

Spillman noted she and Jolley are meeting with Town Administrator Hebert next week to discuss getting a permanent replacement.

**Next Meeting: September 14, 2016**

**ADJOURNMENT:**

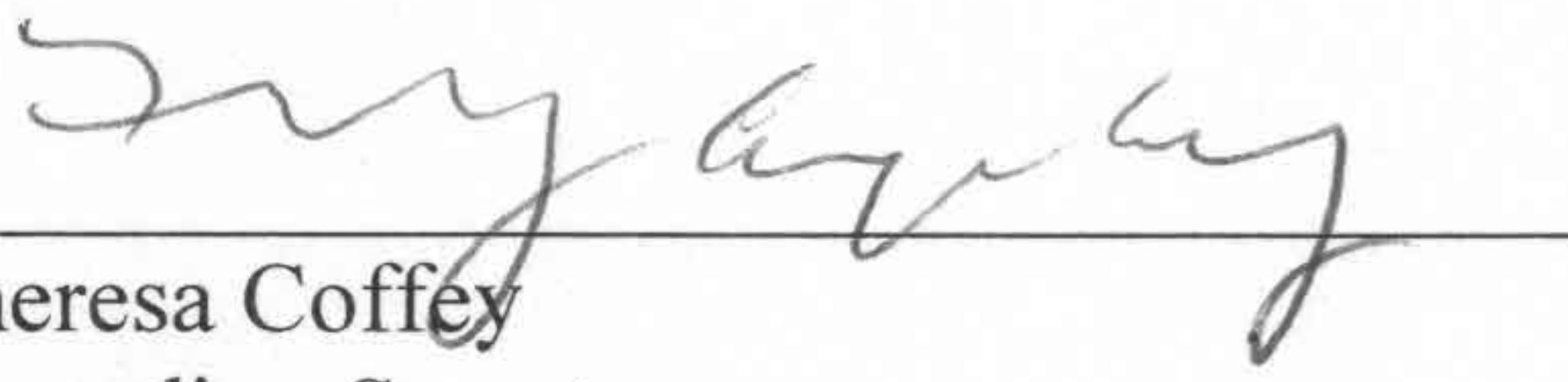
Shamroth moved to adjourn. Carroll seconded. The vote was unanimous in favor.

The meeting was adjourned at 10:17 p.m.

**Documents used for or submitted at the meeting:**

1. August 17, 2016 Meeting Agenda
2. NOI 307-0735: 250 Perkins Row
3. NoI 307-0737: 196 High Street
4. NoI 307-0736: Adjacent to 200 High Street and Site Plan, Morin-Cameron Group June 24, 2016
5. MACC E-Handbook 16.24.3.3 and MACC E-Handbook Page: 18.7 "Limited" Projects
6. "Arguments for Permitting the Proposed High Street Parking Lot at the Canoe Landing Site", authored by Holger Luther, attached
7. NoI 307-0739: Town of Topsfield
8. NoI 307-07\_\_: 32 Gail Street
9. ANRAD 307-07\_\_: 470 Boston Street
10. RDA 2016-06: 53 Main Street
11. RDNI 2016-20: 43 Lockwood Lane
12. RDNI 2016-22: 8 Aaron Drive
13. Enforcement Order 2016-01: 25 Johns Lane

Respectfully submitted,

  
Theresa Coffey  
Recording Secretary

*Minutes approved at the TCC meeting on October 19, 2016*

Pursuant to the 'Open Meeting Law,' G.L. 39, § 23B, the approval of these minutes by the Commission constitutes a certification of the date, time and place of the meeting, the members present and absent, and the actions taken at the meeting. Any other description of statements made by any person, or the summary of the discussion of any matter, is included for the purpose of context only, and no certification, express or implied, is made by the Commission as to the completeness or accuracy of such statements.



