

# Staff Report

Date: August 7, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **6 Cove Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-163**

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## DOCUMENTS REVIEWED

- Request for Determination of Applicability and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- FEMA Technical Bulletin 5

## RESOURCE AREAS ON/NEAR SITE

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

## PERFORMANCE STANDARDS

- **Coastal Beach:** 10.27  
(3) Any project on a coastal beach...shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.  
(5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.
- **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 6-foot privacy fence running 80 feet along the property line between 6 and 10 Cove Street and then construct 20 feet of wood posts with vinyl chain.
- The majority of the work is proposed on the Coastal Beach and all of the work is in the VE Zone.

## COMMENTS

- Of the 80 feet of fence proposed, approximately 40 feet falls within coastal beach according to Oliver (it could be more) and approximately 40 feet falls within the buffer zone to coastal beach.
  - The fence proposed is a 6-foot privacy fence with 1x4 board panels
- The entire 20 feet of post and chain falls within coastal beach.
- No vegetation should be removed anywhere on the property.
- The property owner indicated he would be open to native plantings. I would recommend:
  - American Beachgrass (*Ammophila breviligulata*)
  - Beach Pea (*Lathyrus japonicus*)
  - American Dunegrass (*Leymus mollis*)
  - Beach Plum (*Prunus maritima*)
- Based on the performance standards for coastal beach, the project should not have any adverse impact on the beach by changing for form of any beach or adjacent or downdrift beach.
- The wood panels, despite being 6 inches off the ground, are likely to impact the ability of beach sand to effectively travel along the shore and could either cause erosion of the beach on the property in question or could potentially cause erosion of the beach on the property to the north, depending on the direction of accretion/erosion.
- It is possible that there is also a coastal dune on site between the beach and the road.
- The fence should not prevent any beach processes. If the boards in each panel could be spaced apart instead, that would help ensure no impact to the coastal beach.
- This property is also within the Velocity Flood Zone. As such, any work needs to comply with FEMA regulations, which indicate that solid fences must be designed and constructed to fail under base flood conditions without causing harm to nearby buildings. Additionally, open fences are presumed to not cause harmful diversion of floodwater or wave runup and reflection.
- Noncompliance with FEMA standards potentially puts the Town's NFIP designation at risk.
- After a site visit with the applicant on August 6, 2020, they requested a continuance to allow time to revise the plans.

## RECOMMENDATION

- I recommend accepting the applicant's request to continue to August 24, 2020.

# Staff Report

Date: August 6, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **22 Point Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-154**

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## DOCUMENTS REVIEWED

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

## RESOURCE AREAS ON/NEAR SITE

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

## PERFORMANCE STANDARDS

- **Coastal Beach:** 10.27  
(3) Any project on a coastal beach...shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.  
(5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.
- **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 concrete patio/walkway around the house for trash barrels, gas grills, and to replace some deteriorating bricks. The work will be done by hand with basic tools. Wood and rebar will be used to set cement. The access are will be the driveway and there will be no storage of any materials.

## COMMENTS

- Based on my calculation, they are proposing to add 272.5 square feet of cement.
- The work is being proposed within existing landscaped area next to the house.
- A site visit was conducted on August 5. The proposed cement will fall on the landward side of the house. It appears any floodwater will hit the house before it hits any additional cement.
- It does not appear that any work is proposed on the beach itself.

## RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 3 and Negative 6 Determination with the following conditions:
  - There shall be no deposition or disposal of cement into any resource area or stormwater drainage systems.
  - A copy of this Determination shall be kept on site while work is occurring.

# Staff Report

Date: August 6, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Scotcut Neck Road, Map 29, Lot 1C – Request for Amended Order of Conditions – DEP# 023-1258, Fairhaven CON 023-162**

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## DOCUMENTS REVIEWED

- Request for Amended Order of Conditions and associated documents
- Order of Conditions issued December 11, 2017
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

## RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone
- Intermittent Stream (Land Under and Bank of)

## 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.”

- **General Provisions (Limited Projects) 10.53**

(3) ...the Issuing Authority may issue an Order of Conditions...permitting the following limited projects...In determining whether to exercise its discretion to approve the limited projects listed in 310 CMR 10.53(3), the Issuing Authority shall consider the following factors: the magnitude of the alteration and the significance of the project site to the interests [of the Act], the availability of reasonable alternatives to the proposed activity, the extent to which adverse impacts are minimized, and the extent to which mitigation measures, including replication or restoration, are provided to contribute to the protection of the interests [of the Act].

