

Staff Report

Date: September 10, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **23 Point Street – Request for Certificate of Compliance – DEP# 023-779, Fairhaven CON 023-174**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- Order of Conditions issued June 17, 2002
- Determination of Applicability issued September 23, 2013
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

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

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 Order of Conditions approved the construction of the house with the following special conditions:
 - Cement truck washout within footprint of foundation or driveway only.
 - Driveway to be stone.
 - Clean up debris daily.

COMMENTS

- The house has been constructed and the property owner is looking to close the OOC in preparation for selling the house.
- The driveway has since been paved, which was approved by a Determination issued in 2013.

RECOMMENDATION

- I recommend issuing a Certificate of Compliance for Complete Certification.

Staff Report

Date: September 11, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **6 Cove Street – Request for Certificate of Compliance – DEP# 023-1159, Fairhaven CON 023-175**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- Order of Conditions issued June 18, 2013, but never recorded
- 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 Notice of Intent was submitted in response to an Enforcement Order for beach raking, beach nourishment, and removal of vegetation.
- The OOC approved the raking and/or nourishment after-the-fact; the NOI wasn’t entirely clear.

COMMENTS

- It appears the Enforcement Order was for alteration of coastal beach and dune and required the restoration of the beach and dune to original condition.
- The submitted Notice of Intent noted that the project was for beach nourishment and/or raking; it was unclear.
- The approved plan did not specify any details regarding raking or nourishment. It showed the extent of the dune grasses.
- The Order of Conditions noted the following special conditions:
 - Flow of dune under house must remain and cannot be removed.
 - No beach nourishment or raking unless a filing takes place.
 - Driveway is allowed to be cleared of sand.
- The OOC was never recorded.
- Because the NOI/OOC was unclear, it is unclear if the work was ever done or it was simply seeking approval after the fact in response to an Enforcement Order.

RECOMMENDATION

- Because it appears the Notice of Intent was submitted in response to an Enforcement Order and the Order of Conditions has since expired, I recommend issuing a Certificate of Compliance for an Invalid Order of Conditions.
- If the property owner wishes to do any nourishment to the beach/dune or other work on the property, a filing will be needed.

Staff Report

Date: September 3, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **172 Balsam Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-171**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Salt Marsh
- 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
- **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].
- **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 3-foot by 5-foot wood platform on sonotubes for a generator. The finished elevation will be 16 feet and the base of the generator will be at 16.25 feet, above the VE Flood Zone 16.0'.

COMMENTS

- The location of the platform is adjacent to an existing egress for the house and located at least 50 feet from the edge of the BVW, if not more.
- Primarily, this is a flood zone project and the structure is proposed on four sonotubes.
- The sonotubes have already been installed. The property owner was alerted that he may need conservation approval after he began the small project and filed shortly thereafter.

RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 2 and Negative 6 Determination for 172 Balsam Street.

Staff Report

Date: September 10, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **37 Washburn Avenue – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-172**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Salt Marsh
- 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].
- **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 remove an area of overgrown vegetation and replant with native species. Additionally, the applicant is proposing to add loam and seed to areas that were recently cleared of Japanese knotweed.

COMMENTS

- The applicant removed Japanese knotweed that had overtaken the yard and was impacting the house. The applicant would now like to loam and seed the areas that had knotweed as well as remove some additional overgrown vegetation.
- The applicant is proposing native shrubs in the area of overgrown vegetation.
- Primarily, this is a flood zone project. The 100-foot buffer zone to the salt marsh covers only a portion of the property.
- The applicant stated that the amount of loam that would be needed for the areas that had been cleared of knotweed would be about 40 yards. There is no change in impervious surface.
- The applicant also stated that the removal of the overgrown area would be done by hand and only use a bobcat if absolutely necessary.
- He proposes to plant beach plum, bearberry, and bigleaf hydrangea in the area where vegetation is proposed to be removed.

RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 3 and Negative 6 Determination with the following conditions:
 - 1) The native plants shall be planted in equivalent area to what is removed.
 - 2) Invasive species that sprout shall be removed by hand.
 - 3) Only non-cultivars of the native plants shall be used and should any of the plants die within the first year of planting, they shall be replaced.

Staff Report

Date: September 11, 2020
To: Conservation Commission
From: Whitney McClees, Conservation Agent
Subject: **18 Bass Creek Road – Abbreviated Notice of Resource Area Delineation – DEP# 023-____, Fairhaven CON 023-173**

DOCUMENTS REVIEWED

- Abbreviated Notice of Resource Area Delineation and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Bank of Intermittent Stream
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE

PERFORMANCE STANDARDS

- Since no work is proposed and the applicant is seeking boundary confirmation only, I am not including the performance standards for each of the above resource areas.