## ***Topsfield Conservation Commission***

**Minutes of Meeting held August 17, 2016**

**7:00 P.M. – Topsfield Library Meeting Room**

**Present:** Chery Jolley, Chair, Jim Carroll, Jennifer DiCarlo, Holger Luther, Dodds Shamroth, Lana Spillman, Administrator, and Theresa Coffey, Recording Secretary

**Other Attendees:** Greg Hochmuth, Joe Geller, Evan Haglund (Chief, Topsfield Police), Greg Krom (Topsfield Water Dept. Supt.), Foti Qirjazi, Joe Gibbons, A. Festa, Curt Young of Wetlands Preservation, Inc., David Larson, Heidi Fox, Patrick Seekamp, John Sarkis, Vaclav Talacko, Brian Gallagher,

The meeting was called to order with a quorum present at 7:07 pm. Chair Jolley noted for the record that pursuant to the Mullin Rule, Jen DiCarlo and Dodds Shamroth have submitted signed statements that they have listened to the recording of the July 13, 2016 meeting and, therefore, are able to vote on hearings continued from that meeting.

### **HEARINGS:**

**Continuation ANRAD 307-0726: 21 & 9 Towne Lane,** (Map 33, Lot 061 & Map 41, Lot 073), LeClair/Gove Environmental Services, Inc.

Spillman reported that she received a written request from the applicant to continue to September 14, 2016, and that Mike DeRosa, DeRosa Environmental, will continue the peer review when he returns from vacation on August 20.

Luther moved to continue the hearing to September 14, 2016. Carroll seconded. The vote was unanimous in favor.

**Continuation NoI 307-0735: 250 Perkins Row,** (Map 35, Lot 004), Topsfield Water Dept. /Krom – beaver dam removal

Greg Krom, Superintendent Topsfield Water Department was present and discussed the status of this project.

Krom explained that there is a comment on the DEP website stating that applicants should submit with their application something in writing from the Division of Fisheries and Wildlife. At the time of the July 13 TCC meeting, he was waiting for comment from the DFW. Krom has since spoken with DFW but they are unwilling to provide anything in writing. It is DFW's opinion that a formal NOI is not needed to remove the beaver dam. After a 30 minute phone call, Krom sent a summary by e-mail to the DFW, but they have not responded.

Jolley asked if this NOI is only for one time removal. Krom replied that it would cover a period of three years.

Luther moved to close the hearing. Carroll seconded. The vote was unanimous in favor.



Luther moved to grant the permit subject to the procedure that was proposed, with the appropriate supervision of the TCC. Carroll seconded. The vote was unanimous in favor.

**Continuation NoI 307-0737: 196 High Street**, (Map 58, Lot 052), Rail Trail Committee/Geller – Bridge wing wall repair

Joseph Geller, Chairman of Rail Trail Committee was present and reported that the DEP has issued a file number and had no comment on application. With the help of Spillman, Geller drafted a provisional OoC to be used for the bidding process.

Luther moved to close the hearing. Carroll seconded. The vote was unanimous in favor.

Luther moved to grant the permit for the repair of the wing wall at Ipswich River on the upstream side subject to the description in the presentation and subject to consultation with the TCC. Carroll seconded. The vote was unanimous in favor.

**Continuation NoI 307-0736: Adjacent to 200 High Street**, (Map 53, Lot 053), Rail Trail Committee/Geller – Rt. 97 Canoe Landing Parking

Joseph Geller, Chairman of Rail Trail Committee, and Greg Hochmuth, Williams & Sparages, reviewed the status of this project. Hochmuth stated that the application was continued from the July 13, 2016 hearing because they had not received comments from DEP and to allow for a TCC site visit. Hochmuth reported that DEP has responded and that they have no comments. Also, TCC had a site visit. The topography of the proposed parking area will be modified on both ends to make it level, and at least three viable trees plus one large dead one will be removed. One tree proposed to be saved will have to be removed. Hochmuth stated that the Rail Trail Committee is willing to clean up some invasive vegetation but there is no opportunity for mitigation. He also reported that the Rail Trail Committee is willing to support a recommendation for signage prohibiting parking on the river side of the road.

