

MILFORD PLANNING BOARD PUBLIC/CONSERVATION COMMISSION JOINT MEETING MINUTES
March 7, 2017 Town Hall Auditorium, 6:30 PM

Planning Board Members:

Christopher Beer, Chairman
Tim Finan
Doug Knott
Janet Langdell
Susan Robinson
Jacob LaFontaine, Alternate member

Lincoln Daley, Community Development Director
Shirley Wilson, Recording Secretary

Conservation Commission Members:

Andy Hughes, Chairman
David Bosquet
Audrey Fraizer
Kim Rimalover
Andy Seale
Janet Urquhart
Chris Costantino, Alternate

Town of Milford, Brox Community Lands Reclamation and Restoration Plan. Joint Planning Board & Conservation Commission Public Meeting to discuss the proposed excavation and restoration plan for a portion of the Brox Community Lands. (Gravel Removal Operation Plan Completed by Fieldstone Land Consultants)

Chairman Beer called the meeting to order at 6:30 p.m.

Chairman Beer recognized:

Lincoln Daley, Community Development Director
Mark Bender, Town Administrator
Mark Fougere, Select Board Chairman
Chad Branon, Fieldstone Land Consultants, LLC

Presentation:

Plans dated 1/25/17 Rev. C (Received on 2/10/2017)

Conservation Commission questions/comments:

A Hughes stated that these comments have been compiled from Commission members and the full submittal will be reviewed formally at the 3/9/17 Commission meeting.

Wildlife Mitigation Plan, Lot 38-58 dated January 31, 2017

1. Missing a proper description of the project/impacts that the proposed mitigation is meant to offset.
2. Report missing map which is critical and standard with this type of report.
3. Introduction, Paragraph 1 “clearing of land of any rare wildlife...” Were there rare species found during this effort?
4. Introduction, Last Paragraph “historical records” Please define how old the records are, 1 year or 10 years?
5. “I conducted a rare species search and critical wildlife habitat survey..” – The report does not outline critical wildlife habitat findings, only habitat in general terms.”
6. Introduction, Last Paragraph “investigation period was not prime...” Agreed, not optimal time of year and not best year given the conditions.
7. Wetlands, 2nd to last paragraph. Please reference the methodology recommendation for looking for species.
8. Wetlands, 2nd to last paragraph. This method may be fine for the black racer but the endangered hognose snake likes dry/open woodlands and it is not clear if that habitat type exists.
9. Recommendations, paragraph 1: “Protects over half of the total parcel...” Please change to permanently protect with conservation easement.
10. Recommendations, paragraph 1: “This protected land includes...” The description seems to focus on turtles, but not snakes. Again, a map related to this report is necessary.
11. Recommendations, paragraph 2: A gate is referenced, where would it be? Map?
12. Recommendations, paragraph 3: Who would create these stations, pay for them, and maintain them? Would money be set aside in a bond for the stations and development of an educational program?
13. Recommendations, paragraph 4: “Silt fencing”, this is not acceptable for such a long project, The Conservation Commission requests the use Animex fencing <https://animexfencing.com/whyanimex>

14. Recommendations, paragraph 4: “Invading woody species will be removed..... at 5 year intervals” Who will do this? For how long?
15. Recommendations, paragraph 4: “monitored on alternate months in the growing season” The monitoring should be done more frequently especially if there is a storm.
16. Recommendations, paragraph 4: “monitored on alternate months...” Who is going to monitor? For how long?
17. Recommendations, paragraph 7: This entire paragraph needs to be rewritten. People should not be encouraged to handle the rare species. It should match the AoT plan note #5. In addition to notifying biologist and State the Conservation Commission should also be notified.
18. Recommendations, paragraph 8: “Annually for a period of six years” A baseline needs to be established prior to any work being performed. This should be established at the prime season to study wildlife. Why only six year?
19. Recommendation, paragraph 8: “review of the success.... by a Certified Wildlife Biologist” Who is going to pay for this?

