

# Staff Report

Date: September 23, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **10 Oliver Street – Request for Certificate of Compliance – DEP# 023-0155, Fairhaven CON 023-180**

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## DOCUMENTS REVIEWED

- Request for Certificate of Compliance
- Order of Conditions dated September 23, 1986
- Notice of Intent dated September 19, 1986 with site plan dated August 29, 1986
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

## RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetlands
- 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

- Construction of a single-family house and associated site work

## COMMENTS

- The project was entirely a buffer zone project and has been completed.
- The wetland is off the property to the east.
- There was only one condition noted: Limit of work be moved 5 feet to the west from plans as shown.
- There were no continuing conditions noted.

## RECOMMENDATION

- I recommend issuing a Certificate of Compliance for Complete Certification for 10 Oliver Street.

# Staff Report

Date: September 24, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **28 Holiday Drive – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-177**

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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

- 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 applicant is proposing to construct a 184-square-foot addition to create a 1-car garage. The addition will expand the face of the existing bump-out by 10.6 feet by 16-feet wide mostly within existing paved driveway.
- The project will repurpose approximately 200 square feet of living space into garage space.

## COMMENTS

- The work will take place entirely within the 100 foot buffer zone to BVW and the flood zone (Zone AE).
- The plan includes erosion control, located within the unconstructed layout of Sunrise Court.
- The work primarily takes place within either the footprint of the existing house or the footprint of the existing paved driveway. The increase in impervious surface is negligible.
- The impacts of the project to BVW appear to be limited and proper erosion control is proposed.
- The proposed addition includes hydrostatic flood vents.

## RECOMMENDATION

- I recommend closing the public hearing for 28 Holiday Drive and issuing a Negative 3 and Negative 6 Determination with the following recommended conditions:
  - 1) CAP-3
  - 2) PCC-1
  - 3) This Determination does not constitute approval of any existing structures shown on the approved site plan.

# Staff Report

Date: September 25, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Calumet Road – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-178**

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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
- Coastal Bank
- 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.
- **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 submitted an after-the-fact filing for a fire pit on pavers and deposition of beach sand over 308 square feet.

## COMMENTS

- The site plans show a 120 square foot area of cobblestones associated with the fire pit and a 308 square foot area where sand was deposited.
- The narrative notes that the fire pit is removable, not permanent.
- According to MassGIS, approximately half of the property is coastal dune. However, the Order of Conditions that approved the construction of the house noted no coastal dune onsite, only coastal beach and coastal bank.
- The coastal beach between the property and the water falls on Reservation Road.
- The location of the deposited sand and fire pit appears to be on the Coastal Bank and potentially on the Coastal Beach, based on what was delineated for the construction of the house.
- The regulations for Coastal Bank states that “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.”
- The addition of beach sand and a fire pit shouldn’t have an adverse effect on the movement of sediment. However, it appears vegetation has slowly been removed from the general area of the project over the last 6 years or so. Some of the area of removed vegetation has been converted to lawn and sand/cobblestone.
- The Order of Conditions permitting the house set the limit of work to the erosion control, located in approximately the same location as the original extent of the lawn just after the house was constructed.
- The Commission should consider whether some replacement of vegetation will be necessary to help stabilize the beach and dune area to help protect inland areas from storm surge and flooding.
- I would recommend some of the below species if the Commission chooses to require plantings:
  - Beach Pea (*Lathyrus japonicus*)
  - Beach Plum (*Prunus maritima*)
  - Virginia Rose (*Rosa virginiana*)
- Any deposited sand should match the existing composition of the beach, which appears to be a mixture of cobble and sand.

## RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 3 and Negative 6 Determination with the following recommended conditions:
  - A planting plan shall be submitted for review and approval by the Commission or the Agent to address the areas of removed vegetation.
  - All future work, including deposition of beach sand, shall require review and approval by the Conservation Commission.
  - No further removal of vegetation from resource areas is permitted.

