

Richmond Conservation Commission Minutes

Tuesday, October 13, 2020 at 7 P.M.

This was a zoom meeting, it was done remotely due to the COVID-19 restrictions

Call to Order and Introductions:

- Mr. Veillette opened the meeting at 7:09.
- Mr. Veillette announced that the meeting was being recorded and read the Executive Order from the Governor of MA.

“Notice: This meeting will be recorded by the Richmond ConCom (1) and if any other person will be recording this meeting, they are to notify the Commission at this time.”

Mr. Veillette stated that Clarence Fanto was recording the meeting.

- Commission Members Present: Ron Veillette-Chair, Adam Weinberg-vice chair, Bob Dahlen; Dan Scorpa; John Scorpa (associate member), Shep Evans (associate member and agent), Pat Seckler, Harley Keisch
 - Commission Members Absent: none
1. Applicants and Others Present: Peter Beckwith (Richmond DPW), Clarence Fanto-Berkshire Eagle, Peter Miller, Anthony Abate, Tim Lautzenheiser-Mass. Audubon
 2. **Review & approval of the minutes from the Sept 8th, 2020 meeting.**
Mr. Veillette made a motion to approve Sept 8th minutes, it was seconded by Dan Scorpa, a roll call vote was taken and it passed unanimously
 3. **Notices of Intent (New/ Continued/ Extensions):**
There were no NOI's

The Commission decided to go ahead to Agenda Item 5a.

5 Discussion of Violations and/or Enforcement Actions, Superseding Orders:

- a. View Drive Easement Cons Comm jurisdiction, DCR letter-Ron & Harley Update

Ron Veillette stated that there has not been any communication from the State DCR. A Violation Notice letter was sent certified return receipt mail to the State DCR concerning the condition that the state left the land on an easement across View Drive properties and asking them to contact the Conservation Commission. This letter had been voted on during the Sept. 9th meeting. The letter had requested a mediation plan for the destroyed land. The DCR had over 21days to respond and there has been no response.

Ron Veillette stated that there were now 3 options for the Commission to proceed with

1. Issue an Enforcement Order- Which gives DCR 60 days to reply to the Commission
2. Issue Violation Ticket(s)
3. Issue a criminal complaint thru town counsel.

Ron Veillette asked Tony Abate (a View Drive resident) to share the information he has about what was done by DCR and the condition of the land. Mr. Abate explained that there was a meeting with DCR project lead on July 9,2020. He stated that DCR informed the landowners (landowners of the DCR easement) that they planned on replacing the electric lines up to the old fire tower which is now used

Richmond Conservation Commission Minutes

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as a communications tower. DCR representatives told them that there would be minimal disruption to the property and that they would return the land to its natural state. Mr. Abate stated that they did put his property back to the state that it was but his property is at the beginning of the pole-line easement (which is 25ft. wide) and had very little damage done to it. He stated the problem was that the slope of the easement was much steeper as they progressed up the mountainside so they then had to bring in heavy equipment and bulldoze a road to allow for cement trucks to make it up the mountainside. There were hiking trails thru this property which have been totally destroyed. The trail allowed both landowners and others to be able to hike up thru the forest to get to the ridge. There are now 6-7ft. deep cuts into the trail and the access road is so steep that walking is dangerous. The DCR declared that this project was an emergency and by having an emergency declaration they no longer had to apply for permits and get approval from the Conservation Commission prior to the beginning of work. DCR was replacing upper older electric poles with buried wires. On the lower portion they did replace the older poles with newer ones but on the upper portion of the mountain they wanted to bury the lines to prevent lines from breaking and constantly needing repairing. Mr. Abate stated that the residents would like DCR to repair the grade of the hillside and replant the hillside where they stripped the foliage.

Harley Keisch then spoke more about the damage. He stated that most of the damage was not just done to property owned by Ruth Bass, whose property abuts his. Rather, the majority of the damage was done to property owned by Mass. Audubon. The state has put up a gate to prevent outsiders from driving up what is now a road, this was done at the request of the landowners. DCR did put up straw waddles on the steepest sections (at both the lowest and most of the upper portions) to direct runoff as erosion prevention. He stated that he walked the upper portion of the constructed road and noticed erosion from water runoff, whatever topsoil had been there (the finer sediments) are eroding away and just loose, rocky material remains. At the very topmost section, the concrete cap of the trench is exposed on the surface. The construction company left huge amount of debris in the woods. They chopped some of the old electric poles and tossed the sections in the woods mostly outside of their 25ft. easement. Some poles were left whole or in big pieces then just tossed into the woods. The same thing occurred with trees that were cut down or pushed down by machinery---pushed to the side. The two communications lines that were removed from the poles along the now buried section, are still lying on the forest floor.

