

Staff Report

Date: January 21, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

DOCUMENTS REVIEWED

- Request for Determination of Applicability and associated documents
- Revised site plan dated January 21, 2020
- 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) 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

- 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.
- The applicant has revised the plan to shift the berm between wetlands flags B5 and B7 to be located directly underneath the fence and the applicant has included erosion and sedimentation control measures on the plan.

RECOMMENDATION

- I would recommend closing the public hearing and issuing an Negative 3 and Negative 6 Determination with the following conditions:
 1. Work shall be completed within one (1) year of issuance date of this Determination.
 2. Erosion controls as depicted on the approved plan shall be installed prior to any earth-disturbing work commencing.
 3. Contact the Agent to conduct a site visit within 90 days of the completion of the work.

Staff Report

Date: January 23, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **5 Billy's Way – Request for Determination of Applicability – No DEP#, Fairhaven
CON 023-114**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage
- Buffer Zone to Coastal Dune

PERFORMANCE STANDARDS

- **Buffer Zone General Provisions:** 10.53(1) "For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ...where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interests of [the Act]. ...The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work."

PROJECT SUMMARY

- Install an 8-foot by 19-foot deck with two sonotubes

COMMENTS

- The project proposes negligible impact. There are only two sonotubes that are proposed to be installed.

RECOMMENDATION

- I recommend the Commission close the public hearing and issue a Negative 2 and Negative 6 Determination.

Staff Report

Date: January 23, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **42 Bayview Avenue – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-116**

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)

PERFORMANCE STANDARDS

- **LSCSF General Provisions:** 10.24(1) “If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests.”

PROJECT SUMMARY

- Replace the existing attached deck and sonotubes. The replacement will be constructed in the same footprint as the existing structure.

COMMENTS

- The project proposes negligible impact. The disturbance involves the replacement of existing sonotubes.

RECOMMENDATION

- I recommend the Commission close the public hearing and issue a Negative 2 and Negative 6 Determination.

Staff Report

Date: January 20, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **4 Pequod Road – Notice of Intent – DEP# 023-1311, Fairhaven CON 023-108**

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.
- 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 applicant has 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.
- Applicant asserted that the facilities installed are functioning and sufficient to manage on-site stormwater, but that the treatment units will require corrective maintenance.
- The Long-Term Operation and Maintenance Plan has provided a signature block for responsible party/operator signature. This will need to be signed prior to any work commencing.
- The applicant has modified the plans to place some silt fencing around the edge of the pavement closest to the wetland.
- The applicant has modified the plans to include a location onsite for concrete truck washout, if it is needed.
- Applicant does not anticipate needing to do any dewatering.

RECOMMENDATION

- Based on the discussion at the previous hearing and the subsequent information provided, I would recommend closing the public hearing and issuing an Order of Conditions for 4 Pequod Road, using plans dated January 16, 2020, with the following recommended conditions:

Approve plan dated January 16, 2020.

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-2
7. ADD-4b
8. ADD-4c
9. ADD-5
10. STO-4
11. STO-5
12. LOW-2
13. WET-1
14. All work and subsequent monitoring, operation, and maintenance shall comply with all submitted documentation and plans as attached to this Order of Conditions.

B. Prior to Construction

15. CAP-3
16. REC-3
17. DER-1
18. PCC-3
19. EMC-1
20. PCC-1
21. SIL-5

C. During Construction

22. All notes as outlined on the approved plans, specifically on sheet C1.05, shall be followed, with the exception that straw shall be used in place of hay to avoid the introduction of invasive species.
23. STO-1
24. STO-3
25. MAC-3
26. MAC-7
27. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
28. DEB-1
29. DEB-5
30. BLD-3
31. BLD-4
32. EMC-2
33. SIL-3
34. SIL-4
35. SIL-8
36. LOW-3
37. WAT-3
38. WAS-2 as depicted on the approved plans.

D. After Construction/In Perpetuity

- 39. REV-1
- 40. RES-4
- 41. COC-1
- 42. COC-2

Perpetual Conditions

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

- 43. 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.
- 44. DER-4
- 45. All stormwater BMPs shall be operated and maintained in accordance with the design plans and the Operation and Maintenance Plan approved by Conservation Commission.
- 46. The responsible party shall:
 - a. maintain 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.
- 47. All stormwater best management practices (BMPs) shall be maintained as specified in the Operation and Maintenance Plan, section 2.9 of the Stormwater Report revised January 2020 submitted by Gordon R. Archibald, Inc. with the Notice of Intent, titled "Project Description and Stormwater Report for Proposed Pavement Resurfacing at the United States Postal Service Carrier Annex, 4 Pequod Road, Fairhaven, MA 02719," and incorporated in the Order of Conditions. Evidence of maintenance and complete and thorough inspections of the Stormwater Management system using the inspection and maintenance forms in Appendix F of the Stormwater Report shall be provided to the Commission on a semi-annual basis (once in the spring and once during the fall) and after major rain events or nor'easter storm events (approximately 2.0 inches of rain). This condition shall be noted on the Certificate of Compliance and shall continue in perpetuity.

