

# Staff Report

Date: June 30, 2020  
To: Conservation Commission  
From: Whitney McClees, Conservation Agent  
Subject: **Discussion/Action**

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## Signature Approval Letter for Bills/Invoices

- The Commission voted last year to approve any member of the Commission and/or the Agent to sign bills and invoices. The signatures need to be updated to reflect current members of the Commission. The Accounting Department will only accept physical signatures, not electronic.
- The memo last year read:  
On July 29, 2019, the Fairhaven Conservation Commission unanimously voted Whitney McClees, Conservation Agent and Sustainability Coordinator, the authority to approve bills and invoices for the Conservation Commission.

Please be aware at any time the members of the Conservation Commission also have the authority to approve bills and invoices.

If you have any questions, please contact Jay Simmons, Chair of the Conservation Commission

## Policy on Project Review Prior to Submittal

- I'm presenting the following policy to the Commission for consideration:
  - Prior to application submittal, applicants are strongly encouraged to schedule a meeting with the Agent for project review. Not meeting with the Agent prior to submittal will likely result in unnecessary project delays.

# Staff Report

Date: June 30, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **210 Sconticut Neck Road – Request for Determination of Applicability – No DEP #, Fairhaven CON 023-147**

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## DOCUMENTS REVIEWED

- Request for Determination of Applicability
- 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

- The applicant is seeking to construct an 8-foot by 14-foot shed on 6 sonotubes in the northwest corner of the property.

## COMMENTS

- The shed is proposed on sonotubes, which will be the extent of the digging. There are no other resource areas nearby; this is a flood zone-only project.
- I don't believe the fence was permitted by the Commission.

## RECOMMENDATION

- I recommend closing the public hearing for CON 023-147, 210 Sconticut Neck Road, and issuing a Negative 3 and Negative 6 Determination with the following conditions:
  - There shall be no discharge of any truck washout, debris, or any other foreign material into any stormwater drainage systems or resource areas.
  - The shed shall be properly anchored to the sonotubes.

# Staff Report

Date: July 2, 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**

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## 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
- Buffer zone impact letter dated June 1, 2020
- Revised plans dated June 25, 2020
- Response letter to peer review dated June 26, 2020
- Revised stormwater report dated June 26, 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 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 of 15,000 SF)
  - Total area of 100-foot buffer zone impacted: 48.5% (28,438 square feet of 58,699 SF)
- 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*
- *Question for Applicant:* What will be the access and method of repair of the man hole in the wetland?
- The wetland line has not been reviewed since 2017, when the previous OOC was granted. As such, any OOC should not approve the line.
- It appears the project now meets the 65% rule. *Question for Applicant:* Is a waiver to Mass Stormwater Standards still being requested?
- Street sweeping should be included in the long-term O&M Plan
- I also did not see the infiltration basin listed in the long-term O&M Plan even though the letter stated it was included.
- The most recent submissions have not been sent back to the peer reviewer.
- The revised plans and stormwater report documents address some, but not all, of the peer reviewer's comments as well as my comments.

## RECOMMENDATION

- Given the changes that need to be made to the plans and stormwater report, I recommend asking the applicant if they would like to request a continuance to a subsequent meeting to allow time to address those items.

# Staff Report

Date: July 1, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## DOCUMENTS REVIEWED

- After-the-fact Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Revised site plan dated June 30, 2020

## 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.
- 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.
- I have not confirmed whether the chain link fence was permitted by the Commission.
- The revised plans moved the court further from the salt marsh in the rear so the court is now roughly 59 feet from the edge of the salt marsh rather than 34 feet.
- I met with the property owner on site to discuss the installation of plantings and silt fence, both of which should be completed at this point.

## RECOMMENDATION

- I recommend closing the public hearing for SE 023-1319, CON 023-144, 251 Sconticut Neck Road, and issuing an Order of Conditions for plans dated June 30, 2020, with the following recommended conditions:

Approve plan dated June 30, 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 chain link fence located on the property, as shown on the approved plans.
13. WET-1

B. Prior to Construction

14. CAP-3
15. REC-3
16. DER-1
17. PCC-3
18. EMC-1
19. PCC-1
20. Adequate erosion and sedimentation control measures, such as straw wattle and/or silt fence, shall be installed and maintained throughout the entire construction phase, until the site has been stabilized and their removal has been authorized (in writing or by issuance of the Certificate of Compliance) by the Commission or its agent. The Commission reserves the right to require additional or modified erosion and siltation controls during construction if it deems that site conditions warrant such measures.
21. SIL-9
22. SIL-10

