

Staff Report

Date: June 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
- 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
- Revised Operation and Maintenance Plan dated May 21, 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 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.
- The applicant submitted a revised O&M Plan and legible plans that address the majority of the comments from the peer reviewer.

RECOMMENDATION

- I recommend closing the public hearing for SE 023-1299, CON 023-091, Bridge Street, Map 36, Lot 15, and issuing an Order of Conditions for plans dated May 11, 2020 with the following recommended 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. LOW-2 Where there is no erosion and sedimentation barrier, the property line shall serve as the alternation limit line.
 13. Issuance of this Order of Conditions shall not exempt or relieve the applicant from any actions imposed by the Massachusetts Department of Environmental Protection.
- B. Prior to Construction
14. CAP-3
 15. SW-8
 16. REC-3
 17. DER-1
 18. PCC-3
 19. EMC-1
 20. PCC-1
 21. PCC-2
 22. SIL-5
 23. SIL-7
 24. SIL-9
 25. SIL-10
- C. During Construction
26. STO-1
 27. STO-3
 28. MAC-3
 29. MAC-7
 30. MAC-6
 31. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 32. DEB-1
 33. DEB-5
 34. BLD-3
 35. BLD-4
 36. EMC-2
 37. SIL-3
 38. SIL-4
 39. SIL-8
 40. LOW-3
 41. WAS-2
 42. WAT-3
 43. Dewatering shall occur only in the area specified on the approved plans. Dewatering notes as outlined on Sheet 3 of the approved plans shall be followed.
 44. All 17 erosion and sediment control notes as outlined on Sheet 3 of the approved plans shall be followed.
- D. After Construction/In Perpetuity
45. REV-1
 46. RES-4
 47. COC-1
 48. COC-2

Perpetual Conditions

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

49. 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.
50. DER-4
51. SW-9
52. At no point shall any of the resource areas on site be altered in any way in perpetuity.
53. Invasive vegetation on site shall be managed as laid out in the Operation and Maintenance Plan. The applicant shall provide the name and contact information of the selected contractor to the Commission or its Agent and written notice shall be given to the Commission or its agent at least one week prior to when the work is to be performed. Every effort shall be made to control and eradicate invasive species without chemicals and natural herbicide options shall be explored and utilized prior to the use of harsh chemicals such as glyphosate. Herbicide application shall only be used after review of the site and approval by the Commission and in such a manner that does not damage any native vegetation or have any residual impact to groundwater. Documentation shall be submitted to the Commission or its Agent indicating the date of the work, the extent of the work, and the methods employed.

E. Stormwater Management

54. SW-1 This includes the Stormwater Report, Operation and Maintenance Plan, and any other documents listed in the Findings associated with this Order of Conditions.
55. SW-2
56. SW-3
57. SW-5
58. SW-6
59. SW-7

Staff Report

Date: June 19, 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
- Existing Conditions plan dated June 6, 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.
- The existing conditions plan does not include all of the resource areas as shown on the April 20 Overall Site Plan nor does it include the easterly property line.
- The Notice of Intent has not been split into two and the applicant still hasn’t provided the information requested in the February 13 peer review letter.
- The Commission should not spend time on site visits until all items in that letter are addressed.

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: June 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
- 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

- 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 submitted a letter regarding buffer zone impacts:
 - Total area of 25-foot no disturb zone impacted: 14.7% (2,202 square feet)
 - Total area of 100-foot buffer zone impacted: 48.5% (28,438 square feet)
- 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.

RECOMMENDATION

- Based on the lack of revised documents, 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: June 17, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **66 Bay Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-145**

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 AE

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

- Replacing 50 feet of 6-foot wooden fence at the back of the yard with 6-foot vinyl fence and adding 75 feet of 6-foot vinyl fencing on the side yard

COMMENTS

- This is a flood zone only project. There is already a fence in the rear of the yard. The side fence would be new footings.
- No mention is made in the application regarding the fence sitting 6” off the ground to allow for passage of wildlife and floodwaters.

RECOMMENDATION

- I recommend closing the public hearing for 66 Bay Street and issuing a Negative 3 and Negative 6 Determination with the following condition:
 - The bottom of the fence shall be six (6) inches off the ground to allow for the passage of wildlife and floodwaters.

