

# Staff Report

Date: February 6, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **56 Balsam Street – Determination of Applicability – Fairhaven CON 023-089**

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## DOCUMENTS REVIEWED

- Determination of Applicability Issued on October 16, 2019
- Email from applicant
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

## RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF)
- Coastal Beach
- Coastal Dune
- Buffer Zone

## 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.”
- Work is outside of the buffer zone to the coastal beach and coastal dune.

## PROJECT SUMMARY

- The applicant received a permit after-the-fact for an asphalt driveway, a portion of which was to be removed in order to reduce the amount of impervious surface on the property. The applicant amended his Request for Determination to read “the portion of the driveway to be removed to abide by conservation laws will be that portion on the north side of the driveway (23’ x 14’) by original contractor who paved it.”
- The Commission issued a Negative 3 and Negative 6 Determination with the following conditions:
  - The Conservation Agent is contacted for an inspection once the removal of northern area of the driveway (14’ x 23’) is complete.
  - At no point shall there be any impact to the surrounding resource areas
  - Anything you replace the removed area with shall be entirely pervious

## COMMENTS

- The applicant submitted the following email:
  - My wife & I would like to submit a request for our names to be put on the agenda list for the next available conservation meeting as soon as possible. We would like to use

our other option, approval of lot coverage, and send our case to the Board of Appeals for discussion.

- In a reply email, I stated that any approval by the Board of Appeals does not constitute approval by the Conservation Commission.
- The project that has been permitted (removing a portion of the driveway) was permitted as such in order to reduce the amount of impervious surface in a velocity flood zone, to reduce the impacts of the project on storm damage prevention and flood control.
- Going before the Board of Appeals has no bearing on the decision made by the Conservation Commission.

## **RECOMMENDATION**

- The applicant has requested to discuss with the Commission. Therefore, I cannot make a recommendation at this time.

# Staff Report

Date: February 6, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **94 Raymond Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-118**

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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

## 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

- The applicant has filed after-the-fact for the installation of a 6-foot x 3-foot x 1-foot concrete pad for securing two 100-gallon propane tanks. The applicant is also requesting to install a fence around the pad and tanks.

## COMMENTS

- The concrete pad has already been installed. The fence has not yet been installed.
- The pad is located along the side of the house toward the rear.
- It appears the amount of impervious surface that has been added will have a negligible impact on flood control. Having the propane tanks appropriately anchored is in the interest of storm damage prevention.

## RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 2 and Negative 6 Determination.

# Staff Report

Date: February 6, 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)
- 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.
- The Commission closed the public hearing on January 27, 2020.
- Town Counsel submitted the following commentary:
  - That portion of North Street is privately owned. It is a paper street, that is, it is designated on a subdivision plan, but is not built out.

As a general rule the owners on either side of a paper street own to the midline of the street, subject to whatever rights others may have to pass and repass. Those rights may be expressly deeded to others, or they may be by implication. I express no opinion in that regard – since I have not searched the title nor reviewed the history with regard to any other properties.

Also as a general rule, the owner of the fee in a paper street may develop the property, but may not interfere with the rights of others in that street.

In this case it is my understanding that Mr. Miguel owns both sides of North Street at the location that is subject to this notice of intent, so he owns the land. It also appears that the work, sodding and seeding, would not interfere with right of others to pass and repass, if anyone else has such a right.

Under these facts I see no reason that the Commission needs to inquire further as to other rights other parties may have in North Street.

- MassDEP stated they will defer to Town Counsel’s opinion.
- MassDEP Wetlands Program Policy 85-4 regarding Amended Orders states the following:
  - “...the Department recognizes that it would not be reasonable to require a complete refile of the Notice of Intent when the changes sought in the Final Order of Conditions are relatively minor and will have unchanged or less impact on the interests protected by the Act.”
  - “...the issuing authority should consider such factors as whether the purpose of the project has changed, whether the scope of the project has increased, whether the project meets relevant performance standards, and whether the potential for adverse impacts to the protected statutory interests will be increased. Relatively minor changes which result in the same or decreased impact on the interests protected by the Act are appropriate for amendments.”
- Abutter is defined in the Wetlands Protection Act Regulations as “the owner of land sharing a common boundary or corner with the site of the proposed activity in any direction, including land located directly across a street, way, creek, river, stream, brook, or canal.”
  - Per Town Counsel, “having the right to pass and repass doesn’t make a person an abutter.”