# Staff Report

Date: September 25, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **41 Bayview Avenue – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-179**

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

## 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.
- **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.”

- **LCSF 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 submitted this application after the fact for paving the driveway, fence panels, and a concrete walkway.

## COMMENTS

- The Commission discussed this under violations at the last meeting and asked the applicant to submit a planting plan.
- The applicant met with me to discuss the types of plantings that would be appropriate. There was a slight miscommunication and he has already planted two areas rather than submit a planting plan.
- I told him that we can see how what he has planted comes in in the spring and can reassess at that point to determine if additional plantings are necessary. Based on the documentation he provided, the plants he chose are all native, though some are ornamental rather than what would typically be found along the coast.
- The applicant also indicated he will not be proceeding with the fence.

## RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 3 and Negative 6 Determination for 41 Bayview Ave with the following condition:
  - At the discretion of the Commission or the Agent, further plantings may be required should those already planted fail to establish or fill in.

# Staff Report

Date: September 24, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## DOCUMENTS REVIEWED

- Request for Determination of Applicability and associated documents
- Request for Determination of Applicability revised September 16, 2020
- 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, which is currently impacting sightlines for the curve in the road.
- 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 downy serviceberry/shadbush and/or northern bayberry in the area where vegetation is proposed to be removed.
- The applicant revised the application to include a 28-foot by 5-foot front porch with steps in front of the doors on five 10-inch sonotubes.
- He didn't realize the deck needed to be permitted through Conservation since he received a building permit. Typically, Conservation has a sign-off on building permits, but this one was missed due to turnover with the Building Inspector.
- The addition of the front porch doesn't appear to have much impact on the flood zone and has no impact on the nearby resource area.

## 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. Bigleaf hydrangea shall not be used; downy serviceberry/shadbush and/or northern bayberry shall be used instead.
  - 2) Invasive species that sprout within the planting area shall be removed by hand. Invasive species that sprout within the lawn may be mowed.
  - 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 25, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **15 Grinnell Street – Request for Amended Order of Conditions –  
DEP# 023-1314, Fairhaven CON 023-117**

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## DOCUMENTS REVIEWED

- Request for Amended Order of Conditions
- Revised site plan dated September 2, 2020
- Order of Conditions issued February 28, 2020
- 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

- The applicant is proposing the following changes to the plan:
  - Razing the existing garage and not reconstructing it
  - No expansion of existing driveway
  - Rotation of the swimming pool 90 degrees and relocating it further from the property line and adjusting the patio accordingly
  - The shed has been moved southerly to be centered with the proposed patio and pool

## COMMENTS

- The entirety of the project with the exception of the majority of the driveway is within the 100-foot buffer zone.
- The project still includes a grassed swale between the proposed work and the neighboring property to direct stormwater to the wetland at the rear of the property.
- Rotating the pool and shifting the location of the shed does move it closer to the wetland at flag #2. The corner of the shed is proposed 15 feet from the flag.
- In speaking with the applicant's representative, the shed was shifted to align with the pool because it essentially replaces the garage.
- All of the work is proposed within existing lawn and the proposed changes result in a reduction in scope of the work.

## RECOMMENDATION

- I recommend closing the public hearing and issuing an Amended Order of Conditions for 15 Grinnell Street for plans dated September 2, 2020 with the following recommended conditions:

Approve plan dated September 2, 2020

### A. General Conditions

1. These conditions shall be in lieu of the conditions issued with the original Order.
2. ACC-1
3. 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.

