

Staff Report

Date: February 19, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **0 Tootle Lane, Map 37, Lots 1C, 2, 3, & 15 – Request for Certificate of Compliance – DEP# 023-037, Fairhaven CON 023-122**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance
- Notice of Intent dated June 30, 1977
- Order of Conditions dated July 11, 1977
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetlands
- 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 (Diros Realty Inc.) proposed to improve and widen existing gravel road to 30 feet wide and install pipes to equalize wetland area

COMMENTS

- The Order of Conditions included the following conditions:
 - Prior to commencing any work on the proposed roadway, it will be necessary for the Fairhaven Planning Board confirm the existence of the roadway by appropriate means.
 - A variance must be secured from the Board of Appeals for the roadway and the use of same on property not zoned for the purpose.
 - The Fairhaven Conservation Commission requires that it be informed when all work is completed so that it can be inspected for compliance with this Order of Conditions. Copies of Planning Board and Board of Appeals decisions are to be provided.
- It appears the culvert pipes were installed and the road was widened to 30 feet.
- Copies of the Planning Board and Board of Appeals decisions are not in the file, but given the work was done over 30 years ago, I have not done a detailed search for those decisions.

RECOMMENDATION

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

Staff Report

Date: February 19, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Alden Road, Map 37, Lot 1C – Request for Certificate of Compliance – DEP# 023-1011, Fairhaven CON 023-123**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance
- Order of Resource Area Delineation dated October 15, 2007
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetlands
- 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

- No work was done. The order issued was for the delineation or the resource areas on site only.

COMMENTS

- The resource areas were delineated and approved. The Order has since lapsed and is no longer valid.

RECOMMENDATION

- I recommend issuing a Certificate of Compliance for an Order of Resource Area Delineation.

Staff Report

Date: February 19, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Tootle Lane, Map 37, Lots 2, 3, & 15 – Request for Certificate of Compliance – DEP# 023-1074, Fairhaven CON 023-124**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance
- Order of Resource Area Delineation dated September 29, 2009
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetlands
- 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

- No work was done. The order issued was for the delineation or the resource areas on site only.

COMMENTS

- The resource areas were delineated and approved. The Order has since lapsed and is no longer valid.

RECOMMENDATION

- I recommend issuing a Certificate of Compliance for an Order of Resource Area Delineation.

Staff Report

Date: February 18, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **5 Wamsutta Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-120**

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
- Buffer Zone to Salt Marsh

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.”
- **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

- Abandon existing septic system and replace with new system

COMMENTS

- The site plans indicate that the work falls outside of the approximate 100-foot buffer zone to the salt marsh.
- Likely, this would result in an improvement to water quality for the site as it will be a Title V compliant system.
- It appears the existing grade will not be changing much at all.
- Erosion and sedimentation controls have been proposed around the edge of the front of the property around the work area

RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 3 and Negative 6 Determination with the following conditions:
 - CAP-3
 - PCC-1
 - LOW-2

Staff Report

Date: February 18, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **55 Goulart Memorial Drive – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-121**

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
- Coastal Beach
- Coastal Dune
- Salt Marsh
- Rocky Intertidal Shore
- Buffer Zone to Coastal Beach

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.”
- **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

- Install two entrance aprons at Hoppy's Landing. The main entrance will be 35 feet long by 26 feet wide. The secondary entrance will be 33 feet long by 25 feet wide. The work will involve scraping out 4 inches of existing soil, grade, and asphalt. The Harbormaster will work with the Conservation Agent to install appropriate plantings around the parking area to offset the increase in impervious surface in a velocity flood zone.

COMMENTS

- The project is looking to pave an area within the velocity flood zone. One apron is entirely outside of the buffer zone to Coastal Beach. The eastern apron is partially within the buffer zone to Coastal Beach.
- The Harbormaster has included in the application that he plans to install plantings around the edge of the parking area to offset the increase in impervious surface.
- It doesn't appear that the project will have a significant impact on flood control and storm damage prevention.

RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 3 and Negative 6 Determination with the following conditions:
 - Plantings shall be installed no later than June 30, 2020.
 - Any debris produced from the work shall be disposed of offsite.

Staff Report

Date: February 19, 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)
- Revised site plan dated February 3, 2020
- Revised Alternatives Analysis dated February 3, 2020
- Revised site plan dated February 19, 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. 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 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 February 3 revised plans propose to pave the roadway past the first driveway opening to the end of the second driveway opening.
- 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.
- The February 19 revised plans show the changes to the silt trap to reflect no haybales. The dimensions of the RV parking area have been added. The RV parking area is noted as pavers.

RECOMMENDATION

- I recommend the Commission close the public hearing and issue an Order of Conditions for the plans dated February 19, 2020 with the following recommended conditions:

Approve plan dated February 19, 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

24. STO-1
25. STO-3
26. MAC-3
27. MAC-7
28. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
29. DEB-1
30. DEB-5
31. BLD-3
32. BLD-4
33. EMC-2
34. SIL-3
35. SIL-4

- 36. SIL-8
 - 37. LOW-3
 - 38. WAT-3
 - 39. WAS-2
 - 40. WAS-3
 - 41. 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 19, 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)
- Revised plan dated February 3, 2020
- Revised plan dated February 19, 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.
- The silt trap detail has been revised to not include haybales.
- The siltation control barrier has been extended to protect the full length of the salt marsh.
- A concrete pad has been included for a propane tank.

RECOMMENDATION

- I recommend the Commission close the public hearing and issue an Order of Conditions for the plans dated February 19, 2020 with the following recommended conditions:

Approve plan dated February 19, 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 only the following: 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. REC-3
 17. DER-1
 18. PCC-3
 19. EMC-1
 20. PCC-1
 21. SIL-5
 22. SIL-9
 23. SIL-10
 24. SIL-11
- C. During Construction
25. STO-1
 26. STO-3
 27. MAC-3
 28. MAC-7
 29. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 30. DEB-1
 31. DEB-5
 32. BLD-3
 33. BLD-4
 34. EMC-2
 35. SIL-3
 36. SIL-4
 37. SIL-8
 38. LOW-3
 39. WAS-2
 40. WAS-3
 41. WAT-3
 42. 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.
 43. 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.
 44. The walkway shall be constructed using ThruFlow Impact Decking panels to reduce the shading impacts to the salt marsh.
- D. After Construction/In Perpetuity
45. 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.
 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
- 52. At no point shall the salt marsh be disturbed. Any lawn maintenance shall be conducted no closer than 5 feet to the edge of the salt marsh.

Staff Report

Date: February 20, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **15 Grinnell Street – Notice of Intent – DEP# 023-1314, Fairhaven CON 023-117**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Revised plans dated February 18, 2020

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.
- The revised site plans dated February 18, 2020 no longer include two sheds and a storage container. Those have been substituted with one 20ft x 28ft shed. Other changes include shifting garage option B to be in line with the existing garage and adding a grassed swale to direct water to the rear of the property from the swimming pool area.

COMMENTS

- The entirety of the project with the exception of the majority of the driveway is within the 100-foot buffer zone.
- 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 a portion of the addition, a portion of the pool and surrounding patio, the 20ft x 28ft shed on a slab, and about two-thirds of the grassed swale.
- 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 has been extended to protect the full length of the wetland.
- The siltation fence has been revised to be a combination of both silt fence and silt sock/straw wattle.
- The work, including grading, is proposed no closer to the wetland line than 17 feet. The shed itself is about 22 feet off the wetland line.

