

9-20-07
Centerville
er L. Freeman
Joshua Davis
er R. Stearns
edith K. West
anie A. Kiefer
hew J. Dunn
er E. Todino

Freeman Davis & Stearns LLC

1597 Falmouth Road, Suite 3, Centerville, MA 02632 p: (508) 775-5010 f: (508) 775-9105 www.freemandidavislaw.com
236 Lewis Wharf, Boston, MA 02110 p: (617) 227-5070 f: (617) 227-5001

August 22, 2007

Scituate Conservation Commission
Scituate Town Hall
600 Chief Justice Cushing Highway
Scituate, MA 02066

**Re: Herring Brook Meadow LLC
132 Chief Justice Cushing Highway
Request for Determination of Applicability**

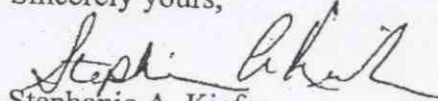
Dear Chairman and Members of the Commission:

Enclosed please find a Request for Determination of Applicability ("RDA") under the Wetlands Protection Act (the "Act"), together with accompanying narrative report and plan, both prepared by SITEC Environmental, Inc. Through the enclosed filing, the applicant seeks a determination pursuant to 310 CMR 10.05(3)(a)(1) that maintenance mowing of the field at 132 Chief Justice Cushing Highway is not work subject to the Act, as such maintenance of the field has existed since before the Act and its regulations. Further, to the extent that mowing maintenance would occur within Riverfront, such work is exempt under 310 CMR 10.58(6)(a).

Please note that the applicant does not waive its challenge to the Commission's issuance of an enforcement order in April 2007, as such challenge is the subject of a certiorari appeal. Likewise, while the applicant disputes the Commission's purported authority to require action of it under the enforcement order, the enclosed RDA would nonetheless satisfy the same.

Thank you for your attention to this matter.

Sincerely yours,



Stephanie A. Kiefer
Freeman Davis & Stearns LLC

Encl.
cc: Client



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

Scituate
City/Town

WPA Form 1- Request for Determination of Applicability
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

A. General Information

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



1. Applicant:

Herring Brook Meadow LLC

Name

E-Mail Address (if applicable)

265 Newbury Street

Mailing Address

Peabody

City/Town

MA

01960

State

Zip Code

978-536-2500

Phone Number

978-536-2501

Fax Number (if applicable)

RECEIVED

AUG 23 2007

TOWN OF SCITUATE
CONSERVATION COMMISSION

2. Representative (if any):

SITEC Environmental, Inc.

Firm

Roderick Gaskell, AICP, PWS, RS

Contact Name

rgaskell@sitec-engineering.com

E-Mail Address (if applicable)

769 Plain Street / Unit C

Mailing Address

Marshfield

City/Town

MA

02050

State

Zip Code

781-319-0100

Phone Number

781-834-4783

Fax Number (if applicable)

B. Determinations

1. I request the Scituate Conservation Commission make the following determination(s). Check any that apply:

- a. whether the **area** depicted on plan(s) and/or map(s) referenced below is an area subject to jurisdiction of the Wetlands Protection Act.
- b. whether the **boundaries** of resource area(s) depicted on plan(s) and/or map(s) referenced below are accurately delineated.
- c. whether the **work** depicted on plan(s) referenced below is subject to the Wetlands Protection Act.
- d. whether the area and/or work depicted on plan(s) referenced below is subject to the jurisdiction of any **municipal wetlands ordinance or bylaw** of:

Name of Municipality

- e. whether the following **scope of alternatives** is adequate for work in the Riverfront Area as depicted on referenced plan(s).



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Roderick Gaskell, AICP, PWS, RS

rgaskell@sitec-engineering.com

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C. Project Description

1. a. Project Location (use maps and plans to identify the location of the area subject to this request):

132 Chief Justice Cushing Highway	Scituate
Street Address	City/Town
58	1-5
Assessors Map/Plat Number	Parcel/Lot Number

b. Area Description (use additional paper, if necessary):

The area subject to the Request for Determination is contained within Map 58/Lot 1-5, a proximate 15 acre parcel, but itself contains approximately five acres. Based upon historic photographs dating back to at least the 1950's, the subject 5+ acre site has historically been utilized as an agricultural field. Per an Order of Resource Area Delineation (ORAD) issued by the Scituate Conservation Comm., a portion of this 5+ acre field is within 200 feet of the First Herring Brook and a portion of the southerly/southwesterly portion of the field was mapped w/ isolated land subject to flooding & A-Zone.

c. Plan and/or Map Reference(s):

Plan Entitled, "Proposed Open Space Mitigation Plan," dated August 17, 2007	
Title	Date
Report Entitled, "Proposed Restoration Plan..." dated August 20, 2007	

2. a. Work Description (use additional paper and/or provide plan(s) of work, if necessary):

The Applicant proposes to re-establish the open meadow habitat (agricultural field) to prior conditions by removing invasive plant species, seeding the removal area and mowing. (Ref. Accompanying 8/17/07 Plan and August 20, 2007 report.)

b. Identify provisions of the Wetlands Protection Act or regulations which may exempt the applicant from having to file a Notice of Intent for all or part of the described work (use additional paper, if necessary).