E. Stormwater Management

- 48. All construction and post-construction stormwater management shall be conducted in accordance with the supporting documents submitted with the Notice of Intent, as outlined on the approved plans, the Department of Environmental Protection Stormwater Management Policy and Stormwater Management Standards, and as approved by the Commission in this Order of Conditions.
 - a. The StormTreat System units shall be maintained in accordance with the original NOI filing as laid out in Appendix C of the Stormwater Report. The StormTreat System units shall also be inspected twice annually.
 - b. Twice-annual cleanouts of all accessible stormwater system elements on the property shall occur, including all deep-sump catch basins, manholes, and piping.

- c. Twice-annual maintenance shall also include cleaning and sweeping of lot surfaces for long-term pollution prevention.
49. All stormwater and infiltration BMPs shall be protected from sedimentation and runoff during construction activities. Discharge to these BMPs will only occur once the site has been stabilized.
 50. There shall be no increase in the post-development discharges from the storm drainage system or any other changes in post-development conditions that alter the post-development watershed boundaries as currently depicted in the Notice of Intent and approved by this Order of Conditions, unless specifically approved in writing by the Commission.
 51. There shall be no sedimentation into any resource area or water bodies from discharge pipes or surface runoff leaving the site.
 52. Upon requesting a Certificate of Compliance, the responsible party shall submit an O&M Compliance statement to be included with the Certificate of Compliance, which shall identify the party responsible for the implementation of the Operation & 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 have 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 structures; and
 - d. the Operation and Maintenance Plan for the stormwater BMPs being implemented.
 53. Prior to work beginning, the signature block in section 2.9 of the Stormwater Report shall be signed and a copy provided to the Commission.

Staff Report

Date: January 24, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Bridge Street, Map 36, Lot 15 – Notice of Intent – DEP# 023-1299,
Fairhaven CON 023-081**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act
- Existing Conditions plan (Sheet 2), revised October 5, 2019.
- Peer Review Letter from Environmental Consulting & Restoration, LLC dated October 10, 2019
- Revised plans dated October 31, 2019
- GCG Stormwater Peer Review letter dated November 25, 2019
- GCG Stormwater Peer Review letter dated January 10, 2020
- Response to January 10 Peer Review
- Revised plans dated January 22, 2020
- Revised Operation and Maintenance Program dated January 22, 2020
- Revised Stormwater Report Appendix A – Site Construction Controls

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland (310 CMR 10.55)
- Buffer Zone

PERFORMANCE STANDARDS

- **Bordering Vegetated Wetland: 10.55(4)**
 - (a) work in a Bordering Vegetated Wetland shall not destroy or otherwise impair any portion of the BVW
 - (b) The ConCom may permit the loss of up to 5000 square feet of BVW when said area is replaced IF:
 1. The area is equal;
 2. The ground water and surface elevation are approximately equal;
 3. The overall horizontal configuration and location are similar;
 4. There is an unrestricted hydraulic connection to the same water body or waterway;
 5. It is in the same general area of the water body;

6. At least 75% of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons; and
 7. The replacement area is provided in a manner which is consistent with all other regs in 310 CMR 10.00.
- (c) The ConCom may permit the loss of a portion of BVW when;
1. Said portion has a surface area less than 500 square feet;
 2. Said portion extends in a distinct linear configuration ("finger-like") into adjacent uplands; and
 3. In the judgment of the issuing authority it is not reasonable to scale down, redesign or otherwise change the proposal.
- (d) No project may be permitted which will have any adverse effect on specified habitat sites of rare species
- (e) No work shall destroy or otherwise impair any Area of Critical Environmental Concern
- **Buffer Zone General Provisions:** 10.53(1) "For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work."

PROJECT SUMMARY

- It is proposed to construct an auto dealership consisting of a 14,000 square foot building with a paved automotive display area/parking lot. A placed stone retaining wall is proposed along the east edge of the paved area in order to minimize wetland impacts. The existing driveway is proposed to be relocated westerly while still providing a 25 foot offset zone to the wetlands. A rain garden will occupy that 25 foot wide area. A detention basin is proposed at the eastern side of the parcel. It will be notched into the water table. It has been designed as a constructed pocket wetlands in order to remove suspended solids.

COMMENTS

- It appears that the majority of paved areas are 25+ feet away from the edge of the wetland line.
- Both the eastern and western stormwater structures will be located within 1-2 feet of the wetland lines in some cases, with grading changes very close to the wetland line.
- Proposed grade changes for the detention basin appear to range from less than a foot to 5 feet.
- Grade changes for the raingarden are proposed to range from a decrease of approximately 1 foot to an increase of approximately 2-3 feet.
- On Sheet 7, I still count 8 *Ilex crenata* rather than 6.
- All of the proposed rain garden plants are native. Most of the landscaping plants are non-native.