DiCarlo stated her opinion that she reviewed the DEP regulations and feels this is clearly an accessory to water dependent use. TCC members discussed with Hochmuth their opinions on parking being applied as water dependent use.

Jolley brought forth the issue of alternatives analysis. DiCarlo stated she felt that the scope of the alternative analysis should be conducted as alternatives for this canoe launch only, not for every launch site in Topsfield. The TCC further discussed the scope of the alternatives analysis. Spillman pointed out that, as shown on an IRWA map, there are five canoe launch sites in Topsfield. Hochmuth read aloud a section from 301 CMR 10.58 under limited project regulations and explained how they are responding. He stated that he feels that the project complies with the performance standards.

Geller stated that he was in contact with the Fairgrounds about making the river accessible for trail and river users; their response was that they have many events on that particular field (the Route 97 lot) and do not want to open it up for public use.

Luther read into the record a paper he drafted in support of permitting the parking lot at the canoe landing site and asked that it be attached to the minutes. The discussion continued on



details on the project, including the type of stone/impervious surface being proposed and trees that may have to be taken down.

Jolley stated she felt the strongest argument in support of the parking lot is protection of the river bank; there would be less parking and traffic on the river side.

Luther moved that the TCC has determined that this is a “limited project.” Carroll seconded. The vote was 4 – 1 with Jolley against.

Luther moved to approve the project as a “limited project” under the Act, as presented. Carroll seconded.

Spillman initiated discussion about alternatives at the site, in particular reducing the amount of parking spaces. DiCarlo asked how overflow parking would be handled, if needed. Police Chief Haglund replied that there is no definite plan in place, but it is likely that parking on the river side would be limited. He stated that if this project is approved, they will look at restricting some areas. Jolley read into the record a letter from IRWA in support of additional parking spaces. However, the letter states that they are not in a position to comment on environmental impact. Discussion ensued on the subject of the project being necessary for public safety. Jolley pointed out that public safety is not an interest protected by the Act or the Bylaw; the purview of the TCC is to protect the environment. Also, there are alternative sites for the parking. Jolley asked if there is anything in writing from Public Safety in the application. Hochmuth replied there are letters from Dave Bond and Chief Haglund included.

Luther moved to issue a waiver under the Bylaw pursuant to the public interest issue. Carroll seconded. Geller read aloud a paragraph on parking included in the letter from DCR. Vote was taken by roll call:

DiCarlo: yes

Shamroth: yes

Carroll: yes

Luther: yes

Jolley: no

Spillman asked for a written plan for removal of the invasive vegetation. Hochmuth said it will be done by hand pulling and he will submit his standard invasive species removal plan. In response to a question, Hochmuth stated that there is no way mitigation could be provided. Luther urged the Rail Trail Committee to come up with an operation and maintenance plan to submit to the TCC, to which Geller agreed.

Luther moved to issue an Order of Conditions for the project described as presented under the Bylaw. Carroll seconded. The vote was unanimous in favor.

**NoI 307-0739: Town of Topsfield**, Topsfield Highway and Water Department/Gibbons – general permit for routine maintenance and certain repairs

Luther read the legal notice into the record. Public notice was as a press release, in the Tri-Town Transcript. Joe Gibbons thanked Spillman and Luther for their help with the NOI. The



requested Order of Conditions is to allow the Water and Highway departments to do normal maintenance and repairs without applying for a NOI each time. There are exceptions and limitations but the Order will cover typical, every day projects. Because of new DEP Regulations, there will be separate NOIs when dealing with culverts.

Spillman asked for a condition for regular communication and site walks for proposed projects in sensitive areas. Gibbons said that is doable, the listing of work is public and the Board of Road Commissioners will send the information to the Conservation Office.

Luther moved to close the hearing. Carroll seconded. The vote was unanimous in favor.