Reference Accompanying August 20, 2007 report.



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

C. Project Description (cont.)

3. a. If this application is a Request for Determination of Scope of Alternatives for work in the Riverfront Area, indicate the one classification below that best describes the project.
- Single family house on a lot recorded on or before 8/1/96
 - Single family house on a lot recorded after 8/1/96
 - Expansion of an existing structure on a lot recorded after 8/1/96
 - Project, other than a single family house or public project, where the applicant owned the lot before 8/7/96
 - New agriculture or aquaculture project
 - Public project where funds were appropriated prior to 8/7/96
 - Project on a lot shown on an approved, definitive subdivision plan where there is a recorded deed restriction limiting total alteration of the Riverfront Area for the entire subdivision
 - Residential subdivision; institutional, industrial, or commercial project
 - Municipal project
 - District, county, state, or federal government project
 - Project required to evaluate off-site alternatives in more than one municipality in an Environmental Impact Report under MEPA or in an alternatives analysis pursuant to an application for a 404 permit from the U.S. Army Corps of Engineers or 401 Water Quality Certification from the Department of Environmental Protection.
- b. Provide evidence (e.g., record of date subdivision lot was recorded) supporting the classification above (use additional paper and/or attach appropriate documents, if necessary.)



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D. Signatures and Submittal Requirements

I hereby certify under the penalties of perjury that the foregoing Request for Determination of Applicability and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge.

I further certify that the property owner, if different from the applicant, and the appropriate DEP Regional Office (see Appendix A) were sent a complete copy of this Request (including all appropriate documentation) simultaneously with the submittal of this Request to the Conservation Commission.

Failure by the applicant to send copies in a timely manner may result in dismissal of the Request for Determination of Applicability.

Name and address of the property owner:

Herring Brook Meadow, LLC

Name

205 Newbury Street

Mailing Address

Peabody

City/Town

MA

State

01960

Zip Code

Signatures:

I also understand that notification of this Request will be placed in a local newspaper at my expense in accordance with Section 10.05(3)(b)(1) of the Wetlands Protection Act regulations.

James R. Motzkin

Signature of Applicant

August 22, 2007

Date

for Herring Brook Meadow LLC

Signature of Representative (if any)

August 22, 2007

Date

FOR SITEC Environmental, Inc.

SITEC ENVIRONMENTAL

Civil and Environmental Engineering, Land Use
Planning, Hazardous and Solid Waste Consulting

SITEC ENVIRONMENTAL, Inc.
769 Plain Street, Unit C
Marshfield, MA 02050
Tel. (781) 319-0100 FAX (781) 834-4783

449 Faunce Corner Road
Dartmouth, MA 02747
Tel. (508) 998-2125 FAX (508) 998-7554

Proposed Restoration Plan 132 Chief Justice Cushing Highway Assessor's Map 58, Lot 1-5 (Formerly Watson Farm property)

August 20, 2007

PURPOSE & SUBJECT AREA

The purpose of this restoration plan is to restore the open meadow (agricultural field) to the conditions which existed prior to the mowing alleged to have been in violation of the MA Wetlands Protection Act and the Scituate Wetlands Bylaw in the Enforcement Order issued by the Scituate Conservation Commission issued on April 24, 2007.

The subject area to be restored is shown on the accompanying SITEC Environmental, Inc. plan dated August 17, 2007, entitled, "Proposed Open Meadow Restoration Plan."

PRIOR CONDITIONS

The subject open meadow is not a natural habitat. The reason that the habitat is an open meadow is because it has been altered for agricultural purposes at least since 1952.

This historic agricultural alteration is documented in a report by Lester Garvin, aerial photo interpretation expert, dated April 11, 2007 entitled, "A Report of Agricultural Use on the Herring Brook Meadow Land" (Attachment A) and the accompanying plan sheet of aerial photographs dating from 1952 to 2005. Both documents have been previously submitted to the Commission. Likewise, such use is documented in an e-mail report signed by former Conservation Commission member Michael Bleakie on 6/21/07 which sets forth the agricultural history (Attachment B). And, it is documented in a letter signed by local farmer Ronnie Simons dated December 8, 2006 which states he continued planting and plowing through 2006 and agreed to plant corn in 2007 (Attachment C). Mr. Simon's planting and plowing has continued the maintenance of the open meadow habitat and preserved the option to plant agricultural crops.