(e) The construction and maintenance of a new roadway or driveway of minimum legal and practical width acceptable to the planning board, where reasonable alternative means of access from a public way to an upland area of the same owner is unavailable. **Such roadway or driveway shall be constructed in a manner which does not restrict the flow of water.**

Reasonable alternative means of access may include any previously or currently available alternatives such as realignment or reconfiguration of the project to conform to [regulations for inland wetlands] or to otherwise minimize adverse impacts on resource areas.

## PROJECT SUMMARY

- The applicant is requesting to amend an existing Order of Conditions to move a wetland crossing 280 feet to the west to cross a different part of the wetland.

## COMMENTS

- The total square footage of impact is 3 square feet less in the new proposed location.
- The area of wetland will be filled and two 8-inch pipes will be placed under the driveway to maintain the hydrologic connection.
- *Question for Applicant:* Are the pipes sufficiently sized to maintain the hydrologic connection between the two sides of the wetland so as not to turn the eastern portion into an isolated wetland?
- *Question for Applicant:* The driveway crossing appears to be proposed asphalt/pavement. The property owner indicated she did not want it paved. Were the driveway to be pervious, would that change the design significantly?
- Given the proximity to the wetland and the indication from the property owner, it is my opinion that the driveway crossing should be pervious.
- Moving the crossing for a future shared driveway rather than two driveways will reduce potential wetland impacts in the future.
- Currently, the location of erosion and sedimentation control is only shown on the cross section. It is not shown on the overall site plan.

## RECOMMENDATION

- If the Commission wishes to see a revised plan that shows the erosion and sedimentation control on the site plan and notes that the driveway will be pervious, I recommend asking the applicant if they would like to request a continuance to a subsequent meeting.
- If the Commission is satisfied that the crossing is designed to maintain appropriate hydrologic connection between the wetlands and that the material of the driveway and location of erosion and sedimentation control can be addressed in attached special conditions, I recommend closing the public hearing and issuing an Amended Order of Conditions for Scoticut Neck Road, Map 29, Lot 1C, plans dated July 20, 2020, with the following recommended conditions:

Approve plan dated July 20, 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 erosion and sedimentation barrier, as shown in the driveway cross-section, shall be placed along the entire length of the driveway crossing on both sides. It shall extend northerly on the western side of the crossing to Wetland Flag #120 and extend northerly on the eastern side of the crossing to Wetland Flag #117. It shall extend southerly at least 5 feet beyond the southerly wetland line between Wetland Flags #205 and #206.
13. LOW-2
14. The driveway crossing shall be pervious.
15. The driveway crossing located between Wetland Flags #118, #119, #205, and #206 shall replace the previously permitted driveway crossing and shall be the only wetland crossing permitted for access to Map #29, Lot #1E (Sub. Lot #6).

### B. Prior to Construction

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

### C. During Construction

25. Construction access shall be to the north side of the depicted limits of clearing along the Map #29 Lot #1C (Sub. Lot #4) lot line and the north side of the depicted limits of clearing along the conceptual common driveway location for Lots #5 and #6 and then between the two depicted boulder piles near Wetland Flags #116 and #120.
26. Any storage of materials shall be in the existing constructed Overlook Lane or a portion of the cleared area of Map #29, Lot #1D (Sub. Lot #5).
27. All equipment used on site must be stored or parked in the existing constructed Overlook Lane.
28. MAC-3
29. MAC-7
30. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
31. DEB-1
32. DEB-5
33. BLD-3
34. BLD-4
35. EMC-2
36. SIL-3
37. SIL-4
38. SIL-8
39. LOW-3
40. WAT-3

D. After Construction/In Perpetuity

41. REV-1
42. RES-4
43. COC-1
44. COC-2

Perpetual Conditions

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

45. 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.
46. DER-4
47. Any and all alterations of wetlands situated within the entire property (Scotcut Neck Road, Map 29, Lot 1C, Subdivision Lots 4, 5, and 6 on subdivision plan entitled "Overlook Acres", a Definitive Subdivision, Fairhaven, MA, Prepared for "Overlook Realty Trust" dated July 12, 2017, revised November 6, 2017, by N. Douglas Schneider & Associates Inc.) shall not exceed a cumulative total of 4,957 square feet in area.