Ron Veillette asked the members if they had any questions for Harley Keisch or Tony Abate.

Adam Weinberg asked why they needed to have cement trucks go up the mountain. He was informed that it was needed for them to be able to pour cement over the conduits that they had put into the ground to carry the wires up to the tower. Harley Keisch explained that they dug deep trenches then put in two conduits which they ran wires thru one, the second is a back-up, then they poured concrete over the conduits to bury them.

Tom Lauzenheiser from Mass. Audubon stated that DCR hasn't contacted them about restoration of their property. He showed a map of the area (Attachment #1), with the easement and property owners property lines. He also showed the commission pictures he took of the damage.

Richmond Conservation Commission Minutes

Tuesday, October 13, 2020 at 7 P.M.

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There was discussion among the members as to which of the options they should proceed with.

Bob Dahlen asked who would be represent the commission if they filed a criminal complaint. Ron

Veillette stated that Town Counsel would. This option would be the last to be taken.

Shep informed the Commission if you give a violation ticket, the violator has a specific time to pay it. If they don't it then goes before the magistrate court and if they do not show up for court it then goes to the district attorney's office. Violations need to be well documented. You can write one ticket for up to 7 consecutive days for the violation.

Ron Veillette made a motion to issue and Enforcement Order against DCR related to the damaged area. Bob Dahlen seconded it and it passed unanimously.

Ron Veillette made a motion to submit violation tickets to 3 separate entities the same time as issuing the Enforcement Order.

1. Daigle Electric
2. Colonial Construction
3. DCR

It passed unanimously by roll call vote.

It was seconded by Harley Keisch (he had previously submitted a conflict of interest form to the Board of Selectmen which was approved, so it allowed him to vote).

3.Requests for determination of Applicability (New/Continued/Extensions)

a. Request for Determination of Applicability from the Town of Richmond, property located at Town Beach Road very large culvert at the crossing of Mount Lebanon Brook. The proposed work consists of excavating 5ft. wide along both sides of the culvert and casting a concrete encasement over the top and sides of the culvert which will act as a bottomless box-culvert and provide more strength to the existing metal culvert and to the road around it.

Peter Beckwith spoke for the town. He stated that there were holes in the 7ft. round pipe and that gravel and debris was falling into it, and then running into the pond. Peter Beckwith explained that the town doesn't have the money to do a complete replacement of the culvert. This is just a repair to the existing pipe. The work won't be done until the pond water is drawn down; they will place straw waddles around the culvert. No work will be done near the water. The cement will be poured in place. The entire top of the culvert is corroded this is necessary to keep the contaminants out of the pond.

Ron Veillette stated that this was a major perennial stream (River) feeding Richmond Pond and the water flow is not storm water management which is what is written in the RDA. Peter Beckwith again stated that this is just a fix to a problem not new construction and that it is important to get it done prior to the winter, so the beach road can be reopened next spring.

When asked by the Commission why the issue was brought to the attention of them if this is only a repair job , Peter Beckwith stated that he was just being transparent and trying to do what is right and that he knew people would call the Commission about work being done on the beach road and wanted to let the Commission know what they were going to do. He explained that to put in a new culvert

Richmond Conservation Commission Minutes

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would cost \$750,000 and the town just doesn't have the money, this is the only feasible way to fix it at a cost the town can afford. He explained that other towns have done a repair job just like this and it has worked well.

The Commission was not happy with this method of repair and said that it was not going to be acceptable to them. The road should just remain closed and people can walk to the beach. Peter Beckwith tried to explain to them that the road was unsafe for walking on with the holes in the culvert and that unless the holes are patched more debris will flow into the pond. The Commission also suggested temporary steel plates over the culvert. The commission told Peter Beckwith that he needs to get a licensed engineer to draw up plans or at least sign off on his plans. Mr. Beckwith explained to the Commission that having an engineer do the plans would cost of about \$20,000 for a project that is going to cost the town \$2,000-\$3,000. The commission suggested that there might possibly be grants the DPW could get for this project. Peter Beckwith told them that he did look into it and the criteria for grants doesn't match this project.