C. During Construction

23. All previously removed grass, sod, and/or topsoil shall only be used to fill existing dug out areas, otherwise must be removed from the site. The current sod pile surrounding and adjacent to the tree in the northeast corner of the property shall not remain.
24. STO-1
25. All equipment used on site must be stored or parked in the driveway outside the buffer zone.
26. MAC-3
27. MAC-7
28. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
29. DEB-1
30. BLD-3
31. BLD-4
32. EMC-2



- 33. SIL-3
  - 34. SIL-4
  - 35. LOW-3
  - 36. Concrete washout shall be disposed of offsite.
- D. After Construction/In Perpetuity
- 37. REV-1
  - 38. RES-4
  - 39. COC-1
  - 40. COC-2

Perpetual Conditions

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

- 41. CHM-3
- 42. DER-4

# Staff Report

Date: July 1, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Frederick Avenue (Map 29, Lots 168-169) – Notice of Intent – DEP# 023-1321, Fairhaven CON 023-148**

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## DOCUMENTS REVIEWED

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

## RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE and Zone AE

## PERFORMANCE STANDARDS

- **Bordering Vegetated Wetland:** 10.55(4)
  - (a) work in a Bordering Vegetated Wetland shall not destroy or otherwise impair any portion of the BVW
  - (b) The ConCom may permit the loss of up to 5000 square feet of BVW when said area is replaced IF:
    1. The area is equal;
    2. The ground water and surface elevation are approximately equal;
    3. The overall horizontal configuration and location are similar;
    4. There is an unrestricted hydraulic connection to the same water body or waterway;
    5. It is in the same general area of the water body;
    6. At least 75% of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons; and
    7. The replacement area is provided in a manner which is consistent with all other regs in 310 CMR 10.00.
  - (c) The ConCom may permit the loss of a portion of BVW when;
    1. Said portion has a surface area less than 500 square feet;
    2. Said portion extends in a distinct linear configuration ("finger-like") into adjacent uplands; and
    3. In the judgment of the issuing authority it is not reasonable to scale down, redesign or otherwise change the proposal.
  - (d) No project may be permitted which will have any adverse effect on specified habitat sites of rare species

- (e) No work shall destroy or otherwise impair any Area of Critical Environmental Concern
- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
- **LSCSF General Provisions:** 10.24(1) “If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests.”

## PROJECT SUMMARY

- The applicant is proposing to construct a single-family dwelling with a driveway and associated utility services. The applicant is also proposing the construct Frederick Avenue from Sciticut Neck Road westerly 250 feet.

## COMMENTS

- A site visit was conducted with the applicant’s representative on June 30, 2020. The following items were discussed:
  - The project will need to go to Planning Board for approval.
  - FEMA does not allow fill for structural purposes in a flood zone.
  - The erosion/sedimentation control should not include haybales. It should be a combination of silt fence and straw wattle or compost filter sock. Haybales can introduce invasive species.
  - Grading and fill is proposed 5 feet off the wetland. We discussed the possibility of providing more of a setback to the wetlands.
  - The driveway falls in the velocity flood zone and they have proposed concrete. The extension of Frederick Avenue falls in both Zone VE and AE. We discussed the possibility of not paving Frederick Avenue as well as having the driveway remain pervious.
  - The amount of vegetation to be removed. We discussed providing the following information:
    - How much vegetation is proposed to be removed?
    - What vegetation is being removed? Native, invasive?
    - What is it being replaced with?
  - The location of utilities (water, sewer) on the plan and where the electrical utilities might connect in.
- The applicant’s representative has requested a continuance to the July 27 meeting to allow time to address the concerns raised during the on-site.

## RECOMMENDATION

- I recommend accepting the applicant’s request for continuance to the July 27 meeting.

# Staff Report

Date: July 2, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **161 Weeden Road, Knollmere Beach – Notice of Intent – DEP# 023-\_\_\_\_, Fairhaven CON 023-149**

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## DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Grain size report dated November 18, 2014
- Revised site plan dated July 1, 2020
- Beach Nourishment history letter dated July 2, 2020

## RESOURCE AREAS ON/NEAR SITE

- Salt Marsh
- Coastal Beach
- Coastal Dune
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE

## 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.
- **Buffer Zone General Provisions: 10.53(1)** “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
- **LSCSF General Provisions: 10.24(1)** “If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests.”

