

Staff Report

Date: March 4, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **16 Wilbur's Point Drive – Request for OOC Extension – DEP# 023-1247, Fairhaven CON 023-130**

DOCUMENTS REVIEWED

- Request for Extension
- Order of Conditions issued April 18, 2017 and approved plan
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Coastal Bank
- Coastal Dune
- Rocky Intertidal Shore
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF)

PERFORMANCE STANDARDS

- **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.
- **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 Order of Conditions permitted the removal of the ground level cottage and replacement with a single-family dwelling on an open concrete column foundation in compliance with FEMA and Mass Building Code for construction in a Velocity Zone, along with associated site work.

COMMENTS

- According to the Extension request:
 - The project was delayed due to extensive State and Federal permitting for the upgrade of the existing vertical concrete seawall, which was permitted under SE 023-1268 and has been completed.
 - The next phase of work to be completed is the sloped rip-rap seawall along the northerly portion of the shoreline, which is expected to be completed this spring.
 - The hope is to begin the construction of the new home this year, but just in case there are further delays, the applicant is requesting a 3-year extension

RECOMMENDATION

- I recommend extending the Order of Conditions for three years to April 18, 2023.

Staff Report

Date: March 4, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Huttleston Ave, Map 31, Lots 115A & 117C – Request for Certificate of Compliance – DEP# 023-1245, Fairhaven CON 023-128**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- Notice of Intent dated January 11, 2017
- Order of Conditions dated March 6, 2017
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

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

- The applicant is requesting a Certificate of Compliance for vegetation clearing within the 100-foot buffer zone.

COMMENTS

- The request for a Certificate of Compliance states that the only work done was the clearing of a few paths. No other work was done and the Order is about to lapse.
- The Order of Conditions expires on March 6, 2020.
- There is another Notice of Intent pending in front of the Commission for this same property.

RECOMMENDATION

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

Staff Report

Date: March 4, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **97 Tootle Lane – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-125**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- 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

- Installation of a new septic system with tank and pump chamber within 100-foot buffer zone to Bordering Vegetated Wetland

COMMENTS

- The septic system proposed is a Title V-compliant system. It involves the abandonment of an existing cesspool.
- The leaching field and pumps will be located greater than 50 feet from the edge of the wetland.
- The plan includes erosion and sedimentation control between the work and the resource area.
- The pond in the rear of the property is labeled by MassGIS Oliver as a potential vernal pool.
- It appears that some changes in grade are proposed.
- Likely, this would improve water quality conditions in the area by abandoning an existing cesspool and constructing a Title V-compliant system.
- Board of Health will also need to approve the plans as well as the variances being requested.

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
 - SIL-10

Staff Report

Date: March 4, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **7 Shawmut Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-126**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Salt Marsh
- 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].
- **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 two existing failed cesspools will be pumped out and removed. The two structures on the property will then be tied into town sewer with the installation of piping, pump chambers, force mains, and a sewer manhole structure.

COMMENTS

- This project will be a significant improvement to existing water quality as there will no longer be a septic system onsite and the property will be tied into Town sewer.
- The work will be occurring close to the salt marsh as the entire property is likely filled salt marsh.
- The plans include erosion and sedimentation control.
- The pump chambers will be installed in the location of the existing cesspools and the piping will be installed using a Ditch Witch, according to the site engineer.
- It appears the existing grades will not change much.
- Board of Health and Board of Public Works will need to review and approve the plans.

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
 - SIL-10

Staff Report

Date: March 6, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Old Fort Road/Fort Phoenix State Reservation – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-127**

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
- There are other resource areas on the parcel, but they are more than 100 feet away.

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

- DCR is proposing to perform in-kind pavement resurfacing of the Fort Phoenix State Reservation courts, to repave areas of deteriorating pavement to support public safety.

COMMENTS

- While there are other resource areas on the State Reservation, they are more than 100 feet away from the proposed work. The only resource area is Land Subject to Coastal Storm Flowage.
- The project does not propose an increase in impervious surfaces and is unlikely to have an impact on flood control or storm damage prevention.
- Applicant has submitted a request to withdraw.

RECOMMENDATION

- I recommend accepting the request to withdraw.

Staff Report

Date: March 3, 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.
- Planning Board has approved the plan.

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.
15. Water quality monitoring as required by the Order of Conditions issued in 1993, SE 023-0448, is no longer needed.

B. Prior to Construction

16. CAP-3
17. REC-3
18. DER-1
19. PCC-3
20. EMC-1
21. PCC-1
22. SIL-5
23. SIL-7
24. SIL-9
25. SIL-10

C. During Construction

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. WAS-2
- 41. WAT-3
- D. After Construction/In Perpetuity
 - 42. REV-1
 - 43. RES-4
 - 44. COC-1
 - 45. COC-2

Perpetual Conditions

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

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

Staff Report

Date: March 4, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **6 Emerson Avenue – Notice of Intent – DEP# 023-1302, Fairhaven CON 19-066**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Architectural plans dated October 21, 2019, signed and stamped by James A. Herrick

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE
- Buffer Zone
- Coastal Beach, Barrier Beach, Marsh: No work proposed in these resource areas

PERFORMANCE STANDARDS

- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the 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

- Notice of Intent filed for the installation of a garage, stamped patio, and concrete driveway.
- Entire project takes place within Land Subject to Coastal Storm Flowage Zone VE.
- Only the proposed stamped patio falls within the buffer zone to Coastal Beach.
- According to the plan, impervious surface is increasing from 5,416 square feet (30.3%) to 7,703 square feet (43.1%).

