

January 29, 2021

Conservation Commission
40 Center Street
Fairhaven, MA 02719

Dear Conservation Commission,

This letter is to request a Certificate of Compliance to:

Michael J. Smoske
746 Sconticut Neck Road
Fairhaven, MA 02719

Re: DEP File # SE 23-725

Registry of Deeds Book 4819, page 235

In August 2000 my father, Lawrence Smoske (now deceased) filed plans to rebuild a house that was destroyed in a fire several years prior in the rear of the property at 746 Sconticut Neck Road. However, he was later informed that the building regulations had changed in the town of Fairhaven and the property at 746 Sconticut Neck Road no longer had the required amount of street frontage to accommodate two housing structures on the plot of land and he could not get the property grandfathered in. Consequently, no further action was ever taken, and no construction was ever performed.

Last year I remortgaged my home and the bank withheld \$2000 until I can remove the Order of Conditions from my deed. I respectfully request a Certificate of Compliance at your earliest convenience.

Sincerely,
Michael J. Smoske
746 Sconticut Neck Road
Fairhaven, MA 02719
617-930-0731
Dsmoske13@gmail.com



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

DEP File Number:

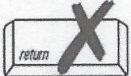
WPA Form 8A – Request for Certificate of Compliance

SE 23-725
Provided by DEP

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

A. Project Information (cont.)

Important:
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



Upon completion of the work authorized in an Order of Conditions, the property owner must request a Certificate of Compliance from the issuing authority stating that the work or portion of the work has been satisfactorily completed.

- This request is being made by:

Name: Michael J. Smoske

Mailing Address: 746 Sciticut Neck Road

City/Town: Fairhaven State: MA Zip Code: 02719

Phone Number: 617-936-0731
- This request is in reference to work regulated by a final Order of Conditions issued to:

Applicant: Lawrence Smoske

Dated: 08/08/2000 DEP File Number: SE 23-725
- The project site is located at:

Street Address: 746 Sciticut Neck Road City/Town: Fairhaven, MA

Assessors Map/Plat Number: 42 Parcel/Lot Number: 7 & 8
- The ~~final~~ Order of Conditions was recorded at the Registry of Deeds for:

Property Owner (if different): Lawrence Smoske

County: Bristol Book: 4819 Page: 235

Certificate (if registered land)
- This request is for certification that (check one):

the work regulated by the above-referenced Order of Conditions has been satisfactorily completed.

the following portions of the work regulated by the above-referenced Order of Conditions have been satisfactorily completed (use additional paper if necessary).

the above-referenced Order of Conditions has lapsed and is therefore no longer valid, and the work regulated by it was never started.



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands

DEP File Number:

WPA Form 8A – Request for Certificate of Compliance

SE 23-725
 Provided by DEP

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

A. Project Information (cont.)

6. Did the Order of Conditions for this project, or the portion of the project subject to this request, contain an approval of any plans stamped by a registered professional engineer, architect, landscape architect, or land surveyor?

Yes If yes, attach a written statement by such a professional certifying substantial compliance with the plans and describing what deviation, if any, exists from the plans approved in the Order.

No

B. Submittal Requirements

Requests for Certificates of Compliance should be directed to the issuing authority that issued the final Order of Conditions (OOC). If the project received an OOC from the Conservation Commission, submit this request to that Commission. If the project was issued a Superseding Order of Conditions or was the subject of an Adjudicatory Hearing Final Decision, submit this request to the appropriate DEP Regional Office (see <http://www.mass.gov/eea/agencies/massdep/about/contacts/find-the-massdep-regional-office-for-your-city-or-town.html>).

4. The final Order of Conditions was recorded at the Registry of Deeds for:

Lawrence Smooke
 Property Owner (if different)

Bristol
 County

4819
 Block

235
 Page

5. This request is for certification that (check one):

- the work regulated by the above-referenced Order of Conditions has been satisfactorily completed.
- the following portions of the work regulated by the above-referenced Order of Conditions have been satisfactorily completed (use additional paper if necessary):

the above-referenced Order of Conditions has lapsed and is therefore no longer valid, and the work regulated by it was never started.



January 12, 2021

Ms. Whitney McClees
Town of Fairhaven
Conservation Commission Agent
40 Center Street
Fairhaven, MA 02719

Re: **Union Wharf Improvements**
Mass DEP File # SE 23-1257 – Permit Extension Request
Town of Fairhaven
Union Wharf, Fairhaven, MA 02719

Dear Mr. McClees:

On behalf of the Town of Fairhaven, Foth Infrastructure & Environment (FOTH) Please accept this letter as a request for extension for the above-referenced Order of Conditions. I hereby request that the Order be extended for an additional 36 months (maximum of 36 months per permit).

