

Staff Report

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

Request from Climate Reality for Letter of Support

- Jean Lawlor and Laura Gardner of Climate Reality have requested a letter of support from the Conservation Commission to the Selectboard in support of a 10% increase in renewable energy in Fairhaven's Community Electricity Aggregation contract.

Scheduling Site Visits

- The Conservation Commission used to conduct joint site visits for each project prior to voting on them. As schedules got busier, it moved to an ad-hoc individual basis.
- Would the Commission like to reinstate a specific date and time for site visits for each project to be scheduled before the first hearing?

Staff Report

Date: May 26, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **42 Camel Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-141**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE
- 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 seeks to replace the existing porch, including the installation of three sonotubes. They note the work is to be done by hand, no heavy equipment, and that all storage of materials is to be within the driveway.

COMMENTS

- The proposed project is entirely within the Velocity Flood Zone
- The project falls in the outer 50 feet of the buffer zone to salt marsh and a portion of the project falls outside the buffer zone entirely.
- There is an existing deck and the applicant is seeking to replace it, which involves the installation of three sonotubes.
- There is no increase in impervious surface and the project does not appear to have a negative impact on the resource areas.

RECOMMENDATION

- I recommend closing the public hearing for 42 Camel Street and issuing a Negative 3 and Negative 6 Determination with the following conditions:
 - CAP-3
 - Any concrete or cement mixed on site shall only be transported by hand from the storage area (driveway) and any washout shall not be permitted to enter catch basins or resource areas.

Staff Report

Date: May 26, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **21 Cove Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-143**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE
- Coastal Beach
- Coastal Dune
- 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.”
- **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.

- **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 remove and replace an existing deck. The proposed deck will be constructed within the existing footprint as well as expanded within the existing front yard area. The deck, including stairs, will be 16 feet by 31.5 feet.
- The deck will be supported by and anchored to a sonotube foundation. The sonotubes will be excavated using a backhoe or bobcat and will be installed and backfilled in less than two days.
- The area to be disturbed for the installation of sonotubes under the deck will be stabilized with weed control fabric covered with crushed stone and any disturbed lawn areas will be treated with loam and seed.

COMMENTS

- The existing deck is 219 square feet. The proposed deck would be approximately 504 square feet.
- Total lot coverage would be about 13.7%, current lot coverage is approximately 14.4%
- The work will occur entirely within the Velocity Flood Zone
- It appears the work will occur primarily in the outer 50 feet of the buffer zone to Coastal Dune.
- The work consists primarily of the installation of sonotubes.
- Because machinery is proposed to be used, construction access should be via the existing gravel drive.

RECOMMENDATION

- I recommend closing the public hearing for 21 Cove Street and issuing a Negative 3 and Negative 6 Determination with the following conditions:
 - CAP-3
 - WAS-2
 - There shall be no discharge of any kind into resource areas or into catch basins or other drainage systems. Catch basins and other stormwater features shall be provided with the appropriate sedimentation control devices.
 - Construction access shall be via the existing gravel driveway.

Staff Report

Date: May 27, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **70 Reservation Road – Notice of Intent – DEP 023-1318, Fairhaven CON 023-142**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Comment Letter from Division of Marine Fisheries dated May 26, 2020

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE
- Coastal Beach
- Coastal Dune
- Coastal Bank
- 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.”
- **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 [that is determined to be significant to storm damage prevention or flood control because it is a vertical buffer to storm waters] or within 100 feet landward of the top of such coastal bank shall have no adverse effects on the stability of the coastal bank.
- **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.”
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PROJECT SUMMARY

- The applicant seeks to repair a seawall which has existed on the property since 1945.
- The existing patio blocks will be manually removed and stacked near the fence onsite for reuse. The deck will be dismantled and disposed of offsite. The deck will then potentially be rebuilt.
- The seawall work will include the following:
 - Removal of stone debris at the base of the existing seawall using a rubber tired backhoe or an excavator with access along the patio and deck area landward of the existing seawall. Debris to be disposed of offsite.
 - A trench will be excavated along the length of the base of the seawall to an approximate depth of 3.3 feet. Crushed stone shall be placed to a depth of 6 inches for a stable sub-base.
 - Concrete forms would be set upon the crushed stone base for the bottom pour which will be 16 inches wide by 36 inches high.
 - Once the forms are stripped, the seaward face will be backfilled using the same excavated sand (beach) material restoring the cobble beach surface back to its preconstruction condition.
 - On the landward side of the wall, a trench will be excavated to an approximate depth of 27 inches below the patio grades. 6 inches of crushed stone will be placed to support a 16 inch wide by 12 inch high footing. The new top portion of the seawall, with the shape of an upside down “U,” will then be poured in one piece. The wall would be backfilled and the lawn area restored to preconstruction conditions.

