Wednesday, February 19, 2014

Letter of Transmittal

From:

Riverrock Realty Trust & Southbrook Development, Inc.

To:

Town of Middleborough Board of Selectmen

Re: Thompson/Fuller Street, Cranberry Bogs, Earth Removal

Attached:

- 3 Copies of Revised Site Plans
- Response letter to Atlantic Design Engineers February 6, 2014 review letter
- Response letter to Town of Middleborough Planning Director February 7, 2014 review letter
- Updated Project Plan
- email from Brian Madden, LEC Environmental Consultants, Inc., to Eve Schluter, Natural Heritage & Endangered Species Program, with a response from Eve to Brian

Will the Board of Selectmen forward the above to Atlantic Design and the Planning Department, or would you like us to do so?

Received By:_____ Date:_____

Riverrock Realty Trust
369 Church Street
Raynham, MA 02767
&
Southbrook Development, Inc.
3 Chester Avenue
Berkley, MA 02779

February 19, 2014

Town of Middleborough
Board of Selectmen
Town Hall
10 Nickerson Ave.
Middleborough, MA 02346

RE: Riverrock Realty Trust
Earth Removal
Off Fuller Street
Middleborough, MA
G.A.F. Job No. 13-8188

Honorable Selectmen,

Attached herewith please find responses to the completed engineering review by Atlantic Design Engineers in their initial review letter dated February 6, 2014. Our responses are in bold text under each comment raised.

Comment: *1. The revised plans now show a very gradual (12.5:1) southeastern slope as opposed to the 2:1 slope on the previous plans. This will result in additional earth removal. The application, total volumes, volume per phase, truck trips, Project Plan, etc. should be revised to reflect the new earthwork created by this new grading.*

Response: **The project plan has been revised to reflect the earthwork created by the revised site grading.**

Comment: *2. There appears to be additional land clearing shown to the south, adjacent to the existing pond and the Janet Ellis property. This appears to encroach into the 100-foot buffer to the pond, and does not provide the 100 setback to property lines required by the Board. The purpose of this clearing is unknown.*

Response: **There was never any plan to do work within the 100' buffer of the pond or the Ellis property. The plan graphic has been revised to show the existing tree line. No work is proposed to take place within 100' of the pond or 100' property line set back, as clearly shown on the plan. The purpose of the clearing is to provide improved air circulation and eliminate shading of the bog. Once this area is regraded and revegetated, per NHESP specs, it will also serve as suitable Eastern Box Turtle habitat.**

Comment: *3. The plan shows revised (proposed) lots fronting on Fuller Street. The grading and land clearing encroach onto one of these lots. In addition, the 100-foot property line setback and the fencing/safety issues brought up by the Planning Department in their 1/24/14 letter, have not been addressed.*

Response: **The lotting is proposed to be revised as shown. Site grading will not impact any lot and a wooded buffer is shown on each lot.**
The property is privately owned and will be properly posted. The site is not intended to be fenced.

Comment: *4. The revised plans also do not appear to address the Planning Departments concern regarding minimizing the earth to be removed. It appears that relocating the reservoir on the other site of the proposed bog could accomplish this and also provide required buffer to the proposed lots off of Fuller Street.*

Response: **The property owners and cranberry growers are satisfied with the current layout. The plan, as proposed, consolidates the proposed non-Eastern Box Turtle habitat features (e.g., reservoir and cranberry bog) closer to Fuller Street and associated residential development; thereby minimizing habitat fragmentation and maximizing protection of contiguous undisturbed habitat areas within the southern/southeastern portion of the site. The earth removal as proposed is the necessary first step in establishing the agricultural use.**

Comment: *5. The applicant has indicated that the depth of the reservoir will be reduced if rock is encountered. We suggest this be made part of any conditions of approval.*

Response: **We concur with this condition.**

Comment: *6. Private, non-bedrock wells in the area should be identified for future reference in case issues arrive during de-watering, construction or operation.*

Response: **We have researched town records and have found that nearby wells are drilled bedrock wells. There are no shallow wells known to exist within 1,200 feet of the proposed reservoir.**

Comment: *7. NHESP approval is still outstanding. We suggest that the conditions of approval require revised plans to be submitted to the Board for approval if any changes result from the NHESP review.*

Response: **We concur with this suggested condition.**

In closing, we believe that the outstanding items, having merit, can be adequately conditioned in the event the project is approved. It is our opinion that the project as designed is in compliance with Earth Removal By-Law and respectfully request the Board consider approval of this application.

