

Staff Report

Date: July 25, 2019

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Smugglers Beach Subdivision – Certificate of Compliance – DEP# 023-071, Fairhaven CON 023-077**

DOCUMENTS REVIEWED

- Notice of Intent
- Order of Conditions
- Certificate of Compliance Request
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland

PROJECT SUMMARY

- Order of Conditions was issued in 1981 for a subdivision that never commenced.

COMMENTS

- The Order of Conditions has since lapsed and is no longer valid.

RECOMMENDATION

- I recommend issuing a Certificate of Compliance for an Invalid Order of Conditions.

Staff Report

Date: July 25, 2019

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **2 Alcobia Drive – Certificate of Compliance – DEP# 023-1113,
Fairhaven CON 023-080**

DOCUMENTS REVIEWED

- Certificate of Compliance Request
- Original Notice of Intent and associated plans/documents
- Order of Conditions
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Salt Marsh
- Land Subject to Coastal Storm Flowage Zone VE

PROJECT SUMMARY

- Remove and reconstruct eastern and southern garage walls (approx. 30 feet) and repair footings that are not deep enough.

COMMENTS

- Construction has been completed and a final sign off was given by the Building Department.
- Order of Conditions has expired at this point.

RECOMMENDATION

- I would recommend issuing a Certificate of Compliance for Complete Certification.

Staff Report

Date: July 25, 2019

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **25 Abbey Street – Notice of Intent – DEP#023-1300, Fairhaven CON-19-055**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents, including revised plans
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw

RESOURCE AREAS ON SITE

- Land Subject to Coastal Storm Flowage (LSCSF)
 - *Significance:* Land subject to coastal storm flowage are likely to be significant to flood control and storm damage prevention. LSCSF provides a temporary storage area for flood water and can slow down storm surge flood waters, reducing damage to both man-made and natural features.

PROJECT SUMMARY

- Notice of Intent filed for the razing of the existing dwelling and garage and construction of a new flood zone-compliant single-family dwelling.
- Revised plans have been submitted to update the location of the buffer zone on the property, the location of the proposed driveway, details regarding what specifically is being removed, and updates to the amount of Land Subject to Coastal Storm Flowage being impacted.
- The Commission discussed two minor omissions to the revised plan dated May 30, 2019 during the June 3, 2019 meeting and asked that the applicant provide an updated plan to the Agent prior to the next meeting. The Commission then voted to close the public hearing.
- The revised plans that were submitted encompassed more changes than what were discussed during the June 3, 2019 meeting.
- The applicant requested to re-open the public meeting on July 8, 2019 to address the changes in the revised plan. The applicant re-advertised and re-notified abutters in accordance with the appropriate timelines for the July 8 meeting.

COMMENTS

- *Question for Applicant:* How is the amount of impervious surface being reduced when the driveway and garage are remaining and a new house and driveway are being put in? By my calculation, the impervious surface is increasing by approximately 500 sq. ft.
- There is Bordering Vegetated Wetland on an adjacent property. Work proposed at the project location falls within the buffer zone to this wetland.

- *Significance:* Buffer zone to bordering vegetated wetland is significant due to its importance in protecting the wetland and allowing the wetland to provide its ecosystem services. Buffer zones are important for flood control, storm damage prevention, protection of public and private water supply, and protection of wildlife habitat. Vegetation in the buffer zone plays a crucial role in maintaining water temperature and chemistry of the wetland. Additionally, most wetland-dependent wildlife also depends on an undisturbed upland buffer zone for cover, habitat, food sources, pollution filtration, temperature control, and other functions and values. Buffer Zones play an important role in preservation of the physical, chemical, and biological characteristics of the adjacent resource area (Bordering Vegetated Wetland). The potential for adverse impacts to resource areas from work in the buffer zone increases with the extent of work and the proximity to the resource area.

RECOMMENDATION

- If the Commission decides to issue an Order of Conditions, my recommended conditions are as follows:

Approve plans dated June 5, 2019.

A. General Conditions

1. ACC-1
2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
3. REC-1
4. REC-2
5. ADD-1
6. ADD-4b
7. ADD-4c
8. ADD-5
9. STO-4
10. STO-5
11. LOW-2

B. Prior to Construction

1. CAP-1
2. CAP-3
3. DER-1
4. REC-3
5. PCC-3
6. EMC-1
7. PCC-1
8. SIL-5

C. During Construction

1. Structure to be razed on the approved plans shall be razed prior to beginning construction of new structure and driveway. Once structure is razed, contact the Conservation Commission or its Agent to perform a site visit. Once the Commission or its Agent has completed the site visit and confirmed that razing is completed, the next phase of the project can commence.

2. STO-1
 3. STO-3
 4. MAC-3
 5. MAC-7
 6. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 7. DEB-1
 8. DEB-5
 9. BLD-3
 10. BLD-4
 11. EMC-2
 12. SIL-3
 13. SIL-4
 14. SIL-8
 15. RUN-2
 16. REV-3
 17. WAS-1
 18. WAS-3
 19. WAT-3
- D. After Construction/In Perpetuity
1. REV-1
 2. COC-1
 3. COC-2
- Perpetual Conditions
- The below conditions do not expire upon completion of the project.*
4. CHM-1 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
 5. DER-4

Staff Report

Date: June 17, 2019

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Alcobia Drive – Request for Determination of Applicability – No DEP #, Fairhaven CON-19-065**

DOCUMENTS REVIEWED

- Request for Determination of Applicability and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw

RESOURCE AREAS ON SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE
 - *Significance:* Land subject to coastal storm flowage is likely to be significant to flood control and storm damage prevention. LSCSF provides a temporary storage area for flood water and can slow down storm surge flood waters, reducing damage to both man-made and natural features.
- Salt Marsh
 - *Significance:* Salt marshes are significant to prevention of pollution, to protection of marine fisheries, wildlife habitat, and, where there are shellfish, to protection of land containing shellfish. Salt marshes are likely to be significant to storm damage prevention and groundwater supply.

Salt marshes provide the basis for a large food web that supports many marine organisms, including finfish and shellfish as well as many bird species. Salt marshes also provide a spawning and nursery habitat for several important estuarine forage finfish as well as important food, shelter, breeding areas, and migratory and overwintering areas for many wildlife species.

