

TOWN OF ELMORE, VT

Special Select Board Meeting

Meeting Minutes – prepared by G. Schwartz
Status: Approved

Meeting Date October 15, 2024

Start Time: 6:00 PM Adjourn: 7:06 PM

Meeting Attendees: See attached lists

Meeting Recording

Link https://us06web.zoom.us/rec/share/GDNqpAp6lwCQFniKOtkSVJVP9H8b9WIZc_m0JEJ9uI0pwIP4I5LbwH-OlxZfns-.Z_Uf2wizes7Kid_b?startTime=1729029333000

Passcode: FLim9A!T

Recording will be available for 30 days from the meeting date.

1. SPECIAL TOPICS

1. Review of the Attorney's Opinion on Property Deed Covenants

Notes: A motion was made by C. DeVore to waive attorney-client privilege and make the attorney's email opinion on the deed publicly available and to be posted with the meeting minutes. W. West seconded the motion. The motion was unanimously approved by the Select Board.

C. DeVore then read the email from the town's attorney, Brian Monaghan. He stated that he reviewed the deed for the town property in question and confirmed that the stormwater mitigation project did not violate any of the deed covenants. A copy of the email is attached

2. Updates on Project Status and Action Items

Notes: G. Schwartz reviewed the status of the stormwater mitigation project adjacent to the Town Hall. It was explained that this project was originally approved by the previous Selectboard in 2020. He then announced that the stormwater mitigation project at the Town Hall had been officially placed on hold for this year, with the exception of plantings in the completed rain garden on the non-deeded property. It is hoped that these plantings will be completed by the end of October. Lamoille County Conservation District is also working on potentially utilizing the unused portion of the funds to perform the work at the Boat ramp (design attached for informational purposes only). Since this is State owned property, the Town has no say in what work is performed. This project if funding is approved, would also have to be completed by the end of October.

The next steps include working with consultants over the winter to revise the landscaping plans and re-evaluating the project in the spring. G. Schwartz to setup an Informational Meeting to discuss the Watershed Assessment Plan with Fitzgerald Environmental for some time in January. Public will be notified of date and Time once confirmed.

TOWN OF ELMORE, VT

Special Select Board Meeting

3. Public Comments on Communication Practices

Notes: A significant portion of the meeting was dedicated to discussing communication improvements. Residents voiced concerns that they were not adequately informed about the stormwater project. Some felt that important projects were proceeding without sufficient public awareness or input. The Select Board stated the current methods of notifying the public, including email alerts, posting of meeting in three locations and on the Town's website. It was noted that all Town Boards encourage attendance by the public and that all meetings are held on a regularly scheduled days of the month. C. Devore then asked the public for their ideas on improving communication. Although it was admitted that this is difficult to do, the following suggestions were made.

- **Use of SMS (Text Message) Alerts:**
Several attendees suggested implementing a town-wide SMS alert system to notify residents of important meetings, agenda items, and project updates. The Board acknowledged that SMS could be an effective tool for reaching a wider audience, especially those who may not regularly check emails or websites.
- **Elmore's Email Notification List:**
The Board was encouraged to make better use of the town's existing email notification system. Residents can already sign up to receive updates via email, and the Board agreed that this tool could be promoted more heavily. The Selectboard agreed to explore automatically adding residents to the email list with an opt-out option to maximize outreach.
- **Marquee Announcements:**
A suggestion was made to use a marquee in a high-traffic area, such as in front of the town office to announce special meetings or significant agenda items.
- **Website Improvements and Meeting Recordings:**
Residents emphasized the need for all meeting materials to be available online, including video recordings of meetings. The Board was asked to ensure that important documents, such as engineering plans for projects, are posted alongside the agendas in advance of the meetings.

The Selectboard acknowledged the communication gap and expressed a commitment to explore these new methods. They agreed that expanding the use of multiple communication channels would be a priority moving forward. The Board also discussed the need for clearer and more descriptive agendas to better convey the significance of upcoming meeting topics.

TOWN OF ELMORE, VT
Special Select Board Meeting

A motion was made by C. DeVore to adjourn. G. Schwartz seconded the motion. The motion was unanimously approved by the Select Board.