4. REC-1
  5. REC-2
  6. ADD-1
  7. ADD-2
  8. ADD-4b
  9. ADD-4c
  10. ADD-5
  11. STO-4
  12. STO-5
  13. LOW-2
  14. WET-1
- B. Prior to Construction
15. CAP-3
  16. REC-3
  17. DER-1
  18. PCC-3
  19. EMC-1
  20. PCC-1
  21. SIL-5
  22. SIL-7
  23. SIL-9
  24. SIL-10
- C. During Construction
25. STO-1
  26. STO-3
  27. MAC-3
  28. MAC-7
  29. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
  30. DEB-1
  31. DEB-5
  32. BLD-3
  33. BLD-4
  34. EMC-2
  35. SIL-3
  36. SIL-4
  37. SIL-8
  38. LOW-3
  39. WAS-1
  40. WAS-3
  41. WAT-3
  42. RUN-2
- D. After Construction/In Perpetuity
43. REV-1
  44. RES-4
  45. COC-1
  46. COC-2

Perpetual Conditions

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

47. CHM-1 This shall be noted in the Certificate of Compliance and shall be an ongoing condition.
48. DER-4
49. Any pool drainage or discharge shall be to the north side of the pool behind the addition and the water must stand to dechlorinate for at least one week before any drainage shall occur.

# Staff Report

Date: September 25, 2020  
To: Conservation Commission  
From: Whitney McClees, Conservation Agent  
Subject: **4 Boulder Court – Notice of Intent – DEP# 023-1331, Fairhaven CON 023-177**

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## DOCUMENTS REVIEWED

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

## RESOURCE AREAS ON/NEAR SITE

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

## PROJECT SUMMARY

- The applicant is proposing to construct a single-family home, garage, and driveway, with associated utilities and grading in the 100-year flood plain.

## COMMENTS

- More than half of the project takes place outside of the 100-foot buffer zone to bordering vegetated wetlands. The entire project falls more than 50 feet away from the wetland. The wetland line was pulled from a 2016 plan, so any approval should not approve the line.
- The majority of the project calls within Zone AE (elevation 14) with a small portion falling within Zone X.
- Much of the site is comprised of shrubs, small saplings, and a handful of mature trees.
- The site will be cleared of most of the vegetation in preparation for construction, but the applicant stated that many of the mature trees will remain. She also stated that she is open to providing a planting plan with native plantings.
- There will be some fill brought in to grade the site and bring the slab one foot above the flood zone elevation. Fill for structural purposes is allowed in the 100-year floodplain.
- They will be tying into town sewer and water.

## RECOMMENDATION

- I recommend closing the public hearing for 4 Boulder Court and issuing an Order of Conditions for plans dated September 3, 2020 with the following recommended conditions:

Approve plan dated September 3, 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
- B. Prior to Construction
14. A planting plan shall be submitted for review and approval by the Conservation Commission or its Agent prior to the start of the project.
  15. Construction shall conform to the requirements of FEMA Building Code, State Building Code, and the Town of Fairhaven Zoning provisions for construction within the coastal floodplain. Work shall ensue only after consulting with the Building Commissioner.
  16. CAP-3
  17. REC-3
  18. DER-1
  19. PCC-3
  20. EMC-1
  21. PCC-1
  22. Adequate erosion and sedimentation control measures comprised of both silt fence and sediment logs shall be installed and maintained throughout the entire construction phase, until the site has been stabilized and their removal has been authorized (in writing or by issuance of the Certificate of Compliance) by the Commission or its agent. The erosion control specifications in the Notice of Intent and the erosion control provisions in the Order will be the minimum standards for this project; the Commission may require additional measures. The Commission reserves the right to require additional or modified erosion and siltation controls during construction if it deems that site conditions warrant such measures.
  23. SIL-7
  24. SIL-9
  25. 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
  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. 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.
- 44. DER-4

# Staff Report

Date: September 25, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Huttleston Ave, Map 31, Lots 115A & 117C – Notice of Intent – DEP# 023-1308, Fairhaven CON 023-095**

