

Staff Report

Date: May 13, 2020
To: Conservation Commission
From: Whitney McClees, Conservation Agent
Subject: **Discussion/Action**

EPA Request for Proposed Bylaw Change

- Dave Patterson submitted the following request:

EPA established e-mailbox for applicants to send their notices to and, to date, the system has worked successfully in New Bedford. The proposed language is simply so the EPA is notified of a project that may potentially impact their efforts in the Harbor. They do not wish to take any authority away from the Commission, nor do they wish to impact regulatory decisions. They simply wish to be notified.

EPA would like to coordinate with the Town of Fairhaven to have the following underlined text amended into Fairhaven's Wetlands Bylaw (Chapter 192), as follows:

§ 192-3. Exceptions.

B. The permit and application required by this chapter shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that:

(1) The work is to be performed by or has been ordered to be performed by an agency of the Commonwealth of Massachusetts or a political subdivision thereof.

(2) Advance notice, oral or written, has been given to the Commission or its agent prior to commencement of work or within twenty-four (24) hours after commencement.

(3) For work any work proposed to the north of the eastern terminus of the hurricane barrier, and within one hundred (100) feet of a coastal wetland resource area protected under the Massachusetts Wetlands Protection Act and corresponding regulations, notice shall also be provided to the United States Environmental Protection Agency (EPA), which is implementing the cleanup of the New Bedford Harbor Superfund Site.

(4) The Commission or its agent certifies the work as an emergency project.

(5) The work is performed only for the time and place so certified for the limited purposes necessary to abate the emergency.

(6) Within twenty-one (21) days of commencement of an emergency project a permit application shall be filed with the Conservation Commission for review as provided by this chapter.

§ 192-5. Notice and hearings.

A. At the time any person files an application or request for determination with the Conservation Commission, he/she shall give written notice thereof, by certified mail or hand delivery to all abutters according to the most recent records of the Assessors, including those across a traveled way, a body of water or a town line. The notice to abutters shall enclose a copy of the application or request, with plans, or shall state where copies may be examined by abutters. When a person requesting a determination is other than the owner or a person acting on behalf of the owner, the request, the notice of the hearing and

the determination itself shall be sent by the Commission to the owner(s) as well as the person making the request. For any work proposed to the north of the eastern terminus of the hurricane barrier, and within one hundred (100) feet of a coastal wetland resource area protected under the Massachusetts Wetlands Protection Act and corresponding regulations, notice shall also be provided to the United States Environmental Protection Agency, which is implementing the cleanup of the New Bedford Harbor Superfund Site. The notice to EPA shall enclose a copy of the application or request, with plans.

Policy on Non-Voting Consulting Conservation Commissioners

- Under MGL Chapter 40, Section 8C (Conservation Commission; establishment; powers and duties), “the commission may appoint a director, clerks, consultants and other employees, and may contract for materials and services within available funds insofar as the same are not supplied by other departments.”
- Thus, the Commission can elect to have non-paid consultants appointed by the Commission act as non-voting, consulting associates.
- The Commission could consider adopting the following policy or a similar policy:
 - In accordance with MGL Chapter 40, Section 8C, the Fairhaven Conservation Commission may appoint not more than two non-voting individuals to act as consultants to the Conservation Commission for terms not to exceed one year. These consulting positions shall be filled by residents of the Town of Fairhaven who have an interest in eventually serving as members of the Conservation Commission.

Staff Report

Date: May 13, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **279 Mill Road – Request for Extension – DEP# 023-1251,
Fairhaven CON 023-139**

DOCUMENTS REVIEWED

- Order of Conditions issued July 17, 2017
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetlands
- Buffer Zone

PERFORMANCE STANDARDS

- **Bordering Vegetated Wetland:** 10.55(4)
 - (a) work in a Bordering Vegetated Wetland shall not destroy or otherwise impair any portion of the BVW
 - (b) The ConCom may permit the loss of up to 5000 square feet of BVW when said area is replaced IF:
 1. The area is equal;
 2. The ground water and surface elevation are approximately equal;
 3. The overall horizontal configuration and location are similar;
 4. There is an unrestricted hydraulic connection to the same water body or waterway;
 5. It is in the same general area of the water body;
 6. At least 75% of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons; and
 7. The replacement area is provided in a manner which is consistent with all other regs in 310 CMR 10.00.
 - (c) The ConCom may permit the loss of a portion of BVW when;
 1. Said portion has a surface area less than 500 square feet;
 2. Said portion extends in a distinct linear configuration ("finger-like") into adjacent uplands; and
 3. In the judgment of the issuing authority it is not reasonable to scale down, redesign or otherwise change the proposal.