Minutes Respectfully Created and Submitted by:

Glenn Schwartz

10/17/24

Town Of Elmore
Meeting Attendance Record

ENTER MEETING DATE: 10/15/24

ENTER MEETING NAME: Special SB Meeting

CHECK ALL THAT APPLY
REASON FOR ATTENDING

Reason for Attendance

YOUR NAME (printed)	Observer	Interested Party	Principal Party	Expert or Consultant	WHY ARE YOU ATTENDING?
Shanty SUE + OWEN					TAX Payer " "
Brent Hasking / Sharon Fortune	✓				
Dawn + George Kress	✓				
Nancy Davis					
John Osgood	✓	✓			I Care about the issue
Don Valentine	✓	✓			
Sue Mercia	✓				We care
Craig Mercia	✓				" "
Faith Bond	✓				
COLIN REYNOLDS	✓				OBSERVE

Town Of Elmore
Meeting Attendance Record

ENTER MEETING DATE: 10/15/24

ENTER MEETING NAME: SPECIAL SB Meeting

CHECK ALL THAT APPLY
REASON FOR ATTENDING

Reason for Attendance

Zoom Attendance YOUR NAME (printed)	Observer	Interested Party	Principal Party	Expert or Consultant	WHY ARE YOU ATTENDING?
Barbara Lacasse					
Courtney Fagan					
Elsie Brennan					
Mark Brewer					
Tim Lindenmyer					
Leonard Zuk					
Liz Dickson					
Cheryl Barkley					
Renee					
Joe Wilkins					
Jason Cohen					
Michelle					
(phone)					
Ram Burtin					
Tom Waldman					
Phil Phelps					

**TOWN OF ELMORE, VERMONT
SELECT BOARD**

Email from Brian P. Monaghan, Monaghan Safar PLLC, dated 10/10/24

Elmore Town Attorney

Released from Attorney/Client Privilege by vote of the Elmore Selectboard 10/15/24

(edited)

Here is my short answer to this deed interpretation question: I believe the Town has the full authority to install the stormwater mitigation system as depicted on the plans.

The more in-depth analysis is this: based on the facts you provided, the deed to the Town is a warranty deed, conveying fee simple title to the town, except for the three covenants that run with the land:

1. No buildings shall be erected on the within conveyed parcel.
2. The parcel shall be always left open to the public use such as for fishing, picnicking, or general relaxation.
3. The parcel shall be kept mowed, free of brush and general clutter so as to enhance its attractiveness.

It is probably easiest to dispose of #3 first, since I expect that the Town is, and will continue to be mowing the parcel, etc. Next, as to, #2, I expect the town will continue to leave the parcel open for public use, such as for fishing, picnicking, or for general relaxation. So, that leaves the first restriction: it prohibits the Town from building any buildings on the conveyed parcel. So that leads us to wonder what is a "building?" The plans for the stormwater project include the installation of two sediment forebays, a level spreader, and two bio retention basins. Under any practical analysis, none of these items constitutes a "building."

The Merriam Webster Dictionary defines a "building" as "a usually roofed and walled structure built for permanent use (as for a dwelling)." None of these stormwater devices, in my view, comes within the definition of a building as defined by the dictionary. These are all low structures without roofs or walls, a person cannot go inside them, and they are certainly not dwellings.

I think the rub here for the Mercias is that the construction on the site probably appears to be severe in relation to what it has always looked like. Heavy equipment is tearing the ground apart in preparation for installation of these structures and it must appear as though the Town is doing something that might be prohibited by the restrictive covenants. I can understand this perspective.