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## DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Peer Review Letter from GCG Associates, Inc. dated October 11, 2019
- Revised plans dated November 8, 2019
- Peer Review letter from GCG Associates, Inc. dated November 20, 2019
- Peer Review letter from GCG Associates, Inc. dated January 10, 2020
- Response to GCG Associates, Inc. dated January 23, 2020
- Revised plans dated January 22, 2020
- Revised Stormwater System Operation and Maintenance Program dated January 23, 2020
- Revised Notice of Intent dated February 18, 2020
- Revised site plans dated February 14, 2020
- Peer review letter from GCG Associates, Inc. dated May 11, 2020
- Response letter to peer review dated May 13, 2020
- Buffer zone impact letter dated June 1, 2020
- Revised plans dated June 25, 2020
- Response letter to peer review dated June 26, 2020
- Revised stormwater report dated June 26, 2020
- Revised Operation and Maintenance plan dated July 7, 2020
- Revised plans dated July 8, 2020

## RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetlands (310 CMR 10.55)
- Buffer Zone

## PERFORMANCE STANDARDS

- **Bordering Vegetated Wetland:** 10.55(4)
  - (a) work in a Bordering Vegetated Wetland shall not destroy or otherwise impair any portion of the BVW
  - (b) The ConCom may permit the loss of up to 5000 square feet of BVW when said area is replaced IF:

1. The area is equal;
  2. The ground water and surface elevation are approximately equal;
  3. The overall horizontal configuration and location are similar;
  4. There is an unrestricted hydraulic connection to the same water body or waterway;
  5. It is in the same general area of the water body;
  6. At least 75% of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons; and
  7. The replacement area is provided in a manner which is consistent with all other regs in 310 CMR 10.00.
- (c) The ConCom may permit the loss of a portion of BVW when;
1. Said portion has a surface area less than 500 square feet;
  2. Said portion extends in a distinct linear configuration ("finger-like") into adjacent uplands; and
  3. In the judgment of the issuing authority it is not reasonable to scale down, redesign or otherwise change the proposal.
- (d) No project may be permitted which will have any adverse effect on specified habitat sites of rare species
- (e) No work shall destroy or otherwise impair any Area of Critical Environmental Concern
- **Buffer Zone General Provisions:** 10.53(1) "For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work."

## PROJECT SUMMARY

- It is proposed to construct four, two-story wood-framed three-unit residential buildings for a total of 12 residential 2-bedroom units. In addition, two ancillary storage buildings will be constructed and will be available as storage rental space for the apartment tenants as 12-foot-wide by 20-foot-deep areas with garage door access. There is also proposed to be a small maintenance building. A total of 26 standard parking spaces and 2 van-accessible spaces are proposed.
- The storm drainage system at the proposed development has been designed to create a reduction in the rate of stormwater runoff from the existing site. The collection and treatment systems will be in the form of deep sump catch basins, sediment forebays, and a detention basin. Hydrologic computations were performed in order to model the volume and rate of flow of stormwater from the site, under both existing and proposed conditions, for a broad range of design storms.
- The revised plans and Notice of Intent dated February 14, 2020 and February 18, 2020, respectively, note the following changes:
  - The storage buildings and maintenance sheds have been deleted
  - The western driveway has been deleted
  - The detention basin has been reconfigured
  - Due to the reduction in impervious area, changes have been made to the project peak rates and volumes

## COMMENTS

- The revisions to the plan provide close to a 25-foot buffer zone between the proposed construction and the wetlands.
- The proposed landscaping vegetation is mostly native species with the following exceptions:
  - Japanese Zelkova (*Zelkova serrata*)
  - Dwarf Japanese Juniper (*Juniper procumbens* 'Nana')
- The peer review notes the following:
  - Proposed infiltration area vegetation should be cleared and replaced with loam and seed for maintenance. A cleared access path should be provided.
  - Relocate planting along edge of pocket wetland to provide maintenance access.
  - Side slopes for sediment forebay do not meet MSH standards, but forebay is accessible on one side. Waiver should be considered. However, granting the waiver will not relieve the applicant from any actions imposed by MassDEP.
  - Pocket wetland bottom elevation is above estimated seasonal high groundwater and should be excavated to the groundwater table to maintain adequate water levels.
  - Items need to be added to the construction phase erosion control plan and O&M plan.
  - GCG recommends properly sizing the infiltration area based on MSH requirements without the required estimated seasonal high groundwater separation.
- The applicant submitted a letter regarding buffer zone impacts:
  - Total area of 25-foot no disturb zone impacted: 14.7% (2,202 square feet of 15,000 SF)
  - Total area of 100-foot buffer zone impacted: 48.5% (28,438 square feet of 58,699 SF)
- The wetland line has not been reviewed since 2017, when the previous OOC was granted. As such, any OOC should not approve the line.
- No waivers to MassDEP Stormwater Standards are being requested with the most recent revisions.
- If any changes result from the Planning Board process, the applicant will need to come back to the Commission for an Amended Order of Conditions.