The reason(s) for delay in commencing/completing the project is/are:

The Union Wharf project is scheduled to be constructed in phases based on the scale of the overall project and the availability of funding for the bulkhead replacement projects. To date, the Town has completed 3 phases of construction including replacement of 400 LF of steel sheet pile bulkhead along the east and west face of the wharf (Phase 1 and 2) and installation of Town of Fairhaven's Police and Fire Department's Public Safety Marina along the north east face of the wharf.

At this time we respectfully request a 3 year (36 month) extension to the construction period in order to complete the remaining 3 phases of the project. Phase 4 is schedule for construction over the winter/ of 2021 while the remaining phases are pending the availability of funding.

The Order of Conditions was recorded at the Registry of Deeds for Bristol (S.D.) County,

Book; 12233, Page; 253.

If you have any questions, or require any additional information, please do not hesitate to contact me at this office.

Sincerely,
Foth Infrastructure & Environment, LLC

A handwritten signature in blue ink that reads "Patrick Rezendes" with a long, sweeping underline.

Patrick Rezendes
Project Manager

Cc: Tim Cox (Town of Fairhaven)
Susan Nilson, PE (FOTH)



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 1- Request for Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

City/Town _____

A. General Information

Important:
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



1. Applicant:

^{previously}
Maggie Frye (Rossi)
Name

maggiemae2426@gmail.com
E-Mail Address

60 Bayview Ave
Mailing Address

Fairhaven
City/Town

MA
State

02719
Zip Code

508-207-0582
Phone Number

Fax Number (if applicable)

2. Representative (if any):

Firm

Contact Name

E-Mail Address

Mailing Address

City/Town

State

Zip Code

Phone Number

Fax Number (if applicable)

B. Determinations

1. I request the Fairhaven Conservation Commission make the following determination(s). Check any that apply:

- a. whether the **area** depicted on plan(s) and/or map(s) referenced below is an area subject to jurisdiction of the Wetlands Protection Act.
- b. whether the **boundaries** of resource area(s) depicted on plan(s) and/or map(s) referenced below are accurately delineated.
- c. whether the **work** depicted on plan(s) referenced below is subject to the Wetlands Protection Act.
- d. whether the area and/or work depicted on plan(s) referenced below is subject to the jurisdiction of any **municipal wetlands ordinance** or **bylaw** of:

Town of Fairhaven
Name of Municipality

- e. whether the following **scope of alternatives** is adequate for work in the Riverfront Area as depicted on referenced plan(s).



WPA Form 1- Request for Determination of Applicability

City/Town

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

C. Project Description

1. a. Project Location (use maps and plans to identify the location of the area subject to this request):

60 Bayview Ave

Street Address

Fairhaven

City/Town

28A

Assessors Map/Plat Number

436

Parcel/Lot Number

b. Area Description (use additional paper, if necessary):

expansion of existing driveway and asphalt along street. The areas have already been used for parking and the grass is damaged. Potential benefits from paving and plantings over dead grass. Please see drawing for details

c. Plan and/or Map Reference(s):