COMMENTS

- The seawall has a Chapter 91 permit, which was issued in 1998. On April 23, 2020, Chapter 91 approved the minor modification to the license to allow the seawall repair.
- The Division of Marine Fisheries has offered comments on the project.
 - The project site lies within mapped shellfish habitat for quahog (*Mercenaria mercenaria*).

- The subtidal region offshore of the jetties has been mapped by DEP as eelgrass (*Zostera marina*) habitat. Every effort should be made to avoid impacts to eelgrass.
- As much work as possible should be performed from the upland side of the project site to avoid impacts to the intertidal area and shellfish habitat.
- Special care should be maintained to ensure the offshore eelgrass beds are not impacted during the raking of the cobble beach along the base of the seawall and the excavation of the seawall.
- Work should occur within two hours of low tide to avoid seawater from infiltrating the concrete forms before they begin to set so a concrete washout does not occur within the coastal beach.
- Any seaward encroachment of the structures should be minimized to the maximum extent practicable. If habitat conversion occurs, mitigation will be warranted.
- The plan notes that the existing patio blocks are to be temporarily removed for construction and then reset in place or replaced with a poured concrete pad.
- The plan notes that the existing deck is to be removed and rebuild in place or replaced with patio blocks or a poured concrete pad.
- The Applicant's representative indicated that when the patio blocks are replaced, they are intended to be spaced so the area remains pervious.
- Construction access is provided through the existing lawn and the plans note that all concrete washout shall occur within the lawn area only.

RECOMMENDATION

- I recommend closing the public hearing for 70 Reservation Road and issuing an Order of Conditions for SE 023-1318, CON 023-142, plan dated May 11, 2020, with the following conditions:

Approve plan dated May 11, 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. The limit of work shall be the proposed edge of west footing, the northern and southern property lines, and the easterly limit of the patio/deck area.

B. Prior to Construction

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

17. EMC-1
18. PCC-2
- C. During Construction
 19. As much work as possible shall be performed from the upland side of the project site to avoid impacts to the intertidal area and shellfish habitat.
 20. Special care shall be maintained to ensure the offshore eelgrass beds are not impacted during the raking of the cobble beach along the base of the seawall and the excavation of the seawall.
 21. Heavy machinery is prohibited from the Coastal Beach.
 22. The raking of the cobble, as described in the construction notes on the approved plans, and the pouring of the seaward concrete forms for the base footing shall occur within two (2) hours of low tide to minimize impacts and prevent seawater from infiltrating the concrete forms before the set so a concrete washout does not occur within the coastal beach.
 23. If there is any seaward encroachment of the structures, the applicant shall minimize seaward encroachment to the maximum extent practicable.
 24. Any seaward encroachment of hardened structures may result in habitat conversion from cobble beach to hard substrate within intertidal habitat. Mitigation shall be warranted if habitat conversion occurs.
 25. STO-1
 26. STO-3
 27. MAC-3
 28. MAC-7
 29. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 30. DEB-1
 31. DEB-5
 32. BLD-3
 33. BLD-4
 34. EMC-2
 35. LOW-3
 36. WAS-2
 37. WAT-3
 38. The patio blocks shall be reset in such a manner that the area is pervious. If the existing deck is to be replaced with patio blocks, they shall be placed in such a manner that the area is pervious. The patio and deck shall not be replaced with a poured concrete pad.
- D. After Construction/In Perpetuity
 39. REV-1
 40. RES-4
 41. COC-1
 42. COC-2

Perpetual Conditions

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

43. CHM-1 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

Staff Report

Date: May 28, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Violations/Enforcement Orders/Cease and Desist Notices**

3 Hidden Drive

- The wetland has been flagged and I have reviewed and adjusted the line.
- The wetland scientist provided a preliminary inventory of vegetation that was removed and the engineer will be incorporating the list into the restoration plan.
- A restoration plan has not yet been submitted.
- We have received the \$300 fine.

251 Sconticut Neck Road

- The Commission issued a Cease and Desist for the installation of a basketball court in flood zone and potentially within buffer zone to salt marsh.
- I have been in contact with the property owner regarding preparation of a Notice of Intent application.
- The application was submitted 5/28/2020.

28 Cherry Street

- A fence was installed without a permit and it was brought before the Commission in August 2019. The Commission stated that the property owner had 90 days to file an after-the-fact permit from that date. No after-the-fact filing was submitted.
- Further fencing was installed recently and members of the Commission posted a Cease and Desist.
- The property owner submitted an after-the-fact filing on May 21, 2020.
- In a subsequent conversation with the property owner, she mentioned that there was no new digging involved for the installation of the fence, that only existing holes/footings were used.

Staff Report

Date: May 28, 2020
To: Conservation Commission
From: Whitney McClees, Conservation Agent
Subject: **General Business**

Bills

- \$110.00 to MACC for course registrations for Jay Simmons
- \$40.00 to MACC for Wetland Ecology course registration for Whitney McClees