## RECOMMENDATION

- I recommend closing the public hearing for Huttleston Avenue and issuing an Order of Conditions for plans dated July 8, 2020 with the following recommended conditions:

Approve plan dated July 8, 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. Access to the manhole to be rebuilt shall be on foot.
  15. Issuance of this Order of Conditions shall not exempt or relieve the applicant from any actions imposed by the Massachusetts Department of Environmental Protection.
- B. Prior to Construction
16. CAP-3
  17. REC-3
  18. DER-1
  19. PCC-3
  20. EMC-1
  21. PCC-1
  22. SIL-5
  23. SIL-7
  24. SIL-9
  25. SIL-10
- C. During Construction
26. All erosion and sediment control notes on Sheet 4 of the approved plans shall be followed.
  27. STO-1
  28. STO-3
  29. MAC-3
  30. MAC-7
  31. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
  32. DEB-1
  33. DEB-5
  34. BLD-3
  35. BLD-4
  36. EMC-2
  37. SIL-3
  38. SIL-4
  39. SIL-8
  40. LOW-3
  41. WAS-2
  42. WAT-3
- D. After Construction/In Perpetuity
43. REV-1
  44. RES-4
  45. COC-1
  46. COC-2
- Perpetual Conditions  
*The below conditions do not expire upon completion of the project.*
47. CHM-3
  48. DER-4

E. Stormwater Management

49. SW-1

50. SW-2

51. SW-3

52. SW-5

53. SW-6

54. SW-7

55. SW-9

# Staff Report

Date: September 25, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## 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
- Revised site plan dated September 18, 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 maximum 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, alteration 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 960 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 shadblow serviceberry, northern bayberry, seaside goldenrod, beach plum, Virginia rose, and meadowsweet.
- 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.
- With the most recently revised plans, the corner of the dwelling is proposed 14 feet off the top of coastal bank instead of 11 feet. The applicant reduced the building footprint by 114 square feet. The overall building length has been reduced by 4 feet. The building is still located closer to the river than the existing building, though within what the applicant has marked as degraded area.
  - The Act describes degraded areas in terms of impervious surfaces, absence of topsoil, junkyards, or abandoned dumping grounds.
  - The applicant notes that all native topsoil on the property was either removed or buried by imported fill containing ash with elevated levels of PAHs, lead, and cadmium, among other metals.
- Because the applicant is proposing restoration, the Commission may allow proposed work closer than existing conditions, but only if the ratio between alteration and restoration is 1:1.
- The applicant is 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, the area of herbaceous and woody species planted should be equal to the amount of impervious surface proposed.
- The total impervious surface proposed is 2,657 square feet. The proposed restoration planting area is only 960 square feet.
- Reducing the impervious surfaces and increasing the planting area so they are approximately the same square footage could bring the project into compliance with the Wetlands Protection Act.

## RECOMMENDATION

- If the Commission would like to see the impervious surfaces reduced and the area of coastal plantings increased to more closely reach a 1:1 ratio, I would recommend asking the applicant if they would like to request a continuance.
- If the applicant does not want to request a continuance, the Commission must close the public hearing and issue a decision at the meeting as the next meeting would not allow enough time to comply with the 21-day regulatory timeline to issue an Order of Conditions.
- If the applicant does not request a continuance and the Commission closes the public hearing to issue a decision, I recommend the Commission issue a denial because the proposed work cannot be conditioned to meet the performance standards set forth in the wetlands regulations. The project does not meet 310 CMR 10.58(5)(f) by providing a 1:1 ratio in square feet of restored area to area of alteration.