(d) No project may be permitted which will have any adverse effect on specified habitat sites of rare species

(e) No work shall destroy or otherwise impair any Area of Critical Environmental Concern

- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”

PROJECT SUMMARY

- The permit approved a ground-mounted solar installation in the buffer zone to Bordering Vegetated Wetlands.
- The request for a 3-year extension submitted the following reason:
 - Experiencing unforeseen procurement and construction mobilization delays due to COVID-19. Despite the pandemic, we are forecasting start of construction this summer.

COMMENTS

- Given the current situation, I have no concerns or comments regarding an extension.

RECOMMENDATION

- I recommend issuing an extension of the Order of Conditions for SE 023-1251 to July 17, 2023.

Staff Report

Date: May 13, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Bernese Street, Smith Street, Sedgewick Road, & Briercliffe Road – Request for Extension – DEP# 023-1253, Fairhaven CON 023-140**

DOCUMENTS REVIEWED

- Order of Conditions issued June 27, 2017
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Coastal Beach
- Coastal Bank
- Bordering Vegetated Wetland
- 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.
- **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.
- **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

- Order of Conditions approved the installation of stormwater best management practices (BMPs) on the four streets to treat the water quality in areas of Sconticut Neck.

COMMENTS

- The project was partially grant-funded and construction is awaiting further funding.
- The request for a 3-year extension is to allow further time to secure funding to construct the stormwater BMPs.

RECOMMENDATION

- I recommend issuing an extension of the Order of Conditions for SE 023-1253 to June 27, 2023.

Staff Report

Date: May 13, 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
- GCG Stormwater Peer Review Letter dated May 8, 2020
- Letter to Conservation Commission in response to May 8 Stormwater Peer Review dated May 11, 2020
- Revised plans dated May 11, 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 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 applicant submitted revisions on May 11 in response to the peer reviewer's most recent comments.
- The comments from the peer reviewer note the following:
 - Several waivers are requested from the Town's stormwater regulations (permitted by Planning Board).
 - Catch basins and silt sacks should be included in the Operation and Maintenance Plan
 - Side slopes of portions of the pocket wetland do not comply with MA Stormwater Standards, but peer reviewer notes that reasonable access for maintenance and repair is provided and that the waiver should be considered. However, granting the waiver will not relieve the applicant from any actions imposed by MassDEP.
 - Rain garden should be removed from O&M Plan and Stormceptor should be added.
 - Applicant should perform the calculations to analyze the development based on the original landform (without the existing paved driveway) as required by MA Stormwater Standards. GCG notes that because surrounding abutters are fully developed, any increase in post-development runoff would affect the downstream properties.
- The applicant's response notes that items have been added to the Operation and Maintenance Plan and the design plans as requested by GCG. They have also removed items as requested by GCG. Applicant notes that current existing conditions, not original landform, have been used for calculations, and, it appears, does not intend to perform calculations using original landform for existing conditions as required by MA Stormwater Standards.
- I am unable to verify whether the items listed in the letter have been added to the plans as the submitted plans are very poor resolution and I am unable to verify whether or not the Operation and Maintenance Plan has been revised as the revisions were not submitted.
- Better resolution plans should be submitted along with the revised O&M Plan to verify changes.
- The primary concern is that the project does not currently meet Stormwater Standard 2. The applicant argues that the project is a redevelopment project and therefore only has to meet Standard 2 to the maximum extent practicable. The majority of the site is undeveloped and therefore all new impervious area should meet Standard 2 to the fullest extent as it is considered new development. The purpose of Standard 2 is to prevent storm damage and downstream and off-site flooding.
 - "If the [ConCom] issues an [OOC] that is inconsistent with the Stormwater Management Standards, MassDEP may intervene unilaterally and issue a Superseding Order that requires compliance with the Standards." – MSH Vol. 1, Ch. 2, pg. 10
- Other issues raised by the peer reviewer have been resolved, are minor (forebay side slopes do not comply with MSH, but are accessible for maintenance), or are subject to approval by the Planning Board.

RECOMMENDATION

- I recommend asking the applicant if they would like to continue the public hearing until June 1 to allow time to submit better quality plans, the revised O&M Plan, and provide a response to the fact that the project does not currently meet Stormwater Standard 2.