Shep Evans asked Peter Beckwith to explain exactly what they planned on doing. He did explain the work entailed in the project to the Commission. Ron Veillette agreed that it would might work and fix the problems but we could not approve since the details were not in the RDA. Shep Evans stated that we needed an NOI, an engineering plan, since someone would have to take responsibility for the project.

Ron Veillette made a motion for a Positive Determination; it was seconded by Bob Dahlen. A roll call vote was taken, there were 7 ayes and 1 nay (Adam Weinberg). The Commission suggested that Peter Beckwith could appeal the Positive Determination to the DEP.

b. Request for Determination of Applicability from Wood Enviro. On behalf of CSX Transportation, Inc. The subject property is the entire railway Right-of-Way through Richmond. The applicant is seeking a determination whether the boundaries of wetland resource areas depicted on 13 plans and/ or maps submitted by the Applicant are accurately delineated. **Continued from Sept 8, 2020.**

Shep Evans explained to the Commission that he has identified two capable consultants/peer reviewers and is awaiting identification of a third.

Ron Veillette moved to continue the RDA until the November 10th meeting. It was seconded by Harley and by roll call vote passed unanimously.

c. Request for Determination of Applicability from the Town of Richmond, property located at 40 Firehouse Lane. The Proposed work consists of reinstalling, on a flat area to the south of the red garage, the Community Sand Pile roof (10' X 20') on telephone poles posts with a barrier of portable concrete blocks stacked on three sides to contain the sand.

Peter Beckwith spoke for the DPW. He stated that it was necessary to move the sand shed due to the new building built by the Fire Dept. Ron Veillette asked what was in the sand. Peter Beckwith stated that it was plain sand with just a small amount of salt in it to prevent the sand from freezing. There were no comments from the Commission. Ron Veillette made a motion for a Negative 3 determination

Richmond Conservation Commission Minutes

Tuesday, October 13, 2020 at 7 P.M.

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to let the town build the sand shed. It was seconded by Adam Weinberg and passed unanimously by roll call vote.

d. Request for Determination of Applicability from Donald Champlin, property located at 105 Lake Road, Map 101 Lot 159. The proposed work consists of removal of a dead and dangerous tree 135 feet from the shore of Richmond Pond.

The Commission saw no issue with the project so Ron Veillette made a motion issuing a Negative 3 determination for approving the removal of the tree but leaving the stump in place Pat Seckler seconded it and it passed unanimously.

4. Certificate of Compliance Requests:

a. Rose Pond Dam Inspection (DEP File # 271-0215). Foresight Land Services, on behalf of the Co-Owners/Applicants has finished the inspection and has requested a Certificate of Compliance with the Order of Conditions issued on 6-29-2020. Chairman Veillette, Harley Keisch, and Shep Evans conducted a site visit on 10-08-2020 and Steve Mack of Foresight will be forwarding the summary results of the inspection and photo images documenting their findings.

Shep Evans stated that he would issue a Certificate of Compliance once the Commission receives the report but not before. Ron Veillette agreed with his decision so he made a motion to continue the meeting until the Commission receives the report. Pat Seckler seconded it and by roll call vote it was passed unanimously.

5. Discussion of Violations and/or Enforcement Actions, Superseding Orders:

b. Review of Draft ConCom Operating Instruction on Ticketing (Attached):# 2

Ron Veillette explained that he distributed a copy of the draft to all the members. He walked through the steps leading to a Ticket. Ron Veillette made a motion to adopt them. It was seconded by Adam Weinberg and by roll call vote passed unanimously.

c. Boys Club retention basin repair. Ron Veillette told the board that he and Harley Keisch visited the site. One Basin has already failed and the other needs repair. He stated that the Select Board is working on the issue. It concerns the ConCom because the outlets of the 2 basins flow through the buffer zone into the Pond.

6. Special Permits, Variances or Appeal Recommendations:

a. Planning Board Special Permit Application from John Goscha, 206 Stevens Glen Road, Common Driveway.

Ron Veillette explained that they have no comment and doesn't have a ConCom issue since it is an existing driveway. However, the ConCom would need to see a site plan when available since there are wetlands on the site.

7. Open NOI/OOC's& RDAs:

Richmond Conservation Commission Minutes

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a. Update on getting signatures on Orders, Determinations, and other documents at Town Hall after Zoom meetings. Ron Veillette asked the members to try to get to Town Hall as soon as they can to sign the paperwork.

