

Staff Report

Date: November 6, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **3 Bayside Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-190**

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 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 replace the existing front porch and build a new, larger deck on the left side of the house to connect with the existing deck area.
- The applicant also included a shed on the plans, but the shed has already been permitted.

COMMENTS

- The project is proposing 11 new sonotubes for the deck between the replacement and the new deck area.
- The total increase is a 200 square foot area.
- The work is taking place within existing lawn and on the opposite side of the house from the wetland.

RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 3 and Negative 6 Determination with the following conditions:
 - CAP-3
 - All work shall comply with local, state, and federal flood zone regulations.

Staff Report

Date: November 6, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **6 Emerson Avenue – Request for Amended Order of Conditions – DEP# 023-1302, Fairhaven CON 19-066**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE
- Buffer Zone
- Coastal Beach, Barrier Beach, Marsh: No work proposed in these resource areas

PERFORMANCE STANDARDS

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

PROJECT SUMMARY

- The Order of Conditions approved a 24-foot by 30-foot garage with a paved apron, a flagstone patio, and a drywell system to manage runoff from both the house and the proposed garage.
- The request for an amended order of conditions is for the relocation of the garage to the north, further away from the wetland to the south of the property. There are no other changes proposed.

COMMENTS

- Entire project takes place within Land Subject to Coastal Storm Flowage Zone VE.
- The mature tree that was proposed to be removed was in the footprint of the garage in its previous location. The tree is no longer within the footprint of the garage, but the applicant is still proposing to remove it.

- No grade changes are proposed based on the plans and a conservation with the applicant's representative during a site visit.
- The primary change to the plan is the relocation of the garage.

RECOMMENDATION

- I recommend closing the public hearing and issuing an Amended Order of Conditions for plans dated September 29, 2020, with the following conditions:

Approve plan dated September 29, 2020

A. General Conditions

1. These conditions shall be in place of the original conditions.
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 Where there is no erosion and sedimentation barrier as shown on the approved plans, the limit of work shall be the property line.
14. All efforts shall be made to retain the mature tree in the southeast corner of the property. Should the tree become damaged or die, a native replacement tree shall be planted on the property. The replacement tree shall be a non-cultivar native species to be approved by the Commission or its Agent.

B. Prior to Construction

15. A list of plantings to be installed shall be submitted to the Conservation Commission or its Agent for review and approval prior to anything being planted. Plantings shall include non-cultivars of native coastal species, including but not limited to Highbush blueberry (*Vaccinium corymbosum*), Bayberry (*Morella pensylvanica*), and Winged sumac (*Rhus copallinum*).
16. All work shall conform to the requirements of local, state, and federal regulations for construction within a coastal floodplain. This includes no fill for structural purposes in a velocity flood zone and compliance with ASCE 24-14.
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. 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. WAS-3
 - 43. WAT-3
- D. After Construction/In Perpetuity
 - 44. REV-1
 - 45. RES-4
 - 46. COC-2
 - 47. An as-built plan of the entire project, including the drywell system, signed and stamped by a professional engineer shall be submitted with the request for the Certificate of Compliance.

Perpetual Conditions

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

- 48. 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.
- 49. DER-4
- 50. Annual inspection and maintenance of the drywell system shall be the responsibility of the property owner and any successor in interest or successor in control of the property subject to this order. Proof of annual inspection and/or maintenance of the drywell system shall be submitted to the Commission. Should the drywell system become non-functional at any point, it shall be repaired and brought back to working order so runoff does not negatively impact the adjacent bordering vegetated wetland. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
- 51. At no point shall the breakaway walls of the garage be modified so they are no longer breakaway. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.

Staff Report

Date: November 6, 2020
To: Conservation Commission
From: Whitney McClees, Conservation Agent
Subject: **18 Point Street – Notice of Intent – DEP# 023-1333, Fairhaven CON 023-181**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Revised site plan dated October 13, 2020
- Letter from the engineer dated November 2, 2020 addressing FEMA building code in relation to coastal dunes

RESOURCE AREAS ON/NEAR SITE

- Coastal Beach
- Coastal Dune
- Buffer Zone
- 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.
- **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 demolish the existing house and construct a new single-family house on a flood-compliant foundation with associated site work.