Conservation Commission Recommendations

1. Define the impacts meant to be “mitigated”.
2. Conduct a rare species search during prime season use to create a baseline of current population.
3. Do not use Silt fence but something like the Animex fencing
4. Provide a map of site with three layers: 1) location of historical species siting, 2) existing wildlife habitat types, and 3) proposed protected lands.
5. Identify who is going to do each task recommended, for how long, and how it is going to be paid for.
6. Provide funding to purchase easement of protected land. Establish easement prior to work.

A. Seale inquired what the long term plan for the area that is being restored? Will this be a grassy knoll or field?
C. Branon stated that the elevation of the site will be raised to provide adequate separation from the seasonal high water table. The site will be stabilized and seeded. The goal is to prepare the site for future development as needed by the residents of the Town, in accordance with the 2014 Master Plan.

A. Fraizer asked for clarification on how the five 30’x40’ forested areas will be created without disturbing the surrounding land. Also, how were these areas chosen? It seems these areas were chosen for the endangered turtles but may not address the habit and needs of the endangered snakes. C. Branon stated that we will work with NH Fish & Game and our certified wildlife biologist to address any comments and recommendations.

Alteration of Terrain Application dated February 3, 2017

1. Project Narrative dated November 2, 2016 – Introduction “a wildlife crossing” Only one crossing is being recommended? Based on what? Does it work?
 - Would like to see general references for this technique for protecting wildlife.
 - If a fence is erected to prevent passage from amphibians and reptiles, will it also provide a physical barrier to all mammals who can’t jump?
2. Project Narrative dated November 2, 2016 – Proposed Terrain Alteration – The Conservation Commission does not want silt fencing used. Please see Animex Fencing.
3. Project Narrative dated November 2, 2016 – Proposed Terrain Alteration – provide a description of the “berm” What
C. Branon described the berm and stated that in discussion with NH Fish & Game it was suggested to create a gravel berm to the north to be more conducive to the turtle habitat. On the low side, we will be creating, not building, a berm so that the site will remain self-contained. The area is man-made so that makes it non-jurisdictional even from a vernal pool standpoint and we are actively communicating with the State on this interpretation. He then described the details for self-containment.
4. Project Narrative dated November 2, 2016 – Proposed Terrain Alteration – “upgrade the existing connection to Perry Road”
 - a. The Conservation Commission does not support the use of the connection to Perry Road
 - i. Perry Road a class XI road
 - ii. Creates unnecessary stress to sensitive wildlife habitat
 - iii. Creates wetland impacts

- b. The Conservation Commission recommends the use of Heron Pond Road
5. Project Narrative dated November 2, 2016 – Summary – “protected open space” needs to be in perpetuity with a Conservation Easement
6. Will there be a Public Hearing inviting stakeholders, especially abutters?
M. Fougere said he considered this meeting a public hearing but there will be another meeting to answer the questions brought forth.
7. How will the forestry be done? The Conservation Commission recommends that it be done in small sections prior to any extraction.
8. Who will get the proceeds of the timber harvest? Proceeds could pay for a conservation easement.
9. Was the Wildlife Mitigation plan submitted to NH State DES non-game department?
C. Branon stated that it was submitted to NH Fish & Game.
10. Map NHB16-1762 – The Conservation Commission would like to see this plan overlaid with the plan.

Gravel Removal Operation Maps Revision 1/25/17

Operational Notes

- F. What is calcium chloride, what is its purpose? Does it affect ground water?
- K. “The duration of the excavation” – Recommend this be limited to a specific number of years.
M. Fougere stated that per the warrant article, the contract is to be for no more than six years. The authorization is for twenty years.

Proposed Operations to Avoid Take of Endangered Species

1. “A Wildlife Biologist” – should this be a team or crew?
How large of an area will be cleared at one time?
The Conservation Commission requests Animex type fencing be used.
No clearing should be done during bird breeding season.
2. The Conservation Commission requests Animex type fencing be used.
3. Limit removal of vegetation to 5 acre increments.
4. Define “qualified” individual.
5. Is there an 800# for state? Include Conservation Commission in notification.
Is Peter Spear a one person company? What if not available?
9. More than one Kiosk required and legible from several yards.
Information should also be in the vehicles.
11. Remove the word complex. ** should be #10
Include the word permanent to the protection of 75 acres.
C. Branon reiterated that this is a very complex proposal.