8. Agent's Report: It was determined to continue to next month due to static online

9. Richmond Pond Association: Dan Scorpa's brief on August 25th & Sept meeting.

Dan Scorpa stated that they discussed weed pulling from the (Nordeen) canal portion of the pond, but no RPA member volunteered to lead the project. They mentioned that Christian Lake Camp was for sale with no buyers so far.

10. Discussion of OSRP action Items: None

11. Conservation Fund Discussion: Discussion of Richmond Shores Parcel Map 101 Lot 142, Corner of Shore & Beach Road, disposition by Town. Ron Veillette expressed a desire to either have a conservation restriction on it or for the town to turn it over to the ConCom or Richmond Land Trust. Peter Miller stated that he owns the adjoining property and has wanted to buy it for years to keep it from being developed. Peter Miller stated that he would accept a conservation restriction on it if he could purchase the property.

Harly Keisch recommended that the property be turned over to the Commission as this would insure its future protection.

Ron Veillette made a motion for the ConCom to write a letter to the Board of Selectmen recommending that Richmond Shores Parcel Map 101 Lot 142, corner of Shore and Beach Road be turned over to the Conservation Commission. Harley Keisch seconded and it passed unanimously.

12. Citizen Speak Time: None

13 Other discussions including items not reasonably anticipated prior to Agenda posting.

Ron Veillette mentioned that Balderdash Winery went before the planning commission about being subdivided from 2 into 4 lots and this was never brought before the ConCom with their plan. He looked it over but noted that there were wetlands on 2 of the lots and that site plans would be required and reviewed by the ConCom when developed.

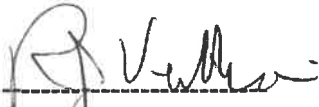
14. Adjournment.

Ron Veillette made a motion at 9:45 to adjourn the meeting. It was seconded by Adam Weinberg, passed unanimously. The November meeting is scheduled for Tuesday November 10th.

Richmond Conservation Commission Minutes

Tuesday, October 13, 2020 at 7 P.M.