# Staff Report

Date: August 7, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Old Fort Road, Fort Phoenix State Reservation – Notice of Intent – DEP# 023-1327, Fairhaven CON 023-161**

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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
- Coastal Beach
- Coastal Dune
- 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
- **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 site-redesign that involves numerous changes to improve the natural resilience of the area, add aesthetic value, as well as additional recreational benefits for the public.
- The existing old bituminous skating/hockey rink will be removed and four new pickleball courts will be installed. The courts will be surrounded with a 10-foot high PVC chain link fence and benches will be placed behind each court.
- The parking lot will be resurfaced only. No expansion is proposed.
- A 5-foot-wide concrete path is proposed between the parking lot and the tennis courts, basketball court, volleyball court, and pickleball courts. A short 10-foot-wide path is proposed between the road and the pickleball courts for maintenance access.
- Two rain gardens are proposed, one of which replaces an existing bituminous swale with catch basin. A yard drain will be installed in each of the rain gardens to manage overflow.
- A large area of existing lawn between the proposed pickleball courts, pathways, and parking area will be planted with a native meadow seed mix.

## COMMENTS

- There will be less impervious surface within 50 feet of the BVW.
- The area will provide better habitat for pollinators.
- The project will better allow for stormwater management and improve existing stormwater treatment.
- *Question for Applicant:* What is the feasibility of posting some educational signage along the road regarding the pollinator meadow?
- Overall, this project is an improvement for stormwater management and protection of wildlife habitat.

## RECOMMENDATION

- I recommend closing the public hearing and issuing an Order of Conditions for SE 023-1327, CON 023-161, Fort Phoenix, plans dated December 4, 2019 and July 2020, with the following recommended conditions:

Approve plan dated

### 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

### B. Prior to Construction

13. CAP-3
14. REC-3
15. DER-1
16. PCC-3
17. EMC-1
18. PCC-1
19. SIL-5
20. SIL-7
21. SIL-9
22. SIL-10

### C. During Construction

23. Construction access shall be existing roads and the proposed 10-foot-wide concrete pathway for emergency and maintenance access.
24. STO-1

25. All equipment used on site shall be stored or parked in the eastern parking lot.
  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. DEB-5
  31. BLD-3
  32. EMC-2
  33. SIL-3
  34. SIL-4
  35. SIL-8
  36. LOW-3
  37. WAS-2
- D. After Construction/In Perpetuity
38. REV-1
  39. COC-1
  40. COC-2
  41. Educational signage shall be posted along the road-side of the pollinator meadows.

Perpetual Conditions

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

42. 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.

# Staff Report

Date: August 7, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Natural Heritage and Endangered Species Program comments dated June 29, 2020
- Revised site plans dated July 14, 2020
- Letter from Environmental Consulting & Restoration, LLC dated July 16, 2020
- Division of Marine Fisheries comments dated July 23, 2020
- Revised site plans dated July 31, 2020
- Revised Notice of Intent dated July 31, 2020

## RESOURCE AREAS ON/NEAR SITE

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

## PERFORMANCE STANDARDS

- **Coastal Beach:** 10.27  
(3) Any project on a coastal beach...shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.  
(5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.
- **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.”
- **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.”

## 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?
- A Chapter 91 license and a 404 Water Quality permit may be required.
- Natural Heritage noted that the project will not adversely affect the Resource Area Habitat or state-protected rare wildlife species and it is their opinion that the project meets the state-listed species performance standard for the issuance of an Order of Conditions.
- DMF offered several comments, including the following:
  - The beginning of the proposed dock will be over salt marsh vegetation. MA DMF recommends that the dock decking be set at a minimum 1.5:1 H:W ratio.
  - The proposed pier width is 6'. Pier width should be reduced to minimize shading impacts. The DEP dock and pier guidelines note that the width of most small docks and piers in Massachusetts does not exceed 3 feet.
- The overall site plan does not show the coastal beach, so it is impossible to tell where the salt marsh transitions to coastal beach on the plans and the amount of overlay the proposed dock has over the marsh and coastal beach, as described in the letter and photos from ECR.
- The site plan does not include erosion and sedimentation control.
- The applicant has revised the plan to propose a 4-foot-wide dock with a 1.5:1 H:W ratio off the salt marsh. There is one error on sheet 3 where the fixed pier construction details still list the dock as 5 feet wide, but Section A-A shows it as 4 feet.

