Findings of Fact | Wetland Conditional Use Permit
City of Portsmouth Planning Board

Date: March 21, 2024
Property Address: 90 FW Hartford Dr.
Application #: LU-23-142
Decision: □ Approve □ Deny □ Approve with Conditions

Findings of Fact:

Per RSA 676:3, I: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.

In order to grant Wetland Conditional Use permit approval the Planning Board shall find the application satisfies criteria set forth in the Section 10.1017.50 (Criteria for Approval) of the Zoning Ordinance.

	Zoning Ordinance Sector 10.1017.50 Criteria for Approval	**Finding** (Meets Criteria for Approval)	**Supporting Information**
1	*1. The land is reasonably suited to the use activity or alteration.*	**Meets** **Does Not Meet**	The applicant removed multiple large trees from the buffer, many of which appear to have been within the vegetated buffer strip according to citywide wetland maps, which is not allowed according to the City of Portsmouth Zoning Ordinance Article 10 Section 10.1018.23 where any cutting of vegetation within the first 25 feet of the buffer is prohibited.
2	*2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.*	**Meets** **Does Not Meet**	According to the City's wetland delineation (and confirmed by the applicant's wetland scientist), all trees that were removed appear to be within the 100-ft wetland buffer. The restoration plan contains plantings in the wetland and wetland buffer area to resolve the violation.

	Zoning Ordinance Sector 10.1017.50 Criteria for Approval	Finding (Meets Criteria for Approval)	Supporting Information
3	*3. There will be no adverse impact on the wetland functional values of the site or surrounding properties.*	**Meets** **Does Not Meet**	The removal of mature trees from the wetland buffer will likely have an impact on the wetland resource as a critical group of buffer plantings was removed, leaving mostly grass and bare soil in their place. The restoration plan restores the buffer with plantings and ensures all bare soil is adequately covered with groundcover. This will help control and filter stormwater runoff as it enters the wetland and will help to increase soil health and bring back cover for wildlife.
4	*4. Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.*	**Meets** **Does Not Meet**	The natural vegetative state was altered with the removal of these trees. Although the applicant will be unable to replace the trees with ones of equal maturity and environmental benefit, planting of native species will offset the negative impacts of tree removal and vegetation removal within the wetland buffer.
5	*5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.*	**Meets** **Does Not Meet**	Removal of vegetation within the vegetated buffer strip is prohibited. Additionally, the applicant should have consulted with staff about the removal of trees within the limited cut area to ensure compliance with Article 10 Section 10.1018.23. This removal resulted in adverse impacts to the wetland buffer and will require an extensive restoration plan to attempt to offset negative environmental impacts.
6	*6. Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.*	**Meets** **Does Not Meet**	The vegetated buffer strip was altered with the removal of these trees. Although the applicant will be unable to replace the trees with ones of equal maturity and environmental benefit, extensive planting of native species will offset the negative impacts of tree removal and vegetation removal within the wetland buffer.
7	**<u>Other Board Findings:</u>**		

Restoration Program

Marc E. Jacobs, *CSS, CWS, PWS, CPESC*
Professional Wetland / Soil Scientist
jacobs2wetsoil2004@yahoo.com

VIA EMAIL to a.chicoree@gmail.com

February 23, 2024

Mr. Amrishi 'Ash' Chicooree
90 F.W. Hartford Drive
Portsmouth, N.H. 03801

Re: Assessor's Map 269, Lot 45
90 F.W. Hartford Drive
Portsmouth, N.H.

Subject: Wetland Buffer Restoration Program

Dear Mr. Chicooree,

The following specifications are offered as a wetland buffer restoration program and are intended to address stipulation 1.d. as well as other stipulations in the letter from the Portsmouth Conservation Commission (PCC) dated December 21, 2023, which was issued after a public meeting and their earlier site visit in August 2023 to document the removal of trees within the buffer zone at the above-referenced location without their prior review and authorization. This letter also addresses stipulations 1-5 in the PCC letter dated February 20, 2024. Refer to Figure 1 for a depiction of the area.

This program addresses area T2, but does not address the common area, previously referred to in my November 22, 2023 delineation report as area T1. Area T1 straddles the property line with your neighbor at 80 F.W. Hartford Drive. Area T1 lies within the 100-foot wetland buffer and the trees in this area were also cut but it is my understanding that you and the neighbor intend to coordinate regarding the future of this area. Until that coordination happens we cannot properly address area T1 in this wetland buffer restoration program.