In addition to the above, the continuous, long term alteration of the open meadow for agricultural purposes has been demonstrated in the field by documenting the well developed 18" to 24" plow layer that exists in the top soil (A) horizon. This Ap soil horizon throughout the meadow/agricultural field is the result of 50+ years of tilling and planting crops.

Accordingly, the conditions prior to the mowing which triggered the April 24, 2007 Enforcement Order (i.e.; the "prior conditions") will be re-established by continued maintenance of the open meadow habitat. This will also preserve the option to continue to plant and to harvest agricultural crops.

INVASIVE PLANT SPECIES

Phragmites communis, commonly known as Common Reed or Phragmites, is a highly invasive, non-native plant species that is expanding throughout the lower, south center of the open meadow. Although Phragmites is listed as a wetland indicator plant, it occurs in altered areas where high ground water elevations are not sustained long enough to support the dominance of other wetland plants or the formation of hydric soils. This is because their extensive root systems (rhizomes) can extend well below 2 meters (well below 6 feet) to reach low-lying ground water. The adventitious rhizome root system forms dense mats that discourage competitors. These characteristics enable Phragmites to push other species out and form monotypic stands. [Natural Areas Journal, "*Phragmites australis* (*P. communis*): Threats, Managing and Monitoring," Volume 14 (4), 1994, p. 287] "Phragmites is a problem where and when stands appear to be spreading while other species typical of the community are diminishing." (The Nature Conservancy, Arlington VA, "Elements Stewardship Abstract for Phragmites or common reed", p. 4)

Because mowing, plowing and planting of the meadow/agricultural field have been temporarily prohibited by the recent Enforcement Order, the Phragmites community has been allowed to thrive and continue to expand. This process will continue until mitigated by physical cutting and removal, including removal of at least the upper layer of the rhizome root system.

PROPOSED RESTORATION MEASURES

First, mechanically remove the entire invasive plant community, including the Phragmites and the associated rhizome root system within the first 12" of the plow layer (Ap Horizon). This will be accomplished by mowing and disking this area and then removing the exposed rhizomes by hand raking.

Second, rake level this disturbed area to its current topography and seed with ERNST "Whitetail Deer & Turkey Mix" (ERNMIX-133) or similar seed mix. This seed mix is composed of the following meadow species;

- 30% Ladino White Clover
- 30% N Z white Clover
- 20% Vernal Alfalfa
- 10% Orchardgrass
- 10% Perennial Ryegrass.

Seed mix to be broadcast by hand or knapsack seeder at the rate of 15 bulk pounds per acre.

Third, when vegetation throughout the entire open meadow/agricultural field (including the reseeded area) reaches 12" to 18" tall, mow to no less than six inches.

MANAGEMENT OBJECTIVES

The management objectives for maintaining the restored open meadow/agricultural field are;

1. To return and maintain the subject area to "prior conditions" (i.e.; to an open meadow habitat free of non-native, invasive plant species),
2. To cause no change in existing topography, and

3. To preserve the existing Ap soil horizon and thereby preserve the option to continue to plant and harvest agricultural crops within all or a portion of the restored open meadow/agricultural field.

MA WETLANDS PROTECTION ACT - NO ALTERATION OR IMPACTS TO EXISTING WETLANDS FUNCTIONS

Riverfront Area

"Any...clearing...landscaping...within the riverfront area in existence on August 7, 1996...is allowed...without filing a Notice of Intent..." [310 CMR 10.58(6)(a)] The subject area has been cleared and maintained as open, herbaceous habitat for over 50 years. (Ref. Attachment A and accompanying aerial photo plan sheet). Therefore, continuing to maintain this area as an open meadow is exempt from the requirements for a Riverfront Area.

Land Subject to Coastal Storm Flowage (LSCSF)

There are no performance standards set forth in the MA Wetlands Protection Act Regulations for work within LSCSF. Notwithstanding this, the proposed restoration measures will result in no change in topography or vegetative cover effecting coastal flood flows. Therefore, there will be no impact on the existing functions of LSCSF.

