and local laws and regulations.

37. Within THIRTY (30) DAYS from completion of the work under this Order of Conditions and after stabilization of soils and sufficient growth of vegetation, and **after the final Monitoring Report has been submitted by the Environmental Monitor**, the applicant shall request a **Certificate of Compliance** from the Topsfield Conservation Commission. The request shall be made in writing (WPA form 8A is preferred) delivered by hand or by certified mail, and, **if there are no deviations from the Plan of construction signed by the TCC**, shall include the following:
- a. A professional engineer's or professional land surveyor's written certification that the project was constructed in compliance with the OoC and the Plan,
 - b. TWO (2) sets of "as-built" plans, signed and stamped by a professional engineer or professional land surveyor,
 - c. A set of post-activity photographs showing the construction/activity areas, and
 - d. The Bylaw Regulations fee for a Certificate of Compliance would be waived because this is a Town project.

If the project deviates from the Plan of Construction, the following shall be submitted:

- a. A professional engineer's or professional land surveyor's written identification of all deviations from the approved Plan, and their impacts on the protected interests evaluated,
- b. TWO (2) sets of "as-built" plans, signed and stamped by a professional engineer or professional land surveyor,
- c. A set of post-activity photographs showing the construction/activity area, and
- e. The Bylaw Regulations fee for a Certificate of Compliance would be waived because this is a Town project.

This condition does not authorize any deviation from the signed and approved Plan without prior notification and written approval of the TCC.

38. After a final inspection has been made for the Certificate of Compliance and/or after permission to remove erosion controls has been granted, **all siltation control fencing and/or plastic erosion control sock shall be removed and disposed of properly**. You may contact the TCC office for information about disposal of hay bales.

PART B, PURSUANT TO THE TOWN OF TOPSFIELD WETLANDS GENERAL BYLAW AND REGULATIONS:

1. **CONTINUING CONDITIONS:** The following conditions shall be in effect during the work activities described in this Order of Conditions and shall remain in effect following the issuance of a Certificate of Compliance:

- a. Continued Vegetation Required:** The owner shall be responsible for assuring the lasting integrity of vegetative cover on the site in order to prevent erosion, contamination, or other detrimental impact to on-site and off-site resources. Only non-invasive, preferably native, plant species are to be planted within the Buffer Zone Resource Area on these properties. Additionally, no plant listed on the Massachusetts Prohibited Plant List may be planted on these properties (See http://www.mass.gov/agr/farmproducts/Prohibited_Plant_Index2hrm).
- b. No Fertilizers or Pesticides:** There shall be no use of fertilizers or pesticides within ONE HUNDRED (100) FEET of any wetland area or stream/body of water except with written permission of the TCC.
- c. No Chemicals, Oil, or Gas:** There shall be no storage or parking of any equipment that leaks oil or other petroleum products within the Buffer Zone or within Riverfront Area.
- d. No Pollutants:** There shall be no discharge or spill of fuel, oil, or other pollutants into any area of statutory interest including the Buffer Zone. Any accidental spill shall be immediately reported to the TCC and other appropriate authorities.
- e. Dumping Prohibited:** There shall be no dumping of leaves, grass clippings, brush, or other debris into the wetlands or streams/bodies of water.
- f. Additional Alteration Prohibited:** There shall be no additional alterations of areas under TCC jurisdiction without the required review and permit(s).
- g. Maintenance of Stormwater/Drainage Structures:** Regular Monitoring and Maintenance of all stormwater/drainage structures shall be the responsibility of the landowner(s).