# Staff Report

Date: September 25, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Hiller Avenue and Timothy Street, Assessors Map 28C, Lots 71 & 71A – Notice of Intent – DEP#023-1297, Fairhaven CON-19-051**

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## DOCUMENTS REVIEWED

- Notice of Intent and associated attachments submitted
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Peer review by GCG Associates dated December 30, 2019
- Revised plans dated January 13, 2020
- Revised stormwater report dated January 10, 2020
- Exhibit plan dated September 25, 2020

## 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

- The Notice of Intent was filed for the construction of paved roadways and stormwater management systems and the installation of utilities, including the placement of fill for the aforementioned work, for a proposed 16-lot subdivision.

## COMMENTS

- From 310 CMR 10.00 Preface to the Wetlands Regulations, 2005 Revisions:
  - "Research on the functions of buffer zones and their role in wetlands protection has clearly established that buffer zones play an important role in preservation of the physical, chemical, and biological characteristics of the adjacent resource area. The potential for adverse impacts to resource areas from work in the buffer zone increases with the extent of the work and the proximity to the resource area."
  - "Extensive work in the inner portion of the buffer zone, particularly clearing of natural vegetation and soil disturbance is likely to alter the physical characteristics of resource areas by changing their soil composition, topography, hydrology, temperature, and the amount of light received. Soil and water chemistry within resource areas may be adversely affected by work in the buffer zone. Alterations to biological conditions in adjacent resource areas may include changes in plant community composition and structure, invertebrate and vertebrate biomass and species composition, and nutrient cycling. These alterations from work in the buffer zone can occur through the disruption and erosion of soil, loss of shading, reduction in nutrient inputs, and changes in litter and soil composition that filters runoff, serving to attenuate pollutants and sustain wildlife habitat within resource areas."
- From 310 CMR 10.00 Preface to the 1983 Regulations:
  - "Any project undertaken in close proximity to a wetlands resource area has a high likelihood of resulting in some alteration of that area, either immediately or as a consequence of daily operation of the completed project. The problem becomes particularly severe when Bordering Vegetated Wetlands are involved; inadvertent damage to these sensitive areas can easily occur and in many instances is irreparable."
- From the MACC Wetlands Buffer Zone Guidebook:
  - Most studies find that buffers dominated by trees or a mix of vegetative cover types, structure, and age classes are most effective in removing nutrients and sediment pollution.

