

NORTH BERWICK PLANNING BOARD

MINUTES OF PLANNING BOARD NOVEMBER 18, 2021

Present: Jon Morse, Anne Whitten, Scott Strynar, David Ballard, Mark Cahoon, Matt LeConte, CEO

Absent: Chairman Geoffrey Aleva

Also Present: Jim McIntyre, Joy McIntyre, Chris Mende, Jack Olea, Barb Farah, Michael Peverett from Civil Consultants, Nick Curtis, Steve Morse, Shannon Regan, Eric Regan, Chris Hagan, Cheryl Klausman, Jacob Doyon, Gina Plachowicz, Cheryl Hoffman, Kathryn Harrison, Anna Houston, Sid Avery

1. Call to Order:

Vice Chairman Jon Morse will be the Acting Chairman for tonight's meeting. Acting Chairman Morse called the meeting to order at 6:35 pm.

2. Review Previous Minutes: October 14, 2021

Anne Whitten stated that under the Review Previous Minutes on the first page of the minutes, the correction was not done. It read, "He doesn't think there...". This was the corrected version. The incorrect version previous to the change was "He doesn't thing there...". Also on page 5, the second sentence in the 3rd paragraph currently reads, "...Stub Marsh because its s in Resource...". It should read, "...Stub Marsh because it is in Resource...". The next sentence after this currently reads, "...from Stub Marsh so the meet the town's requirements.". It should read, "...from Stub Marsh so it meets the town's requirements.".

David Ballard stated that on page 3, the 1st sentence in the last paragraph currently reads, "Anne Whitten stated that everything that the dedicating to the town is mostly wetland." It should read, "Anne Whitten stated that everything that the applicant is dedicating to the town is mostly wetland."

Anne Whitten motioned to approve the minutes of October 14, 2021 as amended. Mark Cahoon seconded the motion. VOTE: 5-0

Anne Whitten requested that we add the date of the minutes that they are approving at the meeting next to Review Previous Minutes. Also, they would like the agenda to be part of the saved minutes when added online.

Acting Chairman Morse moved Mark Cahoon up to full voting status.

3. Current Business:

3.1 Public meeting of Adeline's Way Subdivision, prior known as Hagan Subdivision abutting 166 Somersworth Road – Map 001 Lot 070 & 070A

Conditional Use Application for a Major Subdivision Review – The Applicant is proposing a 7 building lot subdivision on Somersworth Road with 5 of the lots proposed to be for duplex dwellings (2 per lot), 1 lot for public dedication, and 1 lot for the owner's existing home.

Chris Mende from Civil Consultants stepped forward to represent the project for the owner Chris Hagan. He said that the Board had a revised set of plans to review with the changes. He stated that Dwayne Morin told him that the wetland setbacks are supposed to be 100-foot setbacks but they only had them at 75 foot setbacks. He did correct this on the plans and changed the building areas on the sheets. On Lot 1, they relocated the building to fit and on Lot 5, they changed the configuration of the building. He said that they really don't have a configuration. It is basically just a place holder to show that they can fit a substantial size building on the lot. Mr. Mende said that they added a transformer to the plans. He said that they noticed when they were getting ready to send the plans out to Underwood for review, the soils letter was not included, and they have corrected that on the plan as well.

Mr. Mende referred to the memo from Neil Rapoza who has been working this project. It talks about the progress with the permitting to DEP and Army Corps. It provides dates when things were submitted, what types of applications were submitted and what they expect as far as timing for the review. He said that there is currently nothing to report in regard to these reviews because they have not received any comments back yet. Mr. Mende said that the plan set did go out to Underwood for review and the current estimated time for review is sometime in early December. Matt LeConte said that Dwayne indicated that the review should be back prior to the December 9th meeting. Mr. Mende said that if it is back a few days before the meeting, it might not make sense to be present at the December 9th meeting. It will also give DEP more time to get back to them and they can address everything at once.

Mr. Mende stated that, at the last meeting they discussed 3 issues that the Board was concerned with. One was the overhead utilities and the need to provide the Board with some justification for using overhead instead of underground. Another concern was using a joint driveway for lots 4 & 5. The 3rd issue had to do with Open Space. Anne Whitten said that she did speak with Dwayne about the Open Space being wetlands. He explained to her that the Board of Selectmen had agreed to it because it is connected to some land that the town owns. She no longer has a concern with the Open Space issue.

Regarding the merging of the driveways, Mr. Mende sent a letter to Dwayne, and he has received a response back from him. Dwayne did not agree with that plan. Matt Leconte stated that he

didn't approve it because it goes against the specific Ordinance that only allows 2 dwellings. Mr. Mende said that the plan shows 2 driveways now for lots 4 & 5.

Mr. Mende stated that the other issue was regarding overhead utilities. He stated that what they are currently showing on the plan is the utilities running from Route 9 overhead to a transformer at the cul-de-sac and then going underground for each of the dwelling units. The only justification that they can give for this waiver is for ease of maintenance for overhead rather than underground and the cost of installation is cheaper for overhead than it is for underground. Acting Chairman Morse verified that they would have 3 poles. One would be at the mouth of the entrance road, one about halfway down and another one right before the cul-de-sac. Mr. Mende verified that this was the case. He stated that sometimes when they work with the utility company, they may require an additional pole, but this is what they foresee based on the terrain. Acting Chairman Morse asked if the power, cable, and phone were going to be on all 3 poles and then everything else would be underground from there. Mr. Mende said that this was the plan.

Mr. Mende went on to discuss the issue with Open Space. He said that the Ordinance for subdivisions does specify 35 acres and larger provide a dedication to Open Space. It also states that for less than 35 acres or less than 15 lots or dwelling units, it is at the discretion of the Board as to whether or not it is required and what is required. In working through the wording of the Ordinance and the numbers, based on the provisions, he calculated that the requirement would be 67,387 sf of Open Space. He said that they are providing 43,809 sf of Open Space that is on the upland portion of it. They don't quite meet the threshold of the suggested if the Planning Board chooses to go with that option. As stated earlier, this is adjacent property to property that the town currently owns. Mr. Mende said that he did look at the lots to see if he could reconfigure them to add more upland, but it would be a small contribution and probably would not be worth the effort.

Acting Chairman Morse stated that the Board had asked for the Homeowners Association documents, but he didn't see them. Mr. Mende said that they have not been completed yet by the attorney. As soon as they are, he will submit a copy to the Board. Acting Chairman Morse also asked about a performance guarantee for the roadway. Mr. LeConte stated that this would typically be part of the conditions of approval stating the pre-determined escrow amount. Mr. Mende asked him if he would be making the determination as to what the amount would be regarding an estimate of the roadway, etc. Mr. LeConte said that he could propose an estimate, but the amount may come from the Road Commissioner or possibly Underwood Engineering will make a suggestion. Mr. Mende stated that if the estimate does not come from one of these sources, they will make a suggestion for consideration.