Planting Schedule				
Trees				
Symbol	QTY	Botanical Name	Common Name	Status
SR	5	<i>Syringa reticulata</i> 'Ivory Silk'	Ivory Silk Japanese Tree Lilac	Non-Native, Introduced
AG	10	<i>Amelanchier x grandiflora</i> 'Autumn Brilliance'	Autumn Brilliance Serviceberry	Native Hybrid
Shrubs				
CH	13	<i>Cephalotaxus harringtonia</i> 'Prostrata'	Prostrate Japanese Plum Yew	Non-Native
CA	15	<i>Clethra alnifolia</i> 'Ruby Spice'	Ruby Spice Summersweet	Native
IC	6	<i>Ilex crenata</i> 'Helleri'	Heller Holly	Non-Native
JH	120	<i>Juniperus horizontalis</i> 'Bar Harbor'	Bar Harbor Juniper	Native
JP	78	<i>Juniperus procumbens</i> 'Nana'	Dwarf Japanese Garden Juniper	Non-Native
RH	14	<i>Rhododendron</i> 'Henry's Red'	Henry's Red Rhododendron	Native Hybrid
RP	21	<i>Rhododendron</i> 'Purple Gem'	Purple Gem Rhododendron	Native Hybrid
RR	9	<i>Rosa rugosa</i> 'Frau Dagmar Hastropp'	Frau Dagmar Hastropp Rose	Non-Native, Introduced
SA	14	<i>Spiraea japonica</i> 'Alpina'	Alpina Spirea	Non-Native, Introduced
Perennials				
HR	415	<i>Hemerocallis</i> x 'Happy Returns'	Happy Returns Daylily	Non-Native
NF	365	<i>Nepeta</i> x <i>faassenii</i> 'Blue Wonder'	Blue Wonder Catmint	Non-Native
PA	46	<i>Pennisetum alopecuroides</i>	Hamel Dwarf Fountain Grass	Non-Native, Introduced
RF	435	<i>Rudbeckia fulgida</i> 'Goldsturm'	Goldsturm Black-Eyed Susan	Native
Rain Garden Plants				
AG	150	<i>Andropogon gerardii</i>	Big Bluestem	Native
AN	100	<i>Aster novae-angliae</i>	New England Aster	Native
EM	50	<i>Eupatorium maculatum</i>	Joe-Pye Weed	Native
EG	100	<i>Euthamia graminifolia</i>	Grass-Leaved Goldenrod	Native
IV	50	<i>Iris versicolor</i>	Blue Flag Iris	Native
JT	150	<i>Juncus tenuis</i>	Path Ruse	Native
ZA	200	<i>Zizia aurea</i> golden	Golden Alexanders	Native

- The invasive vegetation control plan in the O&M plan has not been amended and it still lacking in detail. It does not address the legacy of multiflora rose on the site, nor does it address who would be doing the removal.
- The amended Stormwater Report Appendix A refers to haybales in several places. Haybales are likely to introduce invasive species. An appropriate substitute should be proposed. Additionally, this is not consistent with the amended plans, which refer to compost logs.
- This project will need a SWPPP.
- The applicant is requesting several waivers to the MassDEP Stormwater Regulations.
- The applicant is also requesting several waivers to the local stormwater regulations.
- It appears there are areas where there may not yet be compliance with the Mass. Stormwater Handbook.
- The applicant will need to provide another deposit for peer review fees if the Commission would like to have the peer reviewer assess the most recent comments and plans.

RECOMMENDATION

- I would recommend asking the applicant if they would like to request a continuance to address the above information.

Staff Report

Date: January 24, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Huttleston Ave, Map 31, Lots 115A & 117C – Notice of Intent – DEP# 023-1308, Fairhaven CON 023-095**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Peer Review Letter from GCG Associates, Inc. dated October 11, 2019
- Revised plans dated November 8, 2019
- Peer Review letter from GCG Associates, Inc. dated November 20, 2019
- Peer Review letter from GCG Associates, Inc. dated January 10, 2020
- Response to GCG Associates, Inc. dated January 23, 2020
- Revised plans dated January 22, 2020
- Revised Stormwater System Operation and Maintenance Program dated January 23, 2020

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetlands (310 CMR 10.55)
- Buffer Zone

PERFORMANCE STANDARDS

- **Bordering Vegetated Wetland: 10.55(4)**
 - (a) work in a Bordering Vegetated Wetland shall not destroy or otherwise impair any portion of the BVW
 - (b) The ConCom may permit the loss of up to 5000 square feet of BVW when said area is replaced IF:
 1. The area is equal;
 2. The ground water and surface elevation are approximately equal;
 3. The overall horizontal configuration and location are similar;
 4. There is an unrestricted hydraulic connection to the same water body or waterway;
 5. It is in the same general area of the water body;
 6. At least 75% of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons; and
 7. The replacement area is provided in a manner which is consistent with all other regs in 310 CMR 10.00.
 - (c) The ConCom may permit the loss of a portion of BVW when;

1. Said portion has a surface area less than 500 square feet;
 2. Said portion extends in a distinct linear configuration ("finger-like") into adjacent uplands; and
 3. In the judgment of the issuing authority it is not reasonable to scale down, redesign or otherwise change the proposal.
- (d) No project may be permitted which will have any adverse effect on specified habitat sites of rare species
- (e) No work shall destroy or otherwise impair any Area of Critical Environmental Concern
- **Buffer Zone General Provisions:** 10.53(1) "For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work."