**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-2
9. ADD-4b
10. ADD-4c
11. ADD-5
12. STO-4
13. STO-5
14. 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.
15. Failure to allow the Conservation Commission or its Agent to inspect will result in a cease and desist order.
16. Construction shall follow the sequencing laid out on the approved plan.
17. 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.
18. 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

19. CAP-3
20. REC-3
21. DER-1
22. PCC-3
23. EMC-1
24. PCC-1
25. SIL-5
26. LOW-6
27. Erosion controls should be installed along the limit of work only.

C. During Construction

28. STO-1
29. STO-2 and within the Limit of Work, or on the paved driveway.
30. STO-3
31. MAC-3
32. MAC-5

33. MAC-7
  34. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
  35. DEB-1
  36. DEB-5
  37. BLD-3
  38. BLD-4
  39. EMC-2
  40. SIL-3
  41. SIL-4
  42. SIL-8
  43. LOW-3
  44. WAT-3
  45. Concrete washout shall be located within the footprint of the driveway and outside of the 100-foot buffer zone.
  46. 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
47. REV-1
  48. RES-4
  49. COC-1
  50. COC-2

Perpetual Conditions

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

51. 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.
52. DER-4

# Staff Report

Date: February 6, 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**

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## 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)
- Revised site plan dated February 3, 2020
- Revised Alternatives Analysis dated February 3, 2020

## 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].
    - 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.
- The only work proposed within the inner 100 feet of the Riverfront Area are two areas of revegetation.
- Plantings proposed in the revegetation areas are all native.
- 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 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.
- The Board of Public Works submitted the following commentary regarding the project:
  - Highway
    - The Town will not maintain or plow this section of Beach Street.
    - The guardrail that is to be removed must be delivered to the Board of Public Works yard located at 5 Arsene Street
    - Need to pave from the edge of Alpine Avenue to the first driveway opening, to Town standard 4" thick (2 ½" binder and 1 ½" top)
  - Water
    - Water main needs to be updated to 6" Ductile Iron with hydrant at the end.
    - Water service to be 1" plastic.
  - Sewer
    - No comments
  - BPW
    - Preconstruction meeting with utility contractor
    - Fees: sewer, water, driveway, trench permit, inspection services, and as-built plans
- Per communication from BPW, they are authorizing the property owner to put in the road themselves, but it will not be maintained by the Town
- The revised plans propose to pave the roadway past the first driveway opening to the end of the second driveway opening.
- The applicant should consider making the area for R.V. parking pervious rather than impervious, given the increase in impervious surface in the area.
- The revised alternatives analysis provides the following three alternatives to the proposed plan:
  - Considering the project as a redevelopment project; applicant feels this area does not meet the definition of previously developed riverfront and therefore does not qualify as a redevelopment project.
  - Considering purchasing the abutting lot on the north side, which would increase allowable disturbance but would not add any non-riverfront area to the lot; applicant feels this would not advance any interests of the Wetlands Protection Act
  - Considering the construction of the house on a flood-zone compliant foundation in the southeast corner of the lot at the minimum zoning setback from Beach Street, where driveway and parking can be located almost entirely outside of the riverfront area, would require hydrostatic relief vents; applicant feels this would not be feasible due to the cost of flood insurance
- The alternatives analysis for the proposed option asserts that the amount of fill that will be brought in is less than what is would be allowed if the area was smaller than isolated land subject to flooding (holding a volume of ¼ acre-feet of water). The equivalent fill volume for an area just under the ¼ acre-foot provision is 400 cubic yards. Since the applicant is proposing to bring in only 300 cubic yards of fill, the applicant submits this as evidence that the amount of fill proposed would not have a significant impact to flood control and storm damage prevention.

## RECOMMENDATION

- If the Commission would like to see revised plans that address keeping the RV Paved Parking area to the first driveway apron pervious and fixing the haybale silt trap detail, I recommend the

Commission ask the applicant if they would like to request a continuance to a subsequent meeting to make those changes to the plan.

- If the Commission feels no further changes aside from the haybale silt trap detail need to be made to the plans, I recommend the Commission close the public hearing and issue an Order of Conditions for the plans dated February 3, 2020 with the following recommended conditions:

Approve plan dated February 3, 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, with the exception of the revegetation areas located within the inner 100 feet of the Riverfront Area.
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
21. SIL-9
22. SIL-10
23. SIL-11

C. During Construction

25. Where the plans refer to haybales (i.e. de-watering silt trap), an alternative option shall be used that does not include hay.
26. STO-1
27. STO-3
28. MAC-3
29. MAC-7
30. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
31. DEB-1
32. DEB-5
33. BLD-3
34. BLD-4

- 35. EMC-2
  - 36. SIL-3
  - 37. SIL-4
  - 38. SIL-8
  - 39. LOW-3
  - 40. WAT-3
  - 41. WAS-2
  - 42. WAS-3
  - 43. Revegetation areas shall be planted and filled by hand only.
- D. After Construction/In Perpetuity
- 43. REV-1
  - 44. RES-4
  - 45. COC-1
  - 46. COC-2

Perpetual Conditions

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

- 47. CHM-3
- 48. DER-4
- 49. RFA-1
- 50. The inner 100 feet of the Riverfront Area shall be minimally impacted. No construction is to occur within this area. The revegetated areas shall be minimally maintained and if the revegetated areas begin to expand, they shall be allowed to do so without limitation.