Salt marsh plants and substrate remove pollutants from surrounding waters. Sediments also absorb chlorinated hydrocarbons and heavy metals such as lead, copper, and iron. The marsh also retains nitrogen and phosphorus compounds, which in large amounts can lead to algal blooms in coastal waters.

The underlying peat also serves as a barrier between fresh groundwater landward of the salt marsh and the ocean, thus helping maintain the level of such groundwater. Salt marsh cord grass and underlying peat are resistant to erosion and dissipate wave energy, thereby providing a buffer that reduces wave damage.

When a salt marsh is significant to one or more of the interests specified above, the following characteristics are critical to the protection of such interests:

the growth, composition, and distribution of salt marsh vegetation (*interests*: protection of marine fisheries and wildlife habitat, prevention of pollution, storm damage prevention);

the flow and level of tidal and fresh water (*interests*: protection of marine fisheries and wildlife habitat, prevention of pollution); and

the presence and depth of peat (*interests*: groundwater supply, prevention of pollution, storm damage prevention).

PROJECT SUMMARY

- Request for Determination of Applicability filed after some trees were removed for the removal of hurricane/storm-downed trees, dying/dead trees, broken/dying limbs and branches extending over the roofline, all stumps to remain, and the placement of a stockade fence adjacent to the south border and a gate.

COMMENTS

- The provided site plan highlights the trees in yellow that will be cut down or have branches removed. The application indicated that all stumps will remain.
- The site plan does not show the location of the proposed fence and gate.
- *Question for Applicant*: Are you still planning to install the fence and gate?
- Alcobia Drive runs through the salt marsh. If the proposed gate is installed on the existing shell driveway, it can be done as part of this filing rather than a Notice of Intent.
- If the fence is installed beyond the end of the stone wall and no vegetation is being cut down to install it, it can be done as part of this filing rather than a Notice of Intent.

RECOMMENDATION

- If the Commission decides to issue a Determination of Applicability for the entire proposed project (trees, fence, and gate), I would recommend a Negative 3 Determination with the following conditions:
 1. At no point may any work occur in the salt marsh.
 2. The gate may be installed in the existing shell layout of Alcobia Drive only.
 3. Any vehicles accessing the area to perform permitted work shall use Alcobia Drive and the driveway on the property only.

Staff Report

Date: July 25, 2019

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **38 Camel Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-073**

DOCUMENTS REVIEWED

- Request for Determination of Applicability application and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland (310 CMR 10.55)
 - *Significance:* Bordering vegetated wetlands are likely to be significant to public or private water supply, to groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, and to wildlife habitat. Plants and soils of bordering vegetated wetlands remove or detain sediments, nutrients, and toxic substances that occur in run-off and flood waters.

The vegetation in bordering vegetated wetlands acts to slow down and reduce the passage of flood waters during periods of peak flows by providing temporary flood water storage and by facilitating water removal through evaporation and transpiration. This process reduces downstream flood crests and the resulting damage to private and public property. During dry periods, the water retained in bordering vegetated wetlands is essential to the maintenance of base flow levels in rivers and streams, which is important to the protection of water quality and water supplies.

Wetland vegetation provides shade which moderates water temperatures important to fish life. Wetlands flooded by adjacent water bodies and waterways provide food, breeding habitat, and cover for fish.

Bordering vegetated wetlands are probably the Commonwealth's most important inland habitat for wildlife. The hydrologic regime, plant community composition and structure, topography, and water chemistry of bordering vegetated wetlands provide important food, shelter, migratory and overwintering areas, and breeding and nesting areas for many birds, mammals, amphibians, reptiles, and insects.

- Land Subject to Coastal Storm Flowage (LSCSF) Zones VE and AE
 - *Significance:* Land subject to coastal storm flowage is likely to be significant to flood control and storm damage prevention. LSCSF can slow down flood waters and allow them to flow across a natural landform surface, providing frictional resistance and reducing their energy and destruction potential. It can allow flood waters to spread over a wide area without obstructions. Obstructions can cause the channelization of flood

waters and storm-wave overwash and an increase in the velocity and volume of flow to adjacent or landward areas. LSCSF can also allow flood waters to be detained, absorbed into the ground, or evaporated into the atmosphere. LSCSF also protects the land from storm erosion by providing a substrate for vegetation that helps to stabilize sediments and slow down flood waters.

Where LSCSF overlaps other coastal resource areas, it plays an important role in determining the delineation and function of these resource areas, specifically coastal beaches and dunes, barrier beaches, and coastal banks.

Particular physical characteristics of LSCSF that are critical to the protection of the flood control and storm damage prevention interests include: topography, slope, surface area, soil characteristics (i.e., composition, size, shape, and density of material), vegetation, erodability, and permeability of sediments. Topography, slope, and permeability are critical for determining how effective an area is in dissipating wave energy, absorbing flood waters, and protecting areas within and landward of these zones from storm damage and flooding.

PROJECT SUMMARY

- Border existing driveway with cobblestones
- Demolish and install a new porch
- Cut down and remove a diseased tree on the east side of the house
- Install a new driveway on the west side of the house in crushed stone

COMMENTS

- Driveway was begun, but has since been halted with a Cease and Desist. It appears no work has occurred since the Cease and Desist was issued.
- It appears the proposed work will occur within the buffer zone to Bordering Vegetated Wetland, not in the wetland itself.
- *Question for Applicant:* Will you be using existing foundation/footings for the porch?
- The proposed driveway will be permeable, which should not impact flood storage capacity much if at all.
- The tree proposed to be removed is near the corner of the house and may be outside the buffer zone to the wetland but still within the flood zone.
 - *Question for Applicant:* Will the root system remain or will it be removed?

RECOMMENDATION

- I would recommend issuing a Negative 3 Determination with the following conditions:
 - At no point shall any foreign object or species, or any other material be deposited or disposed of in a resource area.
 - Any work other than what is permitted by this determination requires a new filing.