RECOMMENDATION

- If the Commission feels the changes have addressed their comments, I recommend closing the public hearing and issuing an Order of Conditions for the plans dated February 18, 2020 with the following recommended conditions:

Approve plan dated February 18, 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

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-1
 - 43. WAS-3
 - 44. WAT-3
 - 45. RUN-2
- 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-1 This shall be noted in the Certificate of Compliance and shall be an ongoing condition.
- 50. DER-4

Staff Report

Date: February 19, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **46 Sconticut Neck Road – Notice of Intent – DEP#023-1296,
Fairhaven CON-19-050**

DOCUMENTS REVIEWED

- Notice of Intent and associated attachments submitted
- Revised plans dated September 18, 2019
- Revised mitigation plan dated August 10, 2019
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw
- Stormwater Management Plan Review by GCG Associates, Inc. dated June 25, 2019
- Second review by GCG Associates, Inc. dated August 26, 2019
- Third review by GCG Associates, Inc. dated October 2, 2019
- Revised Sheet C-6 dated January 26, 2020

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Salt Marsh
- Priority and Estimated Habitat for Rare and Endangered Species
- Land Subject to Coastal Storm Flowage

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
- No work is proposed within 100 feet of Salt Marsh, Priority and Estimated Habitat for Rare and Endangered Species, or Land Subject to Coastal Storm Flowage

PROJECT SUMMARY

- The Notice of Intent was filed for the construction of an 8-house subdivision, roadway, stormwater facility, and utilities and for wetland mitigation of historical impacts.
- The proposed construction is located in the most western portion of the property and will be located on approximately 2.3 acres of predominantly disturbed land or old field habitat. An additional impact to natural wood land will impact approximately 2,500 square feet (0.06 acres). The remainder of the property, approximately 25 acres, will remain undisturbed.
- The Fairhaven Conservation Commission issued an Order of Resource Area Delineation (ORAD) on April 4, 2019 confirming the wetland delineation on the property (DEP File # SE 023-1284).
- A historic wetland impact area was identified by MassGIS 2005 Human Altered Areas database. The entire area accounts for 24,751 square feet.
- To mitigate for the historic impact, the project proposes to construct a 16,728 square foot deciduous forested swamp located in the southeast portion of the property.

COMMENTS

- The applicant has been engaged in permitting processes through the Army Corps of Engineers, MassDEP, and Water Quality.
- They requested to come before the Commission to provide an update regarding where they stand regarding those permitting efforts.
- They would additionally like to see if peer review is still necessary, since their plans and designs are essentially being dictated by the various state and federal agencies. They feel it may become redundant and confusing to add another party to the mix, but will defer to the Commission.
- I noted that they will still need to file with the Planning Board, who may choose to continue the Stormwater Peer Review to ensure compliance with local bylaws.
- The applicant indicated that due to the previously mentioned permitting agencies, the number of lots is still in question. Once those discussions are settled, they will plan to submit to the Planning Board approximately two weeks after that. They also acknowledge that Planning will likely conduct peer review.

RECOMMENDATION

- I recommend asking the applicant if they would like to request a continuance to a future meeting to allow for further time to address the plan changes needed to comply with all permitting.

Staff Report

Date: February 19, 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
- Revised narrative dated February 18, 2020
- Revised plans dated February 14, 2020
- Revised Stormwater Report dated February 18, 2020

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	9	<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 x</i> 'Happy Returns'	Happy Returns Daylily	Non-Native
NF	365	<i>Nepeta x 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 proposed constructed pocket wetlands plantings are primarily native. I would recommend the following substitutions:
 - *Alisma subcordatum* instead of *Alisma plantago-aquatica*
 - *Symphotrichum puniceum* instead of *Aster puniceus c*
- The revised O&M plan has provided a more detailed invasive vegetation control plan.
- 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 waivers requested from MassDEP Stormwater Regulations have not been outlined in the submitted updated stormwater report.
- The submitted changes have not yet been reviewed by the peer reviewer for compliance with Stormwater Regulations.
- The project is also before the Planning Board.