Very truly yours,

Marcus Baptiste
Southbrook Development, Inc.

Joseph Arruda
Riverrock Realty Trust

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Riverrock Realty Trust
369 Church Street
Raynham, MA 02767
&
Southbrook Development, Inc.
3 Chester Avenue
Berkley, MA 02779

February 19, 2014

Re: Earth Removal Permit, Thompson/Fuller Street

Dear Board of Selectmen:

As discussed at our meeting on February 10, 2014, below are our responses to the Planning Board's February 7, 2014 review letter.

1. All owners and the applicant signed an application which was handed in to the Board of Selectmen at the 2/10/14 meeting.

2. Currently, there are ANR lots which have grading and a portion of the reservoir on them. As stated at the 2/10/14 meeting, these lots will be reconfigured by our engineer. A new plan will be presented to the Planning Board for endorsement. We will accept a condition on the Earth Removal Permit that no work can begin until such time as the lots are legally reconfigured. The new plan will remove the reservoir and all grading from the ANR lots.

3. A buffer is proposed on the rear of lots 6,7 and 8. Please note, it has come to our attention that other earth removal permits have been granted with less than a 100' buffer. In addition, all prospective homeowners will be notified in writing of the earth removal. Before a Purchase and Sale Agreement is signed for a new home, we will have the prospective homeowner sign an "Earth Removal Acknowledgement Form", which will be forwarded to the Board of Selectmen.

   A 3:1 slope has been provided.

4. Bayside Agricultural, Inc. is well aware of the Ocean Spray moratorium. As Mr. Beaton stated at the 2/10/14 meeting, he will be taking other bogs out of production.

5. The 12.5:1 revised slopes on the southerly side of the proposed bog were designed to enhance the productivity of the cranberry bogs. They will allow sunlight to reach the bogs for a greater portion of the day and will also provide ventilation. Once the slope

has been regraded and revegetated, per Natural Heritage specifications, it will also serve as suitable Eastern Box Turtle habitat.

6. The proposed earth removal is accessory to the cranberry bog. The earth removal will be completed in approximately four years, but the cranberry bogs will produce for many decades.

   The proposed design was planned in cooperation with the land owner, the earth removal contractor, Bayside Agricultural, Inc. and Natural Heritage. The plan not only serves the needs of Bayside Agricultural, Inc., but it also consolidates the proposed non-Eastern Box Turtle habitat features (e.g., reservoir and cranberry bog) closer to Fuller Street and associated residential development; thereby minimizing habitat fragmentation and maximizing protection of contiguous undisturbed habitat areas within the southern/ southeastern portion of the site.

   In the Planning Director's initial letter, dated January 24, 2014, when discussing the relocation of the proposed bog and reservoir, the Planning Director states "The most important benefit from this relocation is that the street front lots would not be included in the project any longer and would be buffered from the earth removal aspects." We have accomplished this "most important benefit" by redesigning the street front lots and we will be placing a deed restricted buffer on them.

We look forward to our upcoming hearing on February 24th.

Sincerely,

Marcus Baptiste

Joseph Arruda

Project Plan
Riverrock Realty Trust
Cranberry Bog/Earth Removal Project

Project Purpose:

The project purpose is earth removal associated with the construction of a 3.15 acre cranberry bog and water supply reservoir/tailwater recovery pond. Refer to plans entitled "Proposed Cranberry Bog & Earth Removal Permit Plan" dated December 30, 2013, revised thru February 17, 2014.

The site is forested and is comprised of four (4) lots; 2065, 2146, 2968 and 1366, as shown on assessors map 033. All lots possess frontage on Fuller Street.

The earth removal is necessary to construct the cranberry bogs and water supply/ tailwater recovery pond.

The project is likely to be constructed in phases over the four to five (4-5) year desired permit time frame. Applicant understands that the permit is valid for three (3) years with a possible one (1) year extension. Any work beyond the four (4) year timeframe would require the applicant to apply for a new permit.

Phasing:

Phase I. A 25 foot wide gravel haul road will be constructed essentially at grade and will begin at a centrally located position on lot 2968 and extend to the rear center of the proposed cranberry bog. Land clearing, stumping and grubbing will occur at the rear southeast and southwesterly portions of the site; up to, and including, the 15 foot wide cranberry bog dike road, separating the bog and pond approximately 7.7 acres. Material will be removed in this area to approximately EL. 41.00. Approximately 400,000 cubic yards will be removed from this area in the first phase.