Acting Chairman Morse asked the Board if they had all had a chance to review the new driveway plan. Mr. Mende said that it was unchanged from what they saw at a previous meeting. He asked the Board members if they had any comments regarding the overhead power. Scott Strynar said that he is fine with overhead going over Route 9, but he prefers it to be underground once it is on the property. The power is coming from the opposite side of Route 9 so instead of going under

Route 9, they can go over it. Once they come onto the property, he would like it to go underground from there so there would be only 1 pole instead of 3 of them. Mark Cahoon wondered if they wouldn't want to do another pole on the other side of the stream because it would be hard to bury electrical under a stream. David Ballard agreed. He said that he doesn't like them above ground either but given the situation with the topography, he would put the 2nd pole in and put the transformer there. Acting Chairman Morse said that they basically have to go over the wetlands with overhead so adding 1 more pole won't really hurt. Anne Whitten agreed with that. She said that she doesn't know why it was put in the Ordinance, but it does state that the Board can waive it if they want to. Mr. LeConte said that part of the decision will be where CMP will allow the transformer to be placed. He said that there may be some benefit to all private properties to feed each of the buildings with underground. David Ballard and Scott Strynar both stated that we should put as much power underground as possible so they would like to see just 2 poles overhead and the rest underground. Mark Cahoon also agreed with the 2nd pole over the stream and then go underground.

Scott Strynar asked if they were still waiting on the peer review and Mr. LeConte said that they were. Acting Chairman Morse asked Mr. LeConte if they had covered what they needed for this project. Mr. LeConte said that they were. They are still waiting for the final permit from the DEP to come back and to get the peer review comments. He said that this about all the Board can do tonight. Mr. Mende asked about if there was going to be another Public Hearing. Mr. LeConte said that once the conditions of approval are created and the reviews come back, they will set up the 2nd Public Hearing as required by the Ordinance. Mr. Mende said that he will monitor the information that they are waiting for and will schedule the next meeting once everything has been received.

3.2 Public Meeting of Curtis Sand and Gravel LLC – proposed gravel pits Stub Marsh Road – Map 009 Lot 039 & 051

Conditional Use Application Review for Mineral Extraction – The Applicant has proposed the development of two mineral extraction locations on including East Pit consisting of 9.5 acres and West Pit consisting of 4.2 acres.

Anne Whitten said that she had a couple questions from the last minutes. There was a part where Mark stated that “they were not going to widen Stub Marsh Road”. She does not recall that actually being said. She thought they said something more like, “maybe they won't have to”. Acting Chairman Morse believes that they were talking about mainly pushing the brush back on both sides of the road and they weren't going to improve the size of the road. Acting Chairman Morse said that they had discussed radios in the trucks so that if one truck is coming and one is leaving, they won't be able to pass. They did say something about putting in some kind of turnout but not to widen the existing road.

Mike Peverett from Civil Consultants and Nick Curtis from Curtis Sand and Gravel were present to discuss the project. Mr. Peverett shared a set of new plans with the changes highlighted. The

first change is Note 4 regarding the revised hours of operation. The new hours of operation are Monday through Friday from 6:00 am to 6:00 pm and Saturday from 7:00 am to 3:00 pm and Sunday would be for emergencies only. Note 5 relates to crushing. Crushing operations will be Monday through Friday from 7:00 am to 5:00 pm on an as needed basis. He said that they will bring in a mobile crusher whenever he has enough material to process. Under mineral extraction reclamation notes, Note 13 reads, "Stub Marsh Road to be renovated as indicated on Sheet L2. Entrance at intersection to be paved. Gravel road from paved transition to be renovated to an average width of 10 feet for truck traffic."

Mr. Peverett said that their intention is to have trucks staged in the pit and not on Stub Marsh Road. They will also post Stub Marsh Road at a 20-mph speed limit. Also Note 17 reads, "Processing of offsite material will require a Maine DEP Permit by Rule prior to processing offsite material." They will have to present that Permit by Rule to the Code Enforcement Officer before considering processing any offsite material.

Mr. Peverett stated that they were proposing to ask for a waiver for the extraction setback along Stub Marsh Road. As it turns out, it is part of the Zoning Ordinance so the Planning Board cannot waive that. They have revised the plans to show a 150-foot setback on Stub Marsh Road. This changes the size of the pit. The revised side of the East Pit is now 7.8 acres, and the revised West Pit is 3.8 acres.

Mr. Peverett said that they did some survey work and provided a sketch to show the proposal for the work that they are going to do adjacent to the Harrison property at the 4-way intersection. They are proposing to pave a 16 foot wide paved road well beyond their driveway for a total length of 225 feet. Beyond that, they are proposing a 12-foot wide by 50 foot long construction entrance to clean the tires on the trucks to eliminate dust and mud. There were some concerns expressed regarding horse riders at the construction entrance, so they are showing an additional 4 feet of just gravel. Beyond that point, there is a couple hundred feet of 16 foot wide gravel and then they will taper it down to a 10-foot graveled surface for the rest of the way to the pit.

Mr. Peverett stated that they have some notes relating to spill prevention. There will be no fuel storage on site. He will fuel from fuel cells in his vehicles. He said that they will stack the trucks in the pit and there will be radio communication so that there won't be an meets along the way. At one point along the road, they are going to widen it 10 feet. The engineer is going to try and pick a spot that is the best most wide-open space to do it. In the unplanned event that they have to have a meet along the way, this would be the place to do it. By having the trucks staged in the pit area, there won't be any issues with neighbors with trucks parked at the beginning of the entrance or out on the paved roads.

Anne Whitten wanted to make the comment that she found out that the pit across the road is still an active gravel pit. This is why it has not been reclaimed.

Acting Chairman Morse mentioned that they are proposing times of M-F from 6:00 to 6:00,

Saturday from 7:00 to 3:00 and Sunday for emergencies. Also, the crushing operations will be done M-F from 7:00 to 5:00. He asked the Board members for their thoughts. Mark Cahoon asked if the 16 feet of pavement went up to the cemetery. Mr. Peverett said that it did not. It is about 150 feet short of the cemetery. Mr. Cahoon asked who owned the cemetery and was told that the Abbott's owned it. It is still an active cemetery. Mr. Cahoon was wondering about paving up to the cemetery. Anne Whitten said that it has never been paved. Nick Curtis stated that that section is probably the worse part of the road as far as being wet.

Anne Whitten said that there were some new letters that were not presented before and thinks that they should be read into the minutes. Matt LeConte said that one of them is from David Galbraith who will be our new planner from SMPDC to assist the town. He has provided a memo that itemizes each of the items to be discussed and it was just received today. Mr. LeConte said that it would be a good idea to review the items and go through each of the concerns as an initial set of conditions. He stated that Dwayne has provided a memo that addresses everything that we have received from the last meeting. They can then discuss the Attorney's opinion that was also received.

Acting Chairman Morse said that the Planning Consultant, David C. M. Galbraith, has basically stated the applicant is looking to open 2 gravel pits and that the Maine DEP has issued permits. He went on to read from the memo as follows:

Stub Marsh is abandoned and ownership is presumed from the center line to property line/Right of Way for each property along it. Under the town's Zoning Ordinance, in the F&F Zone, supply yards are a conditional use. Mineral extraction is defined in the town's ordinance, however it is not listed in the use table. The project was introduced to the Planning Board at the September 9, 2021 meeting and a public hearing was held on October 14, 2021.