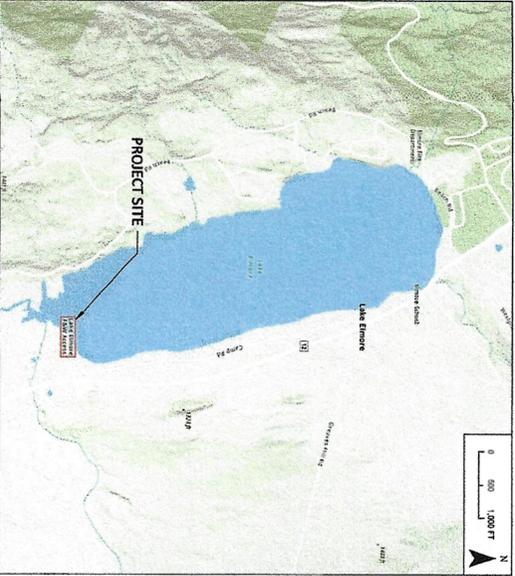
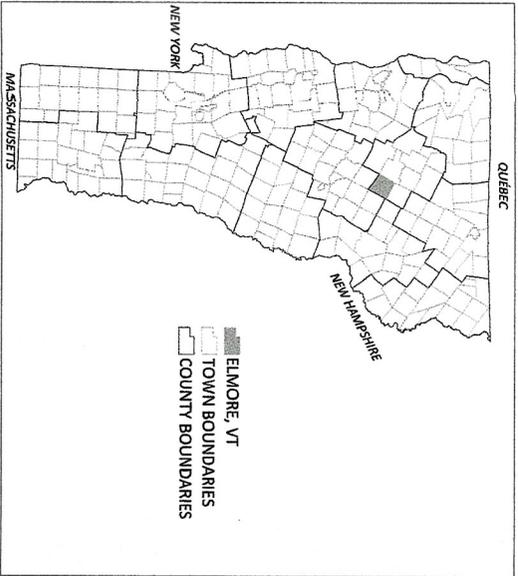
Nevertheless, based on all this, I do not believe the Town is violating the Mercia family's restrictive covenants. The question is, how to proceed? Here are the options:

1. Get the contractors back on site to proceed as had been occurring before the stoppage.
2. Speak to the Mercias to get their approval before proceeding.
3. Go to court to ask for a declaratory judgment that the Town is proceeding appropriately.

**TOWN OF ELMORE, VERMONT
SELECT BOARD**

I advise going with Option #1. There is no reason to stop the work because the Town will not be violating the covenants. You might wish to reach out to the Mercias to explain what is happening, but I don't see a need to stop the work any further to have that conversation. I also don't think there is any need to do Option #2. The Town is within its rights here, it is not installing any buildings, and the Town could be liable for work stoppage charges with the contractor, so you need to just get this project done before the construction season closes. As to Option #3, I have concerns with this process because I think it is unnecessary, and I also don't know if the court would accept jurisdiction, because it is not clear if there is a genuine "case or controversy." On the other hand, if the Mercias were to file suit against the Town to stop the construction, there would be a genuine case or controversy over which the court would have jurisdiction. And that is the risk if the Town proceeds: the Mercias could seek a declaratory judgment in court to force the Town to stop the construction, and that would be a challenge to contend with.

Ultimately, I believe the court would go through the same analysis I just went through to determine whether the stormwater features constitute "buildings." The court would use a similar definition, if not the exact same definition. In that analysis, I don't see any way in which these stormwater features are characterized as "buildings."



LAKE ELMORE VAUGHN M. DOUGLASS ACCESS AREA

900 CAMP ROAD

ELMORE, VERMONT

FINAL PLANS
APRIL 3, 2023

THIS PROJECT INVOLVES THE CONSTRUCTION OF GREEN STORMWATER INFRASTRUCTURE AND THE INSTALLATION OF LAKESHORE BUFFER PLANTINGS ON THE PROPERTY OF THE VERMONT DEPARTMENT OF FISH AND WILDLIFE LAKE ELMORE BOAT LAUNCH, INCLUDING TWO BIORETENTION BASINS WITH VEGETATED FOREBAYS, RE-GRADING OF A PORTION OF THE PARKING AREA, AND BUFFER PLANTINGS.

