

# Staff Report

Date: January 9, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **3 North Street – Request for Amended Order of Conditions – DEP# 023-1273, Fairhaven CON 023-106**

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## DOCUMENTS REVIEWED

- Request for Amended Order of Conditions and associated documents
- Current Amended Order of Conditions and approved plans dated June 3, 2019
- Approved Field Change Memos dated December 18, 2018 and August 5, 2019
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

## RESOURCE AREAS ON/NEAR SITE

- 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).

- 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 applicant has submitted a request for an Amended Order of Conditions for work beyond the approved work limits. The applicant added sod and stone in an effort to stabilize the area beyond the approved work limits.
- The request also includes shifting the replacement catalpa tree to the west slightly.

## COMMENTS

- In comparing the June 3, 2019 plans to the submitted plans dated December 13, 2019, it appears the proposed plans are consistent with previous approved field changes and include the work done outside of the limit of work.
- The plans reflect two replacement trees on the western portion of the property.
- The salt marsh is noted as bordering vegetated wetland on the plans.
- *Question for Applicant*: Are the grades shown on the plan reflective of existing site conditions?

## RECOMMENDATION

- If the Commission is satisfied that the proposed plans address the existing Enforcement Orders regarding work outside the Limit of Work, I recommend closing the public hearing and issuing an Amended Order of Conditions for the plans dated December 13, 2019. My recommended conditions are as follows:

Approve plan dated December 13, 2019.

A. General Conditions

1. All silt fencing outside the limit of work shall be removed.
2. All conditions from Order of Conditions dated November 7, 2018 and the Amended Order of Conditions dated July 15, 2019 remain in full force and effect.
3. ACC-1
4. 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.
5. REC-1
6. REC-2
7. ADD-1
8. ADD-4b
9. ADD-4c
10. ADD-5
11. STO-4
12. STO-5
13. The Limit of Work (LOW) area shall be bound by the edge of sod and crushed stone north of the north property line, the western 40.21-ft property line and western edge of sod, the southern 58.12-ft property line, the front (northwest) face of the existing dwelling, the northeast face of the existing dwelling (garage) and the existing concrete driveway.
14. Failure to allow the Conservation Commission or its Agent to inspect will result in a cease and desist order.
15. Construction shall follow the sequencing laid out on the approved plan.
16. The Conservation Commission or its Agent shall be notified at the completion of each step in the construction sequence as numbered on the approved plan and shall perform a site inspection after each phase is completed.

B. Prior to Construction

1. CAP-3
2. REC-3
3. DER-1
4. EMC-1
5. PCC-1
6. SIL-5
7. LOW-6
8. Erosion controls should be installed along the limit of work only.

C. During Construction

1. STO-1
2. STO-2 and within the Limit of Work, or on the paved driveway.
3. STO-3
4. MAC-3
5. MAC-5
6. MAC-7
7. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.

8. DEB-1
  9. DEB-5
  10. BLD-3
  11. BLD-4
  12. EMC-2
  13. SIL-3
  14. SIL-4
  15. SIL-8
  16. LOW-3
  17. WAT-3
  18. Concrete washout shall be located within the footprint of the driveway and outside of the 100-foot buffer zone.
  19. Concrete for the stone edging and stops shall be small quantities mixed onsite and conveyed via wheelbarrow to the construction area.
- 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-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.
5. DER-4

# Staff Report

Date: January 2, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **55 Goulart Memorial Drive – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-107**

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## 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.

- Buffer Zone to Coastal Beach, Coastal Dune, Salt Marsh, and Rocky Intertidal Shore
  - It appears no work is to occur within any of these resource areas, only within the 100-foot buffer zone.
  - 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.”
- “Extensive work in the inner portion of the buffer zone, particularly clearing of natural vegetation and soil disturbance is likely to alter the physical characteristics of resource areas by changing their soil composition, topography, hydrology, temperature, and the amount of light received. Soil and water chemistry within resource areas may be adversely affected by work in the buffer zone. Alterations to biological conditions in adjacent resource areas may include changes in plant community composition and structure, invertebrate and vertebrate biomass and species composition, and nutrient cycling. These alterations from work in the buffer zone can occur through the disruption and erosion of soil, loss of shading, reduction in nutrient inputs, and changes in litter and soil composition that filters runoff, serving to attenuate pollutants and sustain wildlife habitat within resource areas.”
- From 310 CMR 10.00 Preface to the 1983 Regulations:
  - “Any project undertaken in close proximity to a wetlands resource area has a high likelihood of resulting in some alteration of that area, either immediately or as a consequence of daily operation of the completed project. The problem becomes particularly severe when Bordering Vegetated Wetlands are involved; inadvertent damage to these sensitive areas can easily occur and in many instances is irreparable.”