Under the town's Zoning Ordinance Section 6.9.4, Conditional Use Permit applications and plans must provide a place for signatures of the Board, date, scale, and arrow showing north, zoning districts, setbacks, landscaping, proposed signage, existing and proposed buildings, as well as contours and finished grade elevations. The applicant has provided all of the above in plan sets and applications materials.

Public Input:

As mentioned above, a public hearing was held on October 14, 2021 and the Board heard a number of concerns and issues raised by the public. The Town also received over 25 written correspondences, submitted by individuals, households and neighborhood groups which have been entered into the public record. The objective of this memorandum was to review the various issues raised and condense/organize into categories so the Board can focus upon each "issue" both independently and how each relates to each other. There was considerable overlap between the written issues raised and how closely they mirrored the issues raised during the public hearing. The below is a brief overview of the primary issues raised and how the issues relate to each other:

A. “External Obsolescence”: External Obsolescence is a form of depreciation caused by factors not on the property itself, such as environmental, social, or economic forces. An example would be a very nearby garbage dump. The homeowner cannot reverse this loss in value by spending money to fix something. Many individuals expressed concerns that, if approved, the gravel extraction would create a loss to them in not just a monetary form, from the devaluation of their property, but in a personal loss of their enjoyment of their property and neighborhood. These issues will be further elaborated upon in each of the core concerns outlined below.

B. Hours of Operation: The Applicants are proposing to operate the extraction operation from 6:00 am to 6:00 pm seven (7) days a week. The proposed hours of operations were considered highly objectionable and were specifically raised almost 20 times within the written correspondence. The primary concern mentioned was weekend operations when residents are usually at home and enjoying their properties. It was suggested multiple times that, if approved, the weekend operations should not be allowed and that weekday hours be curtailed. It was suggested that weekday morning hours should be limited to after school bus morning pick-up and 5:00 pm to reduce impacts/interruptions to surrounding property owner’s schedules.

C. Air Quality/Dust/Noise: Dust and the need for dust control was an especially important and passionate topic as concerns regarding the material removal and hauling impacts to short and long-term respiratory issues that dust/particulates can cause. One household in particular expressed concerns regarding the probability of the proposed gravel pit operation aggravating their already existing conditions. Noise was also an often mentioned topic regarding truck traffic, operational machinery/equipment and the noise they will generate. Vehicle/equipment exhaust, smoke, particulates, etc. were also raised in regards to air quality. The “neighborhood” was mentioned a considerable amount of times and the consensus was the dust and noise would significantly change the area and essentially eliminate a significant reason why the residents moved there. Dust and noise were also mentioned with how they will negatively impact the surrounding environment by coating wetlands with dust. Concerns were also raised regarding the physical impacts to private property/homeowners. These include dust choking their lawns/gardens, covering the exterior of their homes/exterior possessions and infiltrating the interior of their homes impacting the air quality (dust particulates) and causing wear and tear on their home air systems and possessions.

D. Environmental Impacts: Negative environmental impacts were one of the key issues raised at the public hearing and contained within the received correspondence. (Matt LeConte stated that Dwayne Morin has provided a memo on these impacts. He told the Acting Chairman to read each of the conditions and then read the Town Manager’s correspondence.).

1) “Critical Habitat Destruction”: This was a wide ranging topic and raised issues or migratory species habitats, deer wintering areas, and impacts to plant and animal species currently living within and surrounding impacted areas. The value and need for the protection of Stub Marsh was specifically mentioned, independently, 16 times within the written correspondence.

Comments from Dwayne Morin's letter were:

1. Environmental Concerns: Due to the submission of a letter from the neighbor's Legal Counsel regarding the environmental concerns, I recommend that the Planning Board table any discussions on environmental concerns until the Norman, Hanson and DeTroy letter can be reviewed by the Town's legal counsel and receive an opinion concerning its contents. In addition, much of the substantive concerns mentioned in the letter surround the protection of endangered species and habitats and would typically be addressed by the Maine DEP and IF&W in their review for State permits and the Maine DEP should be contacted to determine what review has been conducted at the State Level regarding these concerns. The Town's previous SMPDC consultant had emailed the DEP, however to my knowledge we have not yet received any response.

Mike Peverett stated that after they received the letter from Nelson, Hanson & DeTroy, they forwarded it to Mike Clark at Maine DEP. He is the gravel pit and mining coordinator. Geoffrey Aleva from Civil Consultants had a conversation with Mr. Clark today. Mr. Clark said that he is in the process of reviewing the letter with his supervisor so they can determine how Maine DEP will respond to it. Given the situation that it is a previously approved pit, this will have some bearing on how they approach things. Mr. Peverett wanted to point out that the DEP Biologist and the gravel pit mining people were already brought onto the site and there is correspondence that was obtained from them prior to the application being submitted. Mr. Peverett said they are in a holding pattern and waiting to hear back from the DEP. He said that they are the permitting authority so that is who they have to work directly with. Anne Whitten stated that she had reached out to the DEP and she was told that the DEP had given Mr. Peverett the okay for the plan. Mr. Peverett said that the email that Mrs. Whitten sent has a copy of the field evaluation form. This is where Lucien from DEP went to the site with Mr. Curtis and with one of the mining and gravel pit people to look at the wetlands. He characterized them as scrub brush wetted wetlands. Mr. Peverett said that there was a question about the vernal pools. He said that the biologist that did the wetland mapping had a comment in his report about possible vernal pools. Mr. Peverett had said that Lucien had evaluated the vernal pools but he sort of miscategorized that. Lucien did not essentially classify them as vernal pools so DEP does not write a letter that says they are not vernal pools. His letter characterized what the wetlands are which is scrub brush.

Acting Chairman Morse continued to read from the memo received from SMPDC:

2) Endangered Species: Numerous concerns were raised regarding the endangered species living within and/or reliant upon the project area. Specific concerns surrounding wetland/species (plant and animal), vernal pools, and species such as the Blanding Turtle and Box Turtles were mentioned by name. Calls for extensive evaluations of the project and sign-offs from regulating agencies, such as MDEP and Inlands Fisheries and Wildlife (IF&W). This issue is also discussed under the "Procedural Issues" section of this document.

3) Surface and Groundwater: Numerous issues were raised regarding the potential impacts to their well water quantity but primarily with their water quality. Well water monitoring, testing and mitigation were raised and will be discussed under the “Procedural Issues” section of this document. Flooding concerns were also raised regarding the surface area of the open pit being denuded and the increase in impervious surface and reduction of ground absorbency.

4) Recreational Usage: Concerns were raised with how the project will detract from the existing recreational use of the surrounding areas and how the project is in conflict with the Town’s adopted Comprehensive Plan.

5) Dust: Dust has been discussed in detail above. However, the point was raised regarding the impact of heavy vehicles driving down the dirt road creating dust which will be deposited onto the area including wetlands.

6) Wetland Mapping: One of the letters specifically questioned the correctness of the 100 Year Wetland Mapping.