PROJECT SUMMARY

- It is proposed to construct four, two-story wood-framed three-unit residential buildings for a total of 12 residential 2-bedroom units. In addition, two ancillary storage buildings will be constructed and will be available as storage rental space for the apartment tenants as 12-foot-wide by 20-foot-deep areas with garage door access. There is also proposed to be a small maintenance building. A total of 26 standard barking spaces and 2 van-accessible spaces are proposed.
- The storm drainage system at the proposed development has been designed to create a reduction in the rate of stormwater runoff from the existing site. The collection and treatment systems will be in the form of deep sump catch basins, sediment forebays, and a detention basin. Hydrologic computations were performed in order to model the volume and rate of flow of stormwater from the site, under both existing and proposed conditions, for a broad range of design storms.

COMMENTS

- There is a current Order of Conditions (SE 023-1245) for these lots which expires March 6, 2020.
- This current OOC approved vegetation clearing up to 25 feet off the wetland line and identifies the resource area as a Bordering Vegetated Wetland.
- *Question for Applicant:* Given the previous filing maintained a 25-foot setback to the wetland line, what would the feasibility be of doing the same here?
- *Question for Applicant:* How much of the buffer zone is being proposed to be cleared?
- As the regulations state regarding buffer zone: "where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]."
- The proposed landscaping vegetation is mostly native species with the following exceptions:
 - Japanese Zelkova (*Zelkova serrata*)
 - Green Velvet Boxwood (*Buxus sempervirens*)
 - Dwarf Japanese Juniper (*Juniper procumbens* 'Nana')
- The proposed detention basin also contains some non-native plants.

- *Question for Applicant:* What is the feasibility of using native vegetation for the project?
- The stormwater peer review seems to substantially meet MassDEP Stormwater Regulations. A number of waivers are requested for local stormwater regulations.
- The applicant will need to provide another deposit for peer review fees if the Commission would like to have the peer reviewer assess the most recent comments and plans.

RECOMMENDATION

- If the Commission feels the most recent responses and plans do not need to be evaluated by a peer reviewer and if they feel the questions outlined above have been sufficiently answered, I recommend closing the public hearing and issuing an Order of Conditions for Huttleston Ave, Map 31, Lots 115A & 117C, DEP# 023-1308, Fairhaven CON 023-095, plans dated January 22, 2020, with the following recommended conditions:

Approve plan dated January 22, 2020

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-2
7. ADD-4b
8. ADD-4c
9. ADD-5
10. STO-4
11. STO-5
12. LOW-2

B. Prior to Construction

13. CAP-3
14. REC-3
15. DER-1
16. PCC-3
17. EMC-1
18. PCC-1
19. SIL-5

C. During Construction

20. STO-1
21. STO-3
22. MAC-3
23. MAC-7
24. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
25. DEB-1
26. DEB-5

- 27. BLD-3
- 28. BLD-4
- 29. EMC-2
- 30. SIL-3
- 31. SIL-4
- 32. SIL-8
- 33. LOW-3
- 34. WAS-2
- 35. WAT-3
- D. After Construction/In Perpetuity
 - 36. REV-1
 - 37. RES-4
 - 38. COC-1
 - 39. COC-2

Perpetual Conditions

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

- 40. CHM-3
- 41. DER-4
- 42. SW-9
- E. Stormwater Management
 - 43. SW-1
 - 44. SW-2
 - 45. SW-3
 - 46. SW-4
 - 47. SW-5
 - 48. SW-6
 - 49. SW-7
 - 50. SW-8 if it is required

Staff Report

Date: January 23, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **132 Weeden Road – Notice of Intent – DEP# 023-1313, Fairhaven CON 023-115**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Riverfront Area
- Bordering Vegetated Wetland
- Coastal Bank
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF)

PERFORMANCE STANDARDS

- **Riverfront Area: 10.58(4)**
 - (c) Practicable and Substantially Equivalent Economic Alternatives
 - (d) No Significant Adverse Impact.
 1. Within 200 foot riverfront areas, the issuing authority may allow the alteration of up to 5000 square feet or 10% of the riverfront area within the lot, whichever is greater ..., provided that:
 - a. At a minimum, a 100' wide area of undisturbed vegetation is provided... preserved or extended to the max. extent feasible...
 - b. Stormwater is managed ...
 - c. Proposed work does not impair the capacity of the riverfront area to provide important wildlife habitat functions. ...
 - d. ... incorporating erosion and sedimentation controls and other measures to attenuate nonpoint source pollution.
- **Bordering Vegetated Wetland: 10.55(4)**
 - (a) work in a Bordering Vegetated Wetland shall not destroy or otherwise impair any portion of the BVW
 - (b) The ConCom may permit the loss of up to 5000 square feet of BVW when said area is replaced IF:
 1. The area is equal;
 2. The ground water and surface elevation are approximately equal;

