

Staff Report

Date: March 16, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **22 Alder Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-129**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

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

PERFORMANCE STANDARDS

- **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.
- **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

- Construction of a 16-foot by 12-foot deck on the rear of the house on three sonotubes

COMMENTS

- The work is proposed more than 50 feet from the coastal beach. The impact to the ground is 3 sonotubes.
- In my opinion, this project complies with the performance standards.

RECOMMENDATION

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

Staff Report

Date: March 16, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **43 Elizabeth Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-131**

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

- Remove carport and a portion of the asphalt driveway and construct a 2-car garage attached to the house on a full foundation with a master bedroom above

COMMENTS

- The proposed construction is approximately 60 feet from the estimated edge of the wetland.
- The plan includes erosion control from the corners of the house to the edges of the property line between the proposed work and the estimated edge of the wetland.
- The garage is proposed to be constructed in an area that is predominantly paved driveway. The proposed area of the garage does not substantially increase the amount of impervious surface on the property.
- The work does not appear that it will have a significant impact on the resource area.

RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 3 and Negative 6 Determination with the following conditions:
 - PCC-1
 - LOW-2
 - No storage of equipment or materials closer than 50 feet to the resource area or beyond the erosion control shall be allowed. Any excavated material must be property disposed of offsite.

Staff Report

Date: March 17, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Scotcut Neck Road, Map 43, Lots 193-195 – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-132**

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

PERFORMANCE STANDARDS

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

PROJECT SUMMARY

- The applicant wishes to clear the underbrush, leaving the trees, and plant grass.

COMMENTS

- There appears to be a foundation from what used to be a house. Historic aerals shows there may have been a house on the lot in the 1960s and 1970s.
- Based on Google Earth aerals, it appears as though the lot was maintained until about 10 years ago
- The trees are proposed to remain.
- Some native maritime shrubs and groundcover plants could be planted to help with flood control, such as:
 - Highbush blueberry (*Vaccinium corymbosum*)
 - Bayberry (*Morella pensylvanica*)
 - Winged sumac (*Rhus copallinum*)
 - Creeping juniper (*Juniperus horizontalis*)
 - Lowbush blueberry (*Vaccinium angustifolium*)
- Applicant could consider the following alternatives for lawn grass:

- Microclover
- Fescue grass
- Planting of native species will also help with the likely presence of invasive species on site.
- *Question for Applicant:* How do you propose to remove all of the underbrush?
- *Question for Applicant:* What is your plan for the existing foundation on the property?

RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 3 and Negative 6 Determination with the following conditions:
 - Work with the Agent with regard to a planting plan, to be submitted within 90 days.
 - No mature trees shall be removed and all root systems of the existing trees shall not be damaged.

Staff Report

Date: March 19, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Torrington Road, Map 29B, Lot 171 – Request for Amended Order of Conditions – DEP# 023-1289, Fairhaven CON 19-034**

DOCUMENTS REVIEWED

- Request for Amended Order of Conditions
- Revised Site Plan dated January 13, 2020
- Order of Conditions issued March 4, 2019
- Approved Site Plan dated January 25, 2019
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Buffer Zone
- Bordering Vegetated Wetland (no work proposed in this resource area)
- Land Subject to Coastal Storm Flowage (no work proposed in this resource area)
- Barrier Beach (no work proposed in this resource area or within 100 feet)

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.”

PROJECT SUMMARY

- The OOC was issued on March 4, 2019 approving a site plan with depicted a proposed single family dwelling, the construction of a driveway, a 9-foot-high concrete block retaining wall, an in-ground swimming pool and an associated perimeter patio, the installation of underground utilities, and the placement of fill to properly grade the site.
- The revised plan dated January 13, 2020 depicted a different house footprint, driveway configuration, and grading schematic, resulting in a significant reduction in the scope of work.

- The revised project will result in a 26% reduction in building coverage relative to the proposed house, deck, porch, pool, and patio areas due to the elimination of the in-ground swimming pool and associate perimeter patio areas and concrete block retaining wall.
- The approved retaining wall structure was located 27 feet from the edge of the BVW and the closest structure will now be the house at 52 feet from the edge of the BVW.
- The above changes will also result in a significant reduction in the required volume of fill to build the swimming pool.
- The driveway reconfiguration results in significantly less area than previously proposed.

COMMENTS

- The revision moves the project further from the wetland and reduces the scale of the project.
- Overall, there is a reduction in impervious surfaces.
- The special conditions will need to be amended to reflect the removal of the pool.

RECOMMENDATION

- I recommend closing the public hearing and issuing an Amended Order of Conditions for the plans dated January 13, 2020 with the following conditions to replace the conditions issued with the original Order:

Approve plan dated January 13, 2020

A. General Conditions

1. These conditions shall be in place of the 23 conditions attached to the original Order of Conditions.
2. ACC-1
3. 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.
4. REC-1
5. REC-2
6. ADD-1
7. ADD-2
8. ADD-4b
9. ADD-4c
10. ADD-5
11. STO-4
12. STO-5
13. LOW-2. Where there is no siltation fence, the Limit of Work shall be the property boundary.
14. WET-1

B. Prior to Construction

13. CAP-3
14. REC-3
15. DER-1
16. PCC-3
17. EMC-1

18. PCC-1
 19. SIL-5
 20. SIL-7
 21. SIL-9
 22. SIL-10
- C. During Construction
23. STO-1
 24. STO-3
 25. MAC-3
 26. MAC-7
 27. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 28. DEB-1
 29. DEB-5
 30. BLD-1
 31. BLD-3
 32. BLD-4
 33. EMC-2
 34. SIL-3
 35. SIL-4
 36. SIL-8
 37. LOW-3
 38. WAS-2
 39. WAT-3
- D. After Construction/In Perpetuity
39. REV-1
 40. REV-3
 41. RES-4
 42. COC-1
 43. COC-2

Perpetual Conditions

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

44. CHM-3
45. DER-4
46. At no point shall any work occur beyond the placed boulders on the property as depicted on the approved plans, unless expressly permitted by the Conservation Commission.