7) State/Federal Permits and Licenses: A number of the letters, including one signed by nine (9) concerned citizens, raised the issue that all required state and / or federal permits had not been submitted with the Application as required by the Town’s Zoning Ordinance. As wetlands, endangered species and their habitat are at risk, the issue of reviewing all required permits, such as Inland Fisheries and Wildlife (IF&W) was raised. This is also listed as a concern under the “procedural” section of this memorandum.

E. Public Safety: Public safety was mentioned repeatedly throughout the received correspondence as it relates to:

1) Truck Traffic: Truck traffic was listed as a major concern by residents as the area roadways accommodate bicyclists and walkers on a regular basis. The concerns centered around not only the safety of “pedestrians” but of the determination of the roadway quality which makes walking and bike riding less pleasurable and dust further reduces the “walkability” and “rideability” of the area. A considerable number of the letters talked about the large number of pedestrian/bikers in the area who regularly use the roadway for recreation/enjoyment.

Comments from Dwayne Morin’s letter were:

2. Prohibit use Of Abbott Road: Abbott Road is a Public Town Road with no legal restrictions as to who can utilize the road. Any restrictions as to use would fall under the jurisdiction of the Road Commissioner and the Board of Selectmen. A condition that prohibits the use of a public town road is not enforceable.

2) Water: Drinking water, well water monitoring and mitigation if needed were raised and also how the project may exacerbate area seasonal flooding.

3) Air quality: As discussed above in item “C” (Air quality/ Dust/Noise) many concerns discussed regarding how the project will impact the neighborhood air quality.

F. Procedural Issues:

1) Endangered Species: Numerous concerns were raised regarding the endangered species living within and/or reliant upon the project area. Specific concerns surrounding wetland/species (plant and animal), vernal pools, and species such as the Blanding Turtle and Box Turtles were mentioned by name. Calls for extensive evaluations of the project and sign-offs from regulating agencies, such as MDEP and Inlands Fisheries and Wildlife (IF&W). This issue is also discussed under the “Procedural Issues” section of this document.

2) Surface and Groundwater: Numerous issues were raised regarding the potential impacts to their well water quantity but primarily with their water quality. Well water monitoring, testing and mitigation were raised and will be discussed under the “Procedural Issues” section of this document. Flooding concerns were also raised regarding the surface area of the open pit being denuded and the increase in impervious surface and reduction of ground absorbency.

3) Setbacks/Buffers: A couple of the letters mentioned that the Application did not provide the required setbacks as required under the Town’s Zoning Ordinance. It should be noted that the Applicant has been informed of this requirement. A letter signed by nine (9), concerned citizens, specifically discussed providing a fence for an abutting property owner to help screen/buffer the operation from their property.

4) Conflict of Interest: Two of the correspondence raised the issue of potential “conflicts of interest” or Planning Board members business and/or personal association with Applicant.

Anne Whitten stated that Geoffrey Aleva is the Chairman of the Planning Board, and he also works for Civil Consultants. Mr. Aleva has recused himself from the meetings and he has not talked to any of the Planning Board members about the application. The issue of it being a conflict of interest does not stand. Acting Chairman Morse stated that since he has been on the Planning Board, Geoffrey Aleva has always recused himself anytime that Civil Consultants was involved in an application. He has never voted on any of their applications.

Acting Chairman Morse continued to read from the SMPDC letter:

III. Conclusion:

The overriding theme of the correspondence mirrored that of the sentiments expressed at the

public hearing. The area residents are concerned that the approval of the project will have irreparable negative impacts to their neighborhood as outlined in the concerns discussed above and therefore object to the project being approved. However, if the Board is considering approving the Application, they request that the Board place conditions on the approval to minimize the impacts to the neighborhood, such as limiting the operations hours to Monday through Friday and curtail the proposed hours to reduce conflicts with school busses and commuters.

In light of the correspondence the Town received and heard at the public hearing the Board should review and discuss the concerns and determine if/what additional information or plan modifications should be submitted or made.

Acting Chairman Morse went on to complete the reading of Dwayne Morin's email from where he left off:

3. Hours of Operation: The Planning Board should discuss and establish reasonable hours of operation for the Gravel Extraction project as they have for previously approved Gravel Extraction Projects within the Town.

4. Stub Marsh Road upgrades: The Board should work with the developer to determine the most appropriate means to control dust and access unto the Town's public road system. As the Road Commissioner, I am willing to review any plans that the Planning Board would like reviewed. In addition, the Town's Engineering firm, will review any proposal as part of the third-party review of the project.

5. Number and maximum Load of Gravel Trucks: The Town of North Berwick does not have a mechanism within our ordinances that allows for the charging of an impact fee for the usage of Public Roads. Furthermore, the ability to quantify and qualify the amount of damage caused to a public road from the gravel trucks as opposed to the residential cars, fedex delivery trucks, oils trucks, busses, etc. utilizing the road would be an impossible task to undertake. The Town of North Berwick Road system is designed to accommodate all varieties of vehicles and transportation patterns and the creation of an impact fee system on the Road is not appropriate. In addition, there has been an active gravel extraction operation that has utilized the Public Road network for more than 30 years.

There are currently no weight restrictions on any of the Public Roads in that area. The creation of a weight restriction would fall under the purview of the Road Commissioner and Board of Selectmen and require a legal reason for the imposition of a weight restriction. The weight limits of gravel trucks are limited under State of Maine Law based on the capacity of the vehicle.

6. Align with the Comprehensive Plan: The comprehensive Plan is just that – A Plan. It is not an ordinance nor a regulatory document. In the Introduction of the Town's 2009 Comprehensive Plan, it clearly states that "Although the comprehensive Plan must be approved at Town

Meeting, it is not an ordinance or regulatory document. Recommendations are made for zoning revisions and capital investments, but these items require consideration and approval at subsequent Town Meetings before they can actually go into effect. Neither is the Comprehensive Plan a document set in stone. It is intended to provide direction, not dictate an inflexible course of action.” (Pages 3&4 2009 Comprehensive Plan).

As for the limiting of the time for a Conditional Use Permit to 10 years, I note that the Pursuant to section 6.9.7 of the Zoning Ordinance, it states that “the Planning Board may attach such conditions...These conditions may include...period of operation...” abbreviated version of 6.9.7). The Planning Board should discuss this and make a decision as to whether this would be an appropriate condition of approval. I would state that no other gravel extraction operation permit granted by the Town has had this condition attached.

As part of every Gravel Extraction Project, the Town will require a performance guarantee for the reclamation of the project. The amount established is typically recommended to the Town by the Third Party Engineering Firm reviewing the project, in this case that would be Underwood Engineers. Underwood has not yet begun the engineering review until a more finalized project plan has been submitted by the applicant.

7. Setback from Stub Marsh Road: This item has already been addressed with the applicant. Under the Zoning Ordinance: “no part of any extraction operation shall be permitted within 150 feet of any property or street line. All property line setbacks will be in accordance with guidelines set by the D.E.P. or the requirements of this Ordinance, whichever are more restrictive.”