DRAWING INDEX	
NO.	TITLE
1	EX-1 SITE PLAN - EXISTING CONDITIONS
2	PR-1 SITE PLAN - PROPOSED CONDITIONS
3	PRO-1 PROFILES - BIORETENTION FEATURES
4	DT-1 CONSTRUCTION DETAILS
5	N-1 CONSTRUCTION NOTES

EXISTING CONDITIONS AND SOURCE NOTES

1. GEOGRAPHIC DATA AND PLANS ARE REFERENCED TO THE VERMONT STATE PLANE IN US SURVEY FEET (NAD83). ELEVATIONS ARE BASED ON NAVD88.
2. PARCEL BOUNDARY DATA SHOWN ON THE PLANS ARE FROM VCGI.
3. EXISTING GRADE TOPOGRAPHIC INFORMATION IS FROM VERMONT STATE LIDAR DATA (2014) SUPPLEMENTED BY FIELD SURVEY DATA OF THE PROJECT SITE, COLLECTED BY FEAWITH A TOTAL STATION AND A CENTIMETER GRADE TRIMBLE GPS ON 12/13/2022.
4. SOIL DATA ARE FROM NRCS.
5. SUPPLEMENTAL DATA COLLECTED BY FEAWITH TO VERIFY AVAILABLE DATA.

PREPARED BY:



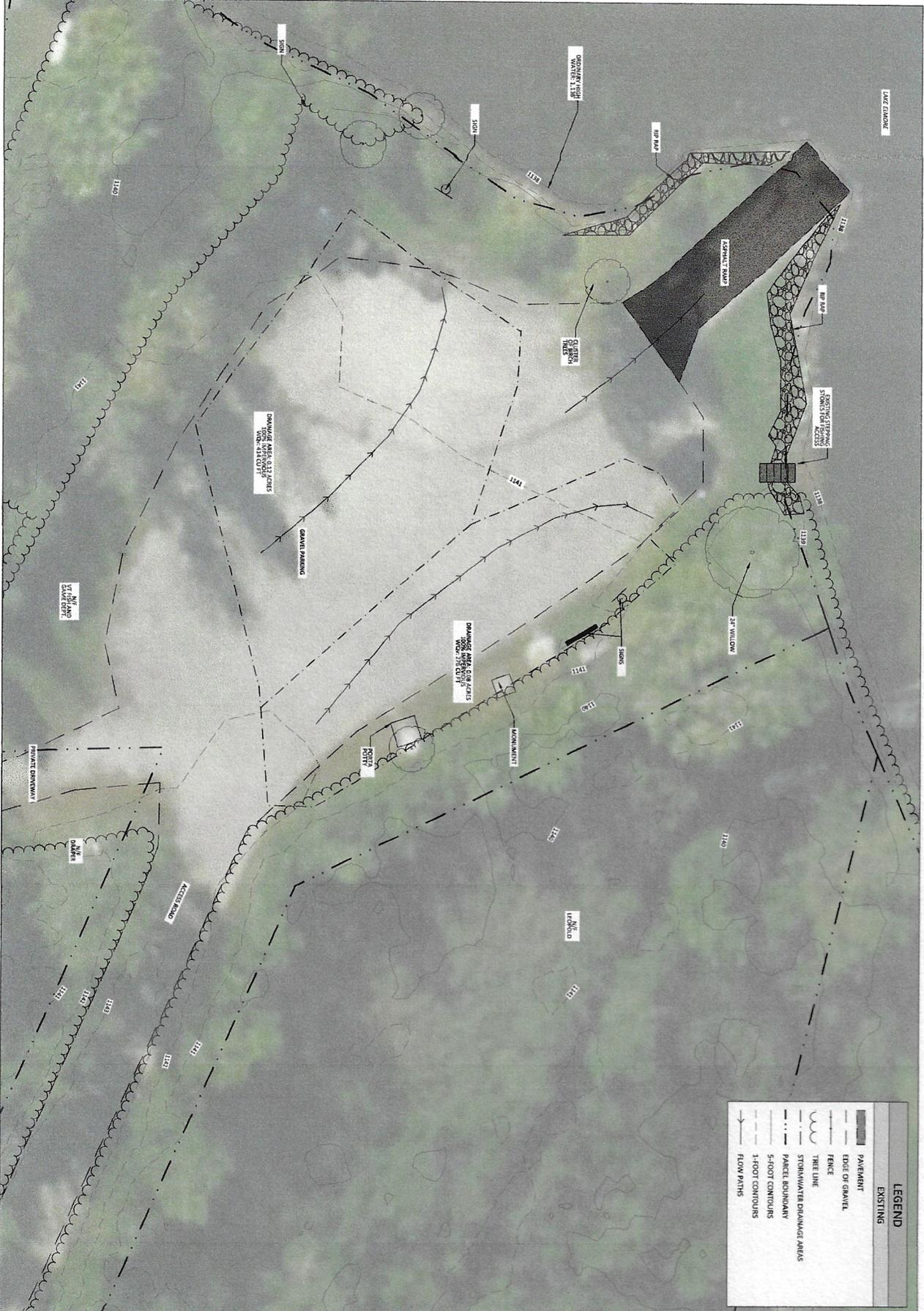
Fitzgerald
Environmental
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164 Main Street, Suite 2
Colchester, VT 05446
Telephone: 802.876.7778
www.fitzgeraldenvironmental.com