The quantity of trees to be planted to restore a wetland and/or its buffer would customarily be determined using the size - in square feet (SF) - of the area that was cut or graded, and the desired density (for example, 15-feet on center) of specimens, especially where the area has been grubbed and the stumps have been removed. However, there has been no survey of the T2 area by a land surveyor and no scaled drawing exists which accurately depicts the size of Area T2 in SF. Furthermore, the area has not been graded, the stumps from the trees that were cut remain and, regarding stipulation 1.e. in the PCC letter, are not proposed to be removed, therefore we have used the tally of stumps provided in Table 1 from our November 22, 2023 letter as the basis for the quantity and species of trees proposed for planting in the 0-50' portion of the T2 buffer zone area. Refer to Table 1 below.

609 Portsmouth Avenue
PO Box 417
Greenland, NH 03840-0417

Phone **(603) 686-5097**
Fax **(603) 686-5142**
Mobile **(603) 534-SOIL (7645)**

TABLE 1

TREE SPECIES	0-25 FT BUFFER	25-50 FT BUFFER
	Diameter (inches)	**Diameter (inches)**
Red maple *(Acer rubrum)*	7, 9, 9, 9, 10, 13, 19	14*, 14
White pine *(Pinus strobus)*	5*, 6*, 8*, 18, 21, 21, 23, 24	8
Eastern hemlock *(Tsuga Canadensis)*	6, 7, 7, 9, 9, 11, 16	7, 7, 14
Black birch *(Betula lenta)*	9	NA
Red oak *(Quercus rubra)*	22	18, 22
TOTAL Number of Trees (live)	**21 Total**	**7 Total**

*These stumps represent dead trees or trees that were removed long before the trees that were recently removed.

Plant Specifications

The specified plantings identified below were chosen as a result of the tally of stumps or because the species is generally represented elsewhere on site. Any substitutions of plant materials due to lack of commercial availability or delays in installation due to seasonal conditions (such as drought, frost or snow) shall be preapproved in writing by the wetland scientist and the City of Portsmouth. If the specimens are installed between October 1 and December 1 in any year, they will be mulched with an apron of wood chips, bark mulch or similar. (Installation after December 1 or before April 1 in any year is not recommended.) Any apron will be 3 inches in depth, will not bury the stem but will extend outward at least 1 foot from the stem in all directions. (The apron is recommended after planting in any season.) All woody shrub species shall be non-ornamental varieties. No stumps are proposed to be removed. With the exception of one red maple which is proposed for actual wetlands, proposed shrubs will be planted randomly but uniformly between existing stumps within the T2 area and specifically within the 0-50' buffer per stipulation 1.c in the 2023 and 2024 PCC letters. Refer to Table 2 below.

Note that while we refer to trees throughout this program, all trees will be planted as shrubs and the expectation is that they will mature into trees with the passage of time. (The technical definition of trees comprises specimens that are 5 inches or more in diameter at breast height [dbh], which is measured 4.5 feet from the ground surface. Acquisition and installation of specimens of that size is not practicable).

We have not proposed any eastern hemlock (*Tsuga Canadensis*) specimens although hemlock stumps were commonly observed within Area T2. Hemlock is susceptible to hemlock woolly adelgid, a non-native invasive insect pest, which is proliferating rapidly in our region.

TABLE 2

STRATUM	SPECIES / MIX Common (*scientific*) name	SIZE / RATE	QUANTITY / LOCATION
Tree	Red Maple (*Acer rubrum*)	4-5' minimum	9 specimens randomly but uniformly distributed within the 0-50' buffer in Area T2 uplands per Figure 2. *One specimen shall be located within the wetland.*
	White pine (*Pinus strobus*)	2-3' minimum	9 specimens randomly but uniformly distributed within the 0-50' buffer in Area T2 uplands per Figure 2.
Shrub	High Bush Blueberry (*Vaccinium corymbosum*)	36"- 48" minimum height	10 specimens randomly but uniformly distributed within the 0-25' buffer in T2 uplands per Figure 2.
			Total of 28 shrubs

In the absence of a bonafide land survey, it is impractical to show the exact locations of individual specimens proposed for planting per stipulation 1.b in the PCC letter. Similarly, we were unable to show the locations of individual stumps in our delineation report for analogous reasons; due to the scale of GIS mapping resources. We have however prepared a sketch which shows the approximate location of plantings proposed for installation within the 0-50' buffer. Refer to Figure 2. We are also proposing that staff from our office we will be on site to lay out the plants and guide the installation of proposed plantings.