There is no section in the ordinance that allows for a reduced setback as established by the ordinance due to an agreement between neighbors, in fact there are no exceptions stated in the ordinance at all. Although the DEP may allow a reduced setback as part of their review, the Town’s ordinance states that the more restrictive of the requirements shall be required. Therefore a 150 foot setback is required from property lines and street lines. It is my understanding that the applicant will be amending the plan to insure that the 150 foot road setback.

It is my hope that these comments and information are beneficial for the Planning Board’s continued review of the project. Should you wish to further discuss these or other concerns, I would be more than willing to meet and discuss this with the Planning Board. As always, it is my aim and goal to assist the Planning Board in their deliberations.

Acting Chairman Morse went on to read the letter from Joseph M. Mavodones, Esq. from Norman Hanson & DeTroy:

RE: Curtis Sand & Gravel’s conditional Use Permit Application: Threatened and Endangered Species & Plants in Area of Stub Marsh Road

Dear Members of the Planning Board:

We represent a group of neighbors who abut or reside in the vicinity of the two proposed “mineral extraction gravel pits” on Stub Marsh Rd. The developer of these gravel pits is Curtis Sand & Gravel, LLC, whose application for a conditional use permit is currently pending before the Board. This letter serves to provide notice to the Board of the threatened and endangered species known to be present in or adjacent to the proposed development area and, more broadly, to note our objections to the applicant’s conditional use permit application.

The location of the proposed gravel pits is in the Bauneg Beg Mountain Focus Area, an area of high conservation value and home to a variety of endangered, threatened or protected species and plants. As discussed in more detail below, we are requesting that the Board require Curtis Sand & Gravel to conduct a biological and environmental evaluation and survey of the area on Stub Marsh Rd. to determine whether any protected, threatened or endangered species or plants—including, but not limited to, the Blanding’s turtle, Northern long-eared bat, and small whorled pogonia—and their habitats will be significantly altered or otherwise harmed as a result of Curtis Sand & Gravel’s proposed excavation and mineral extraction.

A. Background: Stub Marsh Rd. Wildlife & Habitats

As you are aware, the proposed locations for the applicant’s two gravel pits encompass more than 13 acres of undisturbed land in a rural area of North Berwick. According to the State of Maine’s “Beginning with Habitat Map Viewer” and the associated Beginning with Habitat maps directly addressing North Berwick, the affected area includes or abuts areas that are wetlands, marshes, aquifers, or rivers and streams. Additionally, these maps demonstrate that this same area is denoted as “Inland Wading Bird and Waterfowl Habitats” and “Candidate Deer Wintering Areas”. The affected area is also located in the Bauneg Beg Mountain Focus Area, as delineated by the Maine Department of Inland Fisheries and Wildlife (MDIFW) and the Maine Natural Areas Program (MNAP).

More importantly, these maps highlight that as many as four species defined by the State of Maine as endangered are known to live in or around the affected area. The habitats for these endangered species are directly implicated by the proposed gravel pits, including the excavation activity itself and the transit of trucks and material to and from the sites. Although the State does not identify the known endangered species by name, there is reason to believe that the area is essential habitat for, among others, the Blanding’s turtle and the northern long-eared bat. See 12 M.R.S. §§ 12803(3)(J), (YY) (designating these species as endangered under Maine law). There is also reason to believe that the area of the proposed gravel pits is a know habitat of the small-whorled pogonia, which is identified as an endangered plant by the State of Maine. Additionally, both the northern long-eared bat and the small-whorled pogonia are listed as threatened species or plants by the United States and protected by the Endangered Species Act. See 16 U.S.C. §

1531 et seq; 50 C.F.R. §§ 17.11(h), 17.12(h). These federally protected species and plants have been identified in the area of Stub Marsh Rd. The area is also known to have bald eagles and a variety of migratory birds, which are protected under federal law.

The Town's Comprehensive Plan further highlights the presence of these species and plants in the land surrounding Stub Marsh Rd, as well as the unique natural environment that this land affords wildlife and residents alike. The Comprehensive Plan directly references the Bauneg Beg Mountain Focus Area and discusses the presence of the Blanding's turtle in this area. The Plan states:

The wetlands and uplands on the west side of the focus area support the state endangered Blanding's turtle. Blanding's turtles are generally found only in the southernmost part of the state where increasing development contributes to loss of habitat, habitat fragmentation, and an on-going loss of individuals to road kill.

(Comprehensive Plan, p.168) Importantly, it is in this "west side of the focus area" where Curtis Sand & Gravel seeks to develop its gravel pits. The Plan also highlights that "[o]ne of the eastern United States rarest orchids, small whorled pogonia, has been found in the focus area."

(Comprehensive Plan, p. 168) As a result, the Plan seeks to "conserve and protect significant natural resources, including unfragmented forested blocks, habitat for endangered and threatened wildlife species, rivers, streams, coastal waters, wetlands, aquifers, and scenic areas."

(Comprehensive Plan, p. 194-95.)

B. Threatened or Endangered Species & Plants

1. Maine: Threatened or Endangered Species & Plants

As indicated above, the land encompassing or abutting the affected area on Stub Marsh Rd. is a know habitat for a variety of species and plants identified as threatened or endangered under Maine law. The Board is not allowed to "permit, license, fund or carry out projects" that will "significantly alter" an endangered species' habitat without consultation with MDIFW and until there is an affirmative determination certifying that no significant alteration to such a habitat will occur. 12 M.R.S. § 12806(1)(A). Moreover, for the endangered northern long-eared bat, the MDIFW has promulgated additional protection guidelines, including a prohibition on tree removal in certain areas without the prior approval of the Commissioner of the Department. 09-137 CMR ch. 8, § 8.06. The Board may not issue a permit or license that will violate these protective guidelines without consultation and prior approval by the Commissioner. See 12 M.R.S. § 12806(1)(B); 09-137 CMR ch. 8, § 8.06.

In limited instances, MDIFW may authorize an "incidental take plan" for specific activities, allowing for minimal, incidental "take" of an endangered or threatened species in Maine. 12 M.R.S. § 12808-A. Statutory requirements govern the contents of any incidental take

plan. Id. § 12808-A(5). Moreover, to obtain authorization for an incidental take plan, the Commissioner is required to seek input from additional entities or hold a public hearing on the plan. Id. § 12808-A(2)-(4).

To date, there is no record of either the Board or Curtis Sand & Gravel consulting with MDIFW to determine which endangered species or plants have habitats in the area of Stub Marsh Rd, whether the proposed gravel pits will “significantly alter” these habitats, whether there are protective guidelines in place for any endangered species or plants identified by the MDIFW or MNAP, and whether an incidental take permit may be required.

2. Federal Endangered Species Act

The Endangered Species Act (“ESA”) was enacted, in part, “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved” and “to provide a program for the conservation of such endangered species and threatened species.” 16 U.S.C. § 1531(b). Under the ESA, it is unlawful for any person to “take” an endangered species. 16 U.S.C. § 1538(a)(1)(B). To “take” means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”. 16 U.S.C. § 1532(19). A “take” include both direct and indirect harm, and need not be purposeful. See 50 C.F.R. § 17.3 (defining the terms “harass” and “harm”); *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687, 704 (1995).