3. The overall horizontal configuration and location are similar;
 4. There is an unrestricted hydraulic connection to the same water body or waterway;
 5. It is in the same general area of the water body;
 6. At least 75% of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons; and
 7. The replacement area is provided in a manner which is consistent with all other regs in 310 CMR 10.00.
- (c) The ConCom may permit the loss of a portion of BVW when;
1. Said portion has a surface area less than 500 square feet;
 2. Said portion extends in a distinct linear configuration ("finger-like") into adjacent uplands; and
 3. In the judgment of the issuing authority it is not reasonable to scale down, redesign or otherwise change the proposal.
- (d) No project may be permitted which will have any adverse effect on specified habitat sites of rare species
- (e) No work shall destroy or otherwise impair any Area of Critical Environmental Concern
- **Coastal Bank:** 10.30(4) Any project on a coastal bank or within 100 feet landward of the top of a coastal bank...shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action.
 - **Buffer Zone General Provisions:** 10.53(1) "For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work."
 - **LSCSF General Provisions:** 10.24(1) "If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests."

PROJECT SUMMARY

- This is a sewer upgrade project. The applicant proposes to extend the sewer line onto the property to serve the main house and three rental cottages. The work will include abandoning the existing cesspools, connecting the sewer line to the three rental cottages, installing a pump and sewer manhole.
- Proposed disturbance:
 - 11,714 square feet in the buffer zone
 - 12,000 square feet in the flood zone
- No disturbance is proposed in the Riverfront Area

COMMENTS

- This project proposes what appears to be an improvement of existing conditions given the cesspools within the water table will be abandoned.

- The extent of the work that occurs within buffer zone is the sewer line to the three rental cottages and the pumps and manhole. The sewer line proposed to come in from the road to service the main house falls within flood zone only.
- Since the work falls outside of the Riverfront Area, no alternatives analysis is needed.
- Erosion controls are proposed using straw wattles, located approximately 25 feet off the wetland line.
- The wetland delineation was performed in November 2019 and has not been verified. For this particular project, it may not be necessary to verify the line.

RECOMMENDATION

- I recommend that the Commission close the public hearing and issue an Order of Conditions for SE 023-1313, plans dated December 19, 2019, with the following recommended conditions:

Approve plan dated December 19, 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-2
7. ADD-4b
8. ADD-4c
9. ADD-5
10. STO-4
11. STO-5
12. LOW-2
13. WET-1

B. Prior to Construction

14. CAP-3
15. REC-3
16. DER-1
17. PCC-3
18. EMC-1
19. PCC-1
20. SIL-5

C. During Construction

21. STO-1
22. STO-3
23. MAC-3
24. MAC-7
25. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
26. DEB-1

- 27. DEB-5
- 28. BLD-3
- 29. BLD-4
- 30. EMC-2
- 31. SIL-3
- 32. SIL-4
- 33. SIL-8
- 34. LOW-3
- D. After Construction/In Perpetuity
 - 36. REV-1
 - 37. RES-4
 - 38. COC-1
 - 39. COC-2

Perpetual Conditions

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

- 40. CHM-3
- 41. DER-4

Staff Report

Date: January 24, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Bella Vista Island – Notice of Intent – DEP# 023-1309, Fairhaven CON 023-110**

DOCUMENTS REVIEWED

- Notice of Intent and associated site plans and documents
- MassDEP Administrative Consent Order with Penalty and Notice of Noncompliance dated June 25, 2019
- Previous Notices of Intent, Order of Conditions, Enforcement Orders
- Division of Marine Fisheries comments dated January 7, 2020
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Salt Marsh
- Coastal Beach
- Coastal Dune
- Coastal Bank
- Land Containing Shellfish
- Land Under the Ocean
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF)
- Isolated Vegetated Wetlands

PERFORMANCE STANDARDS

- **Salt Marsh:** 10.32
(3) A proposed project in a salt marsh, on lands within 100 feet of a salt marsh, or in a body of water adjacent to a salt marsh shall not destroy any portion of the salt marsh and shall not have an adverse effect on the productivity of the salt marsh. Alterations in growth, distribution and composition of salt marsh vegetation shall be considered in evaluating adverse effects of productivity.
(4) A small project within a saltmarsh, such as an elevated walkway or other structure which has no adverse effects other than blocking sunlight from the underlying vegetation for a portion of each day may be permitted if such a project complies with all other applicable requirements of [the regulations for coastal wetlands].
- **Coastal Beach:** 10.27
(3) Any project on a coastal beach...shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.

(5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.