PREPARED FOR:



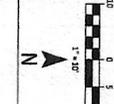
LAMOTTE COUNTY CONSERVATION DISTRICT
109 PROFESSIONAL DRIVE, SUITE 2
MORRISVILLE, VT



DATE	2024-04-03
PROJECT NO.	22119
SHEET NO.	1 OF 5
SHEET NAME	EX-1

SITE PLAN - EXISTING CONDITIONS
 LAMOILLE COUNTY CONSERVATION DISTRICT
 LAKE ELMORE BOAT LAUNCH
 900 CAMP ROAD, ELMORE, VT
 NOT FOR CONSTRUCTION

NO.	DESCRIPTION	DATE



FINAL PLANS

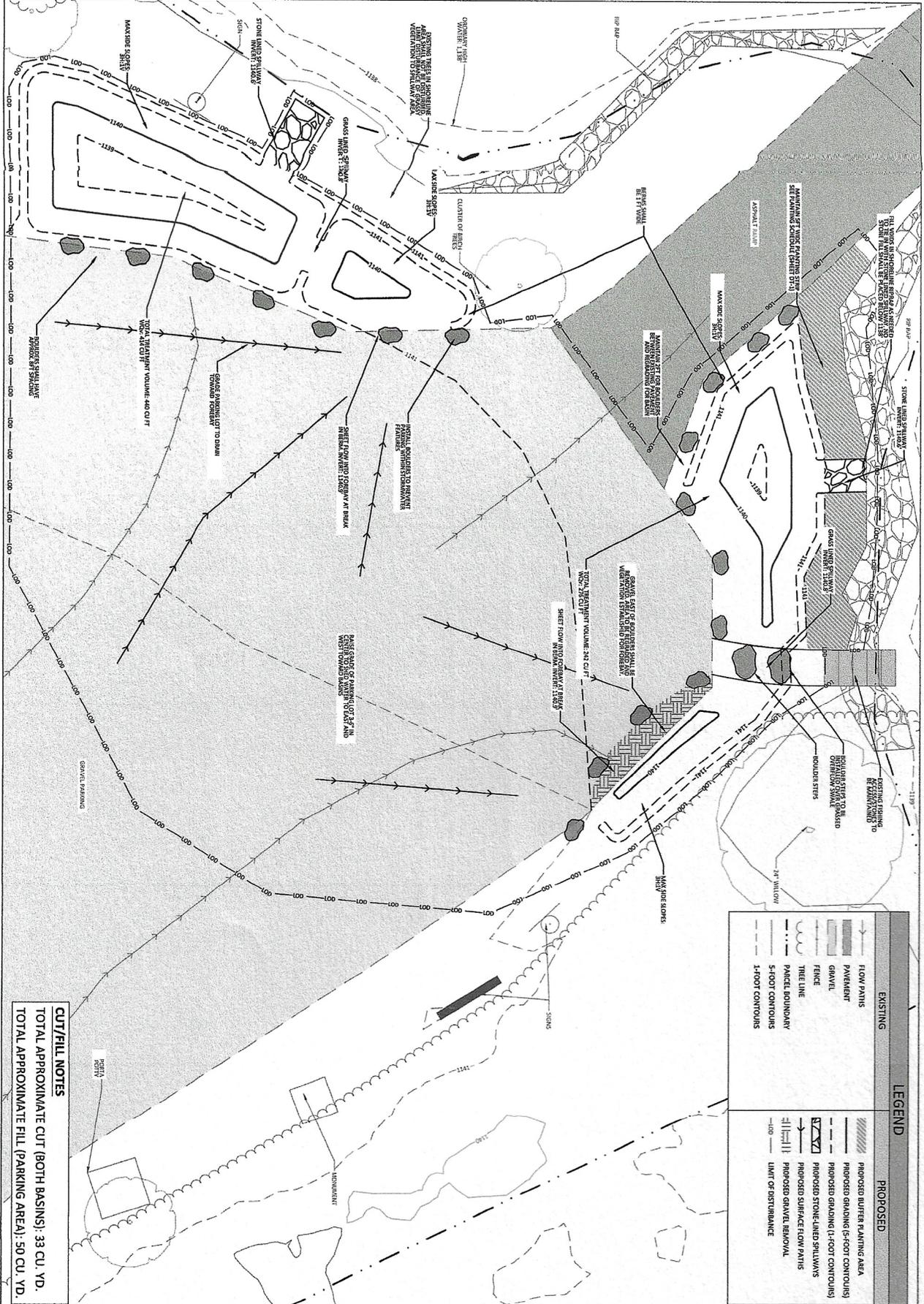
LEGEND

EXISTING

- PAVEMENT
- EDGE OF GRAVEL
- FENCE
- TREE LINE
- STORMWATER DRAINAGE AREAS
- PARCEL BOUNDARY
- 5-FOOT CONTOURS
- 1-FOOT CONTOURS
- FLOW PATHS

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CUT/FILL NOTES
 TOTAL APPROXIMATE CUT (BOTH BASINS): 33 CU. YD.
 TOTAL APPROXIMATE FILL (PARKING AREA): 50 CU. YD.

EXISTING		PROPOSED	