## PROJECT SUMMARY

- The applicant is proposing a beach nourishment project. They will add approximately 6 to 12 inches (maximum 250 cubic yards) of clean sediment within the beach nourishment area (approximately 8,600 square feet) annually.

## COMMENTS

- This project was previously permitted in 2014 and extended in 2017. That Order of Conditions has now expired and needs a Certificate of Compliance.
- A site visit with the project engineer was conducted on July 1, 2020. The following items were discussed:
  - Grain size analysis of sand
  - Profile of the beach included on the plans
  - How will the sand be spread?
  - Where will the sand be sourced from as there is no associated dredging with this project?
  - Several small boats are being left on the salt marsh at low tide and should be removed, either so they are in the water at low tide or so they are on the beach at low tide.
  - It appears much of the eel grass and other debris that washes is up is being raked into the beach and dune grass. If this material is to be raked, it should be disposed offsite, not left in the beach grass.
  - The salt marsh was last surveyed in 2014 and has not been relocated since.
  - Staking mean high water and limit of work so no sand is deposited below the water line or outside of the limit of work.
  - Project history of nourishment over the last 6 years as a baseline.

- The project engineer submitted a revised site plan that addressed much of what was discussed during the on-site. The changes included:
  - Added profile of existing and proposed beach.
  - Added an area on the plan where the sand will be deposited before it is spread.
  - Added a note indicating how the sand will be spread (a bobcat loader equipped with tracks).
  - Added a note relating to the staking of mean high water and limit of work prior to start of work.
  - Added a note regarding when the salt marsh was last surveyed.
- The engineer also submitted the grain size analysis that was done in 2014, which is the grain size they are trying to match.
- The engineer also submitted a summary of a comparison between current conditions and 214 conditions. He notes:
  - The 2020 beach contours are very similar to those shown on the 2014 plan, but roughly 3 to 4 inches lower.
  - The mean high water line has advanced landward approximately one foot from the 2014 mean high water line.
  - The 5-ft contour at the crest of the beach has receded approximately 5 feet.

## RECOMMENDATION

- Currently, DEP has not issued a file number and the public hearing cannot be closed until a file number is issued. If they have not issued a file number, I recommend the Commission ask if the applicant would like to request a continuance
- If there is a file number issued prior to Monday's meeting, I recommend closing the public hearing for CON 023-149, 161 Weeden Road, Knollmere Beach, and issuing an Order of Conditions for plans dated July 1, 2020, with the following recommended conditions:

Approve plan dated July 1, 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 limit of work noted on the approved plans. The only activities that may occur outside the limit of work shall be the deposition of sand/sediment in the sediment stockpile area as noted on the plans, the removal of boats from the salt marsh, and the removal of eelgrass and other debris from the coastal beach and dune.

13. Eelgrass and other debris previously deposited in the coastal dune or on any vegetation shall be removed.
  14. The Commission or its Agent shall be notified annually at least five (5) days prior to each sediment deposition event.
  15. WET-1
- B. Prior to Construction
16. CAP-3
  17. REC-3
  18. DER-1
  19. PCC-3
  20. EMC-1
  21. The sediment to be used for beach nourishment shall match the grain size report dated November 18, 2014, as attached to this Order, and proof of that match shall be provided to the Commission or its Agent prior to its use. This condition applies annually each time the work is being done.
  22. The Mean High Water line and the limit of work shall be staked prior to start of work and the Commission or its Agent shall be contacted for an inspection once the stakes are installed. This condition applies annually each time the work is being done.
- C. During Construction
23. STO-1
  24. Equipment shall only be stored in the designated parking area as marked on the approved plans.
  25. MAC-3
  26. MAC-5
  27. The Bobcat equipped with tracks is only permitted on the Coastal Beach within the limit of work. No equipment is permitted in any other resource area at any point.
  28. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
  29. DEB-5
  30. EMC-2
  31. LOW-3
- D. After Construction/In Perpetuity
32. RES-4
  33. COC-1
  34. COC-2

Perpetual Conditions

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

35. DER-4
36. Eelgrass and debris shall not be raked into the coastal dune or onto beach and dune grasses or other vegetation. Eelgrass and other debris, if raked, shall be disposed of offsite or otherwise left to remain on the sand. This condition shall survive the expiration of this Order and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
37. There shall be no storage of boats on the salt marsh or any other resource area vegetation at any point. This condition shall survive the expiration of this Order and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.