A take may be committed by a municipality. The ESA’s definition of “person” includes, in part, “any officer, employee, agent, department, or instrumentality... of any State, municipality, or political subdivision of a State,” and “any State, municipality, or political subdivision of a State”. 16 U.S.C. § 1532(13). As many courts have concluded, state or local governments may be deemed to have violated the ESA by issuing licenses or permits that result in take. See, e.g., *Strahan v. Coxe*, 127 F.3d 155, 163-64 (1st Cir. 1997) (concluding that where a state “has licensed commercial fishing operations to use gillnets and lobster pots in specifically the manner that is likely to result in a violation of [the ESA],” the state’s licensing activity amounts to a take); *United States v. Town of Plymouth, Mass.*, 6 F. Supp. 2d 81, (D. Mass. 1998)(holding town liable for take of endangered piping plovers where town policy allowed off-road vehicles on beach, resulting in harm or death to piping plovers.)

In certain instances, the ESA does permit the issuance of incidental take permits (“ITP”), which allow for the taking of an endangered species when that take “is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity”. 16 U.S.C. § 1539(a)(1)(B). Prior to obtaining an ITP, an applicant must submit a conservation plan that specifies, in part, what impact will result from the incidental taking, what steps will be taken to “minimize and mitigate such impacts,” and what other alternatives to taking have been considered. ID. § 1539(a)(2)(A). An ITP application and the conservation plan are also subject to a period of public comment prior to approval. ID. § 1539(a)(2)(B).

As noted above, at least two federally protected species or plants are known to exist in the area surrounding Stub Marsh Rd.: the small-whorled pogonia and the northern long-eared bat. The Board must seek a biological and environmental evaluation and survey of the area to determine whether the proposed gravel pits will “harass, harm...[or] kill,” 16 U.S.C. § 1532(19), any federally protected species or plant. Without such an evaluation and survey, and without any subsequent ITP that may be required, Curtis Sand & Gravel and the Board are at risk of violating the ESA by directly or indirectly causing a take.

3. Federally Protected Birds

In Addition to the endangered or threatened species and plants mentioned above, the area surrounding Stub Marsh Rd. also is known to be habitat for the Bald Eagle and a variety of migratory birds, including the Bobolink, Lesser Yellowlegs, and Wood Thrush.

The Bald and Golden Eagle Protection Act makes it unlawful, without a proper permit, to “take...at any time or in any manner, any bald eagle, commonly known as the American Eagle, or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles”. 16 U.S.C. § 668(b). To “take” is defined, in part, as to “molest or disturb.” ID. § 668c. To “disturb” is further defined as “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.” 50 C.F.R. § 22.3. In certain instances and subject to certain requirements, the U.S. Fish and Wildlife Service may issue “take” permits under the Act. See 50 C.F.R. § 22.26. Similarly, the Migratory Bird Treaty Act makes it is unlawful to “kill,” “take” or “attempt to take...any migratory bird, [or] any part, nest, or egg of any such bird.” 16 U.S.C. § 703(a).

Again, there is no record that Curtis Sand & Gravel or the Board has taken any action to determine whether the development of the proposed gravel pits will take, disturb, or attempt to take any Bald Eagle or migratory bird in the are of Stub Marsh Rd.

4. Biological and Environmental Evaluation and Survey

For all of the reasons discussed above, we urge the Board to require Curtis Sand & Gravel to conduct a biological and environmental evaluation and survey of the area surrounding Stub Marsh Rd. The evaluation and survey should be conducted by an individual or entity trained and authorized to do such an analysis. The evaluation and survey should also determine the identity of the State and Federal endangered or threatened species and plants in the area, the location of these species and plants, and whether any take of these species or plants or any alteration, harm, or harassment of their habitats will occur. This same determination must be made for all bald eagles or migratory birds in the area. Requiring Curtis Sand & Gravel to

conduct such an evaluation and survey will ensure that these species and plants are properly protected, as they must be under both State and Federal law, and for sufficient precautions and safeguards may be implemented in the event that a conditional use permit is ultimately granted by the Board.

It is also important that any biological and environmental evaluation and survey be conducted during the appropriate season in which each species or plant is known to grow or live in the affected area. To account for the small-whorled pogonia, in particular, the evaluation and survey must be conducted during the growing season of this threatened plant. Generally, in northern climates, the small-whorled pogonia emerges from leaf litter in May blooms in June. Further consultation with MDIFW or other state and federal agencies by the Board of Curtis Sand & Gravel is likely necessary to determine the appropriate seasons during which the Blanding's turtle and Northern long-eared bat, among others, are known to be present in the area of Stub Marsh Rd.

C. Deficiencies in Conditional Use Permit Application

The clients that we represent submitted a letter to the Board prior to its October 14, 2021 meeting that listed their concerns with Curtis Sand & Gravel's application, including its failure to follow many provisions of the Town's Zoning Ordinance. We write separately to highlight and address some of those individual concerns.

1. Setback Requirements

First, Curtis Sand & Gravel's application shows only a 50-foot setback between the "West Pit" and Stub Marsh Road and only a 50-foot setback between the southeastern edge of the "East Pit" and Stub Marsh Road. It is our understanding that the applicant has obtained permission from an adjoining landowner for purposes of obtaining a 50-foot setback from the neighbor's property line. This 50-foot setback does not comply with the standards for issuing a conditional use permit for the operation of a gravel pit in the Farm & Forest District.

Under the Town's Zoning Ordinance, certain activities, including "gravel extraction operations," are required, in general, to "have sufficient setbacks and screening to provide a visual buffer sufficient to minimize their adverse impact on other land uses and surrounding properties". Zoning Ordinance, § 5.1.8(a). For purposes of obtaining a conditional use permit to allow for "Earth Material Removal," the Ordinance clarifies that, for this specific activity, "[n]o part of any extraction operation shall be permitted within 150 feet of any property or street line". Zoning Ordinance, § 5.2.2(d)(1). In this case, the applicant's two gravel pits abut both Stub Marsh Rd, which is an abandoned public road, and property lines. Although state law, see 38 M.R.S. § 490-D(7), and other sections of the Ordinance, see § 5.1.7(f) (Erosion Control), § 5.2.17(k)(2)(Shoreland Districts), allow for smaller setback distances from property lines for excavation operations, the Ordinance does not allow for reduced setbacks from any street line. Moreover, the Ordinance requires that the more restrictive standards must prevail when there is a

conflict between any provisions of the Ordinance. Zoning Ordinance, § 5.2.2(d)(1), § 5.2.17 (“Where these standards are in conflict with any underlying standards, the more strict shall prevail.”). Therefore, although other sections of the Ordinance may allow for reduced setbacks from property lines, such a reduction is not allowed under the more “restrictive” requirements for obtaining a conditional use permit for gravel extraction operations in the Farm & Forest District. See § 5.2.2(d)(1).

As a result, Curtis Sand & Gravel’s application does not comply with section 5.2.2(d)(1) of the Zoning Ordinance because it does not include the required 150-foot setback from all property or street lines for purposes of obtaining a conditional use permit. Under the terms of the Zoning Ordinance, any conditional use permit issued to Curtis Sand & Gravel must require this 150-foot setback from all property and street lines.