Flow Paths	Flow Paths	Proposed Buffer Planting Area	Proposed Buffer Planting Area
Pavement	Pavement	Proposed Grading (5-foot contours)	Proposed Grading (5-foot contours)
Gravel	Gravel	Proposed Stone-lined Spillways	Proposed Stone-lined Spillways
Fence	Fence	Proposed Surface Flow Paths	Proposed Surface Flow Paths
The Line	The Line	Proposed Gravel Removal	Proposed Gravel Removal
Parcel Boundary	Parcel Boundary	Limit of Disturbance	Limit of Disturbance
5-foot Contours	5-foot Contours		
1-foot Contours	1-foot Contours		

SITE PLAN - PROPOSED CONDITIONS
 LAMOILLE COUNTY CONSERVATION DISTRICT
 LAKE ELMORE BOAT LAUNCH
 900 CAMP ROAD, ELMORE, VT
 NOT FOR CONSTRUCTION

SCALE: 1" = 5'
 DATE: 2024-04-03
 PROJECT NO.: 22119
 SHEET NO.: 2 OF 5
 SHEET NAME: PR-1

FINAL PLANS

SCALE: 1" = 5'

LEGEND

PROPOSED BUFFER PLANTING AREA

PROPOSED GRADING (5-FOOT CONTOURS)