Phase II. The next phase of land clearing will progress toward Fuller Street. The limit of clearing ends over 200 ft. from the layout of Fuller Street. Excavation will continue down to EL. 41 and approximately 200,00 cubic yards will be removed in the second phase.

Phase III. Phase III will consist of construction of the reservoir/tailwater recovery pond and cranberry bogs.

Buffers: Undisturbed natural vegetated buffer zones will be provided as shown on the plan and as agreed to with the Board of Selectmen.

Other: The estimated amount of material to be removed from the site is calculated at 775,243 cubic yards.

All topsoil is to remain on site for slope stabilization material, and for use in the construction of the cranberry bogs.

Side slopes are designed to be constructed at 3:1 and 12.5:1 slopes (horizontal to vertical) and are to be stabilized with natural wood mulch grindings.

Slopes will be stabilized upon completion of the slopes within a particular phase.

XFINITY Connect mtbaptiste@comcast.net

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FW: Thompson & Fuller St, Middleborough (#13-32363

From : Brian Madden <BMadden@lecenvironmental.com> Tue, Feb 18, 2014 09:28 AM
Subject : FW: Thompson & Fuller St, Middleborough (#13-32363
To : 'mtbaptiste@comcast.net' <mtbaptiste@comcast.net>

From: Schluter, Eve (FWE) [mailto:eve.schluter@state.ma.us]
Sent: Tuesday, February 18, 2014 9:26 AM
To: Brian Madden
Subject: RE: Thompson & Fuller St, Middleborough (#13-32363

Hi Brian,

I have had a chance to review the list of proposed revisions to the site plan and overall concur with the list you that you provided below. However, please note that on item #3, it is still unclear whether all of the side-slopes would count towards habitat and mitigation. As discussed, the steep side slopes into the bog would not be considered habitat and the location of the slopes towards ANR Lots 6 and 7 may be considered too fragmented. Once we receive the plan showing the proposed revisions and the new impact calculations, we can discuss what components the "net benefit" mitigation would include, remembering that as we discussed, it may be difficult to meet all of it on-site. Once we have come to an agreement, the next steps would be to formally file the plan (expand the original MESA filing) and then apply for the Conservation & Management Permit (CMP). Additionally, along with the "net benefit", we would need to solidify certain details such as a turtle protection plan, any habitat restoration plans, and operation and maintenance plans. Finally, assuming the proponent moves forward with the project that results in a "take", they would need to file for MEPA review and we would not be able to issue our CMP until that review has been completed.

Please let me know if you have any further questions.

Thanks,

Eve

Everose Schlüter, PhD
Senior Endangered Species Review Biologist
Natural Heritage & Endangered Species Program
Massachusetts Division of Fisheries and Wildlife
PLEASE NOTE NEW FIELD HEADQUARTERS ADDRESS (Phones and Emails have not changed.)
100 Hartwell Street, Suite 230
West Boylston, MA 01583
Voice: (508) 389-6346
Fax: (508) 389-7890
www.mass.gov/nhesp

From: Brian Madden [mailto:BMadden@lecenvironmental.com]
Sent: Thursday, February 13, 2014 3:09 PM
To: Schluter, Eve (FWE)
Subject: Thompson & Fuller St, Middleborough (#13-32363

Hi Eve,

Thanks for taking the time to meet with the group back on Jan 30th. As discussed during the meeting, the Applicants are working towards:

1) Eliminating one proposed single-family home along Fuller St.

2) Reconfiguring ANR Lots 6 & 7 and expanding the proposed Conservation Restriction (CR) area on said lots to the greatest extent feasible.
3) Expanding the regrading limits south of the proposed bog to accommodate appropriate sunlight exposure and ventilation for bog operation. The southerly Limit of Work will incorporate a gentler slope. Per our discussions, all regraded side slopes and the temporary 25-foot wide truck access drive will be restored/revegetated to function as Box Turtle habitat and left to naturally regenerate. Any future selective management (e.g., cutting red maple trees) adjacent to the bog would require NHESP approval.
4) Shaving off the easterly portion of the proposed cranberry bog to provide a potential turtle migration corridor to habitat areas within the northeastern portion of the project site and expanded CR (see #2).
5) Expanding the proposed CR to include the entire "bog lot" and undeveloped portions of the ANR lots. The CR's reserved rights would include normal bog operation/maintenance, but effectively relinquish any other future development rights (e.g., housing).