RECOMMENDATION

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

Staff Report

Date: February 19, 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
- Revised Notice of Intent dated February 18, 2020
- Revised site plans dated February 14, 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 parking 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.
- The revised plans and Notice of Intent dated February 14, 2020 and February 18, 2020, respectively, note the following changes:
 - The storage buildings and maintenance sheds have been deleted
 - The western driveway has been deleted
 - The detention basin has been reconfigured
 - Due to the reduction in impervious area, changes have been made to the project peak rates and volumes

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:* How much of the buffer zone is being proposed to be cleared?
- The revisions to the plan provide close to a 25-foot buffer zone between the proposed construction and the wetlands.

- The proposed landscaping vegetation is mostly native species with the following exceptions:
 - Japanese Zelkova (*Zelkova serrata*)
 - Dwarf Japanese Juniper (*Juniper procumbens* 'Nana')
- The proposed constructed pocket wetlands plantings are primarily native. I would recommend the following substitutions:
 - *Alisma subcordatum* instead of *Alisma plantago-aquatica*
 - *Symphyotrichum puniceum* instead of *Aster puniceus*
- The new plans have not yet been reviewed by the peer reviewer. The last set of plans seemed to substantially comply with the MassDEP Stormwater Regulations, but the submitted plans are significantly different to what the peer reviewer last reviewed.
- The Commission will need to determine whether or not they feel peer review of the new plans dated February 14, 2020 will need stormwater peer review.

RECOMMENDATION

- If the Commission feels the new plans need peer review, I recommend asking the applicant if they would like to request a continuance to a future meeting.

Staff Report

Date: February 19, 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)
- Preliminary Peer Review Report, prepared by LEC Environmental Consultants, Inc. dated February 13, 2020

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 Penalty (ACOP) 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.
- The applicant has submitted to Natural Heritage.
- The peer reviewer provided a preliminary review, stating “due to the complicated and extensive history of enforcement actions and Conservation filings dating back to the Applicant’s purchase of the property in 2009, this letter is intended to be a preliminary review report outlining our initial comments and requests for information. Once the comments provided below are addressed, we will provide a more specific review of the project.”
- The peer review letter provided an overview of the background, previous filings, and the current filing.
- The peer review letter outlined findings and recommendations, including the following:

- The site plans submitted with the NOI are lacking information and should be updated to reflect existing conditions and clarify scope of work proposed. The plans are lacking a current wetland delineation.
- The existing conditions plan should be based on a current land survey...[and] should clearly label all features which are subject to the ACOP and current NOI. No proposed features or activities should be depicted on the existing conditions plan.
- The applicant should clarify which activities have been completed and which activities have not been completed under the previous filings.
- The Commission should seek additional clarification on the permitting status of the “toe plate” located at the base of the seawall.
- Numerous items should be removed from resource areas as soon as possible, including booms, anchors, and associated wires, the wooden float, and the 6” x 6” wooden posts along the property line near the entrance.
- The Commission should not issue a COC for File No. Se 023-1127
- The applicant should address the comments provided in DMF’s letter in response to the NOI dated January 7, 2020.
- The applicant’s engineer has been provided with the peer review letter and I have not yet received any response.

RECOMMENDATION

- I recommend asking the applicant if they would like to request a continuance to allow time to address the comments from the peer reviewer.

Staff Report

Date: February 19, 2020
To: Conservation Commission
From: Whitney McClees, Conservation Agent
Subject: **333 Bridge Street – Notice of Intent – DEP# 023-1315, Fairhaven CON 023-119**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Riverfront Area
- Bordering Vegetated Wetland
- Inland Bank
- Buffer Zone