PROPOSED STONE-LINED SPILLWAYS

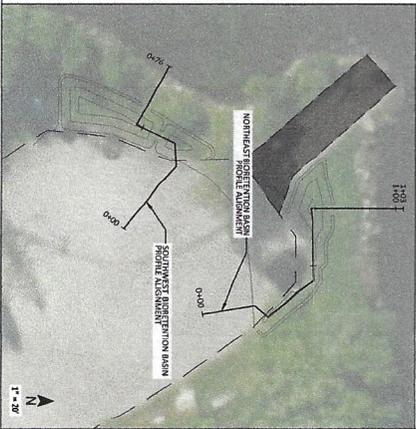
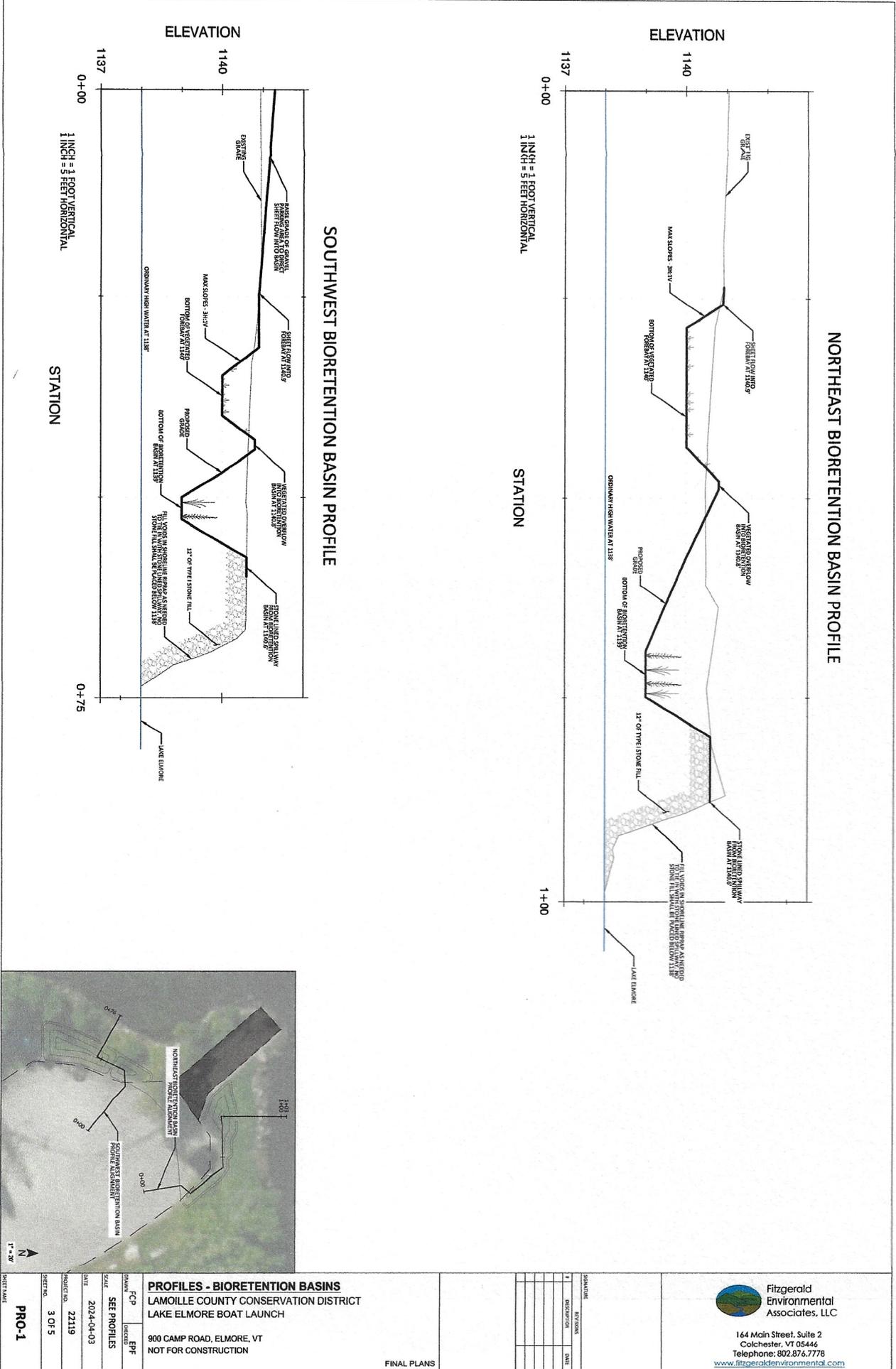
PROPOSED SURFACE FLOW PATHS