Title

Date

Title

Date

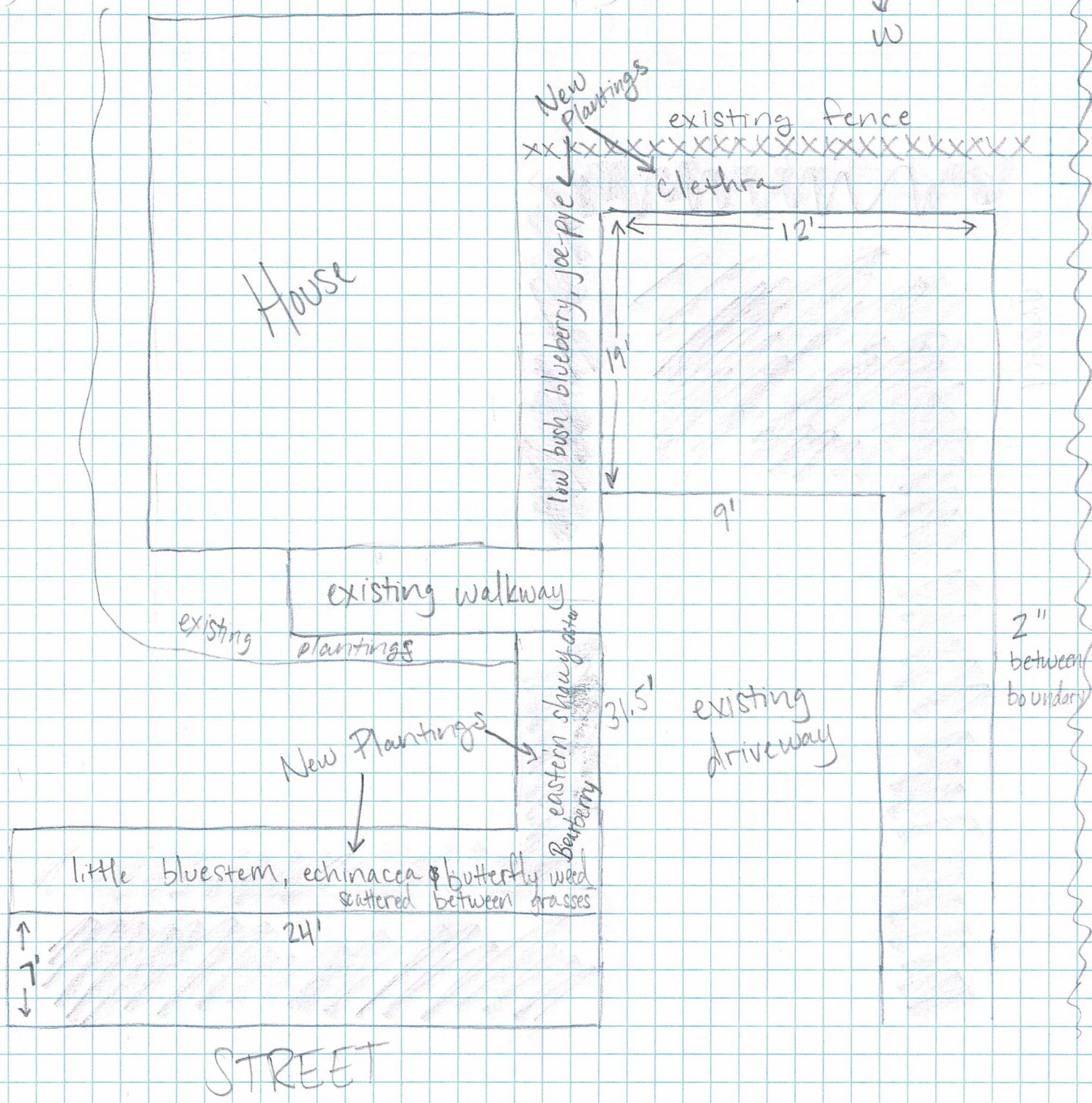
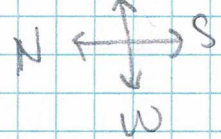
Title

Date

2. a. Work Description (use additional paper and/or provide plan(s) of work, if necessary):

See 1b for details

expansion of existing driveway along south facing side of the house. Asphalt driveway will continue 19' towards existing fence 3' towards neighbor. We have received verbal approval from neighbor. Asphalt will extend along street, continuing the same layout as our four neighbors to the south. 7' toward the front of the house and 24' wide. Please see drawing for details.



The proposed street dimensions are a continuation of the 4 houses to the South. Shaded areas are the proposed driveway, street, and new garden beds. Plantings will be dependent on availability or any suggestions from the committee. Preferably low grasses and ground cover for the front and a mix of native flowers. Please note written dimensions as drawing is not accurate to size based on square grids.

Mr. Chairman, and Board members:

Feb 3, 2021

If you would be so kind as to read this into the record, concerning BellaVista island.

I was in the past a full member and Chairman of this board, I personally dealt with the Applicant of Bella Vista Island for many months when they were applying to do work in the Island. At 1st work started to be performed without any permits, the ConCom intervened and stopped all work and asked for a filling. Some work did continue sporadically while the commission waited for the NOI to be presented to the commission, a violation again.

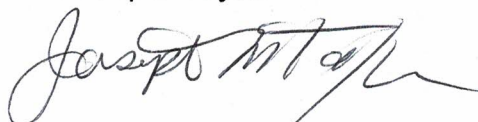
Upon receiving the NOI there was a meeting and the notice was reviewed completely with some changes. There was to be a repair to the seawall, a repair but the seawall was extended and incorrectly built, It is almost a vertical wall. This was all done incorrectly and not on the NOI. There was a massive hole dug on the back part of the island, and there continued to be many infractions to the NOI as well as more work was done that was not on the NOI. Each time the Applicant was approached they said oh I did not know and we will stop and fix the problem, never happened. I spoke with the engineer several times to see if things could be corrected, to no avail. The DEP finally showed up after many conversations and when they showed up their 1st word to me was Holy smokes what happened here.

My response was I told you many times what was going on here now you see.