COMMENTS

- Currently the project proposes a paved driveway and a frost wall foundation with horizontal members below grade and a slab. The project also proposes some fill.
- Minimal fill is allowed if it is not for structural purposes. However, it is likely to be washed out in the event of a significant storm or flooding event.
- The letter from the engineer states that there is an exception in the building code related to soil type in terms of using something other than an open pile foundation in a coastal dune.
 - The exception states that “where surface or sub-surface conditions consist of non-erodible soil that prevents the use of pile foundations, spread footings...may be permitted.”
 - The on-site evaluation of the soils submitted in the letter by the engineer states that there are compact soils on site.
- FEMA has found significant scour associated with horizontal structures in and near coastal dunes.
- *Question for the Applicant:* Given that the soils on site, the proximity to the coastal dune, as well as proposed fill, how do you propose to prevent impacts from scour/erosion associated with horizontal structures to the property, surrounding properties, and the coastal dune?
- Additionally, FEMA regulations state that concrete slabs need to be structurally independent of the primary foundation system of the building. If it is structurally connected, the main structure needs to be capable of resisting any added flood loads and effects of scour due to the presence of a slab.
- Currently the project proposes three separate horizontal structures within 100 feet of the coastal dune: frost wall foundation below grade, concrete slab at grade, concrete driveway.
- To protect the property and adjacent properties from damage as well as to prevent impacts to the coastal dune from scour associated with horizontal structures, I maintain that an open pile foundation should be used.

RECOMMENDATION

- I recommend asking the applicant if they would like to request a continuance to revise the project in such a manner that does not negatively impact the coastal dune or flood control/storm damage prevention.

Staff Report

Date: November 6, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **15 James Street – Notice of Intent – DEP# 023-1334, Fairhaven CON 023-184**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 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 applicant proposes to demolish the existing house and construct a new single-family home on a flood-zone compliant foundation with connections to town water and sewer and associated site work. The applicant also proposes to relocate the driveway and shed.

COMMENTS

- The project falls within the velocity flood zone. The plan depicts some fill around the foundation, but the engineer stated during the site visit that there is no fill for structural purposes for the project. The slab should be structurally separate from the rest of the house to prevent structural damage during a flood event.
- There is a small area of phragmites on the property that the applicant proposes to remove and replace with native species.
- The site is fairly flat and there are no resource areas within 100 feet of the property.
- Erosion control has been proposed along the south side of the property. There are no catch basins in the road, so no erosion controls are proposed within nearby catch basins.
- The only vegetation removal proposed is the removal of the phragmites and replacement with native species.

RECOMMENDATION

- I recommend closing the public hearing for 15 James Street and issuing an Order of Conditions for SE 023-1334, CON 023-184, plans dated October 13, 2020, with the following recommended conditions:

Approve plan dated October 13, 2020

A. General Conditions

1. ACC-1
2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
3. REC-1
4. REC-2
5. ADD-1
6. ADD-2
7. ADD-4b
8. ADD-4c
9. ADD-5
10. STO-4
11. STO-5
12. The erosion and sedimentation barrier shall serve as the alteration limit line along the south side of the property. The property lines shall be serve as the limit of work on the north, east, and west sides of the property. No work shall be permitted beyond this limit line.
13. All construction shall comply with local, state, and federal building regulations for construction within a flood zone. This includes no fill for structural purposes and compliance with ASCE 24-14.

B. Prior to Construction

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

C. During Construction

23. At no time shall any construction materials, soils, fills, sediments, dredging or any other substances be stockpiled or stored outside the alteration limit line.
24. MAC-3
25. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
26. DEB-1
27. DEB-5
28. BLD-3
29. BLD-4

- 30. EMC-2
- 31. SIL-3
- 32. SIL-4
- 33. SIL-8
- 34. LOW-3
- 35. WAS-2
- 36. WAT-3
- D. After Construction/In Perpetuity
 - 37. REV-1
 - 38. RES-4
 - 39. COC-1
 - 40. COC-2

Perpetual Conditions

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

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

Staff Report

Date: November 6, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Smugglers Road – Notice of Intent – DEP# 023-1337, Fairhaven CON 023-189**

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)

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 26-foot by 26-foot 2-story garage outside of the flood zone but within the 100-foot buffer zone to Bordering Vegetated Wetlands.