PROPOSED GRAVEL REMOVAL

LIMIT OF DISTURBANCE

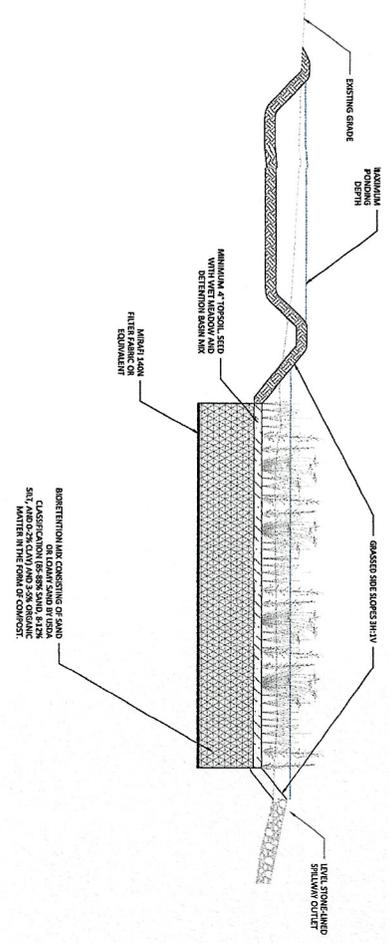
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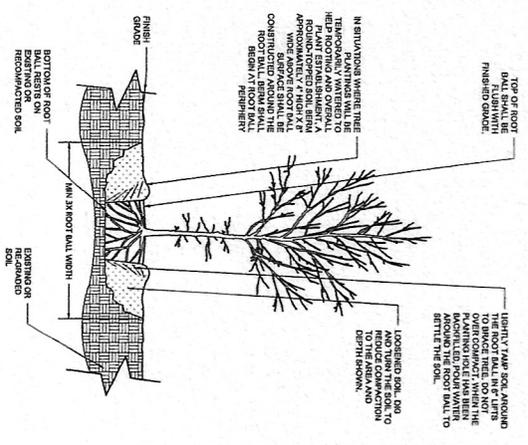
<p>PROFILES - BIORETENTION BASINS LAMOILLE COUNTY CONSERVATION DISTRICT LAKE ELMORE BOAT LAUNCH 900 CAMP ROAD, ELMORE, VT NOT FOR CONSTRUCTION</p>	<p>DATE: 2024-04-03 PROJECT NO.: 22119 SHEET NO.: 3 OF 5</p>	<p>SCALE: SEE PROFILES DRAWN BY: ECP CHECKED BY: EFP</p>	<p>PROJECT NAME: PRO-1</p>	<p style="text-align: center;">FINAL PLANS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>NO.</th> <th>REVISIONS</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	NO.	REVISIONS	DATE										<p style="text-align: center;">  Fitzgerald Environmental Associates, LLC 144 Main Street, Suite 2 Colchester, VT 05446 Telephone: 802.876.7778 www.fitzgeraldenvironmental.com </p>
NO.	REVISIONS	DATE															

BIORETENTION BASINS



N.T.S.

PLANTINGS



N.T.S.

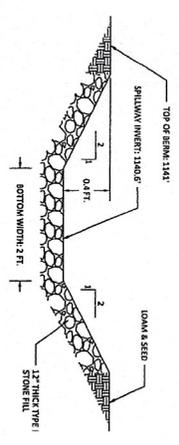
Lake Elmore - Boat Launch Shoreline Planting Schedule

Planting Area (acres):	0.005
Planting Area (sqft):	227
Target Spacing (ft):	5
Min. Quantity Needed:	12
Density (plants/acre):	2218

Common Name	Taxonomic Name	Form	Size	Quantity
Northern bayberry	<i>Myrica pensylvanica</i>	1 gal. cont.	2-3'	4
Red Osier Dogwood	<i>Cornus sericea</i>	1 gal. cont.	2-3'	4
Steeplebush	<i>Spiraea tomentosa</i>	1 gal. cont.	2-3'	4

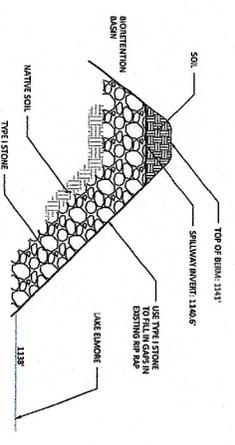
Total Trees/Shrubs: 12

CROSS SECTION



N.T.S.

PROFILE



N.T.S.

STONE LINED SPILLWAYS

N.T.S.

CONSTRUCTION DETAILS
 LAMOILLE COUNTY CONSERVATION DISTRICT
 LAKE ELMORE BOAT LAUNCH
 900 CAMP ROAD, ELMORE, VT
 NOT FOR CONSTRUCTION

DATE	2024-04-03
PROJECT NO.	22119
SHEET NO.	4 OF 5
SCALE	N.T.S.
DESIGNED BY	FCP
CHECKED BY	EPF
DRAWN BY	N.T.S.
SHEET NAME	DT-1

FINAL PLANS

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