## RECOMMENDATION

- Based on the revisions to the plan, I recommend closing the public hearing and issuing an Order of Conditions for SE 023-1320, CON 023-146, 14 Wigwam Beach Road, plans dated July 31, 2020, with the following recommended conditions:

Approve plan dated

### 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 is restricted to the boundaries of the gangways, dock, and floats as depicted on the approved plans. No work is permitted northerly of Wetland Flag USM-2 or southerly of Wetland Flag USM-3.
  13. WET-1: The wetland boundary delineated in the field and/or shown on the plans has not been accepted or approved by the Conservation Commission through the issuance of this permit.
  14. The applicant shall pay a shellfish mitigation fee of \$100.00 to the Town of Fairhaven.
- B. Prior to Construction
15. CAP-3
  16. REC-3
  17. DER-1
  18. PCC-3
  19. EMC-1
  20. PCC-2
- C. During Construction
21. STO-1
  22. STO-3
  23. MAC-1
  24. MAC-2
  25. MAC-3
  26. MAC-7
  27. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
  28. DEB-1
  29. DEB-5
  30. EMC-2
  31. LOW-3
  32. WAT-3
  33. Any soil or debris removed during the course of construction shall not be disposed of in a resource area.
- D. After Construction/In Perpetuity
34. REV-1
  35. RES-4
  36. COC-1
  37. COC-2
- Perpetual Conditions  
*The below conditions do not expire upon completion of the project.*
38. CHM-3
  39. DER-4



# Staff Report

Date: August 6, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **86-88 Middle Street – Notice of Intent – DEP# SE 023-1324,  
Fairhaven CON 023-153**

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## DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Peer review dated August 3, 2020

## 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 requesting after-the-fact to pave the entire lot with concrete.

## COMMENTS

- A site visit was conducted on July 22, 2020. The following items were discussed as needing to be addressed:
  - better clarity on the plans regarding existing conditions dated December 2018, perhaps a note indicating which pieces of the project have already been completed and which remain due to using an out-of-date survey of the property
  - revision of site plan to include all the concrete work the applicant wants to do under and around the tent structure
  - stormwater report should include a brief explanation as to LID measures, whether they were considered, and ultimately why they don't work for the site
  - stormwater report should include an explanation for standard 7. The report notes that one is included, but I didn't see one.

- stormwater report should include a long-term pollution prevention plan. The checklist states one is included, but I didn't see it.
- construction period pollution prevention and erosion and sedimentation control plan should be included; can be as simple as a location for washout/dewatering on the plans potentially
- The peer review noted that several changes should be made to the plans, including the following items:
  - Existing and proposed spot grades and contours should be shown on the plan.
  - The proposed catch basin insert does not meet stormwater standards for Land Uses with Higher Potential Pollutant Loads.
  - The existing sidewalk manhole cover north of the utility pole is a curb inlet and should be both called out on the plan and protected with wattle or silt sack during construction.
  - There is not sufficient data to support the catch basin insert would work in a drainage manhole situation. The catch basin insert will restrict the manhole structure flow-through capacity. The peer reviewer does not recommend using a catch basin insert in the existing structure.
  - The applicant has requested a waiver for Standard #8 (Construction Period Pollution Prevention Plan). The peer reviewer does not recommend a waiver for this standard. The curb inlet in front of the project should be protected during construction. Concrete washout area should be identified on the plan and protected during construction.
  - Additions to the O&M Plan, such as frequency of catch basin inspection and including street sweeping.
- It is important to consider stormwater management, but the Commission should also consider whether or not the project protects the interests of the Act, namely storm damage prevention and flood control, in this case. The question that should be considered is how 100% impervious surface in a flood zone directly impacts flood control and storm damage prevention.
- The burden of proof is on applicant to demonstrate that the project does not negatively impact the interests of the Act.

## RECOMMENDATION

- As I have not yet received revised plans, I recommend asking the applicant if they would like to request a continuance to a subsequent meeting.

# Staff Report

Date: August 7, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Crow Island – Notice of Intent – DEP# 023-1325, Fairhaven CON 023-158**

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## DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Revised plans dated August 3, 2020
- Notice of Intent Narrative dated August 3, 2020
- NHESP comment letter dated August 7, 2020

## RESOURCE AREAS ON/NEAR SITE

- Coastal Beach
- Coastal Dune
- Coastal Bank
- Buffer Zone
- Land Containing Shellfish
- Land Under Ocean
- Land Under Waterbodies and Waterways
- Land Subject to Coastal Storm Flowage

## PERFORMANCE STANDARDS

- **Coastal Beach:** 10.27  
(3) Any project on a coastal beach...shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.  
(5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.
- **Coastal 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.”

- **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 (*Ruppia 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.