Based on our discussions and your recommendations, the original plan as amended by these revisions will serve to consolidate the proposed non-Eastern Box Turtle habitat features (e.g., reservoir & cranberry bog) closer to Fuller St and associated residential development; thereby minimizing habitat fragmentation and maximizing protection of contiguous undisturbed habitat areas within the southern/southeastern portion of the site.

We look forward to providing NHESP with a revised cumulative site plan and discussing final layout details and corresponding mitigation requirements.

When able, can you please confirm that the above generally summarizes our discussions to date and recommended next steps.

Thanks,
Brian

Please visit our web site at www.lecenvironmental.com for a full description of our services.

Brian T. Madden
Wildlife Scientist
LEC Environmental Consultants, Inc.
Plymouth Office 508.746.9491
Cell: 508-364-1662
bmadden@lecenvironmental.com

TOWN OF MIDDLEBOROUGH

EARTH REMOVAL APPLICATON
and renewal form

1. General Information

Name of Applicant: Riverrock Realty Trust

Address of Applicant: 369 Church Street

Town or City: Raynham, MA 02767

Owner of Property: South Brook Development, Inc., B & T Realty Trust & Bayside Agricultural, Inc.

Location of Property: 288 Thompson Street and Off Fuller Street

Property Assessor's Parcel and Map Numbers: Map 033 Parcel 3656
(NOTE: Lot 3656 has been subdivided new Lot No.'s 2968, 2065, 2146)
Map 033 Parcel 1366

2. Permit Status

New Application or Renewal: New

Request for an Extension of Time for existing permit. _____

Existing Permit Number: _____

Parcel(s) Acreage: 73.22± Acres

Estimated Number of Cubic Yards to be removed: 743,512 cubic yards

Requested Time Frame of Permit 3 years

Brief Project Description and Reason for Request:

Construction of a cranberry bog and a water supply/tailwater pond.

3. **Project Plan**

Has a Project Plan being submitted with this application? Yes

An Application for an Earth Removal Permit will not be accepted by the Board of Selectmen for a public hearing, unless submitted with this application.

4. **Planning Information**

a. **Proposed Traffic Route** from site to unloading of materials.

Off the existing dike road take a left onto Fuller Street then a left or right onto Thompson Street. The left turn onto Thompson Street will take you to Route 44 and the trucks can go either right or left onto Route 44. Turning trucks onto Thompson Street brings them onto Route 105.

b. Has a plan and Notice of Applicability (NOA) or Intent (NOI) been submitted to the Town of Middleborough's Conservation Commission? Yes

c. Has Order of Conditions by the Conservation Commission been issued: if so what is project number and date of conditions: Yes, Negative Determination Nov. 21, 2013

d. Provide a copy of the Order of Conditions so they may be attached to the permit.

e. Is there a Department of Environmental Protection-Water Management Act Registration or Permit for this property? No

Permit No. _____ Registration No. _____

f. Has a Farm Plan been completed? No Please provide a copy.

g. Expected Date of Project Completion: January 2017

5. **Engineering General Information**

Engineering Firm Name: G.A.F. Engineering, Inc.

Engineer's Contact/Name: William F. Madden, P.E.

Street: 266 Main Street

Town/City: Wareham, MA 02571

Phone Number: 508-295-6600

Joseph A Arruda
Signature of Applicant

Printed Name of Applicant
River Rock Realty Trust
By: Joseph Arruda, Trustee

Date: February 10, 2014
Phone Number 781-727-5598

Signature of Owner

Printed Name of Owner
B & T Realty Trust
By: ~~William R. Logan~~, Trustee
Timothy S Hashem
Date: February 10, 2014
Phone Number 774-406-0299

Signature of Owner

Printed Name of Owner:
Southbrook Development, Inc.
By: Marcus Baptiste, President

Date: February 10, 2014
Phone Number 508-400-7162

Peter D Beaton
Signature of Owner

Printed Name of Owner:
Bayside Agricultural, Inc.
By: Peter Beaton, President

Date: February 10, 2014
Phone Number 774-766-1483