Luther moved to issue a general permit Order of Conditions for the Water Department and Highway Department, as submitted, and subject to conditions as discussed. Carroll seconded. The vote was unanimous in favor.

**NoI 307- 07\_\_ : 32 Gail Street**, (Map 40, Lot 026), Giovannacci/C.G. Johnson Engineering, septic system upgrade within Buffer Zone/Riverfront Area of Cleaveland Brook  
Luther read the legal notice into the record. Proof of abutter notification was submitted.

Vaclav Talacko presented the planned septic system upgrade for Giovannacci. He stated that DEP has not yet assigned a file number. Spillman stated she made a site visit and does not have concerns about the proposed work. Luther questioned access to the site; Talacko replied that you can drive right in.

Luther moved to continue the hearing to September 14, 2016 because there is no DEP file number. Carroll seconded. The vote was unanimous in favor.

**ANRAD 307-07\_\_ : 470 Boston Street** (Map 7, Lot 003), Sarkis Development Company/Seekamp Environmental Consulting – review of Resource Area delineation  
Luther read the legal notice into the record. Proof of abutter notification had been submitted.

Patrick Seekamp of Seekamp Environmental reviewed the site plan and history. Spillman stated she made a site visit and they have identified a small bottle dump area close to the wetland. Seekamp agreed that this would be cleaned up by hand as part of the process.

Luther moved to continue the hearing to September 14 due to no DEP number. Carroll seconded. The vote as unanimous in favor.

**RDA 2016-06: 53 Main Street**, (Map 41, Lot 028), Qirjazi/Graham Associates – new septic tank in Riverfront Area of School Brook and authorization of shed in Buffer Zone/Riverfront Area  
Luther read the legal notice. Proof of abutter notification had been submitted.  
Qirjazi explained his plan to build an extension and to add a septic tank to upgrade from 1500 gallons to 3000 gallons. So as not to disturb existing water and gas lines, he plans to put a new tank next to an existing tank; the new tank will be more than 100 feet from School Brook. Luther asked if he would need to expand the leaching field. Qirjazi replied he did not and stated that the Board of Health has approved this plan. Qirjazi confirmed that there is no problem with access to the site.



Spillman added that on a site visit, she noticed a shed on blocks, approximately 8x10 feet, and suggested that he add this shed to the application for after-the-fact authorization, which he did.

Luther moved to close the hearing. Carroll seconded. The vote as unanimous in favor.

Luther moved to issue a Negative Determination of Applicability for the proposed septic tank in Riverfront Area, and a shed, after the fact. Carroll seconded. The vote as unanimous in favor.

#### **REQUESTS:**

**Emergency Certification 2016-04: 250 Perkins Row –Beaver Dam**, (Map 35, Lot 004), Water Department – ratification

Luther moved to ratify the emergency certificate for the breaching of the beaver dam at 250 Perkins Row. Carroll seconded. The vote as unanimous in favor.

**RDNI 2016-20: 43 Lockwood Lane**, (Map 30, Lot 004), Conn/Seekamp Environmental Consulting – waterline connection to provide water to Andrews Farm Development in Boxford  
DiCarlo disclosed that she lives on Lockwood Lane and stated she did not feel it would affect her impartiality to vote on this application.

Patrick Seekamp explained the events that led to the failure of the water source to Andrews Farm Development in Boxford. He described the current, temporary set up in which water is being delivered from Topsfield water to this Boxford development. The temporary water line is a 4-inch pipe lying on the surface. It is not adequate and will freeze in the winter weather. DEP has ordered this water line to be winterized.

Seekamp reviewed the proposal to bury 18 feet of 8 inch pipe connecting two hydrants, one in Topsfield, one in Boxford. Krom added further explanation of the process that will be needed to make this water source permanent and said there are other entities that will also have to approve this. Spillman noted she visited the site and is satisfied with the plan. Jolley expressed her concern that the application be clear that this is temporary. Krom assured her it is.