- **Coastal Dune:** 10.28

(3) Any alteration of, or structure on, a coastal dune or within 100 feet of a coastal dune shall not have an adverse effect on the coastal dune by:

- (a) affecting the ability of waves to remove sand from the dune;
- (b) disturbing the vegetative cover so as to destabilize the dune;
- (c) causing any modification of the dune form that would increase the potential for storm of flood damage;
- (d) interfering with the landward or lateral movement of the dune;
- (e) causing removal of sand from the dune artificially; or
- (f) interfering with mapped or otherwise identified bird nesting habitat.

- **Coastal Bank:** 10.30

(4) Any project on a coastal bank or within 100 feet landward of the top of a coastal bank...shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action.

(6) Any project on [a coastal bank significant to storm damage prevention or flood control] or within 100 feet landward of the top of such coastal bank shall have no adverse effects on the stability of the coastal bank.

- **Land Containing Shellfish:** 10.34

(4) Any project on land containing shellfish shall not adversely affect such land or marine fisheries by a change in the productivity of such land...

(6) ...the issuing authority may, after consultation with the Shellfish Constable, permit the shellfish to be moved from such area under the guidelines of, and to a suitable location approved by, the Division of Marine Fisheries, in order to permit a proposed project on such land.

- **Land Under Ocean:** 10.25

(3) Improvement dredging for navigational purposes affecting land under the ocean shall be designed and carried out using the best available measures so as to minimize adverse effects...

(4) Maintenance dredging for navigational purposes affecting land under the ocean shall be designed and carried out using the best available measures so as to minimize adverse effects...

(5) Projects...which affect nearshore areas of land under the ocean shall not cause adverse effects by altering the bottom topography so as to increase storm damage or erosion of coastal beaches, coastal banks, coastal dunes, or salt marshes.

(6) Projects...shall...be designed and constructed...so as to minimize adverse effects [or] have no adverse effects on marine fisheries habitat or wildlife habitat...

- **Buffer Zone General Provisions:** 10.53(1) "For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work."

- **LSCSF General Provisions:** 10.24(1) "If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests."

PROJECT SUMMARY

- This NOI is a result of an Administrative Consent Order with MassDEP that establishes corrective actions to bring the property into compliance.
- The applicant proposes to:
 - repair the existing eastern groin and provide beach nourishment
 - dredge under the bridge to allow the bridge channel to be deep enough for small crafts to navigate and place the dredged sand on the beach for nourishment purposes
 - repair the southeast end of the causeway side slope by placing large stones
- The applicant is seeking after-the-fact approval for:
 - Wooden posts and rope line that extend north and south perpendicular to the causeway along the eastern property line
 - Reconstruction of the existing stone seawall, including removing the southern end of the seawall

COMMENTS

- MA DMF has provided commentary on the project with regard to potential impacts to several marine fisheries resources and habitat.
 - Prohibit silt-producing activities or dredging from January 15 through May 31 of any year
 - Plan does not indicate where beach fill will be deposited. Disposal of beach fill in the intertidal area should be consistent with DEP's Beach Nourishment Guide and be of equal grain size and appropriate slope to avoid premature loss from the beach and impacts to nearshore bottom habitat.
 - Proposed relocated seawall shall not be constructed below the mean high water line within the intertidal area
 - Plan does not depict the groin work. MA DMF recommends that groin repairs remain within the existing footprint. Groin shall be constructed with interstitial spaces to support marine fisheries habitat for macroalgae
- The NOI is missing the square footage of Land Subject to Coastal Storm Flowage impacted and the square footage of Lang Containing Shellfish impacted.
- A portion of the proposed dredging is located within Natural Heritage Estimated Habitat.
- *Question for Applicant:* Have you filed with NHESP?
- Applicant is requesting the hearing process for a previously denied NOI be resumed.
- *Question for Applicant:* Will you be amending the current NOI submittal to include items from the file you had requested to resume?
- Commission could consider retaining a peer reviewer to review the project.

RECOMMENDATION

- I recommend scheduling a site visit with the Commission and the applicant/applicant's representative.
- I recommend the asking the applicant if they would like to request a continuance to allow time to schedule a site visit and address the changes that need to be made to the NOI and the plans.

Staff Report

Date: January 23, 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**

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)
- Land Subject to Coastal Storm Flowage (LSCSF)

PERFORMANCE STANDARDS

- **Salt Marsh:** 10.32(3) A proposed project in a salt marsh, on lands within 100 feet of a salt marsh, or in a body of water adjacent to a salt marsh shall not destroy any portion of the salt marsh and shall not have an adverse effect on the productivity of the salt marsh. Alterations in growth, distribution and composition of salt marsh vegetation shall be considered in evaluating adverse effects of productivity.
- **LSCSF General Provisions:** 10.24(1) “If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests.”

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.
- The plans include a line for the 200-foot Riverfront Area. This property is south of the mouth of the Acushnet River and therefore is not within Riverfront Area.
- *Question for Applicant:* Are the grades shown on the plan reflective of existing site conditions?

RECOMMENDATION

- 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.
17. The fine of \$125.00 assessed to the property owner of record under the Fairhaven Wetlands Bylaw, Chapter 192 of the Code of the Town of Fairhaven, for the installation of sod without a permit and lack of removal after 30 days shall be paid to the Conservation Commission upon submitting proof of recording of this Order.