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Mr. Veillette -Chair

11/10/20

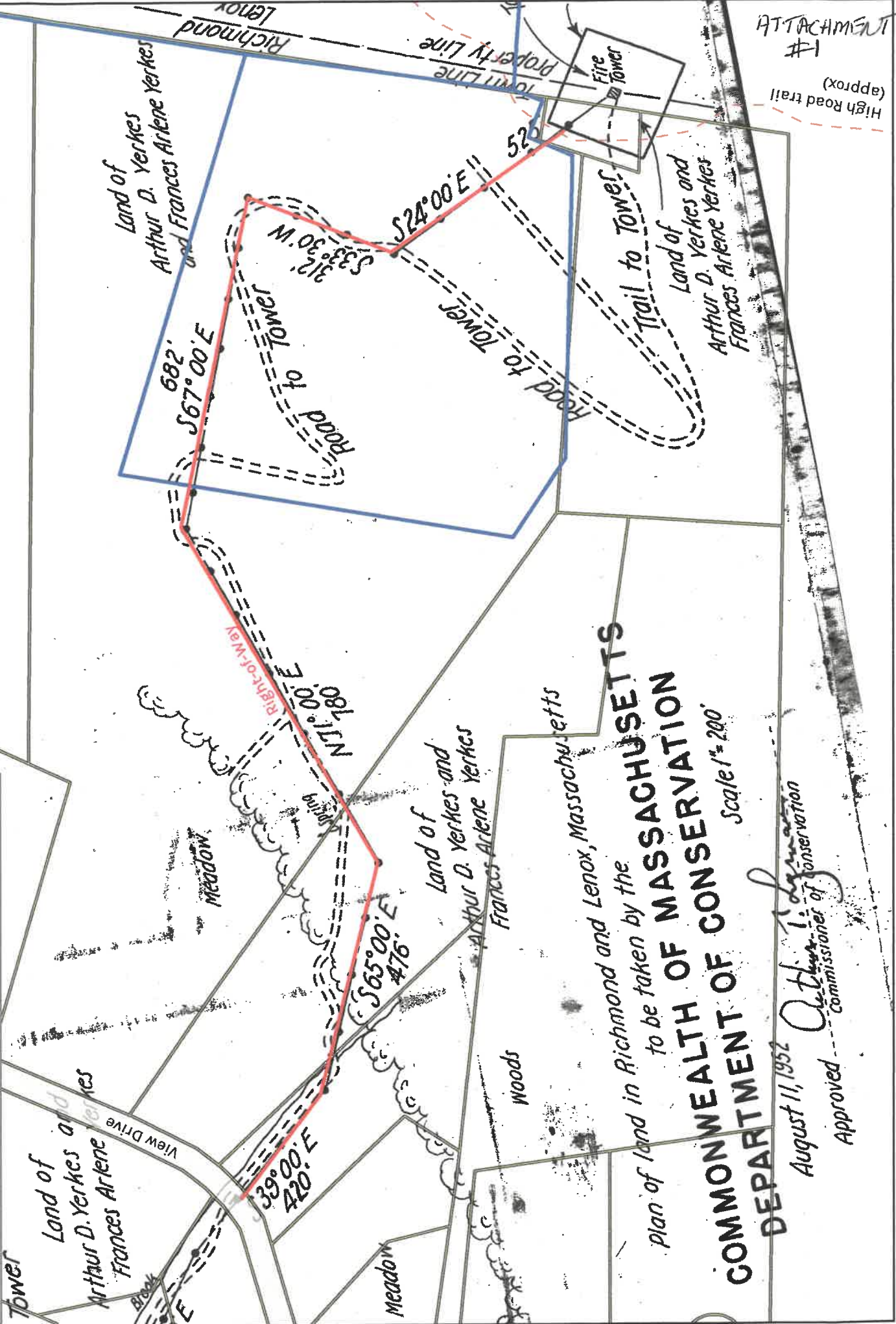
Date

Mr. Adam Weinberg- Vice Chair

Date

Pleasant Valley Wildlife Sanctuary - Lenox Mt.
1952 Plan Bk 417 Pg 139
With Town of Richmond parcel lines from MassGIS

1:3,000



Plan of land in Richmond and Lenox, Massachusetts
to be taken by the
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CONSERVATION
Scale 1" = 200'

August 11, 1952
Approved: *Oct 11 1952*
Commissioner of Conservation

ATTACHMENT #1
(Approx)
High Road trail

**VIOLATION NON-CRIMINAL DISPOSITION TICKETING
CRITERIA AND RESPONSIBILITIES**

NOTE: CONCOM ENFORCEMENT AUTHORITY IS AGENT (SHOULD ALTERNATE BE DESIGNATED IF AGENT NOT AVAILABLE?)

1. TRIGGERING ACTIVITY SOURCE

- A. ConCom Rep /Agent Observation of Violation**
- B. Abutter/Resident/Richmond Boards/BOS/DEP Reports Alleged Violation to ConCom and /or Agent**

2. TYPE OF VIOLATION

- A. Non permitted Land Disturbance or Significant Work in Buffer Zone, Resource Area or Scenic Mountain area**
- B. Stop Work Ignored**
- C. Violation Notice Ignored**
- D. Enforcement Order Ignored**
- E. Existing Permit Expires and Work Continues**
- F. Etc.**

3. ACTION

- A. Non-Emergency**
 - i. Member or Agent brings violation to ConCom Members for vote on issuing ticket (Regular or Special Meeting)**
 - ii. If approved, Agent Issues Ticket**
- B. Emergency**
 - i. Agent consults with Chairman, Co-Chair/Vice Chair at minimum for concurrence**
 - ii. If approved, Agent issues ticket**
- C. Fine Amounts:**

ATTACHMENT
2-2

- i. Flood Prone & Wetland Areas: \$200
- ii. Stream & Pond Protection: \$200
- iii. All Rules & Regulations: \$100 for Each

4. TICKET (WETLANDS OR SCENIC MOUNTAIN CITATION) ISSUED

- A. Evidence including witnesses, photos gathered and report prepared and put on file
- B. Fine effective as of date ticket written (?) and communicated to violator
- C. Inform Board of Selectmen of violation and ticket issuance

5. FINAL DISPOSITION

- A. Ticket Issuance plus 21 days
 - i. Fine not paid or requested hearing -violator is subject to criminal complaint
 - 1. Appears before local District Court
 - a. Order payment plus maybe additional penalties
 - b. Or if not paid, subject to criminal complaint
 - 2. If paid, matter disposed of without criminal record-no record of case
 - ii. Violator does not respond
 - 1. Can request that district attorney prosecute
 - 2. Small violations-Letter to violator that they are now being subject to criminal complaint