- **Land under Water Bodies and Waterways (under any Creek, River, Stream, Pond, or Lake)** 10.56

(4)

- (a) Work shall not impair the following:

1. The water carrying capacity within the defined channel, which is provided by said land in conjunction with the banks;
  2. Ground and surface water quality;
  3. The capacity of said land to provide breeding habitat, escape cover and food for fisheries; and
  4. The capacity of said land to provide important wildlife habitat functions. A project or projects on a single lot, for which Notice(s) of intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 5,000 square feet (whichever is less) of land in this resource area found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures established under 310 CMR 10.60.
  5. Work on a stream crossing shall be presumed to meet the performance standard set forth in 310 CMR 10.56(4)(a) provided the work is performed in compliance with the Massachusetts Stream Crossing Standards by consisting of a span or embedded culvert in which, at a minimum, the bottom of a span structure or the upper surface of an embedded culvert is above the elevation of the top of the bank, and the structure spans the channel width by a minimum of 1.2 times the bankfull width. This presumption is rebuttable and may be overcome by the submittal of credible evidence from a competent source. Notwithstanding the requirements of 310 CMR 10.56(4)(a)4., the impact on Land under Water Bodies and Waterways caused by the installation of a stream crossing is exempt from the requirement to perform a habitat evaluation in accordance with the procedures established under 310 CMR 10.60.
- (b) ...the issuing authority may issue an Order...to maintain or improve boat channels
- (c) ...no project may be permitted which will have any adverse effect on [rare species].
- **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 proposes to install underwater sewer service to the island and fill a pond onsite and grade for the purposes of two seasonal tents.

## COMMENTS

- After a site visit, the following items were discussed as being needed before the Commission can proceed:
  - Existing conditions plan needs to include all resource areas, labeled, with a note of when they were last delineated. This should include coastal beach, coastal dune, bank, and any other resource areas on site.
    - Addressed on revised plans, except there is no indication of when they were last delineated. Based on comments from the engineer during the site visit, the lines are not current and were last approved 5 years ago. As such, they should not be approved by the OOC without verification.
  - Information regarding the pond, calculations showing it is not ILSF, and information regarding whether it is being used for stormwater management of roof runoff from the house.

- Not addressed in the revised documents other than indicating the volume with no units. If it is impervious on the bottom or holds less than ¼-acre-foot, it would not qualify as ILSF under the Wetlands Protection Act. Ponds, both land under and the water in, are considered a wetland resource area under the Fairhaven Wetlands Bylaw.
  - Stormwater report
    - Submitted.
  - Revised NOI to include impacts to Coastal Beach, Land Containing Shellfish, Coastal Dune, Land Subject to Coastal Storm Flowage, and any other resource areas on site, even if they are marked 0.
    - Not submitted.
  - Information responding to DEP's comments
    - Additional NOI narrative submitted.
    - *Question for Applicant:* Will using the float and sink method for utility installation temporarily reposition or impact any sediment?
  - Notation on the plans of what material seasonal tent locations will be
    - Addressed on revised plans. The larger tent area will be a brick paver surface. The smaller will be a grass surface.
  - Inventory of trees and other vegetation to be removed, including notation that stumps are to be removed, and which native species will be planted somewhere on site to replace those removed.
    - Number of trees, including stumps, to be removed noted on the plans. Specific species not noted.
    - 24 trees proposed to replace those removed. All proposed trees are native.
  - More detailed description of how the force main will be installed both on the coastal beach and under the water
    - Submitted.
  - Erosion control to be moved to the edge of the vegetation clearing limit. Additionally, erosion control should include both straw wattle and silt fence.
    - Addressed.
  - Haybales should not be used for dewatering/sedimentation area. Straw or other material should be used instead.
    - Addressed.
- NHESP noted that the project will not adversely affect the actual Resource Area Habitat of state-protected rare wildlife species and offered their opinion that the project meets the state-listed species performances standard for the issuance of an Order of Conditions under the Wetlands Protection Act. They noted that MESA project review is necessary and no soil or vegetation disturbance, work, clearing, grading, or other activities related to the subject filing may be conducted anywhere on the project site until the Massachusetts Division of Fisheries & Wildlife has completed its MESA review.
- Division of Marine Fisheries has not yet submitted their comments.

## RECOMMENDATION

- I recommend asking the applicant if they would like to request a continuance to a subsequent meeting as the public hearing cannot be closed until Division of Marine Fisheries submits their comments on the project.