## PROJECT SUMMARY

- Trimming the vegetation on the southwestern side of the parking area to be level with the top of the boulders. No trimming proposed on the beach-side of the boulders. Work to take place from parking lot side only.

## COMMENTS

- The vegetation is assisting in anchoring the coastal beach and coastal dune and the boulders are preventing vehicle traffic in the resource areas.
- Given the proposed work will only trim the vegetation to the top of the boulders and won't remove it and that the work is proposed to occur from the parking lot side only, it seems unlikely that significant negative impact will occur to the resource areas.

## RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 3 and Negative 6 Determination with the conditions that no work is to occur from the beach-side of the boulders and the Conservation Office is notified before work is to begin.

# Staff Report

Date: January 8, 2020  
To: Conservation Commission  
From: Whitney McClees, Conservation Agent  
Subject: **4 Pequod Road – Notice of Intent – DEP# 023-\_\_\_\_, Fairhaven CON 023-108**

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## DOCUMENTS REVIEWED

- Notice of Intent 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.

## PROJECT SUMMARY

- The United States Postal Service is proposing to conduct parking lot resurfacing, concrete walk replacement, and related exterior maintenance measures.

- Due to the poor condition of pavements surrounding the building, the USPS is proposing to restore facilities to a state of good repair through resurfacing of the existing asphalt surface parking/operations area on the property, including in-kind replacement of bituminous berm along the lot perimeter.
- Other proposed maintenance repairs include replacement of the existing walkway (along the south and west side of the building) and replacement of bituminous asphalt pavement at the facility loading dock (north side of the building) with a reinforced concrete slab/pad.

## COMMENTS

- Freshwater wetlands are present to the east of the Carrier Annex Building. They have been identified as forested wetlands and a part of the headwaters of a small, unnamed tributary to the Nasketucket River.
- The extent of the resurfacing will match the existing paved limits and there will be no change in impervious cover or existing drainage patterns across the site.
- The applicant notes in their stormwater report that due to no increase in impervious surface, the stormwater system that was designed when the building was constructed will continue to serve the area in compliance with the regulations.
- Erosion control consists of a compost filter sock that runs the perimeter of the pavement to be replaced. It would be good to pair the compost filter sock with silt fencing if possible.
  - *Question for Applicant:* Are their site constraints that prevent the use of both silt fence and compost filter sock?
- *Question for Applicant:* Do you have a location onsite for concrete truck washout?
- *Question for Applicant:* Do you anticipate needing to do any dewatering?
- Because this is a redevelopment project within the buffer zone to a wetland, the applicant is required to meet the stormwater management standards, some only to the maximum extent practicable, and to improve existing conditions.
- The applicant notes that the “approved stormwater management facilities are in place and functional. The USPS has maintained these facilities in a state of good repair, will be cleaning and flushing system elements as part of the pavement resurfacing project, and will continue to maintain facilities following completion of the work. The practicability of implementing improvements to these existing stormwater facilities is limited given that:
  - (a) the entire portion of the parcel outside of the Buffer Zone is fully developed (parking lot, building, etc.), with the limited remaining area of the parcel consisting of undeveloped woodland within the buffer zone; and
  - (b) reconstruction of these facilities would be well beyond the scope (and cost) of the maintenance-level activities that the USPS is seeking to implement (for the purpose of restoring the existing parking lot to a state of good repair).”
- The have provided a signed and stamped stormwater checklist, but not any calculations aside from the ones that were submitted with the NOI for the construction of the building in 2001.
- *Question for Applicant:* Is your assertion that since the stormwater facilities that were originally installed are functioning, the calculations from 2001 are still valid?
- The Long-Term Operation and Maintenance Plan should provide a signature block for responsible party/operator signature.
- The Commission should consider whether stormwater peer review is necessary.



## RECOMMENDATION

- Given that it appears there are outstanding items that need to be addressed, I recommend asking the applicant if they would like to request a continuance to a subsequent meeting to allow time to address those items. Additionally, the Commission will need to determine if they would like me to pursue stormwater peer review for the project.
- Additionally, DEP has not yet issued a file number and if there is not one issued by Monday, January 9, the public hearing cannot be closed.