38. The only maintained access path to the beach shall be the stone path from the designated parking area. The vegetation along the edge of this path shall be mowed no more than three (3) feet from the edge of the stones. Any other paths that have been cut shall be left to revegetate. This condition shall survive the expiration of this Order and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.



# Staff Report

Date: July 1, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **6 Saltmarsh Road – Notice of Intent – DEP# 023-\_\_\_\_, Fairhaven CON 023-150**

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## DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Revised plans dated July 1, 2020

## RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Coastal Bank
- Rocky Intertidal Shore
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE

## 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

2. **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.

• **Rocky Intertidal Shore:** 10.31

(3) ...Significant to Storm Damage Prevention, Flood Control, or Protection of Wildlife Habitat, any proposed project shall be designed and constructed...so as to minimize adverse effects on the form and volume of exposed intertidal bedrock and boulders.

(4) ...Significant to the Protection of Marine Fisheries or Wildlife Habitat, any proposed project [that is water-dependent shall be] designed and constructed...so as to minimize adverse effects...on water circulation and water quality [and any proposed project that is not water-dependent shall have no adverse effects on water circulation and water quality.]

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

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

## PROJECT SUMMARY

- The applicant is proposing to construct a new Title V septic system within the buffer zone of coastal bank and rocky intertidal shore and within land subject to coastal storm flowage.

## COMMENTS

- Overall, the project is an improvement for the area.
- A site visit was conducted with the engineer on July 1 to discuss the project and a few minor plan changes were noted. The engineer submitted revised plans addressing the plan changes.
- The overall grade is going to be changing no more than a foot.
- There is a 10-foot setback to the neighboring property.
- The plans do show a wetland that has been flagged, but the work will occur more than 100 feet from the edge of the wetland. I recommend not approving that line.

## RECOMMENDATION

- Currently, DEP has not issued a file number and the public hearing cannot be closed until a file number is issued. If they have not issued a file number, I recommend the Commission ask if the applicant would like to request a continuance.

- If there is a file number issued prior to Monday's meeting, I recommend closing the public hearing for CON 023-150, 6 Saltmarsh Road, and issuing an Order of Conditions for plans dated July 1, 2020, with the following recommended conditions:

Approve plan dated July 1, 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
13. The project shall not displace water onto neighboring properties. If, after construction is complete, water is being displaced onto neighboring properties, the applicant shall rectify the situation by installing a berm or other such mitigating measure.

B. Prior to Construction

14. CAP-3
15. REC-3
16. DER-1
17. PCC-3
18. EMC-1
19. PCC-1
20. SIL-5
21. SIL-9
22. SIL-10

C. During Construction

23. STO-1
24. MAC-3
25. MAC-7
26. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
27. DEB-1
28. DEB-5
29. BLD-3
30. BLD-4
31. EMC-2
32. SIL-3
33. SIL-4
34. SIL-8
35. LOW-3

- 36. WAT-3
- D. After Construction/In Perpetuity
  - 37. REV-1
  - 38. RES-4
  - 39. COC-1
  - 40. COC-2

Perpetual Conditions

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

- 41. CHM-3
- 42. DER-4

# Staff Report

Date: July 2, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## 2 Melpen Way

- I received a report of a potential violation at 2 Melpen Way and conducted a site visit with the Chair and Vice Chair of the Commission and noted the following:
  - A significant number of trees and vegetation cleared in flood zone, buffer zone, and possibly resource area
  - Some stumps removed and chipped or burned
  - Vehicles tracks all through area
  - Bobcat onsite
  - Replacement/new construction of a boardwalk across the marsh to the beach, boards are not spaced far enough apart and will likely cause shading impacts to the marsh
  - Cease and desist posted
- I issued an enforcement order, which needs to be ratified, for the following:
  - All activity must cease and desist
  - Resource area alterations resulting from said activity shall be corrected and the resource areas returned to their original condition
  - A restoration plan shall be filed with the issuing authority on or before September 28, 2020 for a delineation of and assessment of damage to the resource areas on site and restoration to original conditions, as approved by the Conservation Commission

## 1 Smugglers Road

- During a site visit to an adjacent property, the following was noted by myself, the Chair, and the Vice Chair:
  - Placement of sand in a resource area
  - Cutting of vegetation in a resource area
  - Vehicle tracks through the marsh and on the beach
  - Potential removal of topsoil and vegetation in a flood zone and buffer zone
  - A verbal cease and desist was issued to one of the property owners and their presence was requested at the July 6 meeting