Sheet 2 Of 9 – Both areas called existing sediment basin and wash pond need to be reevaluated as wetlands during spring vernal pool season – April/May. The larger appears to have occurred from hitting groundwater and small area appears to naturally occurring wetland at the bottom of the steep slope. Is there any evidence that either were sediment basins or wash ponds in the past?

How were the “proposed turtle habitat mitigation areas” identified and how will they be created?

A study of the Blandings turtles is recommended to understand how they are using the site.

Sheet 3 of 9 – The 25’ buffer around the “forested wetland” should be 100’ per town ordinance.
The referenced buffer should state peatland not forested.

Recommend a 100’ buffer around the vernal pools. Extremely steep slopes 25’ from the vernal pool is not contiguous to wildlife migration

If Perry Road used, need to see upgrade plans and wetland impacts for adjacent property
The silt fence is not shown beyond the power lines. Also we would like to see the consideration of wildlife outside the areas shown.

Will there be any wetland impacts with widening Perry Rd? C. Branon said we don't anticipate any impacts associated with the proposed improvements to the existing road. A Fraizer inquired what documentation was submitted to the NH Fish and Game.

C. Branon confirmed that the AoT permit, the design plans and the wildlife mitigation plan were submitted to NH Fish and Game earlier this week, at the request of the Alteration of Terrain Bureau.

A. Fraizer noted that this was an excellent place for the DPW yard. Will it be fenced off in some way to show where they are working with lines of demarcation?

M. Fougere replied that he didn't know if there would be a fence, but we will figure out something as we certainly do not want it to grow.

A. Fraizer brought up the buffer.

C. Branon stated that local regulations and RSA 155-E specify a 50' buffer to adjacent properties and 150' buffer to any residential buildings. We adhere and exceed all buffering requirements.

A. Fraizer inquired if the public would still have access to the existing hiking trail that is identified on the conservation land during the work.

M. Fougere said the public will have to stay out of the pit area while work is being done for safety reasons, but we may put up some signage to help identify the trail.

A. Hughes inquired if there were any invasive species in the material from Osgood Pond. A. Fraizer stated that there are known invasive species in the pit area, per the Natural Resources Inventory (NRI) that was done in 2015 but we don't know if there is anything from Osgood; however, purple loosestrife is a good candidate. A. Hughes suggested that the on-site wildlife biologist report any to the Commission.

Planning Board questions/comments:

S. Robinson inquired about the reclaimed areas.

C. Branon stated that the details for the former pit area are called out in the plan details and the full site, including gravel area #2, will be reclaimed with loam and organic materials removed from the excavation areas that will be stored on site. There is an area on site that DPW needs to utilize as needed for stockpiled materials and they will maintain that area.

S. Robinson asked if any of the materials from Osgood Pond will be utilized to reclaim the former pit area?

M. Fougere described the materials and added that a sample of the pond material has been sent to UNH to test the organic layer. There will probably be some formula needed to make it into a suitable material, but it is material that we can work with.

J. Langdell inquired about the improvements to Perry Rd.

M. Fougere stated that we've talked about access to this property for years and we do not want to have trucks going up and down Heron Pond Rd, intermingling with school traffic and pedestrians. He described the existing conditions and the road improvements. The contractor will be doing all work per the contract; however it will carry a light footprint as there is nothing significant being done. He also noted that this route has been dictated by the warrant article.

J. Langdell brought up the work schedule.

C. Branon verified that there are no weekend hours proposed and no processing between the hours of 6AM – 7AM. All work hours are defined in the contract and we will make the necessary revisions to the plan.

J. Langell requested that more than one animal crossing be shown on the plan.

Staff questions/comments:

L. Daley noted that Environmental Coordinator, Fred Elkind, has been working with staff and the consultants throughout the application process.

Chairman Beer opened the public hearing to the general public and took questions.

Adam Goess, Ches Mae Ln; stated he moved in during March, 2016 and was not informed by the previous home owner and there has been virtually no communication out to abutting properties. My quality of life will be significantly impacted for the next six to twenty years.

