

Staff Report

Date: April 21, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **2 Alcobia Drive – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-135**

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
- Salt Marsh
- Buffer Zone

PERFORMANCE STANDARDS

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

PROJECT SUMMARY

- The applicant is proposing to construct an 8' x 12' wood shed set on six (6) 10" round, 4ft deep sonotubes.
- The shed will be located to the rear of the property.
- Mixing of cement will be contained to a concrete washout circular area using a sediment control straw log

COMMENTS

- The proposed location for the shed is within the outermost 10-15 feet of the buffer zone to salt marsh.
- If this property were not located within the flood zone, this would be an exempt minor activity.
- The applicant has proposed that a concrete washout area will be used to contain any concrete washout and prevent it from flowing into the marsh.

RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 3 and Negative 6 Determination for 2 Alcobia Drive with the following conditions:
 - CAP-3
 - WAS-2

Staff Report

Date: April 23, 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
- Revised draft Wetland Restoration Plan dated March 30, 2020 with plans dated March 30, 2020
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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 first submitted revisions included:
 - 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.
- The second submitted revisions include:
 - Stumps to remain at 7 Waybridge in addition to the planting of two trees
 - Tree plantings have been revised to include the number of each and the addition of Eastern Hemlock
 - 7 Red maple
 - 7 Black gum tupelo
 - 3 Yellow birch
 - 4 Eastern hemlock
 - Shrub plantings have been revised to include the number of each as well as the total
 - 12 High bush blueberry
 - 13 Sweet pepperbush
 - 12 Inkberry
 - 11 Bayberry
 - Revision to the timeline regarding the removal of fill and removal of invasive species to occur in spring/early summer 2020
 - Revised planting schedule to occur third week of September
 - Installation of a sprinkler system to permit timed watering during fall months of 2020 and the summer and fall months of 2021-2025
 - Monitoring updated to include 5-year monitoring due to presence of invasive species

- Note that the timeline could be affected by the pandemic and further adjustments may need to occur
- 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.
- The fine has not yet been paid but I have communication from the engineer that it will be forthcoming and the property owner understands that it needs to be paid.

RECOMMENDATION

- I recommend approving the revised restoration plan dated March 30, 2020 and the associated plans dated March 30, 2020 with the following amendments and conditions:

Amendments:

- Substitute 4 *Tsuga canadensis* trees with 4 *Larix laricina*

Conditions:

- ACC-1
- ADD-1
- ADD-4b
- This Restoration Plan and associated Enforcement Order shall apply to any successor in interest or successor in control of the property subject to this order and to any contractor or other person performing work conditioned by this order.
- Once the sprinkler system is installed, contact the Conservation Agent for an inspection.
- At no point, shall any work be done beyond the edge of current area of disturbance as shown on the approved plan.
- MAC-3
- REP-2
- REP-3
- REP-5
- REP-8
- REP-9
- REP-11, modified to reflect 5 years of monitoring.

The following conditions shall be recorded and apply in perpetuity:

- DER-4
- REP-12