Long-term Monitoring and Status Reports

Within 30 days of completion of the plant installation work, an initial status report, including photographs), will be prepared and submitted to the City of Portsmouth. Status reports will provide information regarding the following parameters (minimally):

- An inventory and the general status (health) of shrubs,
- observations regarding the uniformity of live vegetation throughout the 0-50' buffer of Area T2,
- any plant substitutions (initial report only),
- observations of any commonly accepted invasive vegetation species (with an emphasis on new infestations [area or species] or expansions of existing infestations), and
- recommended remedial measures or corrective actions, if any.

As necessary to confirm the successful re-establishment of restored buffer zone, additional inspections and status reports will be prepared and submitted to the City of Portsmouth by June 30th for two (2) additional growing seasons following installation of restoration plantings. In addition to those items listed above, subsequent reports will document the following ecological performance standard: a minimum of 80 percent survival/establishment of the woody tree / shrub plantings installed within restored wetland buffer. Woody stems must be uniformly distributed.

The percentage of trees and shrubs deemed to have survived will be based upon an actual woody stem count and will be compared to the total quantity of woody stems originally planted. Shrubs will be considered living (and therefore counted in the tally) if they exhibit at least 25 percent foliage during the normal growing season. The woody stem count may also include suitable woody specimens that have colonized the restored wetland buffer areas from surrounding natural areas and which were not represented in the original plant list specified in Table 1 above. Suitable woody specimens include those which are not considered invasive or exotic according to commonly accepted sources.

Where inspections and status reports demonstrate that the ecological performance standard stated above has not been achieved at the end of two (2) full growing seasons, or as soon as it may be apparent that site conditions may not result in a successful restoration of wetland buffer, the status report will identify any recommended corrective action(s), such as replanting or invasive species management, that may be necessary to bring the restored wetland buffer area into compliance with this program. The City of Portsmouth will be consulted prior to initiating any remedial actions. (After 2 years and any remedial plantings, the restored buffer area will be allowed to grow naturally (without alteration) in perpetuity. Any future proposed management activities will be pre-approved through prior consultation with the PCC or submittal of a Conditional Use Permit application.)

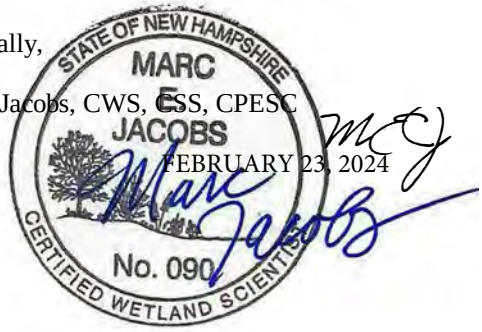
While it is anticipated that the wetland scientist of record or another suitably qualified individual will be conducting future inspections and preparing status reports, the property owner will ultimately be the party responsible for providing status reports as well as implementing any remedial measures or corrective actions which may be needed to bring the restored wetland buffer area into compliance with this program.

Other

Regarding stipulation 1.f. in the December 21, 2023 PCC letter, the portion of the 25-foot buffer that is currently being mowed, I understand it is your intention to cease mowing this area in perpetuity. No shrub plantings are proposed here. We have identified the approximate area on the attached buffer restoration sketch. This area will need to be measured with a fiberglass tape and staked-out in the field. It is our recommendation that you propose a permanent means of marking the limits of this area in the field. A line of boulders may be the easiest method and would not require any short or long-term maintenance.