Staff Report

Date: June 18, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **251 Sconticut Neck Road – Notice of Intent – DEP# 023-1319,
Fairhaven CON 023-144**

DOCUMENTS REVIEWED

- After-the-fact Notice of Intent 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 proposes to finish installing a 30-foot by 50-foot basketball court in the lawn area in buffer zone and flood zone.
- The installation involves:
 - Removal of top sod soil **(complete)**
 - Level with compacted crushed stone **(complete)**
 - Pour a 6" concrete reinforced (rebar) slab
 - Run electrical conduit.
 - Install basketball court kit

COMMENTS

- This was submitted in response to a violation. The property owner began installing the court without a permit and was issued a cease and desist by the Commission and was required to file an after-the-fact permit.
- The property falls entirely within the Velocity Flood Zone. The property directly abuts the Salt Marsh.
- I conducted a site visit on June 12 with two members of the Commission to discuss the project with the applicant.
- The top soil has been removed, the area has been leveled and crushed stone installed. The reinforcing rebar is partially installed. No concrete has yet been poured.
- We discussed potentially moving the basketball court further from the salt marsh.
 - The applicant indicated that he didn't want to move it too close to the road as he has had cars end up on his lawn before and doesn't want his family to be in danger. He seemed open to the idea of completing the second half of the court closer to the road rather than where it has been dug out currently.
- We also discussed the need for native plantings and the applicant stated that he would be willing to do so and indicated he would work on submitting a planting plan.
- The soil and grass that were removed to begin the installation of the court have been piled on site and should be removed entirely from the site.
- Erosion control and a location for concrete washout will be needed. The plan doesn't currently include them.
- The plans do not include the resource areas. As such, the Commission should not approve a line as there isn't one.
- The salt marsh boundary runs along the chain link fence in the rear of the property and for approximately 40-50 feet along the fence on the north side of the property.
- The Commission could consider requiring a living fence along the chain link fence along the north side and rear of the property. I have not confirmed whether the chain link fence was permitted by the Commission.

RECOMMENDATION

- If the Commission would like to see the basketball court relocated and a planting plan, I would recommend asking the applicant if he would like to request a continuance to the July 6 meeting to allow for time to modify the plans and submit a planting plan. Any revision of the plans should also include erosion control and an area for concrete washout.

Staff Report

Date: June 18, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **14 Wigwam Beach Road – Notice of Intent – DEP# 023-1320,
Fairhaven CON 023-146**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Salt Marsh
- Land Containing Shellfish
- Land Under Ocean
- Land Subject to Coastal Storm Flowage
- Buffer Zone

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].
- **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 caused by:
 - (a) alterations of water circulation;
 - (b) alterations in relief elevation;
 - (c) the compacting of sediment by vehicular traffic;
 - (d) alterations in the distribution of sediment grain size;
 - (e) alterations in natural drainage from adjacent land; or

(f) changes in water quality, including, but not limited to, other than natural fluctuations in the levels of salinity, dissolved oxygen, nutrients, temperature or turbidity, or the addition of pollutants

(5) ...projects which temporarily have an adverse effect on shellfish productivity but which do not permanently destroy the habitat may be permitted if the land containing shellfish can and will be returned substantially to its former productivity in less than one year from the commencement of work, unless an extension of the Order of Conditions is granted, in which case such restoration shall be completed within one year of such extension

- **Land under the Ocean 10.25**

(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...which affect land under the ocean shall if water-dependent be designed and constructed, using best available measures, so as to minimize adverse effects, and if non-water-dependent, have no adverse effects, on marine fisheries habitat or wildlife habitat caused by:

(a) alterations in water circulation;

(b) destruction of eelgrass (*Zostera marina*) or widgeon grass (*Rupia maritima*) beds;

(c) alterations in the distribution of sediment grain size;

(d) changes in water quality, including, but not limited to, other than natural fluctuations in the level of dissolved oxygen, temperature or turbidity, or the addition of pollutants; or

(e) alterations of shallow submerged lands with high densities of polychaetes, mollusks or macrophytic algae.

- **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."

- **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 proposes to construct a 6-foot-wide by 80-foot-long fixed dock with gangway and floats. Fixed pier is to be secured with ten (10) pilings with an aluminum deck and handrails. Floats are to be secured to 3 fixed pilings and will be 8 feet by 16 feet.

COMMENTS

- DEP has issued a file number with the following comments:
 - The pier as currently designed does not meet the Department's small docks and piers guidance, nor does it meet DMF guidance relative to shading impacts.
 - The Department's small docks and piers guidance recommends a width closer to three (3) feet.