PROJECT SUMMARY

- The applicant is seeking confirmation of a BVW boundary and has not indicated additional resource areas on the application.
- The applicant's wetland scientist notes that there is an intermittent stream onsite and has delineated the bank of said stream, though it is not labeled as such on the plan.

COMMENTS

- During a site visit, I walked the line with the applicant and took a look at the soils at a couple of the flags. I did not conduct a thorough review of the line, which would likely take a full day.
- Based on the submitted documents, I would recommend the line be reviewed. The delineation deviates fairly significantly from the DEP wetlands layer on MassGIS as well as the NRCS soil map. Additionally, one of the species of maple listed as occurring on the site does not naturally occur in this area.
- The Commission should decide if they would like to have this peer reviewed as they have done with ANRADs in the past or if they would like me to review the line with support from DEP.
- Currently, there is no file number issued by MassDEP, so the public hearing cannot be closed.

RECOMMENDATION

- Based on the inconsistencies between the submitted line and associated documentation and the wetland and soil maps, I would recommend peer review of the line. I will leave it to the Commission whether it should be peer reviewed by a third party or reviewed by the Agent.

Staff Report

Date: September 10, 2020
To: Conservation Commission
From: Whitney McClees, Conservation Agent
Subject: **200 Mill Road – Notice of Intent – DEP# 023-1330, Fairhaven CON 023-170**

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

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

- This NOI was submitted after-the-fact for curb and pavement rehabilitation and drainage pump and outlet replacement.

COMMENTS

- This NOI resulted from a cease and desist that was posted.
- The outlet that is being replaced drains to the BVW, which is not noted on the plans.
- During a site visit, the engineer stated that they would also be adding treatment into the three trough drains noted as surface drains near the top of the plan.
- Adding filters to these trough drains will treat the water before it travels into the pump and then out into the wetland.
- *Question for Applicant:* The type of filtration being installed in the trough drains is not noted on the plans. What are you proposing to install?
- The project has already been backfilled for safety reasons.
- The engineer stated that the new pipes are likely the same size as the original pipes and that smaller ones were installed at some point in the past. To assist with slowing the water down as it leaves the pipe, they have proposed a riprap stilling basin.
- The larger pipes will also slow the speed of the water going into the wetland.
- Overall, this appears to be an improvement to existing conditions.

RECOMMENDATION

- I recommend closing the public hearing and issuing an Order of Conditions for 200 Mill Road, SE 023-1330, CON 023-170 for plans dated August 20, 2020 with the following recommended conditions:

Approve plan dated August 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. LOW-2 with the exception of the installation of the riprap stilling basing.
- B. Prior to Construction
13. CAP-3
 14. REC-3
 15. DER-1
 16. EMC-1
 17. PCC-1
 18. SIL-5
 19. SIL-7
 20. SIL-9
 21. SIL-10
- C. During Construction
22. STO-1
 23. STO-3
 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. EMC-2
 30. SIL-3
 31. SIL-4
 32. LOW-3
- D. After Construction/In Perpetuity
33. REV-1
 34. RES-4
 35. COC-1
 36. COC-2

Perpetual Conditions

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

37. DER-4

Staff Report

Date: September 11, 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
- Response letter from engineer dated September 4, 2020
- Email from DMF responding to engineer dated September 10, 2020

RESOURCE AREAS ON/NEAR SITE

- Coastal Beach
- Coastal Dune
- Coastal Bank
- Buffer Zone
- Land Containing Shellfish
- Designated Port Area
- 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
 - Calculations submitted, no stormwater checklist regarding the standards.
- 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.
- The engineer, DMF and I had a phone call to discuss the project. The engineer submitted a response letter that highlighted the following:
 - Using the HDD method to install the sewer pipe would have more impact when it comes time to connect to the pier because it would require an excavation pit.
 - The anticipated impact from the sewer line using the float and sink method will be 675 square feet of disturbance on the ocean floor, which the applicant is willing to mitigate as requested by the Conservation Commission.
- DMF concurred with the engineer’s explanation regarding HDD versus the float and sink method and recommends mitigation for the portion of the pipe that has contact with the substrate.

RECOMMENDATION

- I recommend closing the public hearing and issuing an Order of Conditions for 1 Crow Island, SE 023-1325, CON 023-158, for plans dated August 17, 2020

Approve plan dated August 17, 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. WET-1
14. In order to protect winter flounder, spawning and juvenile development, a time-of-year (TOY) restriction is required. Any silt-producing activities are prohibited from January 15 through May 31 of any year.