Staff Report

Date: March 23, 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
- Revised plans dated March 16, 2020
- Revised plans dated March 20, 2020

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 received revised plans dated March 20, 2020 addressing the inconsistencies I noted in the revised plans dated March 16, 2020.
- The revisions reflect that the amount of impervious surface on the property is going to increase by about 1,194 square feet rather than by 4,430 square feet. This better addresses my concern of a significant increase in impervious surface in a velocity flood zone and buffer zone to barrier beach and bordering vegetated wetland.
- One tree is proposed to be removed in the location of the proposed garage.
- No grade changes are proposed.
- The revised plans also include a drywell system for groundwater recharge from the garage, proposed patio, and existing patio. This will assist in reducing the impacts of an increase in impervious surface on groundwater.
- I recommend that the proposed plantings near the garage and along the southern property line near the wetland include:
 - Highbush blueberry (*Vaccinium corymbosum*)
 - Bayberry (*Morella pensylvanica*)
 - Winged sumac (*Rhus copallinum*)

RECOMMENDATION

- I recommend closing the public hearing and issuing an Order of Conditions for plans dated March 20, 2020, with the following conditions:

Approve plan dated March 20, 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 Where there is no erosion and sedimentation barrier as shown on the approved plans, the limit of work shall be the property line.

B. Prior to Construction

13. Plantings to be installed shall be submitted to the Conservation Commission or its Agent prior to anything being planted. Plantings shall include non-cultivars of Highbush blueberry (*Vaccinium corymbosum*), Bayberry (*Morella pensylvanica*), and/or Winged sumac (*Rhus copallinum*).
14. CAP-1 This includes no fill for structural purposes in a Velocity flood zone.
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
23. STO-1
 24. STO-3
 25. MAC-3
 26. MAC-7
 27. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 28. DEB-1
 29. DEB-5
 30. BLD-3
 31. BLD-4
 32. EMC-2
 33. SIL-3
 34. SIL-4
 35. SIL-8
 36. LOW-3
 37. WAS-2
 38. WAS-3
 39. WAT-3
- D. After Construction/In Perpetuity
39. REV-1
 40. RES-4
 41. COC-2
 42. An as-built plan of the entire project, including the drywell system, signed and stamped by a professional engineer shall be submitted with the request for the Certificate of Compliance.
- Perpetual Conditions
The below conditions do not expire upon completion of the project.
43. CHM-2 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
 44. DER-4
 45. Annual inspection and maintenance of the drywell system shall be the responsibility of the property owner and any successor in interest or successor in control of the property subject to this order. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
 46. At no point shall the breakaway walls of the garage be modified so they are no longer breakaway.

Staff Report

Date: March 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
- Revised plans dated February 28, 2020
- Revised planting plan dated March 6, 2020
- Revised plans dated March 10, 2020
- Letter to Conservation Commission dated March 17, 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.
- The eastern stormwater structure, which is a constructed pocket wetland, will be located less than 25 feet from the edge of the wetland
- Proposed grade changes for the constructed pocket wetland appear to range from less than a foot to 5 feet.

- The applicant has made substitutions of native plants for the non-native landscaping plants per my recommendations.
- The revised O&M plan has provided a more detailed invasive vegetation control plan.
- This project will need a SWPPP.
- 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 to complete stormwater peer review of the most recent plans 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 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

- *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.
- No changes from the previous meeting.

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 19, 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
- Revised draft Wetland Restoration Plan dated March 17, 2020 with plans dated March 17, 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 first draft of 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
- The submitted revisions include:
 - Planting of two trees at 7 Waybridge Road
 - Further explanation of size of trees:
 - "It is important for the FCC to realize that the replacement tree species will be saplings & not mature trees. These tree saplings would have a height of 8' to 10' (3-3.5" caliper/root ball size 34"/weight 800 lbs.). Mature tree species would not survive the stress of transplantation especially in a coastal setting with the added stress from salt spray. NOTE: a 6" caliper tree would have a root ball of 66-72"/weight of 5000-6000 lbs. and a height of 18-20'. This would most certainly result in plant failure. I DO NOT recommend this at all."
 - Inclusion of shrub plantings, using the recommendations given
 - Removal of the old fill
 - Revision of the timeline to include removal of fill and invasive species
 - Note that they would like to discuss the proposed 5-year monitoring period as well as spring vs. fall planting with the Commission during the March 23 meeting.
- These revisions address all of the comments from the Commission at the last meeting
- 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.
- On the revised site plan, it appears they are proposing to remove two stumps from the 7 Waybridge Road property and replace with two trees.
- The fine has not yet been paid.

RECOMMENDATION

- Because the engineer and wetland scientist would like to discuss further with the Commission, I cannot make a recommendation at this time.

Staff Report

Date: March 19, 2020
To: Conservation Commission
From: Whitney McClees, Conservation Agent
Subject: **General Business**

Bills

- \$550.00 to PowerOptions: Annual Membership Dues
- \$2,239.26 to LEC Environmental Consultants: Peer Review of 1 Bella Vista Island
- \$10.00 to Chadwick's Awards Unlimited: Name Plate for Gary Lavalette
- \$240.00 to Fairhaven Neighborhood News: Legal Ads for 3 meetings (2/10, 2/24, 3/9)
- \$2,500.00 to GAF Engineering: Refund of peer review deposit, unused