B. Prior to Construction

18. CAP-3
19. REC-3

20. DER-1
 21. PCC-3
 22. EMC-1
 23. PCC-1
 24. SIL-5
 25. LOW-6
 26. Erosion controls should be installed along the limit of work only.
- C. During Construction
27. STO-1
 28. STO-2 and within the Limit of Work, or on the paved driveway.
 29. STO-3
 30. MAC-3
 31. MAC-5
 32. MAC-7
 33. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 34. DEB-1
 35. DEB-5
 36. BLD-3
 37. BLD-4
 38. EMC-2
 39. SIL-3
 40. SIL-4
 41. SIL-8
 42. LOW-3
 43. WAT-3
 44. Concrete washout shall be located within the footprint of the driveway and outside of the 100-foot buffer zone.
 45. 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
46. REV-1
 47. RES-4
 48. COC-1
 49. COC-2

Perpetual Conditions

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

50. 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.
51. DER-4

Staff Report

Date: January 24, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Beach Street, Assessors Map 19, Lot 19 (End of Alpine Ave and Newbury Ave) – Notice of Intent – DEP# 023-1310, Fairhaven CON 023-112**

DOCUMENTS REVIEWED

- Notice of Intent and associated site plans and documents
- Revised site plan dated January 21, 2020
- Alternatives analysis and wetland delineation information
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Riverfront Area (310 CMR 10.58)
- Bordering Vegetated Wetland (310 CMR 10.55)
- Land Subject to Coastal Storm Flowage (LSCSF)
- Buffer Zone

PERFORMANCE STANDARDS

- **Riverfront Area:** 10.58(4)
 - (c) There must be no practicable and substantially equivalent economic alternative to the proposed project with less adverse effects on the interests identified in [the Act].
 1. An alternative is practicable and substantially equivalent economically if it is available and capable of being done after taking into consideration costs, existing technology, proposed use, and logistics, in light of overall project purposes.
 - (d) No Significant Adverse Impact.
 1. Within 200 foot riverfront areas, the issuing authority may allow the alteration of up to 5000 square feet or 10% of the riverfront area within the lot, whichever is greater ..., provided that:
 - a. At a minimum, a 100' wide area of undisturbed vegetation is provided... preserved or extended to the maximum extent feasible....
 - b. Stormwater is managed ...
 - c. Proposed work does not impair the capacity of the riverfront area to provide important wildlife habitat functions. ...
 - d. ... incorporating erosion and sedimentation controls and other measures to attenuate nonpoint source pollution.
- **Bordering Vegetated Wetland:** 10.55(4)
 - (a) work in a Bordering Vegetated Wetland shall not destroy or otherwise impair any portion of the BVW

- (b) The ConCom may permit the loss of up to 5000 square feet of BVW when said area is replaced IF:
 1. The area is equal;
 2. The ground water and surface elevation are approximately equal;
 3. The overall horizontal configuration and location are similar;
 4. There is an unrestricted hydraulic connection to the same water body or waterway;
 5. It is in the same general area of the water body;
 6. At least 75% of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons; and
 7. The replacement area is provided in a manner which is consistent with all other regulations in 310 CMR 10.00.
- (c) The ConCom may permit the loss of a portion of BVW when;
 1. Said portion has a surface area less than 500 square feet;
 2. Said portion extends in a distinct linear configuration ("finger-like") into adjacent uplands; and
 3. In the judgment of the issuing authority it is not reasonable to scale down, redesign or otherwise change the proposal.
- (d) No project may be permitted which will have any adverse effect on specified habitat sites of rare species
- (e) No work shall destroy or otherwise impair any Area of Critical Environmental Concern
- **Buffer Zone General Provisions:** 10.53(1) "For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work."
- **LSCSF General Provisions:** 10.24(1) "If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests."

PROJECT SUMMARY

- The applicant proposes to install fill and construct a single-family home and associated site work and utility connections within FMA flood zone AE (El. 6'), within Riverfront Area and buffer zone to the Acushnet River, and within buffer zone to Bordering Vegetated Wetland.

COMMENTS

- The Fairhaven Wetlands Bylaw also regulates the 100-foot buffer zone to the edge of the river. No work is proposed within the inner 100 feet of the Riverfront Area.
- All of the work is proposed within the outer 100 feet of the Riverfront Area.
- The plan notes haybales in use for the dewatering silt trap/concrete washout area. These should be replaced with straw or other suitable material that will not be likely to introduce invasive species, as hay is.
- The applicant has provided three alternatives to the one proposed on the plans.
- "The applicant shall prove by a preponderance of the evidence that there are no practicable and substantially equivalent economic alternatives to the proposed project with less adverse effects

on the interests [of the Act] and that the work, including proposed mitigation, will have no significant adverse impact on the riverfront area to protect the interests [of the Act].” – 310 CMR 10.58(4)

- The submitted alternatives analysis does not address costs or include sufficient detail for the Commission to effectively evaluate whether there are alternatives that may have less adverse impacts than the proposed project.
- The proposed driveway is not marked on the plan whether it will be paved or pervious. The applicant indicated that it would be paved during a site visit.
- The applicant proposes to place fill within the flood zone subject to approval of a conditional letter of map revision based on fill (CLOMR-F) to be requested from FEMA upon the issuance of an order of conditions. The total estimated fill is 300 cubic yards.