Luther moved to issue a Determination of Negligible Impact. Carroll seconded. The vote was unanimous in favor

Heidi Fox asked the TCC if there was something that could be written into the approval that this is temporary only and David Larson asked if there were any alternatives to burying it.

Krom replied that the Topsfield Water Commissioners are scheduled to discuss this on September 14 at 7:30 am and all are encouraged to attend to address these issues.

**RDNI 2016-22: 8 Aaron Drive**, (Map 19, Lot 022), J. W. Construction/White – Replace deck with new footings in Buffer Zone/Riverfront Area  
Spillman stated she had no concerns with this project.

Luther moved to issue the Determination of Negligible Impact. Carroll seconded. The vote was unanimous in favor.



**OTHER:**

**Enforcement Order 2016-01: 25 Johns Lane**, (Map 76, Lot 004), Festa/Vantage Point Realty Trust – ratification, discussion, etc.

Curt Young represented Vantage Point Realty Trust and stated he did resource area flags 20 years ago at this site. He stated that he has reviewed the site with Festa and has started on erosion control. He added they have no issues with the Enforcement Order and will be working on compliance: 1) stabilize the site, 2) delineation, 3) survey plan. Young said Festa wants to put in a driveway from Rt. 1 and asked if that should be part of the Enforcement Order or a separate NOI. Young will report progress to Spillman by e-mail. He stated they would need to get survey work done and on a 30+ acre property that will take some time.

Luther moved to ratify the Enforcement Order. Carroll seconded. The vote was unanimous in favor.

Young suggested a new item that the applicant will provide weekly e-mail updates.

Luther moved to make an amendment to provide a weekly e-mail update. Carroll seconded. The vote was unanimous in favor.

**Brian Gallagher, Summer Intern – updates**

Gallagher discussed the vernal pool brochure he created. He displayed the website (links on the Conservation page of the Town website) map and tags that describe what is in the vernal pool, certification number, etc. Gallagher stated there are 23 certified pools and 7 or so that are not yet certified. Shamroth asked if there is designation listed for public and private properties. Gallagher has color coded the map to indicate this.

Jolley requested approval for ten additional hours for Gallagher to complete his project.

Luther moved to approve ten additional hours for Gallagher, from the Bylaw Revolving Fund. Carroll seconded. The vote was unanimous in favor.

**Wetlands General Bylaw Regulations – further review for amendments**

Spillman and DiCarlo will meet to identify specific items to amend.

**MEETING MINUTES:**

**Minutes of July 13, 2016** – tabled until the September 14, 2016 meeting.

**ADMINISTRATOR'S REPORT:**

**Salem /Beverly Water Board SBWSB Canal – unauthorized alterations of Wetlands Resource Areas, E.O. 2015-02, 2R Valley Road**, (Map 65, Lot 036)

The Army Corps of Engineers issued a Permit, authorizing the Resource Area alterations after the fact. Spillman described infractions at this site over the past years. She and Gallagher made a site visit the previous week and found that, fortunately, alders and other vegetation is growing in, including over some of the extensive fill in BVW.

**Temporary Administrative Assistant – Lucia de Bernardo**

Spillman informed the TCC there is a temporary Administrative Assistant, Lucia de Bernardo, in the Conservation Office and she has been working out very well. Lucia will be leaving mid-September.



# **Arguments for Permitting the Proposed High Street Parking Lot at the Canoe Landing site By Holger Luther**

## **Excerpt from 310-CMR-10.53 ...**

(3) Notwithstanding the provisions of 310 CMR 10.54 through 10.58 and 10.60, the Issuing Authority may issue an Order of Conditions and impose such conditions as will contribute to the interests identified in M.G.L. c. 131, § 40 permitting the following limited projects (although no such project may be permitted which will have any adverse effect on specified habitat sites of Rare Species, as identified by procedures established under 310 CMR 10.59). In determining whether to exercise its discretion to approve the limited projects listed in 310 CMR 10.53(3), the Issuing Authority shall consider the following factors: the magnitude of the alteration and the significance of the project site to the interests identified in M.G.L. c. 131, § 40, the availability of reasonable alternatives to the proposed activity, the extent to which adverse impacts are minimized, and the extent to which mitigation measures, including replication or restoration, are provided to contribute to the protection of the interests identified in M.G.L.c.131, § 40.