- Vegetated buffers between 30 and 100+ feet appear to be effective in reducing sediments, phosphorus, and nitrogen with 75% removal rate.
- Additional benefits of vegetated buffers:
  - phosphorus and sediment removal capacity is most effective within 50 feet of the resource area.
  - nitrogen removal capacity is most effective within at least 100 feet of the resource area.
  - vegetated buffer width of minimum 50 feet is most effective to maintenance of water temperature.
  - buffers of less than 50 feet are more susceptible to degradation by human disturbance. Buffers of 25 feet or less do not function in a meaningful way to reduce disturbance to the adjacent wetland.
  - During flood events, buffer zones become backup flood storage areas and minimize water quality and storm damage impacts from floods and severe storm events.
- When reviewing a project in the buffer zone, it is important to consider:
  - Will the project substantially reduce the capacity of the buffer zone to slow, detain, filter, store, and infiltration runoff prior to reaching the resource area?
  - Will the project substantially reduce the capacity of the buffer zone to protect wildlife habitat functions of the wetland resource area?
  - Will the project substantially reduce existing buffer zone vegetation that provides protection to resource area vegetation, thus potentially reducing the functional capacity of the adjacent resource area?
  - Is the existing or proposed undisturbed buffer zone suitable to maintain sediment, pollutant, pathogen, and nutrient removal capacity of the adjacent resource area?
  - Can the project be reasonably shifted or modified to allow work and also the necessary buffer zone protection of resource area sediment, pollutant, pathogen, and nutrient removal, flood control, storm damage prevention, and protection of wildlife habitat functions?
- Both proposed detention ponds are located directly next to the wetlands on the property and portions of all three roadways fall within the 100-foot buffer zone to the wetlands. 10 of the 16 proposed house lots fall within the jurisdiction of the Conservation Commission.
- Several of the lots are comprised of predominantly wetland (e.g. Lots 8, 9, and 12), which may cause encroachment into the wetlands and potential for violations in the future. Many of these lots will likely need permits through the Conservation Commission for any proposed future work, whether that is the construction of homes or any additions to homes already constructed, such as decks, pools, or patios.
- The amount of work proposed currently and work that will be proposed in the future comprises a significant portion of the inner buffer zone. Significantly reducing the amount of vegetation, especially mature trees, in the buffer zone can have negative impacts on the wetland, such as increased temperatures and a reduction in pollutant filtration. Significantly increasing the number of homes in the area has the potential to increase the amount of fertilizers, herbicides, and pesticides that runoff into the wetland.
- Several of the proposed driveways and portions of the roadways are within 25 to 50 feet of the wetland, which increases the potential for the alteration of hydrology in the wetland.

- Undisturbed buffer zones are important to protect the wetland's ability to perform its ecosystem functions: public or private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, and wildlife habitat.
- Currently, the project proposes to clear a significant portion of the 100-foot buffer zone to the BVW, right up to the wetland line in some cases.
- There is also a significant amount of fill proposed, some of which is proposed directly adjacent to the wetlands.
- It is the applicant's responsibility to show that a proposed project is designed to protect the wetlands' ability to provide the above ecosystem functions. The applicant has not shown thus far that the project will protect the values and interests of the wetlands on the property.
- Currently, the project does not appear to meet Mass. Stormwater Standards. The Commission should decide if the most recently submitted plans need peer review for compliance with the Mass. Stormwater Standards. If so, the applicant will need to provide a peer review fee before the review can commence. However, it does not make sense to send the current plans for peer review if the Commission would like to see a reduction in the scope of the project.
- As currently designed, the project will have an adverse impact on the bordering vegetated wetlands onsite.

## **RECOMMENDATION**

- I recommend asking the applicant if they would like to request a continuance to a future meeting to allow time to address the Commission's concerns.

# Staff Report

Date: September 25, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Smugglers Road – Restoration Plan in Response to Enforcement Order – Fairhaven EO 023-014**

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## DOCUMENTS REVIEWED

- Enforcement Order issued July 8, 2020
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Letter from engineer dated September 3, 2020
- Planting plan narrative dated September 14, 2020
- Site plan dated August 24, 2020

## RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Barrier Beach
- 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
- **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 submitted the planting plan in response to an issued Enforcement Order.
- The applicant proposes to plant native vegetation in a significant area of cleared Japanese knotweed

## COMMENTS

- The applicant responded to each of the points in the enforcement order:
  - The sand that was deposited was placed above native beach sand and was not placed within a wetland. No additional sand will be placed on the beach or the pathway.
  - Cutting of vegetation along the pathway to the beach consisted of trimming existing tree branches that had grown into the pathway. Future trimming will be reviewed by the Agent and approved prior to any work being done in the area.
  - There will be no further use of the ATV within the marsh.
  - Tracks and disturbance by the ATV through dune grass on the beach will also be prevented in the future.
  - Removal of vegetation in an area of approximately 12,000 SF within the buffer zone and within flood zone was performed to eliminate a substantial stand of knotweed.
- The planting plan involves removing the remaining knotweed and seed/root stock with a combination of scraping by machine and spot treatment with Rodeo.
- The plan then includes the spreading of compost and reseeding with a site-specific wildflower meadow mix as well as a ten-foot-wide mowing strip to be mowed on a regular basis to avoid spread of invasives from surrounding areas.
- Due to the significant presence of invasive species, I would recommend five years of monitoring as opposed to the proposed three.

