

Staff Report

Date: August 20, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **113 Cottonwood Street – Request for Certificate of Compliance – DEP# 023-1163, Fairhaven CON 023-168**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- Order of Conditions issued June 3, 2013
- Notice of Intent dated May 2013
- 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 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 Order of Conditions approved the demolition of an existing single-family home and the reconstruction of a new single-family home, sewer and water connections, stone walls, and driveway.

COMMENTS

- The project is a buffer zone and flood zone project only. The house is in the 100-year flood zone.
- The approved plans, dated December 11, 2012, show a single-family dwelling with a deck, porch, driveway, and garage. The submitted as-built plan is for the foundation only.
- The garage was not constructed, nor were the stone boundary walls. The driveway is also in a slightly different location than what was approved.
- What was constructed is less than what was approved. There are no continuing/ongoing conditions noted in the Order of Conditions.

RECOMMENDATION

- I recommend issuing a Certificate of Compliance for a Complete Certification for SE 023-1163, 113 Cottonwood Street.

Staff Report

Date: August 19, 2020
To: Conservation Commission
From: Whitney McClees, Conservation Agent
Subject: **148 Shaw Road – Notice of Intent – DEP# 023-1328, Fairhaven CON 023-168**

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
- Riverfront Area (no work proposed in the RFA)

PERFORMANCE STANDARDS

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

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

PROJECT SUMMARY

- The applicant is proposing to redevelop the western portion of the property, which includes razing and reconstructing the single family dwelling and agricultural barn, the installation of a Title 5 septic system and associated utilities, the construction of driveways, and filling and grading.

COMMENTS

- The septic system, house, and garage are outside of the 100-foot buffer zone based on the delineated wetland on the site plan.
- Because the wetland flags are in the middle of a regularly mowed agricultural field, I was unable to verify them during the site visit.
- The work within Conservation jurisdiction is the majority of the proposed agricultural barn and the gravel access driveway adjacent to the barn.
- The existing barn has already been demolished.
- The proposed work within the 100-foot buffer zone is proposed no closer than 25 feet from the closest wetland flag on the plan. It appears as though the wetland bends at a 90-degree angle from flag #7, though without a flag #8, it is difficult to be sure whether the wetland tracks along the edge of the wooded area behind the existing barn or continues southerly into the wooded area.
- No vegetation is proposed to be removed within the buffer zone.
- There will be an increase in building coverage within the buffer zone due to rotating the new barn 90 degrees from the orientation of the existing barn, but the building is 54 feet away from the wetland flag #7.

RECOMMENDATION

- I recommend closing the public hearing and issuing an Order of Conditions for SE 023-1328, CON 023-168, 148 Shaw Road, plans dated July 24, 2020, with the following recommended conditions:

Approve plan dated July 24, 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
- 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. STO-1
 24. STO-3
 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. BLD-3
 31. BLD-4
 32. EMC-2
 33. SIL-3
 34. SIL-4
 35. SIL-8
 36. LOW-3, with the exception of the field area that is currently in agricultural use.
 37. WAS-2
 38. WAT-3
- D. After Construction/In Perpetuity
 39. REV-1
 40. RES-4
 41. COC-1
 42. COC-2

Perpetual Conditions

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

43. Any expansion of or cutting of vegetation beyond the current extent of the field in agricultural use requires review and approval of the Fairhaven Conservation Commission.
44. DER-4

Staff Report

Date: August 19, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **6 Fort Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-169**

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
- Coastal Bank
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE

PERFORMANCE STANDARDS

- **Coastal Beach:** 10.27
(3) Any project on a coastal beach...shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.
(5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.
- **Coastal Bank:** 10.30
(4) Any project on a coastal bank or within 100 feet landward of the top of a coastal bank...shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action.
(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.”

- **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 path to the waterfront from the back of the house. The path will be a series of level paths and steps down the hillside.

COMMENTS

- The project falls within the 100-foot buffer zone primarily and minimally within flood zone.
- The applicant is proposing the project as a means of a safe way down to the waterfront as the backyard of the house is on the Fort Phoenix ledge.
- He is proposing minimal fill for the purposes of leveling some of the paths.

RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 2 and Negative 6 Determination.

Staff Report

Date: August 19, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

DOCUMENTS REVIEWED

- Request for Determination of Applicability and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- FEMA Technical Bulletin 5
- Revised documents submitted August 14, 2020
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RESOURCE AREAS ON/NEAR SITE

- Coastal Beach
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE
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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*)
- After a site visit with the applicant on August 6, 2020, they requested a continuance to allow time to revise the plans.
- The revised plan and narrative incorporates the comments made during the site visit. The fence will be a shadowbox design, 6 inches off the ground, 32 feet in length, and will run along the western side of the house slab.
- The fence will be cedar and use 7 posts.
- *Question for Applicant:* Can you clarify the location of the last fence post on the water side? Will it end at the end of the slab or will it continue beyond the end of the slab?
- If the fence is proposed to continue beyond the end of the slab on the waterside, I recommend ending the fence at the end of the slab to ensure no restriction to coastal beach processes or impacts to existing vegetation.

RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 3 and Negative 6 Determination with the following recommended conditions:
 - 1) The fence shall not extend past the concrete slab on the waterside.
 - 2) No vegetation shall be removed. Native vegetation may be planted.