Staff Report

Date: July 25, 2019

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **56 Goulart Memorial Drive – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-074**

DOCUMENTS REVIEWED

- Request for Determination of Applicability and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE
 - *Significance:* Land subject to coastal storm flowage is likely to be significant to flood control and storm damage prevention. LSCSF can slow down flood waters and allow them to flow across a natural landform surface, providing frictional resistance and reducing their energy and destruction potential. It can allow flood waters to spread over a wide area without obstructions. Obstructions can cause the channelization of flood waters and storm-wave overwash and an increase in the velocity and volume of flow to adjacent or landward areas. LSCSF can also allow flood waters to be detained, absorbed into the ground, or evaporated into the atmosphere. LSCSF also protects the land from storm erosion by providing a substrate for vegetation that helps to stabilize sediments and slow down flood waters.

Where LSCSF overlaps other coastal resource areas, it plays an important role in determining the delineation and function of these resource areas, specifically coastal beaches and dunes, barrier beaches, and coastal banks.

Particular physical characteristics of LSCSF that are critical to the protection of the flood control and storm damage prevention interests include: topography, slope, surface area, soil characteristics (i.e., composition, size, shape, and density of material), vegetation, erodability, and permeability of sediments. Topography, slope, and permeability are critical for determining how effective an area is in dissipating wave energy, absorbing flood waters, and protecting areas within and landward of these zones from storm damage and flooding.

- Salt Marsh (310 CMR 10.32)
 - *Significance:* Salt marshes are significant to prevention of pollution, to protection of marine fisheries, wildlife habitat, and, where there are shellfish, to protection of land containing shellfish. Salt marshes are likely to be significant to storm damage prevention and groundwater supply.

Salt marshes provide the basis for a large food web that supports many marine organisms, including finfish and shellfish as well as many bird species. Salt marshes also provide a spawning and nursery habitat for several important estuarine forage finfish as well as important food, shelter, breeding areas, and migratory and overwintering areas for many wildlife species.

Salt marsh plants and substrate remove pollutants from surrounding waters. Sediments also absorb chlorinated hydrocarbons and heavy metals such as lead, copper, and iron. The marsh also retains nitrogen and phosphorus compounds, which in large amounts can lead to algal blooms in coastal waters.

The underlying peat also serves as a barrier between fresh groundwater landward of the salt marsh and the ocean, thus helping maintain the level of such groundwater. Salt marsh cord grass and underlying peat are resistant to erosion and dissipate wave energy, thereby providing a buffer that reduces wave damage.

When a salt marsh is significant to one or more of the interests specified above, the following characteristics are critical to the protection of such interests:

the growth, composition, and distribution of salt marsh vegetation (*interests*: protection of marine fisheries and wildlife habitat, prevention of pollution, storm damage prevention);

the flow and level of tidal and fresh water (*interests*: protection of marine fisheries and wildlife habitat, prevention of pollution); and

the presence and depth of peat (*interests*: groundwater supply, prevention of pollution, storm damage prevention).

- Coastal Beach (310 CMR 10.27)

- *Significance*: Coastal beaches, which are defined to include tidal flats, are significant to storm damage prevention, flood control, and the protection of wildlife habitat. In addition, tidal flats are likely to be significant to the protection of marine fisheries and, where there are shellfish, land containing shellfish.

Coastal beaches dissipate wave energy by their gentle slope, their permeability, and their granular nature, which permit changes in beach form in response to changes in wave conditions.

Coastal beaches serve as a sediment source for dunes, subtidal areas, and any coastal areas downdrift from any point on the beach. Steep storm waves cause beach sediment to move offshore, resulting in a gentler beach slope and greater energy dissipation. Less steep waves cause an onshore return of beach sediment, where it will be available to provide protection against future storm waves.

Coastal beaches serve the purposes of storm damage prevention and flood control by dissipating wave energy, by reducing the height of storm waves and by providing sediment to supply other coastal features, including coastal dunes, land under the ocean, and other coastal beaches.

A number of birds also nest in the coastal berm, between the toe of a dune and the high tide line. In addition, isolated coastal beaches on small islands are important as haul out areas for harbor seals.

Tidal flats are likely to be significant to the protection of marine fisheries and wildlife habitat because they provide habitats for marine organisms such as polychaete worms and mollusks, which in turn are food sources for fisheries and migratory and wintering birds. Coastal beaches are extremely important in recycling of nutrients derived from storm drift and tidal action.

When coastal beaches are determined to be significant to storm damage prevention or flood control, the following characteristics are critical to the protection of those interests: volume (quantity of sediments) and form, and the ability to respond to wave action.

When coastal beaches are significant to the protection of marine fisheries or wildlife habitat, the following characteristics are critical to the protection of those interests: distribution of sediment grain size, water circulation, water quality, and relief and elevation.

PROJECT SUMMARY

- Replace existing tent with permanent building using 8-foot high steel frame in twelve 10-inch diameter concrete forms 4 feet below grade.

COMMENTS

- It appears that the sonotubes are being placed in an area with existing concrete.
- No work is proposed in the salt marsh or on the beach. Work will occur in Land Subject to Coastal Storm Flowage only. Because the project area is already concrete, it is likely that there will be no net change to flood control or storm damage prevention.

RECOMMENDATION

- I would recommend issuing a Negative 2 Determination.

Staff Report

Date: July 26, 2019

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **30 Weeden Road – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-076**

DOCUMENTS REVIEWED

- Request for Determination of Applicability application and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE
 - *Significance:* Land subject to coastal storm flowage is likely to be significant to flood control and storm damage prevention. LSCSF can slow down flood waters and allow them to flow across a natural landform surface, providing frictional resistance and reducing their energy and destruction potential. It can allow flood waters to spread over a wide area without obstructions. Obstructions can cause the channelization of flood waters and storm-wave overwash and an increase in the velocity and volume of flow to adjacent or landward areas. LSCSF can also allow flood waters to be detained, absorbed into the ground, or evaporated into the atmosphere. LSCSF also protects the land from storm erosion by providing a substrate for vegetation that helps to stabilize sediments and slow down flood waters.

Where LSCSF overlaps other coastal resource areas, it plays an important role in determining the delineation and function of these resource areas, specifically coastal beaches and dunes, barrier beaches, and coastal banks.