# Staff Report

Date: January 6, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **40 Wapatma Lane – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-109**

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## DOCUMENTS REVIEWED

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

## RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland (310 CMR 10.55)
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- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE
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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.

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## PROJECT SUMMARY

- Readjust existing fence to allow for a 25-foot setback from wetlands. Create a 12-inch soil berm to prevent agricultural runoff from entering wetlands.

## COMMENTS

- This application has been submitted in response to a violation that required the applicant to submit a filing within 90 days of October 28, 2019.
- The fence is positioned on the upgradient side of the berm, preventing runoff from entering wetland resource area.
- Between wetland flags B5 and B7, the fencing is proposed to remain. This is likely due to the fencing being more permanent post and rail fence as opposed to more temporary fencing like the remainder of the fence to be removed.
- It does appear that the berm on the downgradient side of the fencing between wetland flags B5 and B7 will be constructed partially within the resource area.
- *Questions for Applicant:* Can you estimate the area of wetland that will be impacted by that construction?
- *Question for Applicant:* Have you proposed any erosion and sedimentation control measures, especially for the areas in close proximity to the wetland?
- The Commission should consider requiring a replication based on the amount of impact to the wetland between flags B5 and B7, perhaps in the area between flags B8 and B10 given the greater setback to the proposed repositioned fencing.
- The Commission should consider requesting the applicant provide sedimentation and erosion control on the plans.

## RECOMMENDATION

- Given the need for revision to the plans, I would recommend the Commission ask the applicant request a continuance to allow time to revise plans. Additionally, the Commission should consider whether the need for wetland replication is likely to result in a positive Determination requiring a Notice of Intent.

# Staff Report

Date: January 9, 2020  
To: Conservation Commission  
From: Whitney McClees, Conservation Agent  
Subject: **497 Sconticut Neck Road – DEP# 023-1291, Fairhaven CON-19-037**

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## DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- Order of Conditions dated July 8, 2019
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

## RESOURCE AREAS ON/NEAR SITE

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## PROJECT SUMMARY

- The Notice of Intent was submitted in response to an Enforcement Order dated April 9, 2018 unpermitted activities on the property, including construction of a horse paddock, shell driveway, and barn within jurisdictional areas.
- The Notice of Intent was filed February 4, 2019 for the removal of a horse paddock encroaching on Bordering Vegetated Wetland and the creation of a new paddock in an upland area.
- The Order of Conditions was issued July 8, 2019.

## COMMENTS

- Special Condition C17 states that the wetland replication area shall be the initial phase of the project.
- Special Condition E44 states that planting shall occur in the fall of 2019 at the end of the growing season (April 2-November 11) before the first frost. Shrubs and trees may be planted up to November 15, weather permitting.
- To my knowledge, no planting has been done. The location of the new paddock has been staked out, but the existing paddock has not yet been removed nor has the replication area been started.
- Erosion controls have not yet been installed to my knowledge. I have not yet been contacted to inspect them.
- The Commission requested I send the applicant/representative a letter requesting a status report.
- I sent a letter to the applicant's representative and the applicant and received the following response from the applicant's representative:
  - I received the 12/12/19 letter RE this site [497 Sconticut Neck Road]. I would appreciate the opportunity to address the Commission in person on 1/13/20, after 40 Wapatma Ln. The situation at the moment is that the Tichon's would like to amend the OOC to reconfigure the project. Hindsight has been 20/20 and I'm waiting on a sketch from

them that can be handed to the engineer for a formal plan change. Unfortunately, this has been a longer process than expected. I am speaking to Martha Tichon's daughter, Tara Klinka, today regarding moving the horses. Martha is a snowbird and spends her winters in Florida, so I speak to Tara on immediate matters at this time of year.

## **RECOMMENDATION**

- I cannot make a recommendation until the applicant's representative provides a more thorough status update at the meeting.

# Staff Report

Date: January 9, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## **44 Torrington Road**

- I have received the green card back, indicating that the property owner has received the Violation/Fine Letter and Enforcement Order. I have not yet received any further communication.

## **7 Waybridge Road**

- This property is owned by the same property owners as 44 Torrington Road, though it appears to be rented.
- The Chair indicated he would like it to be on the agenda for a future meeting to discuss whether or not the second tree he observed was on the same property.

## **Bills**

- \$925.00 to Jeff White: Refund of remaining peer review deposit for the 240 Alden Road ANRAD