# Staff Report

Date: February 7, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- Revised plan dated January 21, 2020
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Revised plan dated February 3, 2020

## 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, which will be installed by crane from the upland or by hand.
- 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 most recent revised plan altered the decking panels used for the walkway to allow more light through, keep the walkway at the same height, and still use aluminum pipe augers as the vertical posts. The applicant explained that raising the height of the walkway would result in

greater impact to the salt marsh, so they opted to use the Thruflow Decking Panels and provided pictures and information about these specific panels.

- The walkway ends at Mean High Water. It appears that the marsh grasses continue beyond the end of the proposed walkway.
- The walkway terminates in a set of 5 stairs to the mean high water line of the coastal beach.
- The MassDEP comments also note that this project may need a 401 Water Quality Certification.
- The plan proposes the removal of seven cedar trees and planting seven new cedar trees in different locations 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 proposed stone wall appears to provide a clear delineation between the proposed house and the edge of the salt marsh. This will allow the impacted areas of the salt marsh to revegetate and recover from consistent disturbance.
- The placement of the stone wall may impact salt marsh migration in the future.
- The proposal does increase the amount of impervious surface on site from what is existing, between the paved driveway, larger house, and the stone wall.
- *Question for Applicant:* How will you manage runoff from the proposed structure to minimize the impact to the resource areas on site, specifically the salt marsh?
- Previous comments not included on the revised plans:
  - 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?

## RECOMMENDATION

- If the Commission is satisfied with the responses to the comments and questions outlined above and feels that no further changes are needed, aside from the modifications to the silt fence and haybale silt trap detail, I recommend the Commission close the public hearing and issue an Order of Conditions for the plans dated February 3, 2020 with the following recommended conditions:

Approve plan dated February 3, 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, with the exception of the removal of the rock and rubble pile, the removal of the chain link fencing in the salt marsh, and the installation of the osprey nest and the elevated walkway.
  13. WET-1
  14. The fabric used beneath the stone wall as shown in Section 'A' on the approved plans shall be biodegradable. Photodegradable, UV degradable, or Oxo-(bio)degradable plastics are not considered biodegradable.
- B. Prior to Construction
15. CAP-3, including whether or not a 401 Water Quality certificate is needed for the approved project. If a 401 Water Quality certificate is required, a copy shall be provided to the Conservation Commission prior to any work commencing.
  16. Sedimentation and erosion controls shall be extended to protect the full width of the salt marsh on the property.
  17. REC-3
  18. DER-1
  19. PCC-3
  20. EMC-1
  21. PCC-1
  22. SIL-5
  23. SIL-9
  24. SIL-10
  25. SIL-11
- C. During Construction
26. Where the plans refer to haybales (i.e. de-watering silt trap), an alternative option shall be used that does not include hay.
  27. STO-1
  28. STO-3
  29. MAC-3
  30. MAC-7
  31. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
  32. DEB-1
  33. DEB-5
  34. BLD-3
  35. BLD-4
  36. EMC-2
  37. SIL-3
  38. SIL-4
  39. SIL-8
  40. LOW-3
  41. WAS-2
  42. WAS-3
  43. WAT-3
  44. The rock pile and rubble to be removed from the salt marsh shall be removed by hand. No machinery is allowed in the resource areas at any time.



45. The osprey nest structure shall be installed without the use of machinery in the resource areas. A crane may be used if it remains in the upland area of the property, otherwise, the pole shall be installed by hand.
- D. After Construction/In Perpetuity
  46. If the elevated walkway begins to cause shading impacts to the salt marsh within two years of the completion of the project, the Commission reserves the right to require restoration or mitigation or other corrective measures.
  47. REV-1
  48. RES-4
  49. COC-1
  50. COC-2

Perpetual Conditions

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

51. 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.
52. DER-4

# Staff Report

Date: February 7, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **15 Grinnell Street – Notice of Intent – DEP# 023-1314, Fairhaven CON 023-**

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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
- 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

- The applicant is proposing to perform improvements to the existing house, detached garage, and site as follows:
  - 24ft x 30ft addition to the house
  - Construction of an access porch
  - Remove the 20ft x 20ft garage from its existing foundation and rebuild on the same slab, raising the slab 6 inches
  - If the garage reconstruction is not possible due to an inadequate foundation that does not comply with building code, a 24ft x 24ft garage would be constructed on a new slab.
  - Construction of a 16ft x 32ft in-ground swimming pool with an associated concrete perimeter patio
  - Construction of two 12ft x 16ft sheds on either sonotubes or slabs
  - Conversion of existing gravel driveway to pavement; if a new garage needs to be constructed, the driveway will be expanded slightly.