Particular physical characteristics of LSCSF that are critical to the protection of the flood control and storm damage prevention interests include: topography, slope, surface area, soil characteristics (i.e., composition, size, shape, and density of material), vegetation, erodability, and permeability of sediments. Topography, slope, and permeability are critical for determining how effective an area is in dissipating wave energy, absorbing flood waters, and protecting areas within and landward of these zones from storm damage and flooding.
- Bordering Vegetated Wetland (310 CMR 10.55) – located on abutting lot, buffer zone only
 - From 310 CMR 10.00 Preface to the Wetlands Regulations, 2005 Revisions: “Research on the functions of buffer zones and their role in wetlands protection has clearly established that buffer zones play an important role in preservation of the physical, chemical, and biological characteristics of the adjacent resource area. The potential for adverse impacts to resource areas from work in the buffer zone increases with the extent of the work and the proximity to the resource area.”

PROJECT SUMMARY

- Build a 7' x 22' farmers porch using five 4 x 12 concrete sonotubes

COMMENTS

- It appears the project is greater than 50 feet from the approximate edge of the wetland.
- If the property were not in a flood zone, the project would fall under the minor activities exemptions (310 CMR 10.02 (2) (b)).

RECOMMENDATION

- I would recommend issuing a Negative 2 Determination.

Staff Report

Date: July 26, 2019

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **240 Alden Road – Abbreviated Notice of Resource Area Delineation – DEP# 023-1303, Fairhaven CON 023-075**

DOCUMENTS REVIEWED

- ANRAD application and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- **Bordering Vegetated Wetland (310 CMR 10.55)**
 - *Significance:* Bordering vegetated wetlands are likely to be significant to public or private water supply, to groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, and to wildlife habitat. Plants and soils of bordering vegetated wetlands remove or detain sediments, nutrients, and toxic substances that occur in run-off and flood waters.

The vegetation in bordering vegetated wetlands acts to slow down and reduce the passage of flood waters during periods of peak flows by providing temporary flood water storage and by facilitating water removal through evaporation and transpiration. This process reduces downstream flood crests and the resulting damage to private and public property. During dry periods, the water retained in bordering vegetated wetlands is essential to the maintenance of base flow levels in rivers and streams, which is important to the protection of water quality and water supplies.

Wetland vegetation provides shade which moderates water temperatures important to fish life. Wetlands flooded by adjacent water bodies and waterways provide food, breeding habitat, and cover for fish.

Bordering vegetated wetlands are probably the Commonwealth's most important inland habitat for wildlife. The hydrologic regime, plant community composition and structure, topography, and water chemistry of bordering vegetated wetlands provide important food, shelter, migratory and overwintering areas, and breeding and nesting areas for many birds, mammals, amphibians, reptiles, and insects.

- **Bank (310 CMR 10.54)**
 - *Significance:* Banks are likely to be significant to public or private water supply, to groundwater supply, to flood control, to storm damage prevention, to the prevention of pollution, and to the protection of fisheries and wildlife habitat. When banks are

composed of concrete, asphalt, or other artificial impervious material, said banks are likely to be significant to flood control and storm damage prevention.

Banks are areas where groundwater discharges to the surface and where, under some circumstances, surface water recharges the groundwater. Where banks are partially or totally vegetated, the vegetation serves to maintain the banks' stability, which in turn protects water quality by reducing erosion and siltation.

Banks may also provide shade that moderates water temperatures, as well as providing breeding habitat, escape cover, and food, all of which are significant to the protection of fisheries. The topography, plant community composition and structure, and soil structure of banks together provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife.

Banks act to confine floodwaters during the most frequent storms, preventing the spread of water to adjacent land. Because banks confine water during such storms to an established channel, they maintain water temperature and depths necessary for the protection of fisheries.

An alteration of a bank that permits water to frequently and consistently spread over a large and more shallow area increases the amount of property which is routinely flooded, as well as elevating water temperature and reducing fish habitat within the main channel, particularly during warm weather.

PROJECT SUMMARY

- Seeking boundary confirmations of Bordering Vegetated Wetland and Bank

COMMENTS

- Delineation was done October 28, 2017.
- There is currently no work is proposed within jurisdictional areas on these lots.
- The Bordering Vegetated Wetland on site is connected to a larger system of wetlands on Long Road.
- Would the Commission like this to be peer reviewed by a third party or would the Commission be amenable to the Agent reviewing the delineation with the Circuit Rider?

RECOMMENDATION

- The line should be reviewed. I will leave it up to the Commission as to whether you would prefer a peer reviewer or myself and the Circuit Rider.

Staff Report

Date: July 29, 2019

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **10/12 Howland Road – Notice of Intent – DEP# SE 023-1304, Fairhaven CON 023-078**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Massachusetts Stormwater Handbook

RESOURCE AREAS ON/NEAR SITE

- Riverfront Area (310 CMR 10.58)
 - *Significance:* Riverfront areas are likely to be significant to protect public or private water supply, to protect groundwater, to provide flood control, to prevent storm damage, to prevent pollution, to protect land containing shellfish, to protect wildlife habitat, and to protect fisheries.

Land adjacent to rivers and streams can protect the natural integrity of these water bodies. The presence of natural vegetation within riverfront areas is critical to sustaining rivers as ecosystems and providing these public values. The riverfront area can prevent degradation of water quality by filtering sediments, toxic substances (such as heavy metals), and nutrients (such as phosphorus and nitrogen) from stormwater, nonpoint pollution sources, and the river itself. Riverfront areas can also trap and remove disease-causing bacteria that otherwise would reach rivers and coastal estuaries where they can contaminate shellfish beds and prohibit safe human consumption. Natural vegetation within the riverfront area also maintains water quality for fish and wildlife.

Where rivers serve as water supplies or provide induced recharge to wells, the riverfront area can be important to the maintenance of drinking water quality and quantity. When riverfront areas lack the capacity to filter pollutants, contaminants can reach human populations served by wells near rivers or by direct river intakes. The capacity of riverfront areas to filter pollutants is equally critical to surface water supplies, reducing or eliminating the need for additional treatment.

By providing recharge and retaining natural flood storage, as well as by slowing surface water runoff, riverfront areas can mitigate flooding and damage from storms. Increases in storage of floodwaters can decrease peak discharges and reduce storm damage. Vegetated riverfronts also dissipate the energy of storm flows, reducing damage to public and private property.