1. What is the definition of an active gravel pit and why is a permit not needed for Gravel Resource Area #1? Having been an abutter for the past year, the truck noise has been virtually nil. That is old growth there so it has not been very active.
2. Are there noise ordinances in place, knowing that for the next six to twenty years possibly Monday through Friday from 6:00AM to 7:00PM I get to listen to heavy truck traffic and washing basically in my back yard. *J. Langdell noted that the start and stop times are defined in the Gravel Regulations.*
3. Will there be a public hearing?
C. Beer clarified that this was a public meeting because the Town already has permission to do the work by means of the March, 2016 warrant article. This meeting is to provide feedback on the plan. There will be at least one additional public meeting.
4. The consultant stated that Gravel Resource Area #1 contains fine sediment. This can also be classified as silica, which truthfully is a known carcinogen so will there an air test conducted on site regularly as well as the abutting properties?
5. He would like to request that the minimum buffer to abutting properties be 100'.
6. Is there recourse for the Town to purchase abutting land or homes at adequate or above fair market value, knowing that for the next six to twenty years my quality of life will be impacted?
C. Beer replied that there is not.
7. Is there any recourse for litigation for loss of quality of life and property value?
C. Beer replied he would need to speak with a lawyer.

Dave McManus, Brookview Ct;

1. Does the Planning Board have a report filed between 8/4/1989-8/4/1991 that describes the gravel operation, in terms of the land area? How much material has been removed and how much is left, as a requirement to grandfather this?
C. Beer stated that question would have to be deferred to the Planning Department.
 2. If the site is still active and has not complied with the requirements for incremental reclamation, it would be deemed abandoned and therefore not grandfathered. The Town has to comply with RSA 155-E and as a Planning Board you should be cognizant of that.
 3. Does the Town have reports filed to show that the land is active; year by year, how many truckloads, what types of trucks, how many yards of sand? If not, again this is considered abandoned.
 4. Will the excavation cause diminution of property values or unreasonable change the character of the neighborhood?
 5. Will the excavation cause a nuisance or any public health or safety hazards to the school and people living nearby?
 6. I respectfully request that we enforce the Town Ordinance which states 7:00AM to 5:00PM for operating hours.
J. Langdell noted that this is a Town project, and much like the Ambulance Facility, the plan is brought to the Planning Board for input but it does not need any approval from any Board.
- D. McManus said he respectfully disagreed.

Suzanne Fournier;

1. The existing 17acre gravel pit will be considered grandfathered, although it has been abandoned and is not active providing commercially useful material; however, the new area, Gravel Resources Area #1 does not fall under the grandfathered status and an AoT permit is required by the state. It follows that we need a permit from the Town.
C. Branon noted that there is no Nexis between the AoT permit and permitting at the local level. He then reviewed the requirements of 155-E and stated that the AoT permit establishes a baseline.
S. Fournier rebutted by reading Article III All commercial operations proposing to be given after the adoption date of the regulations, require a permit.
C. Beer stated that this is not a commercial operation, it is Town owned property. S. Fournier asked how the hiring of Northeast Sand & Gravel to remove the material, selling the material, and giving us a cut, is not a commercial operation.

2. Exhibit D was submitted which included the cover sheet, the table of contents and pages 11-12 from the 2005 Clough, Harbour Associates report. The Town hired this firm to do a mining study which was relied upon by the Board of Selectmen when the excavation discussions began in 2013. She then read pages 11 & 12 and stated that it is not the Town of Milford doing the excavation. It is a commercial company and it is very clear from the Clough Harbour report that a permit is required. I would like the Town to address this.
3. When did Fieldstone talk to Fish & Game about the protected berm for the habitat, or when will they be meeting? It was noted in the report that he had met with Fish & Game and discussed what's on the plan set.
C. Branon stated that we met with Fish & Game on a number of occasions for the recreational fields and openly discussed that we would be coming back. We walked the entire property with Kim Tuttle and incorporated her recommendations into this plan. We will meet again, but don't have a specific date.
C. Beer inquired if those meetings occurred before or after Peter Spears' survey dates referenced in the Wildlife Mitigation Report.
C. Branon replied afterwards because they were both on site for the construction of the recreational fields. We also walked the entire site with representatives of the AoT Bureau, Fish & Game for the recreational fields and discussed the proposed gravel plans.
C. Beer requested that the specific dates, locations and attendees be provided at the next meeting.
4. The Natural Heritage Bureau report, also referred to in the report, was for the sports fields. It's not a report for the much larger 55 acre project area and the Perry Rd expansion. Has a request been placed for a new report specific to this site?
C. Branon confirmed that the NHB report was for the recreational fields but added that they look at a much larger area, so that evaluation encompasses the gravel operation. For clarity, we did request an additional evaluation and will submit that to the state and share with Fish & Game.