Staff Report

Date: May 13, 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
- Peer review letter from GCG Associates, Inc. dated May 11, 2020
- Response letter to peer review dated May 13, 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?
 - I still don't have an answer to this question from the applicant.
- 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*
- No revised plans were submitted with the letter.
- The peer review notes the following:
 - Proposed infiltration area vegetation should be cleared and replaced with loam and seed for maintenance. A cleared access path should be provided.
 - Relocate planting along edge of pocket wetland to provide maintenance access.
 - Side slopes for sediment forebay do not meet MSH standards, but forebay is accessible on one side. Waiver should be considered. However, granting the waiver will not relieve the applicant from any actions imposed by MassDEP.
 - Pocket wetland bottom elevation is above estimated seasonal high groundwater and should be excavated to the groundwater table to maintain adequate water levels.
 - Items need to be added to the construction phase erosion control plan and O&M plan.
 - GCG recommends properly sizing the infiltration area based on MSH requirements without the required estimated seasonal high groundwater separation.
- The applicant's response notes the length of time it took for the review to be completed. However, the applicant failed to submit further peer review funds in a timely manner, which delayed the process.
- The applicant's letter to the Commission requests input on the following items:
 - Clearing, loaming, and seeding of infiltration area
 - Elimination of vegetation bordering the constructed pocket wetlands
- Since no revised plans or associated documents (e.g. O&M Plan) were submitted, I cannot assess whether the comments from GCG have been addressed. However, based on the letter from the applicant, it appears that they would like input from the Commission regarding some of GCG's comments before proceeding with revisions.

RECOMMENDATION

- Based on the need for discussion with the Commission and no revised plans, I recommend asking the applicant if they would like to continue to a future meeting to allow for revisions to be submitted.

Staff Report

Date: May 13, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Bella Vista Island – Notice of Intent – DEP# 023-1309, Fairhaven CON 023-110**

DOCUMENTS REVIEWED

- Notice of Intent and associated site plans and documents
- MassDEP Administrative Consent Order with Penalty and Notice of Noncompliance dated June 25, 2019
- Previous Notices of Intent, Order of Conditions, Enforcement Orders
- Division of Marine Fisheries comments dated January 7, 2020
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Preliminary Peer Review Report, prepared by LEC Environmental Consultants, Inc. dated February 13, 2020
- Overall Site Plan dated April 16, 2020, submitted May 8, 2020

RESOURCE AREAS ON/NEAR SITE

- Salt Marsh
- Coastal Beach
- Coastal Dune
- Coastal Bank
- Land Containing Shellfish
- Land Under the Ocean
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF)
- Isolated Vegetated Wetlands

PERFORMANCE STANDARDS

- **Salt Marsh:** 10.32
(3) A proposed project in a salt marsh, on lands within 100 feet of a salt marsh, or in a body of water adjacent to a salt marsh shall not destroy any portion of the salt marsh and shall not have an adverse effect on the productivity of the salt marsh. Alterations in growth, distribution and composition of salt marsh vegetation shall be considered in evaluating adverse effects of productivity.
(4) A small project within a saltmarsh, such as an elevated walkway or other structure which has no adverse effects other than blocking sunlight from the underlying vegetation for a portion of each day may be permitted if such a project complies with all other applicable requirements of [the regulations for coastal wetlands].
- **Coastal Beach:** 10.27

(3) Any project on a coastal beach...shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.

(5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.

- **Coastal Dune: 10.28**

(3) Any alteration of, or structure on, a coastal dune or within 100 feet of a coastal dune shall not have an adverse effect on the coastal dune by:

(a) affecting the ability of waves to remove sand from the dune;

(b) disturbing the vegetative cover so as to destabilize the dune;

(c) causing any modification of the dune form that would increase the potential for storm of flood damage;

(d) interfering with the landward or lateral movement of the dune;

(e) causing removal of sand from the dune artificially; or

(f) interfering with mapped or otherwise identified bird nesting habitat.

- **Coastal Bank: 10.30**

(4) Any project on a coastal bank or within 100 feet landward of the top of a coastal bank...shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action.

(6) Any project on [a coastal bank significant to storm damage prevention or flood control] or within 100 feet landward of the top of such coastal bank shall have no adverse effects on the stability of the coastal bank.

- **Land Containing Shellfish: 10.34**

(4) Any project on land containing shellfish shall not adversely affect such land or marine fisheries by a change in the productivity of such land...

(6) ...the issuing authority may, after consultation with the Shellfish Constable, permit the shellfish to be moved from such area under the guidelines of, and to a suitable location approved by, the Division of Marine Fisheries, in order to permit a proposed project on such land.

- **Land Under Ocean: 10.25**

(3) Improvement dredging for navigational purposes affecting land under the ocean shall be designed and carried out using the best available measures so as to minimize adverse effects...