Riverfront areas are critical to maintaining thriving fisheries. Maintaining vegetation along rivers promotes fish cover, increases food and oxygen availability, decreases sedimentation, and provides spawning habitat. Where groundwater recharges surface water flows, loss of recharge as a result of impervious surfaces within the riverfront area may aggravate low flow conditions and increase water temperatures.

Riverfront areas are also important wildlife habitat, providing food, shelter, breeding, migratory, and overwintering areas. Even some predominantly upland species use and may be seasonally dependent on riverfront areas. Riverfront areas promote biological diversity by providing habitats for an unusually wide variety of upland and wetland species. Loss of connectivity, from activities that create barriers to wildlife movement within riverfront areas, results in habitat fragmentation and causes declines in wildlife populations. Wildlife must also be able to move across riverfront areas, between uplands and the river.

- Coastal Beach (310 CMR 10.27)

- *Significance*: Coastal beaches, which are defined to include tidal flats, are significant to storm damage prevention, flood control, and the protection of wildlife habitat. In addition, tidal flats are likely to be significant to the protection of marine fisheries and, where there are shellfish, land containing shellfish.

Coastal beaches dissipate wave energy by their gentle slope, their permeability, and their granular nature, which permit changes in beach form in response to changes in wave conditions.

Coastal beaches serve as a sediment source for dunes, subtidal areas, and any coastal areas downdrift from any point on the beach. Steep storm waves cause beach sediment to move offshore, resulting in a gentler beach slope and greater energy dissipation. Less steep waves cause an onshore return of beach sediment, where it will be available to provide protection against future storm waves.

Coastal beaches serve the purposes of storm damage prevention and flood control by dissipating wave energy, by reducing the height of storm waves and by providing sediment to supply other coastal features, including coastal dunes, land under the ocean, and other coastal beaches.

A number of birds also nest in the coastal berm, between the toe of a dune and the high tide line. In addition, isolated coastal beaches on small islands are important as haul out areas for harbor seals. Coastal beaches are extremely important in recycling of nutrients derived from storm drift and tidal action.

When coastal beaches are determined to be significant to storm damage prevention or flood control, the following characteristics are critical to the protection of those interests: volume (quantity of sediments) and form, and the ability to respond to wave action.

When coastal beaches are significant to the protection of marine fisheries or wildlife habitat, the following characteristics are critical to the protection of those interests: distribution of sediment grain size, water circulation, water quality, and relief and elevation.

- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE
 - *Significance:* Land subject to coastal storm flowage is likely to be significant to flood control and storm damage prevention. LSCSF can slow down flood waters and allow them to flow across a natural landform surface, providing frictional resistance and reducing their energy and destruction potential. It can allow flood waters to spread over a wide area without obstructions. Obstructions can cause the channelization of flood waters and storm-wave overwash and an increase in the velocity and volume of flow to adjacent or landward areas. LSCSF can also allow flood waters to be detained, absorbed into the ground, or evaporated into the atmosphere. LSCSF also protects the land from storm erosion by providing a substrate for vegetation that helps to stabilize sediments and slow down flood waters.

Where LSCSF overlaps other coastal resource areas, it plays an important role in determining the delineation and function of these resource areas, specifically coastal beaches and dunes, barrier beaches, and coastal banks.

Particular physical characteristics of LSCSF that are critical to the protection of the flood control and storm damage prevention interests include: topography, slope, surface area, soil characteristics (i.e., composition, size, shape, and density of material), vegetation, erodability, and permeability of sediments. Topography, slope, and permeability are critical for determining how effective an area is in dissipating wave energy, absorbing flood waters, and protecting areas within and landward of these zones from storm damage and flooding.

PROJECT SUMMARY

- The removal and replacement of roughly 25,362 sq. ft. of aggregated material (asphalt) on the western side of the property near the Acushnet River. The proposed project will not increase the amount of impervious area.

COMMENTS

- A Cease and Desist was issued for the commencement of work without a permit.
- The abutter notifications were mailed less than seven days prior to the hearing. 310 CMR 10.05 (4) (a) states that “mailing at least seven days prior to the public hearing shall constitute timely notice.” Additionally, it appears one of the abutter notifications was not mailed to the mailing address, as required by 310 CMR 10.05 (4) (a).
- 310 CMR 10.58 (5) (a) requires the redevelopment projects in a riverfront area meet the following criteria (relevant criteria listed):
 - At a minimum, proposed work shall result in an improvement over existing conditions of the capacity of the riverfront area to protect the interests identified in M.G.L. c. 131 §40.
 - Stormwater management is provided according to standards established by the Department.
 - Proposed work shall not be located closer to the river than existing conditions or 100 feet, whichever is less.
- *Question for Applicant:* Will the work result in an improvement over existing conditions of the capacity of the riverfront area to protect the interests identified in the Wetlands Protection Act? In other words, how will the project improve the area’s ability to protect public or private water supply, to protect groundwater, to provide flood control, to prevent storm damage, to prevent

pollution, to protect land containing shellfish, to protect wildlife habitat, and to protect fisheries?

- *Question for Applicant:* What is the current stormwater BMP in use at the site?
- Redevelopment projects are required to meet the pretreatment and structural stormwater best management practice requirements of Standard 4.
 - Structural stormwater best management practices are sized to capture the required water quality volume determined in accordance with the MA Stormwater Handbook.
 - Pretreatment is provided in accordance with the MA Stormwater Handbook.
- *Question for Applicant:* With regard to Standard 4, how are you meeting those two requirements?
- *Question for Applicant:* Where is the Construction Period Pollution Prevention and Erosion and Sedimentation Control Plan?
- A copy of the current operation and maintenance plan needs to be submitted since the application indicates one already exists.
- An Illicit Discharge Compliance Statement has not yet been submitted. It needs to verify that no illicit discharges exist on site and measures will need to be included in the pollution prevention plan to prevent illicit discharges to the stormwater management system.
- The Illicit Discharge Compliance Statement must be accompanied by a site map that is drawn to scale and that identifies the location of any systems for conveying stormwater on the site and shows that these systems do not allow the entry of any illicit discharges into the stormwater management system. The site map shall identify the location of any systems for conveying wastewater and/or groundwater on the site and show that there are no connections between the stormwater and wastewater management systems and the location of any measures taken to prevent the entry of illicit discharges into the stormwater management system. For redevelopment projects, the Illicit Discharge Compliance Statement shall also document all actions taken to identify and remove illicit discharges, including, without limitation, visual screening, dye or smoke testing, and the removal of any sources of illicit discharges to the stormwater management system.
- If one is not submitted, a condition should be included requiring submission of an Illicit Discharge Compliance Statement.
- Based on my assessment of the redevelopment checklist provided in the Massachusetts Stormwater Handbook, it appears several items are missing.
- Plans are not dated, only titled. Before issuing any permits, request that the applicant add a date to the plans.