S Fournier additional comments:

The recreational fields are under appeal with NH DES Water Council and will possibly go to the supreme court based on the outcome. The project has run into problems with endangered species and is not a settled matter. Endangered species at the sports fields are the same species that live throughout this property; the Hognose snake, the Blandings turtle, and the Spotted turtle so I commend the Conservation Commission for requesting a baseline wildlife study.

J. Langdell asked who brought the appeal to the Water Council.

S. Fournier replied five abutting families, one of which is here tonight.

Osgood Pond is a very contaminated place and it has been dredged. We have pictures of living invasive loosestrife and the Brox Environmental Citizens were so concerned that we contacted state offices for information on how to move invasive species. Their answer was indefinite but the point is that purple loosestrife is there and the seeds are there.

She described the vernal pool locations that the Blandings Turtle, Fairy shrimp, Wood frogs, and Spotted salamanders use.

We will be contacting the wetlands bureau regarding this application because it states that there are no wetland impacts. There will be wetland and buffer impacts in the forested area and along Perry Rd.

The road is listed on the plan as 20' wide, but why is that stated when the intention is not to be 20'. Two vehicles cannot pass side by side so the road would have to be wider than 20' which would be a lot of impact.

The dirt service road is considered a Class VI road and in New Hampshire they are non-maintained. I would like the Town to investigate the Class VI laws which prohibit the town from spending any money on these roads and you can read that on nhmunicipal.org. You can change it to a Class V road through the process, but no money can be spent by the town either directly or indirectly through a contractor. I reiterate what the Conservation Commission said that we should not go out Perry Rd.

The culvert at Birch Brook had to be patched. It is a 40-50 year old culvert like many around town and the Town Administrator said they all need to be replaced as they are in danger of collapsing. Think about that culvert with the truck traffic.

Chris LaBonte, Marcey's Way:

C. LaBonte expressed concern with the section of Perry Rd from where the paved portion ends to the intersection with the service road. Is there a standard that will be maintained to because I currently maintain that section of road, out of pocket. He brought up conversations with the prior Town Administrator and stated that the road is not town maintained.

M. Fougere stated that under the contract, the contractor will have to maintain the road to the condition it is in today. There may be a need for regrading or adding some new material but it will be from where it turns from pavement to gravel.

M. Bender clarified that the contract will cover Perry Rd and the Service Rd, but not the privately owned Marcey's Way.

Will the operation be year round, through winter and mud season? Who will plow during winter and what will happen in during mud season? I live there so I have to maintain it for access, but I also have to deal with anyone who drives out there in 6" of mud. I get concerned with the possibility of 40 truck trips and if the contract covers this, I am totally OK with that.

M. Bender stated that the operator is planning on getting his fully loaded trucks out of there in winter, so he is prepared to maintain the road.

The Planning Board encouraged Mr. LaBonte to contact the current Town Administrator, Mark Bender to voice his concerns.

C. LaBonte clarified that he never wanted to imply that he wanted to turn that into a Class V road.

J. Langdell made a motion to continue this meeting tentatively on Tuesday April 4, 2017 at 6:30PM in the Town Hall. The meeting date will be posted on the Town Calendar and home page of the website, on social media, and in the Town Hall. D. Knott seconded and all in favor.

C. Beer thanked the Conservation Commission, the Planning Board, and all those who came out for this presentation.

The meeting was adjourned at 9:00.

Motion to approve: J. Langdell

Motion to second: D. Knott

MINUTES OF THE 3/07/17 MEETING APPROVED ON MAY 23, 2017