COMMENTS

- I did not receive revised plans by the Commission’s deadline nor have I received a communication from the applicant. Therefore, I do not yet have answers to my questions from the last hearing.

- The amount of impervious surface that is proposed seems to be a large amount for a velocity flood zone area. How might that impact the property itself and the surrounding area?
- The property also falls within Buffer Zone to Barrier Beach and Buffer Zone to Marsh. It is important to consider how diverting any potential flood water or any runoff through the increase of impervious surface might affect the nearby resource areas.
 - The Barrier Beach and Marsh are located south of the property across Emerson Avenue.
- I have spoken with someone representing the applicant and they have indicated that they are intending to include a groundwater recharge system to reduce what counts toward the amount of impervious surface on the property.
- A representative for the applicant submitted a request for continuance to the March 23 meeting.

RECOMMENDATION

- I recommend accepting the request for a continuance to March 23, 2020.

Staff Report

Date: March 9, 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
- Revised plans dated February 28, 2020
- Revised planting plan dated March 6, 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.
- All of the proposed rain garden plants are native. The applicant has made substitutions of native plants for the non-native landscaping plants per my recommendations.

- The proposed constructed pocket wetlands plantings are all native.
- 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.
- In my opinion, this project needs stormwater peer review prior to any further discussion with the Commission.

RECOMMENDATION

- I would recommend limiting discussion on this project as very little new information has been submitted and stormwater peer review has not yet been completed and I recommend asking the applicant if they would like to request a continuance to address the above information.

Staff Report

Date: March 5, 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.
- Peer review has been initiated but not yet completed.
- In my opinion, this project needs to have stormwater peer review completed prior to any further discussion with the Commission.

RECOMMENDATION

- I recommend limiting discussion on this project as no new information has been submitted to the Commission and asking if the applicant would like to request a continuance to a future meeting to allow for peer review to be completed.

Staff Report

Date: March 6, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **44 Torrington Road – Enforcement Order – No DEP#, Fairhaven EO 023-010**

DOCUMENTS REVIEWED

- Enforcement Order dated December 9, 2019
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Draft Wetland Restoration Plan dated March 4, 2020 with plans dated March 7, 2020

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone
- 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
- **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 Enforcement Order required that a restoration plan shall be filed with the issuing authority on or before March 9, 2020 for the following:
 - An assessment of the site and submission of a restoration plan by a qualified, licensed professional by March 9, 2020
 - Restoring and revegetating the disturbed area to the original extent of the resource area by June 30, 2020 as laid out by the Commission in response to the submitted restoration plan
 - Assessments of vegetation for three growing seasons following the completion of the work shall be submitted to the Commission. If any of the planted vegetation fails to establish, the property owner shall be required to replace those that fail.
 - The Conservation Commission, its employees, and its agents shall have a right of entry to inspect or compliance with the provisions of this Enforcement Order
 - The Commission reserves the right to impose additional conditions on any or all portions of this project that could impact an area of statutory interest under the Act and/or the Fairhaven Wetlands Bylaw.
 - The restoration plan shall be in compliance with the Performance Standards for Bordering Vegetated Wetland (310 CMR 10.55(4)). Specifically, 310 CMR 10.55(4)(b)1, 2, and 6 require the area restored to be equal to that of the area disturbed, the groundwater and surface elevation of the restoration area shall be approximately equal to that of the pre-disturbed Bordering Vegetated Wetland, and at least 75% of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons, and prior to said vegetative reestablishment any exposed soil in the restoration area shall be temporarily stabilized to prevent erosion.

COMMENTS

- The draft restoration plan was submitted as a "fluid" document, requesting input from the Commission, to be discussed with the engineer and wetland scientist at the March 23 meeting.
- The draft wetland restoration plan includes the following recommendations:
 - Stumps will remain
 - Planting of 21 tree saplings 8-10 feet in height, 3" caliper

- Consideration of some shrub plantings
- A significant presence of invasive species on the site will make it difficult for the new plantings to survive, therefore the area where the cutting occurred should have the invasive species removed using a backhoe or similar machine
- Removal of all cut trees, branches, and other brush/slash from the area, using heavy equipment to allow area to be planted more quickly
- Completion of the removal and planting by May 31, 2020
- 2 years of monitoring in the late spring and late fall
- There should be three years of monitoring given the proposed removal of invasive species
- With the removal of the invasive species, both the trees and shrubs will have an opportunity to establish.
- The shrubs can be planted closer together to allow for better establishment.
- The species recommendations are appropriate for the area.
- The biggest concern with any restoration in this location is the significant presence of invasive species. Ensuring that the native plants are given a head start without having to compete with well-established invasives will be crucial.
- The WRP recommends spring planting and watering through the summer. A fall planting could also be considered, which would limit need for watering and allow plants to establish themselves. Invasives would still need to be kept clear of the site until the new plants are established.

RECOMMENDATION

- I recommend amending the restoration plan to include:
 - three (3) years of monitoring
 - clusters of shrubs among the stumps and proposed tree planting locations, including the following species:
 - Highbush blueberry (*Vaccinium corymbosum*)
 - Bayberry (*Morella pensylvanica*)
 - Winged sumac (*Rhus copallinum*)
 - Could also include Sweet pepperbush (*Clethra alnifolia*) and/or Inkberry (*Ilex glabra*)
 - Only non-cultivars should be used