RECOMMENDATION

- The Commission could consider having stormwater compliance assessed by a peer reviewer.
- I would recommend asking the applicant to provide the missing documentation before closing the public hearing and issuing an Order of Conditions. If the Commission would like to go that route, I would recommend asking the applicant if they would like to continue to the August 12, 2019 meeting.
- If the Commission feels the responses of the applicant are sufficient and decides to close the public hearing and issue an Order of Conditions, my recommendations are as follows:

Approve plan dated _____

- A. General Conditions
 - 1. ACC-1

2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
 3. REC-1
 4. REC-2
 5. ADD-1
 6. ADD-4b
 7. ADD-4c
 8. ADD-5
 9. STO-4
 10. STO-5
 11. LOW-2
- B. Prior to Construction
12. CAP-3
 13. REC-3
 14. DER-1
 15. PCC-3
 16. EMC-1
 17. PCC-1
 18. SIL-5
- C. During Construction
19. STO-1
 20. STO-3
 21. MAC-3
 22. MAC-7
 23. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 24. DEB-1
 25. DEB-5
 26. BLD-3
 27. BLD-4
 28. EMC-2
 29. SIL-3
 30. SIL-4
 31. SIL-8
 32. LOW-3
 33. WAT-3
 34. WAS-3
- D. After Construction/In Perpetuity
34. REV-1
 35. RES-4
 36. COC-1
 37. COC-2

Perpetual Conditions

The below conditions do not expire upon completion of the project.

38. CHM-2 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.

39. DER-4

40. All stormwater BMPs shall be operated and maintained in accordance with the design plans and the Operation and Maintenance Plan approved by the issuing authority.

41. The responsible party shall:

- a. maintain and an operation and maintenance log for the last three years, including inspections, repairs, replacement, and disposal (for disposal, the log shall indicate the type of material and the disposal location);
- b. make this log available to MassDEP and the Conservation Commission upon request; and
- c. allow members and agents of the MassDEP and the Conservation Commission to enter and inspect the premises to evaluate and ensure that the responsible party complies with the Operation and Maintenance Plan requirements for each BMP.

E. Stormwater Management

42. The construction period erosion, sedimentation, and pollution prevention plan shall be implemented as laid out in the plan dated _____ until the site is fully stabilized and the temporary erosion and sedimentation controls are removed.

43. The applicant or responsible party shall submit an Operation and Maintenance Compliance Statement when requesting a Certificate of Compliance. The O&M Compliance Statement shall identify the party responsible for implementation of the Operation and Maintenance plan and state that:

- a. the site has been inspected for erosion and appropriate steps have been taken to permanently stabilize any eroded areas;
- b. all aspects of the stormwater BMPs has been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the system or portions of the system so that the stormwater at the site may be managed in accordance with the Stormwater Management Standards;
- c. future responsible parties must be notified of their continuing legal responsibility to operate and maintain the structure; and
- d. the Operation and Maintenance Plan for the stormwater BMPs is being implemented.

44. *[If no Illicit Discharge Compliance Statement submitted]* An Illicit Discharge Compliance Statement as laid out in the Massachusetts Stormwater Handbook shall be submitted prior to the discharge of stormwater runoff to the post-construction stormwater best management practices.

Staff Report

Date: July 26, 2019

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Violations/Enforcement Orders/Cease and Desist Notices**

38 Camel Street

- In responding to a report of a nearby violation, storage of material in a wetland and potential filling of the wetland were observed on April 24, 2019.
- The Commission discussed the violation at their May 20 meeting and determined that in order to address the violations, the wetland line needed to be more firmly determined.
- On June 6, 2019, I conducted a site visit to assess where the extent of the wetland may be. Jewelweed (*Impatiens capensis*) was present in the gravel area next to the pump station as were hydric soils. It appears likely that the gravel driveway on the west side of the property runs through a wetland and the large piles of gravel and stone are stored in a wetland.
- *Recommendation:* I would recommend that the piles be moved out of the wetland and outside of the buffer zone, if possible. I would also recommend the gravel be removed from the end of the pump station to the northern property line. If the Commission elects to issue an Enforcement Order for a restoration plan, I have included a draft below.

A restoration plan shall be filed with the issuing authority on or before August 26, 2019 for the following:

1. An assessment of the site and submission of a restoration plan by a qualified professional by August 26, 2019
2. Removal of all gravel, stone, and other debris in the resource area by September 26, 2019 as laid out by the Commission in response to the submitted restoration plan.
3. Assessments of vegetation, soils, and hydrology for three growing seasons in April, July, and October following the completion of the work to determine re-establishment of wetland conditions
 - a. Massachusetts DEP Bordering Vegetated Wetland Delineation Field Data Form or US Army Corps of Engineers Wetland Determination Data Form – Northcentral and Northeast Region shall be used to assess vegetation, soils, and hydrology and copies will be submitted to the Commission upon completion of each assessment
4. The Conservation Commission, its employees, and its agents shall have a right of entry to inspect or compliance with the provisions of this Enforcement Order
5. The Commission reserves the right to impose additional conditions on any or all portions of this project that could impact an area of statutory interest under the Wetlands Protection Act (M.G.L. ch. 131 § 40) and its Regulations (310 CMR 10.00) and/or the Fairhaven Wetlands Bylaw (Chapter 192).
6. The restoration plan shall be in compliance with the Performance Standards for Bordering Vegetated Wetland (310 CMR 10.55(4)). Specifically, 310 CMR 10.55(4)(b)1, 2, and 6 require the area restored to be equal to that of the area disturbed, the groundwater and surface elevation

of the restoration area shall be approximately equal to that of the pre-disturbed Bordering Vegetated Wetland, and at least 75% of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons, and prior to said vegetative reestablishment any exposed soil in the restoration area shall be temporarily stabilized to prevent erosion.