Staff Report

Date: August 20, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **108 Sycamore Street – Notice of Intent – DEP# 023-1329, Fairhaven CON 023-167**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Coastal Bank
- Salt Marsh (no work proposed in the resource area)
- Coastal Beach/Tidal Flat (no work proposed in the resource area)
- Buffer Zone
- Riverfront Area
- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE

PERFORMANCE STANDARDS

- **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."
- **Riverfront Area:** 10.58(4)
 - (c) Practicable and Substantially Equivalent Economic Alternatives
 - (d) No Significant Adverse Impact
 - 1. Within 200 foot riverfront areas, the issuing authority may allow the alteration of up to 5000 square feet or 10% of the riverfront area within the lot, whichever is greater ..., provided that:

- a. At a minimum, a 100' wide area of undisturbed vegetation is provided... preserved or extended to the max. extent feasible....
 - b. Stormwater is managed ...
 - c. Proposed work does not impair the capacity of the riverfront area to provide important wildlife habitat functions. ...
 - d. d. ... incorporating erosion and sedimentation controls and other measures to attenuate nonpoint source pollution.
- **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 demolish the existing building and construct a new 2-family residential building, concrete driveway and walkways, paver patio, utilities, grading, and landscaping. All proposed improvements fall within Riverfront Area, flood zone and the 100-foot buffer zone to coastal bank and salt marsh and a portion of the work falls within the 100-foot buffer zone to tidal flat (coastal beach).

COMMENTS

- The applicant stated in their applicant that the property does not fall within Riverfront Area. Upon further review of their submitted USGS locus map, the property falls within the 200-foot Riverfront Area afforded to the Acushnet River.
- The majority of the site falls within the inner 100 feet of the Riverfront Area. Because there is already a building onsite, this project constitutes Redevelopment within Previously Developed Riverfront Area (310 CMR 10.58(5)).
 - An alternatives analysis will need to be submitted.
 - The proposed work will need to result in an improvement over existing conditions.
 - *Question for Applicant:* Was the area degraded prior to August 7, 1996?
- The project that is proposed reduces the overall impervious cover.
- They also have provided a coastal planting area along the top of the bank consisting of American beach grass, northern bayberry, seaside goldenrod, and beach plum.

RECOMMENDATION

- I recommend asking the applicant if they would like to request a continuance to allow time to provide the additional information necessary.

Staff Report

Date: August 20, 2020
To: Conservation Commission
From: Whitney McClees, Conservation Agent
Subject: **1 Crow Island – Notice of Intent – DEP# 023-1325, Fairhaven CON 023-158**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Revised Notice of Intent
- Revised plans dated August 3, 2020
- Notice of Intent Narrative dated August 3, 2020
- NHESP comment letter dated August 7, 2020
- DMF comment letter dated August 10, 2020
- Response Letter from Engineer dated August 17, 2020
- Revised plans dated August 17, 2020
- DMF comment letter dated August 20, 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 (*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.

- **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 and in response letter. The resource area delineations were performed by Farland Corp in April and August of 2020. The Commission

- should decide whether or not they would like to approve the lines in the Order of Conditions.
 - 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.
 - According to the submitted response letter, the pond holds less than ¼-acre foot of water and is not ILSF. 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.
 - Submitted, with the exception of Land Subject to Coastal Storm Flowage and Designated Port Area.
 - The noted 260 cubic yards of beach nourishment will be the replacement of material removed for the utility installation in the exact same area.
 - Information responding to DEP's comments
 - Additional NOI narrative submitted.
 - 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 submitted the following comments:
 - A time-of-year restriction should be required prohibiting silt-producing activities from January 15 through May 31 of any year to protect winter flounder.
 - Applicant agrees with this comment.

- The NOI does not include an alternatives analysis to demonstrate how the applicant plans on averting potential adverse impacts to the marine ecosystem. The alternatives analysis should clarify the extent to which each alternative minimizes environmental impact.
 - Applicant states that they have not provided an alternatives analysis because the “Float and Sink” method proposed is the one with least adverse impacts to the marine ecosystem. Other alternatives would be dredging and horizontal directional drilling (HDD).
- MA DMF recommends this project use the least impactful method so as to avoid impacts to marine fisheries resources and their habitats.
- MA DMF recommends the sewer force main be sufficiently buried so it does not become uncovered and potentially snagged by future dredging operations. This can be accomplished with the use of Horizontal Directional Drilling (HDD).
- Given the loss of shellfish and winter flounder habitat associated with the installation of the sewer force main into intertidal and subtidal waters, DMF recommends mitigation for habitat conversion.
 - Applicant states that the loss of shellfish will be determined during construction and the applicant has no problem relocating the habitat.
- Division of Marine Fisheries submitted further comments in response to the applicant’s response letter and revised plans:
 - Float and Sink method is likely less impactful than dredging as they state, although the proponent alluded to future dredging [associated with the Superfund project] being a necessity. It is our understanding that HDD could be used to place the pipe below any future dredging depth.
 - The proponent agreed to mitigation for shellfish resources (moving the shellfish). Please note that the installation of a pipe would not just damage shellfish resources, but also shellfish habitat. The area occupied by the pipe itself is a habitat conversion. Additional mitigation for habitat conversion may be warranted.
 - We remain concerned that a surface-exposed sewer pipe increases the risk of a sewage spill in the harbor.
- *Question for Applicant:* Have you had an opportunity to review DMF’s latest comments? Would you be amenable to utilizing HDD to avoid potential sewage spills in the harbor and future dredging complications?

RECOMMENDATION

- I recommend asking the applicant if they would like to request a continuance to a subsequent meeting to allow time to address DMF’s comments.