(4) Maintenance dredging for navigational purposes affecting land under the ocean shall be designed and carried out using the best available measures so as to minimize adverse effects...

(5) Projects...which affect nearshore areas of land under the ocean shall not cause adverse effects by altering the bottom topography so as to increase storm damage or erosion of coastal beaches, coastal banks, coastal dunes, or salt marshes.

(6) Projects...shall...be designed and constructed...so as to minimize adverse effects [or] have no adverse effects on marine fisheries habitat or wildlife habitat...

- **Buffer Zone General Provisions: 10.53(1)** "For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work."

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

PROJECT SUMMARY

- This NOI is a result of an Administrative Consent Order with Penalty (ACOP) with MassDEP that establishes corrective actions to bring the property into compliance.
- The applicant proposes to:
 - repair the existing eastern groin and provide beach nourishment
 - dredge under the bridge to allow the bridge channel to be deep enough for small crafts to navigate and place the dredged sand on the beach for nourishment purposes
 - repair the southeast end of the causeway side slope by placing large stones
- The applicant is seeking after-the-fact approval for:
 - Wooden posts and rope line that extend north and south perpendicular to the causeway along the eastern property line
 - Reconstruction of the existing stone seawall, including removing the southern end of the seawall

COMMENTS

- MA DMF has provided commentary on the project with regard to potential impacts to several marine fisheries resources and habitat.
 - Prohibit silt-producing activities or dredging from January 15 through May 31 of any year
 - Plan does not indicate where beach fill will be deposited. Disposal of beach fill in the intertidal area should be consistent with DEP’s Beach Nourishment Guide and be of equal grain size and appropriate slope to avoid premature loss from the beach and impacts to nearshore bottom habitat.
 - Proposed relocated seawall shall not be constructed below the mean high water line within the intertidal area
 - Plan does not depict the groin work. MA DMF recommends that groin repairs remain within the existing footprint. Groin shall be constructed with interstitial spaces to support marine fisheries habitat for macroalgae
- The NOI is missing the square footage of Land Subject to Coastal Storm Flowage impacted and the square footage of Land Containing Shellfish impacted.
- A portion of the proposed dredging is located within Natural Heritage Estimated Habitat.
- The applicant has submitted to Natural Heritage.
- The peer reviewer provided a preliminary review, stating “due to the complicated and extensive history of enforcement actions and Conservation filings dating back to the Applicant’s purchase of the property in 2009, this letter is intended to be a preliminary review report outlining our initial comments and requests for information. Once the comments provided below are addressed, we will provide a more specific review of the project.”
- The peer review letter provided an overview of the background, previous filings, and the current filing.
- The peer review letter outlined findings and recommendations, including the following:

- The site plans submitted with the NOI are lacking information and should be updated to reflect existing conditions and clarify scope of work proposed. The plans are lacking a current wetland delineation.
- The existing conditions plan should be based on a current land survey...[and] should clearly label all features which are subject to the ACOP and current NOI. No proposed features or activities should be depicted on the existing conditions plan.
- The applicant should clarify which activities have been completed and which activities have not been completed under the previous filings.
- The Commission should seek additional clarification on the permitting status of the “toe plate” located at the base of the seawall.
- Numerous items should be removed from resource areas as soon as possible, including booms, anchors, and associated wires, the wooden float, and the 6” x 6” wooden posts along the property line near the entrance.
- The Commission should not issue a COC for File No. Se 023-1127
- The applicant should address the comments provided in DMF’s letter in response to the NOI dated January 7, 2020.
- A site visit was performed on May 11, 2020 with the applicant’s engineer. None of the items outlined in the peer reviewer’s February 13 letter have been addressed. An accurate existing conditions plan is still needed. The plan dated April 16, 2020 still does not reflect existing conditions. This project should be split into two filings.

RECOMMENDATION

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

Staff Report

Date: May 13, 2020
To: Conservation Commission
From: Whitney McClees, Conservation Agent
Subject: **3 Hidden Drive – Violation**

DOCUMENTS REVIEWED

- 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.”

SUMMARY

- Violation reported and observed by Commissioners Simmons, Haworth, and Lavalette and the Conservation Agent
- Large amount of clearing and disturbance in buffer zone and within wetland
- Property owner has indicated that he was unaware of the regulations and will do whatever is needed to come into compliance

COMMENTS

- Wetland delineation is needed to determine the extent of disturbance to the wetland
- Restoration plan will need to be submitted

RECOMMENDATION

- I recommend the Commission consider requiring a restoration plan to be submitted within 90 days. If the property owner does not seem amenable to submitting a plan, the issuance of an Enforcement Order could be considered.