28 Cherry Street

- Sections of fence were observed to have been installed along the western edge of the property in Land Subject to Coastal Storm Flowage/Zone AE and in buffer zone to salt marsh.
- *Recommendation:* I would recommend that the property owner file an after-the-fact Request for Determination of Applicability.

33 Point Street

- A shed was constructed in Land Subject to Coastal Storm Flowage/Zone VE without a permit.
- *Recommendation:* I would recommend that the property owner file an after-the-fact Request for Determination of Applicability.



TOWN OF FAIRHAVEN, MASSACHUSETTS

CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

Memorandum

Date: July 29, 2019

To: Conservation Commission

From: Whitney McClees, Conservation Agent

RE: 3 North Street Project History
DEP File # SE 023-1273

List of Violations:

- Work begun prior to silt fencing inspection by Agent
- Cease and Desist notice posted March 26, 2019 for the following:
 - Silt fence not trenched in
 - Addressed at March 28 site visit, completed by April 8 meeting
 - DEP # and Order of Conditions not clearly posted
 - Addressed at March 28 site visit, completed by April 8 meeting
 - Construction phasing not being followed
 - Addressed at March 28 site visit
- March 26 Cease and Desist notice removed
- Catalpa tree that was to remain was removed, discussed at April 8 meeting
 - Mr. Miguel indicated the tree was damaged by another tree that was felled on the property.
 - Mr. Miguel has also submitted a letter on May 6 stating his intent to replace a damaged and removed tree with a similar species of 1 ½" caliper once the wall construction and grading is completed
- May 28 site visit noted empty boulder containers outside the limit of work, wall higher than three feet, 5' on upper wall and 56.5" on lower wall, the upper bank completely destabilized behind fence (56" in height), and grading did not match plans. Cease and Desist posted for these violations.
 - Engineer promptly met Agent and Vice-Chair on site and indicated intention to submit a request for an Amended Order of Conditions to address the issues.
- May 28 Cease and Desist notice spun around. Addressed with the applicant upon its removal.
- June 11 site visit noted:
 - the top bank had been dug into more

- a 6' fence has been removed and a new, taller (approx. 9' to 10') fence has been installed
- silt fence could use shoring up
- silt fence outside limit of work
- July 8 site visit noted:
 - silt fence installed outside limit of work
 - bank seems to be dug into more

History of Project:

The Notice of Intent for this project was filed June 11, 2018. The following is a chronological history of the project to date including closing the public hearing, issuing the Order of Conditions, and any violations that have occurred since the issuance of the Order of Conditions.

June 25, 2018

The public hearing was opened during which Steve Gioiosa of SITEC Engineering presented the project to the Commission.

October 1, 2018

From the meeting minutes

Pool was later removed from plan, Gloria McPherson expressed some concerns pertaining to the matter, there was a concern about the construction sequence and a concern with grading in this area, but it looks clear what is happening. 18 cubic yards was a lot of fill but reasonable although there is a tree that will be destroyed because of fill.

Gloria McPherson then expressed her concern with removing the tree, and that it would be in her preference to keep the tree due to it being such a large tree.

Geoffrey Haworth expressed his plan on continuing this matter.

Amy DeSalvatore made a motion to close and it was seconded by Nick Sylvia.

Mr. Haworth All in favor, closed vote was unanimous

Mr. Haworth made a Motion for project itself, explained that he would make a motion with conditions at next meeting. Revision of the plan October 29, 2018 The Issues and conditions will be determined at next meeting.

October 15, 2018

From the meeting minutes

Acting chair, Mr. Haworth proposed the following conditions: ACC-1, ADD-1, ADD-4b, ADD-4c, COC-1 MAC-5, LOW-3, LOW-6, PCC-1, PCC-3, REC-1 REC-3, STO-1, STO-2. Mr. Haworth made a motion with the order of conditions. Seconded by Dan Doyle. Vote was unanimous.

December 17, 2018

Conservation Commission meeting

Discussion with Lee Miguel, 3 North Street, regarding the proposed removal of a tree that was shown to remain on a previously approved plan.

Lee Miguel discussed which trees are to be removed and which are to remain based on the plans.

Gloria McPherson stated that she conducted a site visit to inspect silt fencing and noted that the silt fencing was not yet trenched in so Ms. McPherson stated that she did not give the okay to begin work.

Ms. McPherson then noted that she gave the okay that day (December 17) to remove a tree that was to be removed because it was already wedged and starting to be removed and she felt that it is better to drop a tree once the process of removal has started than let it drop itself.

Geoff Haworth asked what the plan is for a replacement for the tree that Mr. Miguel would like to remove.

Mr. Miguel indicated that arborvitae might be a possibility.

Ms. McPherson requested that another oak tree be replaced somewhere on the property.

Jay Simmons, abutter, expressed his thoughts and concerns.

Discussion of misunderstanding between the Board and the Engineer regarding a tree that was labeled to be removed vs. remain.

Mr. Haworth stated that Mr. Miguel had done nothing wrong here regarding the removal of the tree because it had been labeled to be removed on the approved plans.

Mr. Haworth reminded Mr. Miguel that it was important to follow the construction schedule and communicate with the new agent.

Mr. Haworth motioned that a field change be approved for the removal of a tree that was to remain and to replace with a 2-3" caliper white, red, or pin oak and plant arborvitae along western property line at least 4' in height and spaced 4' apart. Motion seconded and passed unanimously.

December 18, 2019

Memo from Gloria McPherson to Lee Miguel and Steve Gioiosa regarding the approved field change:

Please consider this memo confirmation that the Fairhaven Conservation Commission, at their meeting on December 17, 2018, approved the following change to the approved plan:

- Applicant is allowed to remove the tree labeled “12” tree (to remain)” located in the south corner of the western portion of the lot, adjacent to a proposed stone wall

Additionally, the Conservation Commission requires the following mitigation, as offered by the applicant:

- Applicant shall plant a row of arborvitae, at least 4 feet in height and spaced 4 feet apart, along the entire western edge of the property, in addition to the approved 6’ white vinyl fence.
- Applicant shall plant a 2-3” caliper white, red, or pin oak tree anywhere within the buffer zone within the western portion of the property where the tree was removed.