## COMMENTS

- The entirety of the project with the exception of the majority of the driveway is within the 100-foot buffer zone.
- The proposed sheds are between 16 and 19 feet off the wetland line.
- Given this distance, it may be a better fit for the sheds to be placed on sonotubes.
- The storage container is being relocated 9 feet off the wetland line.
- The wetland line appears to follow the tree line, more or less.
- A majority of the work is being proposed in the outer 50 feet of the buffer zone.
- The work within the inner 50 feet of the buffer zone includes the two sheds, the relocation of the storage container, a portion of the addition, and a portion of the pool and surrounding patio.
- The regulations list the following exception under minor activities within the buffer zone: “conversion of lawn to uses accessory to residential structures..., provided the activity, including material staging and stockpiling is located more than 50 feet from...Bordering Vegetated Wetland...and erosion and sedimentation controls are implemented during construction.”
  - Accessory structures include items such as decks, sheds, and patios
- No vegetation is proposed to be removed, based on the submitted plans.
- The erosion and sedimentation control should be extended to be even with the back of the existing single family dwelling so it protects the entire BVW.
- The siltation fence should be a combination of both alternatives provided on the plan.

## RECOMMENDATION

- If the Commission feels the setbacks to the wetland are sufficient and that the work proposed will not adversely impact the resource area, I would recommend closing the public hearing and issuing an Order of Conditions for the plans dated January 6, 2020 with the following recommended conditions:

Approve plan dated January 6, 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. The proposed 12ft x 16ft sheds shall be installed on sonotubes.

B. Prior to Construction

15. CAP-3
16. If the foundation for the existing garage is found to be inadequate, the Conservation Commission shall be provided documentation from a structural engineer and the Building Department that a new foundation will be needed for the garage.
17. REC-3
18. DER-1
19. PCC-3
20. EMC-1
21. PCC-1
22. Both siltation fence and compost silt sock, as detailed on the approved plans, shall be used for sedimentation and erosion control.
23. The erosion and sedimentation control barrier shall be extended to be even with the rear of the existing dwelling to provide protection to the entire resource area.
24. SIL-5
25. SIL-7
26. SIL-9
27. SIL-10

C. During Construction

28. STO-1
29. STO-3
30. MAC-3
31. MAC-7
32. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
33. DEB-1
34. DEB-5
35. BLD-3
36. BLD-4

- 37. EMC-2
- 38. SIL-3
- 39. SIL-4
- 40. SIL-8
- 41. LOW-3
- 42. WAS-2
- 43. WAS-3
- 44. WAT-3
- D. After Construction/In Perpetuity
  - 45. REV-1
  - 46. RES-4
  - 47. COC-1
  - 48. COC-2

Perpetual Conditions

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

- 49. CHM-3
- 50. DER-4

# Staff Report

Date: February 7, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## Abbey Street (May 6, Lot 63)

- I posted a cease and desist after receiving a report that several trees had been cut down within the buffer zone to a wetland and a flood zone.
- An individual who lives nearby noted that the trees were cut down at the end of 2019.

## 44 Torrington Road

- I have been contacted by Field Engineering, who will be handling the restoration plan. I have not yet received anything from them.

## 7 Waybridge Road

- The property owner received the letter and has acknowledged that no further work will be occurring on that property.

## Bills

- \$125 to MACC for Annual Environmental Conference Registration for Geoff Haworth
- \$207.79 to Staples for office supplies
- \$170 to Fairhaven Neighborhood News for advertising
- \$669.32 to Whitney McClees for mileage reimbursement for site visits and other work-related travel August-December 2019
- \$140 to Fairhaven Neighborhood News for advertising

## April Meetings

- Currently, April meetings are scheduled for April 6 and April 20. April 6 is Election Day and April 20 is Patriots Day, so we are unable to have meetings on either day.
- Based on the scheduled meetings in May, we can either opt to hold one meeting in April on April 13 (Easter Monday), or hold two meetings on other days of the week.
- The Board of Selectmen meet on April 13 and April 27.