## RECOMMENDATION

- I recommend approving the restoration plan with the following conditions:
  - 1) For the purposes of this Order, all conditions that refer to replication or replication area shall mean and apply to the area of clearing as noted on the approved plan.
  - 2) ACC-1: The Conservation Commission, its employees, and its agents shall have a right of entry to inspect or compliance with the provisions of this Order of Conditions.

- 3) ADD-1: The Commission reserves the right to impose additional conditions on any or all portions of this project that could impact an area of statutory interest under the Act and/or the Fairhaven Wetlands Bylaw.
- 4) ADD-4b: All work shall be done in accordance with final plans dated August 24, 2020, narrative by Charon Engineers dated September 3, 2020, and narrative by Davis Land Design dated September 14, 2020 as approved by this Commission. Any deviation must be approved by this Commission in writing prior to commencing work involved in this deviation.
- 5) This Restoration Plan and associated Enforcement Order shall apply to any successor in interest or successor in control of the property subject to this order and to any contractor or other person performing work conditioned by this order.
- 6) At no point, shall any work be done beyond the edge of current area of disturbance as shown on the approved plan.
- 7) MAC-3: All mechanized vehicles under contract, subcontract or lease, participating in any manner, in any phase of activity within resource areas, shall carry on board absorbent materials to immediately respond to inadvertent discharge of petrochemicals.
- 8) REP-2: Any non-native invasive plant species (e.g. Phragmites, purple loosestrife, buckthorns, etc...) shall be removed from the replication area under the supervision of the wetland scientist.
- 9) REP-3: Should at least 75% of the surface area of the wetland replication area fail to become established with greater than 50% wetland species within two years of the replication attempt [in accordance with 310 CMR 10.55(4)(b)1-7], the Commission reserves the right to require additional measures necessary to achieve compliance.
- 10) REP-5: The application of bark mulch, wood chips or mulch (which may introduce invasive species or upland species seed stock) is not permitted in replication area(s) or area of statutory interest.
- 11) REP-8: The wetland replication area shall be planted with native species of wetland plants and seed stock, in accordance with the planting schedule provided in the plans and/or modified by this Order. Receipts verifying the purchase of plants must be submitted to the Commission.
- 12) REP-9: A wetland specialist, approved by the Conservation Commission, shall be on-site during all phases of the transference/replanting and construction of the replication area.
- 13) REP-11: The applicant will monitor the soil horizons and depths, groundwater levels, plant community composition, and plant community structure along transects to be established through consultation with the Conservation Commission using USACE or MassDEP field data sheets. Monitoring shall occur in April, July, and October for five complete growing seasons following completion of wetland replication activities and it shall continue beyond that date if the wetland replication area is not established in accordance with the performance standards as specified in the approved planting plan.

The following conditions shall be recorded and apply in perpetuity:

- 14) DER-4: The owner of the property described in this Order must advise any potential buyer of the property that any construction or alteration to said property, including brush cutting or clearance, may require approval by the Fairhaven Conservation Commission. Any instrument conveying any or all of the owners' interest in said property or any portion thereof shall contain language similar to the following:

"This property is subject to the Fairhaven Wetlands Bylaw and/or the Massachusetts Wetlands Protection Act. Any construction or maintenance work performed on this property requires an Order of Conditions and/or a Determination of Applicability from the Fairhaven Conservation Commission."

This condition is ongoing and shall not expire with the issuance of a Certificate of Compliance and shall be recorded in the deed and on subsequent deeds.

- 15) REP-12: No additional wetland areas shall be allowed to be filled or altered on this property without the approval of the Conservation Commission, now or in the future. A deed restriction stating this shall be incorporated into all deeds and future divisions of this site.