B. Prior to Construction

15. The applicant shall submit a shellfish mitigation fee of \$5,400 prior to initiating any work.
16. The applicant shall submit a habitat mitigation plan for the 675 square feet of habitat conversion underneath the sewer pipe. This plan shall be prepared by a qualified professional and submitted to the Commission for review and approval prior to initiating any work.
17. CAP-3
18. REC-3
19. DER-1
20. PCC-3
21. EMC-1
22. PCC-1
23. SIL-5
24. SIL-7
25. SIL-9
26. SIL-10

C. During Construction

27. As the sewer line is laid, all shellfish shall be relocated so as not to be impacted by the installation. The applicant shall coordinate with the Harbormaster/Shellfish Warden during this process.
28. During installation of the sewer line under the water using the float and sink method, all precautions shall be taken against silt-producing activities. The Commission reserves the right to require additional methods such as silt curtains.
29. STO-1
30. STO-3
31. MAC-1
32. MAC-2
33. MAC-3

- 34. MAC-7
- 35. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
- 36. DEB-1
- 37. DEB-5
- 38. BLD-3
- 39. BLD-4
- 40. EMC-2
- 41. SIL-3
- 42. SIL-4
- 43. SIL-8
- 44. LOW-3
- 45. WAT-3

D. After Construction/In Perpetuity

- 46. REV-1
- 47. Should any of the plantings fail within two years of planting, they shall be replaced in kind.
- 48. RES-4
- 49. COC-1
- 50. COC-2

Perpetual Conditions

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

- 51. 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.
- 52. DER-4

Staff Report

Date: September 11, 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)
- Revised Notice of Intent
- Revised Site Plan dated August 31, 2020
- Alternatives Analysis dated August 31, 2020

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. ... 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 entire 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)).
 - The proposed work will need to result in an improvement over existing conditions.
 - Proposed work shall not be located closer to the river than existing conditions or 100 feet, whichever is less, except in accordance with restoration/mitigation proposals.
 - When an applicant proposes restoration on-site of degraded riverfront area, alternation may be allowed at a ratio in square feet of at least 1:1 of restored area to area of alteration not conforming to the criteria.
 - Restoration shall include:
 - i. Removal of all debris, but retaining any trees or other mature vegetation
 - The applicant is proposing to remove the debris and invasive species and is protecting two existing 10" trees
 - ii. Grading to a topography which reduces runoff and increases infiltration
 - The applicant is proposing to utilizing low impact development measures, reduce impervious area, increase greenscape, and appropriately grade the site to reduce runoff and increase infiltration.
 - iii. Coverage by topsoil at a depth consistent with natural conditions at the site
 - The applicant is proposing to cover disturbed areas with a minimum of 6 inches of topsoil and seed.

- iv. Seeding and planting with an erosion control seed mixture, followed by plantings of herbaceous and woody species appropriate to the site
 - The applicant is proposing a permanent 675 square foot buffer of coastal plantings along the top of the bank.
- 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.
- It appears they are including both the lawn and coastal planting area in their calculation of 1:1 ratio of restored area to area of alteration. Because this is the inner 100 feet of the riverfront area, there should be a greater area of herbaceous and woody species planted that more closely approximates the area of alteration.
- There were four alternatives submitted in the alternatives analysis.
 - Parcel to remain in present condition with disturbed and degraded riverfront are.
 - Demolition of the existing building and loam and seed the disturbed area.
 - Demolition of existing building and construct a new single or 2-family dwelling within the same footprint, which would require variances and construction of the driveway closer to the river.
 - The proposed construction of a 2-family dwelling, which includes removal of invasive species, reduction of impervious surface, and coastal plantings.
- The corner of the 2-family dwelling is proposed 11 feet off the top of coastal bank. Since the applicant noted that a single-family dwelling was an option in the alternatives analysis, the Commission should consider requiring an additional option in the alternatives analysis of a single-family dwelling in the same approximate location as the proposed 2-family dwelling, which would allow greater setback from the top of bank and reduced building footprint.
 - I asked the engineer about the feasibility of including this as an option and he stated the following: “In considering your question, we did not feel it is appropriate to do an additional alternative analysis on the sole basis or consideration of a single family dwelling. The use of a single family dwelling or a two-family dwelling is immaterial and the building footprint is the area of consideration.”

RECOMMENDATION

- If the Commission would like to see the building footprint reduced and the area of coastal plantings increased, I would recommend asking the applicant if they would like to request a continuance.