This discretionary exemption includes so-called water dependent uses such as fishing and launching of watercraft at sites approved and/or funded by the DCR.

At issue is whether or not the proposed parking facility will in any manner jeopardize any of the contiguous resource areas. Approval of this project is contingent upon the TCC declaring the proposed project a "Limited Project" as cited in the above excerpt from the regulations.

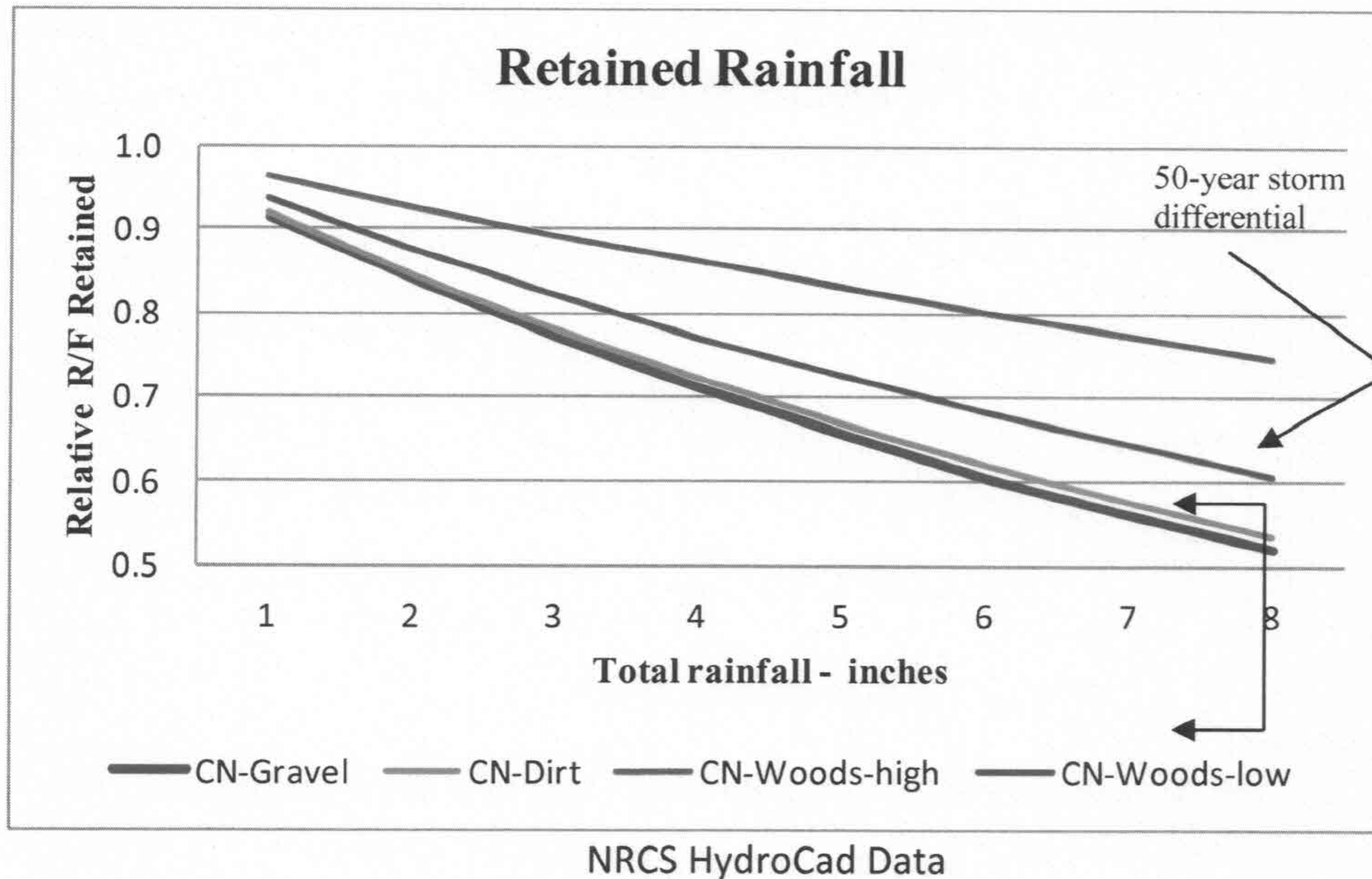
## **Facts:**

1. The entire project is located within the first 100-feet of the Ipswich River riverfront area.
2. The proposed area of the parking lot is about 3,400 sqft.
3. The proposed parking lot is directly across from an established and extensively used watercraft launch site that was recently repaired and improved. The site is used by individuals, recreational businesses, and educational institutions such as the Audubon Society.
4. The proposed area is outside any wetlands areas.
5. There are no archeological entities on or contiguous to the site.
6. There are no rare or endangered species on or contiguous to the site
7. No structures will be located on the site.
8. There are no topological changes that are proposed.
9. No impervious pavement of the site is proposed
10. There are no healthy, major caliper trees that need to be removed.
11. The primary removal of items on-site involves debris and large boulders placed there by previous custodians of the site and invasive shrubs such as Buckthorn, Chinese Euonymus, and Bittersweet that have been established there.
12. In the absence of this project, parking for the launch site will be exclusively on the river side of High Street (Rte-97) – a narrow strip of land between river and road that will promote further erosion of the river embankment.
13. Locating a parking area further up – or down-river will entail extensive portage of watercraft along High Street which has no pedestrian accommodations at this time and is therefore hazardous in the presence of a 40-MPH speed limit traffic.
14. The nearest alternative launch site is off Salem Street about 1.5 miles up-river. That site is as constrained for parking as this site presently albeit the traffic on Salem Street is less intense and at a slower speed.
15. Improving the safety of vehicular traffic in this publicly congested site on High