RECOMMENDATION

- I recommend the Commission request a more detailed alternatives analysis from the applicant and ask if the applicant would like to continue to a subsequent meeting.

Staff Report

Date: January 24, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **12 Almond Street – Notice of Intent – DEP# 023-1312, Fairhaven CON 023-113**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- Revised plan dated January 21, 2020
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Salt Marsh (310 CMR 10.32)
- Coastal Beach (310 CMR 10.27)
- Coastal Dune (310 CMR 10.28)
- Rocky Intertidal Shore (310 CMR 10.31)
- Buffer Zone
- Land Subject to Coastal Storm Flowage

PERFORMANCE STANDARDS

- **Salt Marsh:** 10.32
(3) A proposed project in a salt marsh, on lands within 100 feet of a salt marsh, or in a body of water adjacent to a salt marsh shall not destroy any portion of the salt marsh and shall not have an adverse effect on the productivity of the salt marsh. Alterations in growth, distribution and composition of salt marsh vegetation shall be considered in evaluating adverse effects of productivity.
(4) A small project within a saltmarsh, such as an elevated walkway or other structure which has no adverse effects other than blocking sunlight from the underlying vegetation for a portion of each day may be permitted if such a project complies with all other applicable requirements of [the regulations for coastal wetlands].
- **Coastal Beach:** 10.27
(3) Any project on a coastal beach...shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.
(5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.
- **Coastal Dune:** 10.28

(3) Any alteration of, or structure on, a coastal dune or within 100 feet of a coastal dune shall not have an adverse effect on the coastal dune by:

- (a) affecting the ability of waves to remove sand from the dune;
- (b) disturbing the vegetative cover so as to destabilize the dune;
- (c) causing any modification of the dune form that would increase the potential for storm of flood damage;
- (d) interfering with the landward or lateral movement of the dune;
- (e) causing removal of sand from the dune artificially; or
- (f) interfering with mapped or otherwise identified bird nesting habitat.

- **Rocky Intertidal Shore: 10.31**

(3) ...Significant to Storm Damage Prevention, Flood Control, or Protection of Wildlife Habitat, any proposed project shall be designed and constructed...so as to minimize adverse effects on the form and volume of exposed intertidal bedrock and boulders.

(4) ...Significant to the Protection of Marine Fisheries or Wildlife Habitat, any proposed project [that is water-dependent shall be] designed and constructed...so as to minimize adverse effects...on water circulation and water quality [and any proposed project that is not water-dependent shall have no adverse effects on water circulation and water quality.]

- **Buffer Zone General Provisions: 10.53(1)** “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
- **LSCSF General Provisions: 10.24(1)** “If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests.”

PROJECT SUMMARY

- The applicant proposes to demolish the existing house and construct a new single-family home on a flood-compliant foundation within FEMA Zone VE, El. 17', with connections to town water and sewer, plus associated site work and a new elevated walkway over marsh to coastal beach and new osprey nest on a coastal dune.

COMMENTS

- No work is proposed in the rocky intertidal shore.
- No work is proposed on the coastal beach.
- The only work proposed on coastal dune is the installation of the osprey nest.
- *Question for Applicant:* How do you propose to install the osprey nest?
- The work proposed in the salt marsh includes the removal of existing chain link fence, the removal of a rock/rubble pile, and the installation of a proposed elevated walkway to the beach.
- MassDEP provided comments on raising the height of the proposed walkway to prevent shading impacts. The revised plans addressed these comments.
- The walkway ends at Mean High Water. It appears that the marsh grasses continue beyond the end of the proposed walkway.

- *Question for Applicant:* What does the end of the walkway look like as it gets to the beach?
- The MassDEP comments also note that this project may need a 401 Water Quality Certification.
- *Question for Applicant:* How will you be removing the rock pile and rubble?
- *Question for Applicant:* How will you be installing the piles for the walkway?
- The plan proposes the removal of three cedar trees and planting three new cedar trees in a different location on the property.
- The stone wall proposed between the house and the salt marsh varies in distance from the edge of the salt marsh with a minimum distance of three feet.
- The slope of the stone wall is gradual, which should not contribute to erosion at the base of the stones.
- The concrete truck washout/dewatering silt trap utilizes haybales. A suitable substitute should be proposed to avoid the introduction of invasive species.
- The siltation control barrier should be extended to protect the full length of the salt marsh.
- *Question for Applicant:* Has DEP received a copy of the revised plans and revised sections of the NOI?

RECOMMENDATION

- Given the need for some clarifications to the plans, I would recommend asking if the applicant would like to continue to a subsequent meeting to address comments.