2. Comprehensive Plan

More broadly, the Zoning Ordinance and the applicant’s proposed plan are inconsistent with and not in harmony with the goals and policies outlined in the Town’s Comprehensive Plan. See 30-A M.R.S. § 4352(2) (“A zoning ordinance must be pursuant to and consistent with a comprehensive plan”.); *Rommel v. City of Portland*, 2014 ME 114, ¶ 13, 102 A.3d 1168.

To begin, the Comprehensive Plan recognizes that the wetlands adjacent to the proposed gravel pits help “support” the Blanding’s turtle and the small-whorled pogonia is found in the Bauneg Beg Mountain Focus Area. (Comprehensive Plan, p. 168.) Accordingly, the Plan seeks to conserve and protect significant natural resources, including unfragmented forested blocks, habitat for endangered and threatened wildlife species, rivers, streams, coastal waters, wetlands, aquifers, and scenic areas—all of which are found in the area surrounding Stub Marsh Rd. (Comprehensive Plan, p. 194-195)

Additionally, the Comprehensive Plan proposes, in part, to “expand public walking trails, biking access and conservation areas for low-impact outdoor activities,” recognizing that “the areas near Stub Marsh and Bauneg Beg Mountain can be conserved to develop a recreational area for hiking, biking, horse-back riding, etc.” (Comprehensive Plan, p. 161-62 (emphasis added)). The Plan also proposes to “protect significant open space,” (Comprehensive Plan, p. 162), and seeks to “[e]nsure the long-term protection and enhancement of valuable wildlife habitat and fisheries through the use of regulatory strategies and outreach to governmental and non-profit organizations involved with natural resource protection and management,” (Comprehensive Plan, p. 199) The Plan adopts a policy of “minimize[ing] impacts of new development on freshwater wetlands,” and “protecting wetlands and vernal pools through regulatory and non-regulatory implementation programs.” (Comprehensive Plan, p. 195) Moreover, the Plan recognizes that “more protection to rural areas” is needed in order “to protect for the long-term important natural features, large blocks of unfragmented habitat and opens space, and scenic lands from incompatible development.” (Comprehensive Plan, p. 246.)

Given these goals and policies and given the abundant wildlife and ecology in the undeveloped land surrounding Stub Marsh Rd, permitting over 13 acres of gravel pits to be developed in this area is not in harmony with the Comprehensive Plan.

D. Conclusion

Given the information above, we urge the Board to deny without prejudice or postpone any vote on Curtis Sand & Gravel's conditional use permit application and make certain that the application complies with all relevant provisions of the Town's Zoning Ordinance and Comprehensive Plan. More importantly, we request that the Board require that a biological and environmental evaluation and survey be conducted to ensure that all endangered and threatened species and plants in the area of Stub Marsh Rd. are lawfully and adequately protected.

Russel B. Pierce, Jr., Esq.
Joseph M. Mavodones, Esq.

Anne Whitten stated that this letter was also sent to Don Cameron, Ecologist/Botanist from Maine Natural Areas Program, Scott Lindsay, Regional Biologist from Maine Department of Inland & Fisheries Wildlife, Mark McCollough, Ph.D, USFWS, Maine Field Office and to Cheryl Hoffman.

Anne Whitten motioned to table the discussion regarding issues stated in the letter from Norman Hanson & DeTroy, LLC and send this letter to the Town attorney to get her comments. Scott Strynar seconded the motion. Vote: 5-0

David Ballard asked if we had received the DEP permit yet. Matt LeConte said that we have not received the permit yet. He said that the application has been submitted and the review has been done. Acting Chairman Morse said that we have a letter from the DEP saying that they have surveyed the property and they have approved the property for the gravel pit. He stated that the letter said there were no wetlands, no vernal pools and didn't say anything about any endangered species. Mr. Leconte said that there has been no additional information provided in writing as of yet. Mike Peverett said that the Board does have a copy of the field evaluation form from Lucien who is the biologist on site. This is where he characterized his site visit and how he characterized the wetlands. As far as the DEP permit for the project as a whole, it requires a notice of intent to comply. Mr. Peverett said that their proposal was to make that as a condition of approval that they obtain that. He said that once the Planning Board is through the process and they have made any revisions that the Planning Board and the reviewing engineer want, then the DEP gets the final plan. He said that the applicant pays a fee, and they file the paperwork for the Notice of Intent to Comply. That way they have the latest plans on file. Anne Whitten said that if they find something negative, then it stops everything anyway and all is said and done. Mr. Peverett said that even as a condition of approval, if they don't get the permit then obviously, they cannot go on with the project.

Acting Chairman Morse stated that they would go on to other conditions of approval. They started to discuss the hours of operation. David Ballard said that he read some letters that stated to have the hours as 8:00-4:30. He thought that they had discussed in a previous meeting that they should be earlier hours so they could get in there before the school buses so there wouldn't be an issue with them. If they open up at 7:00 or 8:00, the school buses are going to be running. Acting Chairman Morse asked if the town had a rule on how early you can start work in the mornings. Matt LeConte said that it was 7:00 am to 8:00 pm. Mr. Peverett stated that early mornings are pretty important in the construction industry. Nick Curtis said that he spoke to the Transportation Director at the schools, and they said that the buses in that area run from 7:40 to 8:00. If they were in there at 7:00 and let the machines warm up, then all of the trucks would be meeting the bus. Mr. LeConte said that construction activities can not start before 7:00 am.

Acting Chairman Morse said he thinks that 7:00 to 5:00 Monday to Friday. He stated that they could shorten the hours up on Saturdays. Mr. Peverett said to keep in mind that Sundays was going to be for emergencies only. Anne Whitten said that this would be hard to monitor. Acting Chairman Morse stated that what they may consider to be an emergency may not be considered an emergency by the town. Mr. Peverett said that they could clarify the language for that. The intention was that an emergency use would be for a something like a road being washed out and not because a job just needs to be completed.

Scott Strynar asked Mr. Curtis where he would get materials from if he didn't have this pit. Mr. Curtis said that he would need to purchase it from another contractor. Mr. Strynar stated that there was another pit across from this proposed one. He asked what kind of restrictions they had. Mr. LeConte said that it is 7:00 am to 8:00 pm every day. They are not restricted. Mr. Strynar asked if that pit would use the same access road as the one being proposed. Mr. LeConte said that the did. David Ballard asked if the trucks stayed on the site at night. Mr. Curtis said they did not. He said that the only thing that would stay there would be a loader or excavator that they would be using to process material. The trucks stay at his shop. Mr. Ballard asked how many trucks they would need on a typical emergency load. Mr. Curtis said that they had an emergency water main break in South Berwick last fall. They hauled 3 loads of sand and 2 loads of gravel over the course of the entire day.