Isolated Land Subject to Flooding (ILSF)

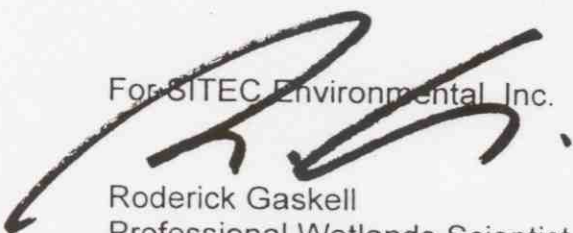
The proposed restoration measures will result in no change in topography or underlying soil conditions and will improve wildlife habitat by removing non-native, invasive plants. There will be no impact of the existing functions of ILSF because the proposed restoration measures will meet and exceed the applicable

Performance Standards [310 CMR 10.57(4)(b)]. That is, these measures will not result in;

1. Any change to existing capacity of the ILSF to contain and prevent lateral displacement of water.
2. Any change in the capacity of the ILSF to protect public and private groundwater supplies.
3. Any change in the capacity of the ILSF to prevent pollution of groundwater because there is no organic mat.
4. Any impairment of the capacity of the ILSF to provide vernal pool habitat because there is no vernal pool habitat.

REQUEST FOR DETERMINATION OF NON-APPLICABILITY

For the reasons set forth above, the proposed restoration measures will not alter or otherwise impact the functions of any wetlands resource areas regulated under the MA Wetlands Protection Act and the Regulations, 310 CMR 10.00. Therefore, we request a finding of "non-applicability for the proposed work" and that this work may proceed under the MA Wetlands Act and Regulations without filing a Notice of Intent under said Act and Regulations.


For SITEC Environmental, Inc.

Roderick Gaskell
Professional Wetlands Scientist
DEP Certified Soil Evaluator

**A REPORT OF AGRICULTURAL USE ON THE HERRING BROOK
MEADOW LAND
SCITUAT, MASSACHUSETTS**

Prepared by

Lester Garvin

Resource Management Systems, Inc.

87 Beldingville Road, PO Box 234

Ashfield, Massachusetts 01330

April 11, 2007

Purpose

I was contacted by Rod Gaskell of SITEC Environmental to undertake the task of researching agricultural use on the Hewing Brook Meadow Land in Scituate, Massachusetts.

I am a professional aerial photograph interpreter with over 50 years of experience analyzing images on aerial photographs and other remote sensors. I received a B.S in Forestry from the University of New Hampshire in 1952 and a M.S in Wildlife Management from the University of Massachusetts, Amherst, in 1955. I began analyzing aerial photographs at UMass in 1953 and continued to do so until I joined the Navy as an Air Photo Intelligence Officer in 1956. While on active duty I was assigned to a heavy attack squadron for a year and completed my active duty tour as an instructor in aerial photograph analysis at the Naval Intelligence School. I was released from active duty in 1960 and continued to serve as a reservist until my retirement as a Captain in Naval Intelligence in 1980. As a civilian from 1960 until the present time I have continued to analyze images for thematic mapping applications and have become proficient with Geographic Information Systems. From 1987 to the present I have worked on over 80 legal cases for attorneys dealing with wetland modification, hazardous materials, grandfathered zoning and boundary disputes (adverse possession) issues.

Methodology

I obtained aerial photograph images for seven dates; the first three on the list were obtained from MassGIS and the last four from the aerial photograph archives at the University of Massachusetts, Amherst. I scanned the UMass photographs at 1000 dpi.

April 2005	.5 Meter pixel resolution	True Color
April 2001	.5 Meter pixel resolution	True Color
April 1997	.5 Meter pixel resolution	Black & White image
4/8/1993	1" = 1000' Scale	CIR (Color Infrared Image)
9/18/1984	1" = 2083' Scale	CIR (Color Infrared Image)
8/13/1971	1" = 1667' Scale	Black & White
7/26/1952	1" = 1667' Scale	Black & White

I analyzed each photograph for indications of land use for agriculture. From 1993 to 2005 there is a consistent pattern of row-crop use that is oriented east-west and similar from year to year, but not identical, which indicates four different crops over the twelve year period. In 1984 row crops were grown, but in rows oriented north-south. The 1971 photograph shows the row-crop to be oriented east-west and the 1952 photo indicates a variety of uses including crops and pasture. An image composite prepared by Resource Management Systems, Inc. and dated 4-9-2007 accompanies this report. There are eight views, a project site locus map and seven images of aerial photographs that are listed above and that were used to analyze the land use.

Conclusions

1. The aerial photographs showed the land to be in continuous agricultural use from 1952 to 2005.

For Resource Management Systems, Inc.

A handwritten signature in cursive script that reads "Lester Garvin". The signature is written in dark ink and is positioned above the printed name.

Lester Garvin