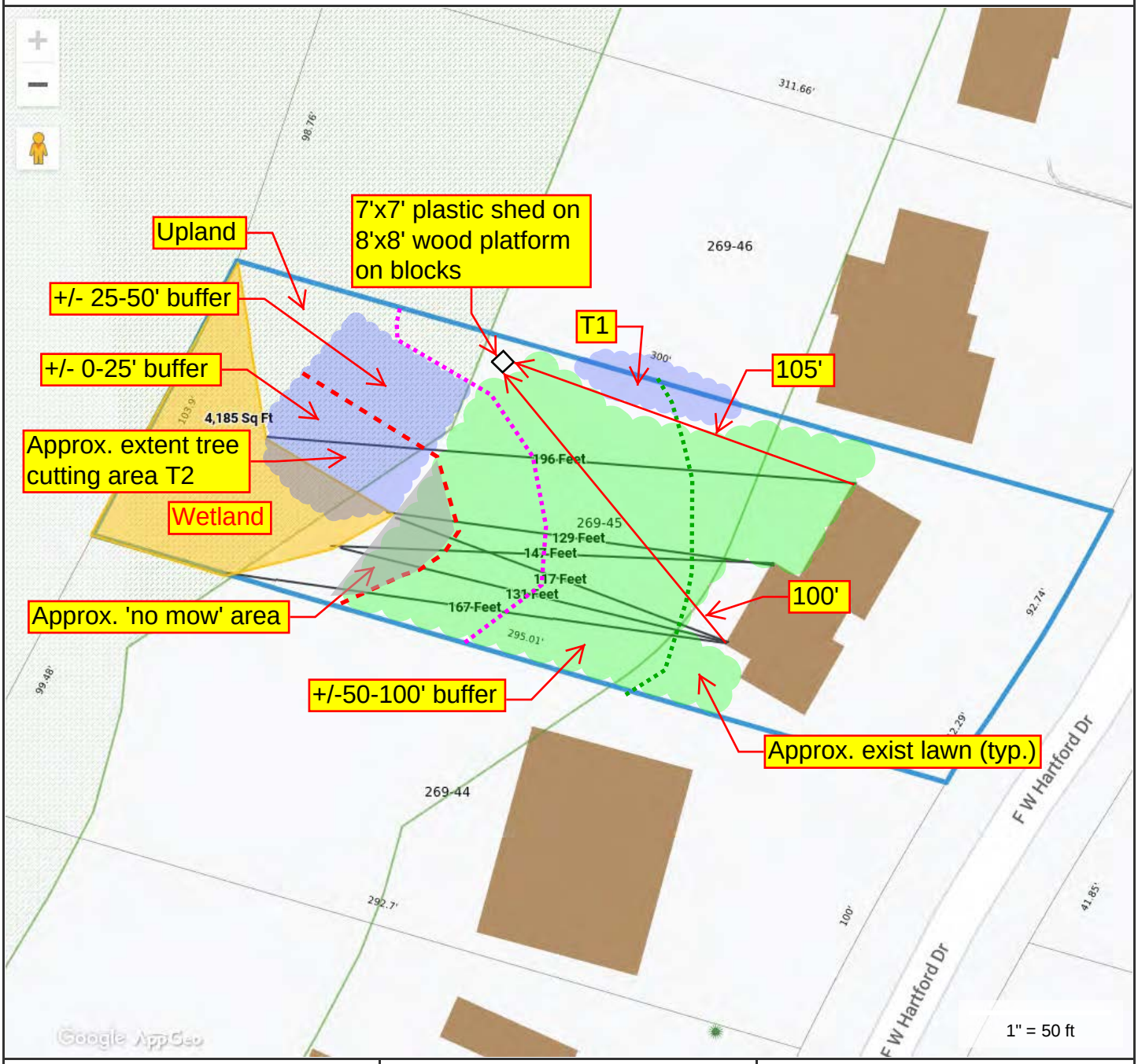
Please contact the undersigned with any questions.