Street will reduce the potential of hazardous spills and river pollution due to vehicular accidents in the Riverfront area.

16. The parking lot will ease the spill-over parking unto the rail trail on the river-side of High Street.
17. In response to fears that the project might substantially affect flood storage or run-off characteristics: Flood storage is not an issue as no changes of grade or impervious structures are proposed. As for changes in run-off characteristics, an estimate of that has been computed based upon probable soil infiltration (CN) values for gravel, dirt, and (present) wooded areas with high and low infiltration rates as provided by the NRCS in their TR-55 publication. The graph below shows the effect of the relative amount of rainfall retained by the area in a typical 24-hour storm.



It is seen that the differential run-off of storm-water (pre-and post-development) from the parking lot in a 50-year storm event (~7.3 inches) is at most 22% or about 456 cubic feet of water over the 24-hour duration of the storm most of which will be directed into the wetlands to the south of the project site.

In light of the above facts, it seems reasonable to assert that this project of minimal alteration and essentially no adverse impacts on contiguous resource areas as described in the submitted NoI. *It therefore complies with the criteria for a limited project.*

**Pursuant to the Topsfield General Wetlands Bylaw.**

The project is not eligible for a permit pursuant to the local bylaw unless the Commission issues a waiver pursuant to the provisions of Section R10-4, 7(i) of the Topsfield General Wetlands Bylaw that requires the Commission to make a finding that the project accommodates an overriding public interest.

According to the testimony of the Topsfield Chief of Police at the initial Public Hearing on this proposal the present parking conditions at the launch site are unsafe and may lead to accidents and/or fatalities. Accordingly given that the Rail Trail Committee is a public entity and the project has been conceived and designed to mitigate traffic hazards at that site, a waiver based upon an overriding concern for public safety is very much in accord with the K&P interpretation of the “overriding public interest” provision.