Acting Chairman Morse asked the Board what they thought about making the hours 7:00 am to 6:00 pm. David Ballard said that he understands that it is a place of business. He knows that the work environment that they do is like being out there loading up trucks at 5:50 because they close at 6:00. Scott Strynar said that the later time would be beneficial in the summer months. Anne Whitten said that they also have to take into consideration that this is not a huge gravel pit. It's 3 men with 2 trucks so she doesn't think the noise will be an issue. As far as the emergencies on Sunday, she said that there is no way to prove that it is an emergency. She said that it would be nice if they could get a letter from the town that they are doing the emergency work for. She asked how many times have they worked on a Sunday this year? Mr. Curtis said that it has been 2 times this year. One was during the previous winter and the other was this fall. Nick Curtis

stated that if the pit across the street is 7:00 to 8:00 and he can't go to his pit, he can just go across the street and get the sand from the neighbor. Matt LeConte said that they could send a notification to the CEO office the following Monday when they have an emergency on Sunday stating what took place and where they worked.

Anne Whitten asked if they could also inquire from the attorney as to what the limitations would be for hours that would be considered emergency. Also, what recourse the Board has if the applicant is abusing the emergency hours.

Mark Cahoon said that they should probably decide on the hours for Monday through Friday and for Saturdays before dealing with the emergency hours. He believes that the Monday through Friday hours should be 7:00 to 6:00 and Acting Chairman Morse agreed with him. Mr. Cahoon said that he thinks the hours for Saturday could be 7:00 to 2:00. Matt LeConte asked the Board if they knew what the hours were for other gravel pits in town. Scott Strynar thinks the Saturday hours should be 8:00 to 12:00. Anne Whitten said that there are only 3 trucks and 2 drivers, and he has a very small pit. It will not go on forever. He is willing to put pavement down and to accommodate for the horses. He is going to fix the other end of the road and the trucks make the same amount of noise as a school bus. They are going to drive slow and it is private property that has an easement for people to use it. She doesn't know why his restrictions should be more than what the pit has across the street. Scott Strynar said that he is thinking about the public access part because the people will use it more on Saturday and Sunday. He is more flexible on Monday through Friday but should be more restricted on Saturday and Sunday. Mr. LeConte asked the applicant what the proposed hours were for Saturday. Mr. Curtis said it was 7:00 to 3:00. Anne Whitten asked the applicant how often they worked on Saturdays. Mr. Curtis said that it is not all the time. He said that they sometimes work on Saturdays but don't need any material but sometimes they do. He said that there are things that pop up every now and again and he just doesn't want to be restricted.

Acting Chairman Morse said that the applicant was making the paved area 16 feet wide and the next 50 feet 12 feet wide with an extra area on the side. Mr. Peverett said that it is actually 16 feet wide all the way down to the cemeteries. Acting Chairman Morse said that he thinks that there is plenty of room on the road for a truck and others who are there for recreational purposes. He doesn't have a problem with the 7:00 to 3:00 on Saturday.

Acting Chairman Morse stated that the current hours that they are considering for approval is Monday to Friday 7:00 am to 6:00 pm and Saturday 7:00 am to 3:00 pm. They will wait to discuss the Sunday hours again.

Acting Chairman Morse stated that they needed to look what is proposed for the construction entrance. They will put 225 feet of 16 foot wide pavement. Scott Strynar said that it will be 60 or 70 feet beyond the driveway which was part of the concern of keeping dust down for the neighbor. Mr. Strynar said that one of the issues that might come up because of the 16 foot wide pavement is that people may park there or drive down. He said they should probably put a sign at

the entrance so that people don't drive their cars down there. Mr. Peverett said that it gets into a legal gray area because it is a public easement so they really can't restrict that. Matt LeConte said that he can speak to the Road Commissioner about putting some sort of sign on the town property before the entrance. Mr. Strynar said that they could just put a sign saying No Parking on Pavement. Anne Whitten said that they could ask Dwayne about that.

The Board all agreed that the construction entrance and the amount of pavement was good. Mr. LeConte stated that by paving and constructing this construction entrance the dust concern is mitigated. He asked the Board if they would agree that this proposed plan is now a final version of the final conditional use so they could send out for 3rd party review. Mr. Peverett said that they will update the plan to include the hours that the Board mentioned. Mr. LeConte stated that the applicant has proposed a 20-mph zone on Stub Marsh Road. Acting Chairman Morse stated that the crushing operation hours proposed are 7:00 to 5:00 Monday through Friday only.

Mr. Peverett stated that they also added Note #17 that states that prior to processing any outside materials they would need to furnish the Permit by Rule from the DEP. Anne Whitten stated that they had mentioned previously that they would not be bringing any outside materials in to process. Mr. Peverett said that it is not currently contemplated, but the idea is that if it was, they would need to provide the Permit by Rule and give to the CEO. Mrs. Whitten said that if they decided to do this then it could change the length of the history of the pit and cause more trips to the pit than if they were just hauling gravel. Mr. Curtis said that if they were hauling something in it would generally be a trip that the truck was making to the pit anyways. This way they are loaded both ways. If the truck is loaded both ways, it is more cost effective.

Matt LeConte said that it is a fairly lengthy application to apply for a Permit by Rule. Scott Strynar asked if they apply for a permit is it good for just a certain amount of time like 2 years or is it on a case per case basis. Mr. Peverett said it would not be on a case by case but he does not know if there is a time frame. Mr. Strynar asked if there are limitations with DEP on what you can bring into the pit. Mr. Peverett said that he would assume so, but he would need to read up on it to see what they would be. He said that anything happening in the pit has to meet the DEP and town requirements. Mrs. Whitten said that she is concerned about it adding more to his business than she was previously thinking. Mr. Strynar asked if he would process any stumps and Mr. Curtis said that they would not. Mrs. Whitten asked what he would bring in and why he would bring it in. Mr. Curtis said that if they are hauling it in it would most likely be topsoil so they could screen it and use it on another project.

Scott Strynar asked if there is a definition for mineral extraction versus soil processing. He wondered if it fell into the same category. Mr. LeConte said he didn't know. Mr. Strynar said that if they are hauling in materials to process to separate, divide, remix and send back out, it would be considered processing materials instead of extracting gravel. He said that this is supposed to be a pit where they are extracting material and then reclaiming it. He is wondering if he is allowed to bring in material if it is an extraction process. Mr. Strynar asked if it was

something that was allowed in our Ordinance. He said that they may want to check with the attorney. Acting Chairman Morse said that if he has to reclaim the pit after everything is processed. All of the stuff that he is bringing in he will have to do something with it. He can't just bury it. It has to be processed and taken back out. He said that it may just require an extra trip in and out of the pit.

Anne Whitten motioned to send the preliminary plan to 3rd party review with the changes made for the hours of operation. Scott Strynar seconded the motion. Vote: 5-0

4. Other Business:

Matt LeConte stated that 3rd application on the agenda for an in-law apartment has been retracted.

5. Adjournment:

Mark Cahoon motioned to adjourn the meeting at 9:30 pm. Scott Strynar seconded the motion. VOTE: 5-0

Matthew LeConte
Planning Coordinator

Respectively submitted,
Susan Niehoff, Stenographer

Chairman Geoffrey Aleva

Jon Morse

Anne Whitten

David Ballard

Scott Strynar

Mark Cahoon