- The DMF guidance related to shading impacts recommends that a three (3) foot pier should be elevated at least 4.5 feet off the salt marsh.
- The Department recommends that the pier be redesigned to meet Department and DMF guidance.
- The Notice of Intent does not account for impacts to Land Under Ocean or Land Containing Shellfish, in which pilings are to be installed. The NOI should be revised to show those impacts.
- Have potential impacts to eelgrass been considered?
- DMF has not submitted their comments yet.
 - *Question for Applicant:* Do you have proof of submittal to DMF?
- A Chapter 91 license and a 404 Water Quality permit may be required.
- Based on the current maps, it appears some of the project will fall within Natural Heritage Priority and Estimated Habitat. I asked the applicant's representative if the NOI had been submitted to NHESP. I have not yet received a response.
- The plans that have been submitted are in Chapter 91 format. A plan that complies with MassDEP requirements should be submitted that shows all resource areas on and near the site, including Estimated and Priority Habitat and Land Containing Shellfish, and is in a scale of not more than 1"-50'.

RECOMMENDATION

- I recommend asking the applicant if they would like to request a continuance to a subsequent meeting to allow DMF and NHESP to comment and to allow time to revise the plans.

Staff Report

Date: June 18, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

86-88 Middle Street

- At the May 4 meeting, the Commission granted another extension on the required after-the-fact filing submission for the work done in the rear of the property without a permit.
- The Commission voted to extend the deadline with the following two conditions:
 - Submit either the after-the-fact filing or a draft filing no later than 7 days prior to the June 22 meeting (June 15, 2020)
 - Come before the Commission at their June 22 meeting to discuss those documents.
- I received an email from the engineer on June 16, 2020 stating the following:
 - Due to the COVID crisis we unfortunately were not able to meet the submittal deadline June 15th. I assure you this is directly the result of being partially staffed and not the result of the applicant neglecting the issue. We are currently working towards finalizing the Notice of Intent submittal and hope to have it submitted prior to the June 22nd meeting. I would be more than happy to explain the situation to the Commission during that meeting.
- I asked the engineer to submit any draft documents that might be available for review and have not received a response or any draft documents.

4 Earle Street

- The property owner submitted a draft restoration plan. I provided an initial round of comments, which the property owner has addressed and submitted revised plans. I am waiting on comments from NHESP on the plan.
- I have several comments and questions on the revised plans that were submitted:
 - What do you mean by current large debris will be cut down?
 - Weeping willow is an introduced non-native and it can impact the water table.
 - Marsh marigold, highbush blueberry, and woodland strawberry are native plants.
 - How many of each type of vegetation? Where is each species going?
 - What will be the method of mechanical removal of invasive species? Hand digging, machines?
 - Once the invasive species are removed, there will be a significant amount of bare space, not all of which appears to be planted according to the planting plan. Will the bare space become lawn?
 - I would highly discourage the property owner from extending the current lawn into the 100-foot buffer zone as that will impact the wetland. The area cleared within the buffer zone should be planted with predominantly native species of trees, bushes/shrubs, and groundcover, not lawn.

10 Nelson Avenue

- I received a call reporting the installation of docks and jetties and that cement had already been poured at 10 Nelson Avenue. Two members of the Conservation Commission performed a site visit and issued a cease and desist for all activity as no permits under the Wetlands Protection Act and Fairhaven Wetlands Bylaw had been issued.
- They observed tire tracks from equipment on the beach, poured concrete forms, a significant amount of debris from taking apart one of the groin, and a ramp that had been temporarily constructed to the beach to allow access for equipment.
- The property owner was instructed to remove all equipment and ramp items from the coastal beach and to install erosion control at the edge of the yard to prevent soil erosion onto the beach. The Agent confirmed the removal of equipment and the installation of erosion control several hours later.
- An Enforcement Order was issued and needs to be ratified. The Enforcement Order requires the following:
 - Cease and desist any and all activity affecting the buffer zone and/or resource areas.
 - Resource area alterations resulting from activity shall be corrected and resource areas returned to their original condition.
 - A restoration plan shall be filed with the Commission on or before September 15, 2020 for an assessment of damage to the coastal beach and any other resource areas on site and restoration to original conditions, as approved by the Conservation Commission.
 - Complete a Notice of Intent and file with the Commission on or before September 15, 2020 for any work within resource areas on site and their 100-foot buffer zones.
 - The property owner shall take the following action to prevent further violations of the Act:
 - Maintain erosion and sedimentation controls until such time that soil stabilization has been established
 - No equipment on the coastal beach at any time
 - No movement of debris or rocks into the water or onto the beach
- Had the filing process been followed, DMF would have provided comments regarding measures to take to protect fisheries and fisheries' habitat. Additionally, the Commission would have been able to weigh in on whether or not it was appropriate to restore a deteriorating groin, as groins contribute to downdrift beach erosion.