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
- **Inland Bank:** 310 CMR 10.54(4)
 - (a) ...any proposed work on a Bank shall not impair the following:
 1. The physical stability of the Bank;
 2. The water carrying capacity of the existing channel within the Bank;
 3. Ground water and surface water quality;
 4. The capacity of the Bank to provide breeding habitat, escape cover and food for fisheries;
 5. The capacity of the Bank to provide important wildlife habitat functions. A project or projects on a single lot, for which Notice(s) of Intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 50 feet (whichever is less) of the length of the bank found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. In the case of a bank of a river or an intermittent stream, the impact shall be measured on each side of the stream or river. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures contained in 310 CMR 10.60.
 6. Work on a stream crossing shall be presumed to meet the performance standard set forth in 310 CMR 10.54(4)(a) provided the work is performed in compliance with the Massachusetts Stream Crossing Standards by consisting of a span or embedded culvert in which, at a minimum, the bottom of a span structure or the upper surface of an embedded culvert is above the elevation of the top of the bank, and the structure spans the channel width by a minimum of 1.2 times the bankfull width. This presumption is rebuttable and may be overcome by the submittal of credible evidence from a competent source. Notwithstanding the requirement of 310 CMR 10.54(4)(a)5., the impact on bank caused by the installation of a stream crossing is exempt from the requirement to perform a habitat evaluation in accordance with the procedures contained in 310 CMR 10.60.
 - (b) ...structures may be permitted in or on a Bank when required to prevent flood damage, including the renovation or reconstruction (but not substantial enlargement) of such facilities, buildings and roads, ...
 - (c) ...no project may be permitted which will have any adverse effect on specified habitat sites of Rare Species.
 - **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 project proposes site improvements to the property, some of which will occur within the 100-foot buffer zone to Bordering Vegetated Wetlands and within the 200-foot Riverfront Area.
- The proposed proposes the construction of a 900 square foot modernized main entrance and a 7,500 square foot employee wellness amenity space. Portions of the sidewalks, access drive, parking, site utilities, and landscaped areas will be reconfigured, resulting in a 6,000 square foot reduction in impervious surfaces.

COMMENTS

- The site is already developed, therefore this is a redevelopment project.
- They project proposed a reduction of impervious surface in the Riverfront Area, constituting an improvement.
- MassDEP had no comments.
- A Riverfront Area Alternatives Analysis was submitted. Some of the points are included below:
 - This project is considered Redevelopment since all of the proposed work is located on previously developed portions of the property.
 - The [work results] in a reduction of impervious surfaces in the amount of 6,050 square feet.
 - No work is proposed within the [inner 100 feet of the Riverfront Area]. The work proposed within the [outer 100 feet of the Riverfront Area] consists of the removal of approximately 6,000 square feet of pavement. This area will be loamed and seeded. A paved waterway will also be removed and replaced with a water quality structure which will discharge to a trap rock-lined channel.
 - Since these activities result in an improvement over existing conditions, and their proximity to the resource area is for the benefit of said resource area, consideration of alternative locations is not warranted.
- The majority of the work proposed falls outside the jurisdiction of the Conservation Commission.
- Primarily, the work that falls within the Commission’s jurisdiction is the reduction in pavement and the improvement of the water quality structure.
- The work proposed within the Commission’s jurisdiction is an improvement over existing conditions.
- There are erosion and sedimentation controls proposed along the western edge of the property between the work and the wetland and Nasketucket River.

RECOMMENDATION

- I recommend closing the public hearing and issuing an Order of Conditions for SE 023-1315, CON 023-119, 333 Bridge Street, plans dated January 28, 2020, with the following recommended conditions:

Approve plan dated January 28, 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 shall fully comply with all notes as outlined on the "Site Improvements Plan General Notes & Legend" Sheet of the approved plans.

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
22. SIL-7
23. SIL-9
24. SIL-10

C. During Construction

25. STO-1
26. STO-3
27. MAC-3
28. MAC-7
29. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
30. DEB-1
31. DEB-5
32. BLD-3
33. BLD-4
34. EMC-2
35. SIL-3
36. SIL-4
37. SIL-8
38. LOW-3
39. WAS-2
40. WAT-3

D. After Construction/In Perpetuity

- 41. REV-1
- 42. RES-4
- 43. COC-1
- 44. COC-2

Perpetual Conditions

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

- 45. CHM-3
- 46. DER-4
- 47. SW-2
- 48. SW-9
- E. Stormwater Management
 - 49. SW-1
 - 50. SW-3
 - 51. SW-6
 - 52. SW-7