Any additional changes require the review and approval of the Fairhaven Conservation Commission.

January 7, 2019

Conservation Commission meeting

Whitney McClees provided an explanation as to why the silt fence was out of compliance with existing order. It was not trenched in.

Mr. Haworth explained the conditions that were given to the applicant. Mr. Haworth stated that his opinion is that the project should be halted until it is brought back into compliance. Mr. Haworth explained that this matter will be reviewed more thoroughly and along with the Conservation Agent by next meeting a decision should be reached.

March 26, 2019

Cease and Desist notice posted for project being out of compliance with Order of Conditions

March 28, 2019

Meeting conducted at the project site by Geoff Haworth and Whitney McClees for a plan review.

The following items were reviewed and discussed with Mr. Miguel:

- Review of silt fence
- DEP # and Order of Conditions posting
- Communication with the Agent
- Cease and Desist dated March 26, 2019 should not have been removed by anyone but the Commission or Agent
- All of the Order of Conditions violations were addressed, the Cease and Desist was removed and added to the file, and the applicant was given permission to proceed

March 28, 2019 - April 8, 2019

Catalpa tree removed, pictures from March 28 site visit show potential damage to tree prior to removing.

April 8, 2019

From the meeting minutes

Ms. McClees explained that she did a site visit and explained that existing conditions weren't being met and explained how they have since been addressed.

Discussion regarding tree that has been cut.

Discussion regarding all trees on property. Board in agreement for another site visit before April 22, 2019.

May 6, 2019

Lee Miguel submitted a letter of intent to replace a damaged and removed tree with a similar species of 1 ½" caliper once the wall construction and grading is completed.

The letter was not signed or dated, but was handed to the Agent after the cancelled May 6 meeting.

May 28, 2019

Site visit conducted by Whitney McClees and Geoff Haworth to check the progress of the project.

The following was documented:

- Empty boulder containers outside the limit of work
- Wall higher than three feet, 5' on upper wall, 56.5" on lower wall
- Upper bank completely destabilized behind fence (56" in height)
- Posted cease and desist for the destabilized bank and for not following the approved plans

June 3, 2019

Conservation Commission meeting

Whitney McClees explained the documented items from the May 28, 2019 site visit. She also stated that she and Geoff Haworth had a conversation with the engineer onsite and he indicated that he was going to survey what had been done to date and make some recommendations to the applicant as to what the next steps would be to come back into compliance with the approved plans.

Mr. Haworth explained to the Commission that he and Ms. McClees felt it was necessary to issue a cease and desist until a discussion with the engineer could occur and figure out what the next steps are.

The engineer followed up with the applicant and the Conservation Agent and indicated that an amendment may be needed to address the destabilization of the bank, but that once fill was placed back on the terracing, the project should meet the plans as proposed.

Mr. Haworth stated that Mr. Miguel had contacted him about lifting the cease and desist order on Thursday, May 30 around 4:50pm. Mr. Haworth indicated that since it was after business hours, he would not be making a decision about the cease and desist until he could have a conversation with the Agent.

Mr. Haworth and Ms. McClees conferred on Friday afternoon (May 31, 2019) and felt that the engineer's response was adequate regarding what needed to be addressed to remove the cease and desist. Mr. Haworth went to the site to remove the cease and desist order and Mr. Haworth warned Mr. Miguel that the DEP sign should not be touched at all. It had been spun so the DEP number and the Cease and Desist sign were facing the water instead of Cherry Street. Mr. Haworth explained to him that moving the sign was unacceptable and Mr. Miguel turned the sign back around so it was facing the right way. Mr. Miguel indicated that his workers had moved it and Mr. Haworth told him that the property owner is responsible for maintaining the sign and that if it happens again, it is a violation. Mr. Haworth removed the cease and desist order with the following statement to Mr. Miguel: You do not do anything that is not on your plans for the weekend, you do not touch the top bank. The matter will be discussed before the board Monday (June 3) night and a decision would be made then whether the cease and desist goes back up or not.

Mr. Haworth told him it was a temporary removal to allow him to work over the weekend *only* on the approved work.

Mr. Haworth indicated that Mr. Miguel had added additional silt fencing over the weekend and had removed the fence, which Mr. Haworth told him he could do, and had started putting taller fence back in, but other than the taller fence, he did not do any work outside of the plans.

Mr. Haworth also indicated that Mr. Miguel had dug into the abutting property's bank (property of Jay Simmons) and Mr. Miguel has since put silt fencing there.

The amended plan will need to address the rear bank and side bank.

June 11, 2019

Site visit conducted by Geoff Haworth noted the following: the top bank has been dug into more; a 6' fence has been removed and a new, taller (approx. 9' to 10') fence has been installed; silt fence could use shoring up; North Street layout has been mowed; unnecessary silt fence remains outside the limit of work

June 18, 2019

Request for Amended Order of Conditions filed by applicant to add an upper retaining wall, mulch beds, and an arborvitae shrub row, to reconfigure the previously approved steps, and to replace two trees.

July 8, 2019

Site visit conducted by Geoff Haworth noted the following: stairs have been installed; fence at top of hill installed (south side); west side fence installed; bank seems to be dug into more; silt fence installed outside limit of work.

Conservation Commission meeting

Amended Order of Conditions issued.

July 20, 2019

Site visit conducted by Geoff Haworth at 8:30am noted the following: activities included building wall at top of bank and stairs being installed. Mr. Haworth explained to Mr. Miguel to record his Amended Order of Conditions by close of business Monday so he can continue working on the project and explained to Mr. Miguel the silt fence requirements.

Staff Report

Date: July 26, 2019
To: Conservation Commission
From: Whitney McClees, Conservation Agent
Subject: **3 North Street Requested Field Change**

A letter signed and dated July 22, 2019 indicates changes to the approved plan in the Amended Order of Conditions that need to be presented to the Commission for approval.

The changes are:

- The granite bench will no longer be replaced
- The proposed pin oak located on the southwestern corner of the property as depicted on the approved plans is proposed to be located within the western portion of the property and may not end up being placed in the location as shown on plans dated June 3, 2019.
- No other changes at this time.