Cordially,



Marc Jacobs, CWS, CSS, CPESC

F W Hartford Drive



Property Information

Property ID	0269-0045-0000
Location	90 FW HARTFORD DR
Owner	CHICOOREE AMRISHI A

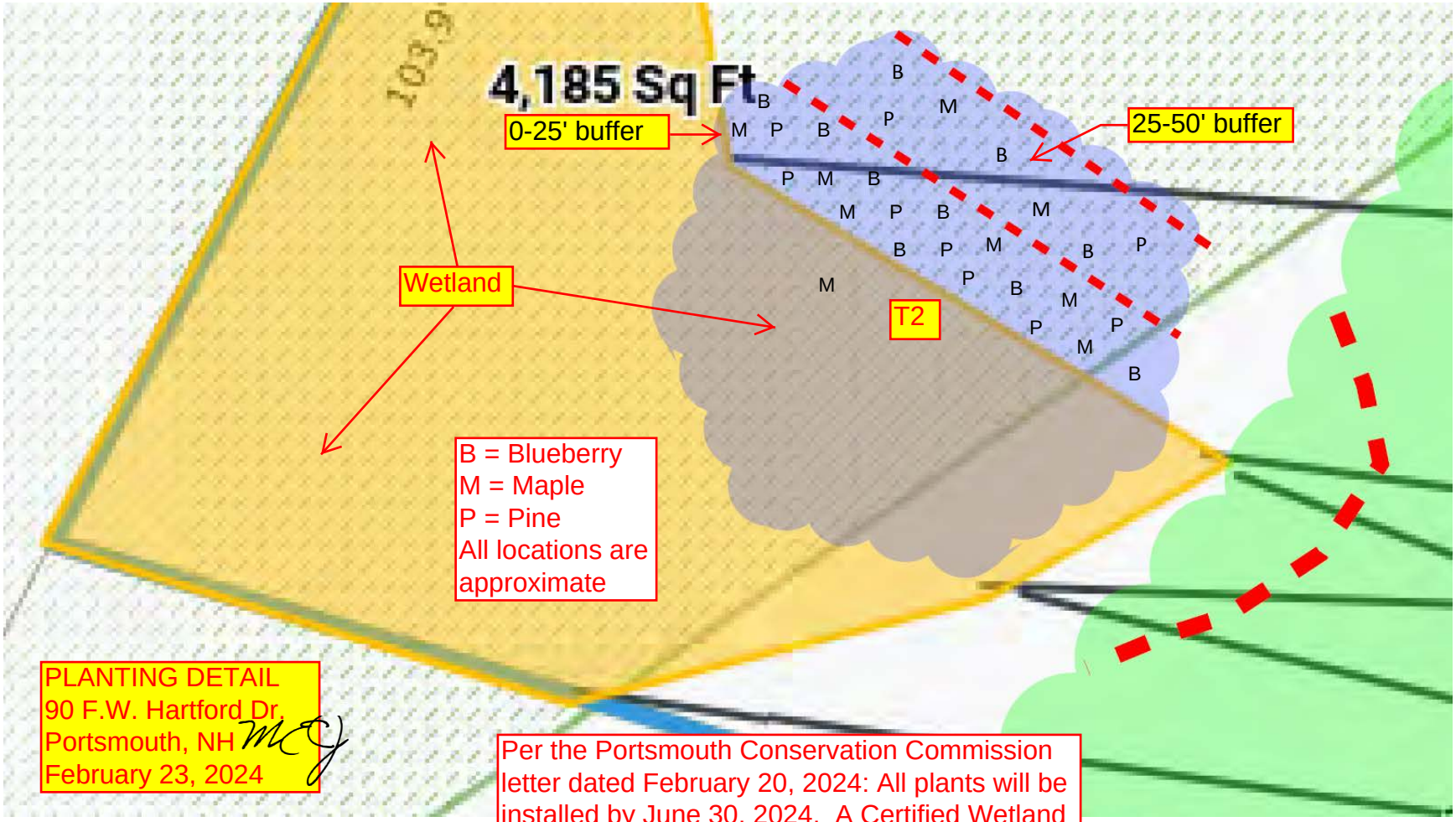
Buffer Restoration Sketch
Marc Jacobs, CWS
February 23, 2024
Features w/o exact dimensions (from GIS) are not-to-scale and will be measured in the field during implementation of this program.

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

Geometry updated 08/24/2023
Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

FIGURE 2


4,185 Sq Ft
0-25' buffer
25-50' buffer
Wetland
T2
B = Blueberry
M = Maple
P = Pine
All locations are approximate
PLANTING DETAIL
90 F.W. Hartford Dr.
Portsmouth, NH
February 23, 2024
Per the Portsmouth Conservation Commission letter dated February 20, 2024: All plants will be installed by June 30, 2024. A Certified Wetland Scientist will oversee the initial planting process and will prepare all monitoring reports.