COMMENTS

- The garage is shown as 25 feet away from the BVW, but some filling and grading will occur closer than 25 feet of the wetland line. However, the project narrative notes that minor filling and grading will be needed.
- The applicant is also proposing to modify the existing unpaved driveway to access the garage and construct an overflow parking area. The plans include a note that the applicant may want to pave the driveway in the future.
- The plans include erosion control between the proposed garage and the BVW.
- During a site visit, the applicant indicated that there was an area of invasive species he would like to clear out to prevent the trees from being overgrown and choked. It has not been added to the site plan as of yet.

RECOMMENDATION

- I recommend closing the public hearing and issuing an Order of Conditions for 1 Smugglers Road, SE 023-1337, CON 023-189, plans dated October 15, 2020, with the following recommended conditions:

Approve plan dated October 15, 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
13. CAP-3
 14. REC-3
 15. DER-1
 16. PCC-3
 17. EMC-1
 18. Both alternatives shown on the approved plan for erosion control shall be utilized, with the silt sock/straw wattle on the upland side of the silt fence.
 19. PCC-1
 20. SIL-5
 21. SIL-7
 22. SIL-9
 23. 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-3
44. DER-4

Staff Report

Date: November 6, 2020

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **2 Melpen Way – Enforcement Order – Fairhaven EO 023-013**

DOCUMENTS REVIEWED

- Enforcement Order dated June 24, 2020, ratified July 6, 2020
- Plan of Site Remediation dated October 30, 2020
- Letter of Findings, Site Assessment, dated November 2, 2020
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Salt Marsh
- Coastal Dune
- Coastal Beach
- Buffer Zone
- Land Subject to Coastal Storm Flowage

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].
 - **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 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 Enforcement Order was issued due to activity conducted without permits. The activity included: clearing of trees and vegetation, removal of stumps, burning of stumps, grubbing and grading, and the replacement/new construction of a boardwalk across the marsh to the beach (boards have little to no spacing) which will cause shading impacts to the marsh.

- The Enforcement Order required a restoration plan be submitted, including a delineation of and assessment of damage to the resource areas on site and restoration to original conditions.
- The restoration plan has been submitted for review and approval by the Commission.

COMMENTS

- The restoration narrative and plan note that 19 trees, mostly red cedar and black cherry, were cut on site, both in the BVW and in the buffer zone.
- The restoration plan proposes tree and shrub replacements in the BVW and in the buffer zone
 - 19 tree saplings, including red maple, black gum tupelo, yellow birch, and red cedar
 - 30 shrubs, including sweet pepperbush, inkberry, and bayberry
- The restoration plan also proposes removing the planks of the boardwalk and re-installing them with a minimum of ¾" spacing and removing some gravel/concrete rubble from the BVW.
- The species proposed seem appropriate to the area and for planting in and adjacent to a BVW.
- The restoration narrative proposes spring 2021 planting with monitoring through Fall 2023 for three years of monitoring.

RECOMMENDATION

- Unless the Commission has other additions to the plan or narrative they would like to see, I recommend approving the restoration plan with the following conditions:
 - 1) 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.
 - 2) 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.
 - 3) ADD-4b: All work shall be done in accordance with final plans dated October 30, 2020 by Charon Associates, Inc. and the narrative by Sabatia, Inc., dated November 2, 2020, as approved by this Commission. Any deviation must be approved by this Commission in writing prior to commencing work involved in this deviation.
 - 4) 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.
 - 5) No work beyond what is outlined in the restoration plan shall be done on the property without seeking an Order of Conditions or Negative Determination of Applicability from the Conservation Commission.
 - 6) 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.
 - 7) 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.
 - 8) 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.

- 9) 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.
- 10) 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.
- 11) 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.
- 12) 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 three 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.
- 13) All plantings shall be frequently watered during the summer and fall months of 2021-2023 to prevent failure. If necessary, a watering system shall be installed.

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.