Please review all the records and early aerial photos of the property before the work started. And you will see what I speak of. I also understand there is talk of dredging under the bridge and there is talk of the bridge being built wrong, at this point that is moot now when the property was purchased there was a schedule about dredging, not please do it when you want but you must, according to the plans you agreed to when purchased the property. Past performances are clear of indications of future performances.

Thank you for letting me add my comments:

Joseph Taylor

A handwritten signature in black ink, appearing to read "Joseph Taylor", written in a cursive style.



TOWN OF FAIRHAVEN, MASSACHUSETTS

CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

January 27, 2021

Richard J. Rheume
Prime Engineering, Inc.
P.O. Box 1088
Lakeville, MA 02347

RE: 1 Bella Vista Island Notice of Intent Filings
SE 023-1309, CON 023-110
SE 023-1340, CON 023-195

Dear Mr. Rheume,

The Conservation Commission has asked repeatedly for further information so they are able to move forward with discussing the Notices of Intent for 1 Bella Vista Island. They were extremely frustrated to receive yet another continuance request at their January 25, 2021 meeting. They expect all of the previously requested information to be submitted next week and expect your attendance at the February 8, 2021 Conservation Commission meeting to discuss the status of the projects.

The NOI for SE 023-1309, CON 023-110 needs to be revised to reflect only those items required by the Administrative Consent Order with Penalty (Enforcement Document #00004701). Many of the items listed in the February 13, 2020 Preliminary Peer Review Report from LEC Environmental Consultants, Inc. are still outstanding. I have summarized those items below and attached the report for your reference.

The following items need to be addressed before the Commission can proceed with review of the SE 023-1340, CON 023-195 NOI:

- The Applicant must demonstrate to the Commission that the site has been cleaned up, including photos of nearshore areas as proof that booms, anchors, associated wires, and the wooden float have been removed from resource areas. Given the history of enforcement at this property, the Commission is unlikely to proceed with review of any additional activities until this is accomplished.
- As noted in the peer review report, the Applicant needs to provide a written statement to the Commission regarding activities that have not been completed under DEP File No. SE 023-1101 and File No. SE 023-1127, or include them as part of the project in the above filing. The activities which have not been completed include:
 - Over 250 plantings depicted on the *Proposed Planting Plan* which were not planted,
 - The area that was supposed to become meadow (mowed to no less than four inches twice per year) is now manicured lawn, and
 - The rain gardens which were proposed to be constructed as mitigation for filling two isolated wetlands were never constructed.
- The previous filing (SE 023-1309, CON 023-110) needs to be updated with revised plans which exclude any activities that are now proposed in the current NOI, as stated above.

- The Applicant needs to perform an eelgrass survey as requested by MA Division of Marine Fisheries in their letter dated December 4, 2020.

The following items have been discussed and agreed to during public hearings in accordance with LEC's Preliminary Peer Review Report:

- An Existing Conditions Plan that shows all features on the property based on a current survey, including lighting, benches, and landscaping along the southerly portion of the island, current resource area boundaries and buffer zones, the extent of the lawn on the property, and the entire property boundary. No proposed features or activities should be shown on this plan.
- A separate plan showing Proposed Activities associated with the ACOP. This plan should not include the proposed pier and float.
- A new NOI for the pier, float, and any other proposed activities that are not part of the ACOP, including activities from previous filings that have not been completed.
- Activities not completed under previous filings should be addressed either in writing or on a plan, i.e. the rain gardens and plantings on the southerly portion of the island. If the Applicant intends to complete these activities, they should be shown on the plan and included in the NOI for the pier and float. If there is no intention to complete the activity, a statement should be provided explaining why and requesting the appropriate action from the Commission, such as a partial COC.
- Proof that the booms, anchor, wires, and other items listed in the February 13, 2020 LEC report (attached) have been removed and disposed of properly. The Conservation Commission unanimously voted that all debris in resource areas should be removed prior to the June 22 meeting.
- Each of the items above is further detailed in LEC's report. All items listed in the recommendations section need to be addressed with the exception of the comments regarding the toe plate stones, which no longer apply.

Please submit any and all information listed above no later than February 1 for the February 8, 2021 Conservation Commission meeting. The Commission will be moving forward with discussion on February 8 and expects your attendance. If you do not submit additional documentation, the Commission will likely choose to issue denials for lack of information.

Should you have any questions or need further information, do not hesitate to contact me in the Conservation Office at (508) 979-4022 ext. 128 or via email at conservation@fairhaven-ma.gov. Thank you for your immediate time and attention in this matter.

Sincerely,



Whitney McClees, Agent
Fairhaven Conservation Commission
conservation@fairhaven-ma.gov
(508) 979-4022 ext. 128

cc: File
Patti Kellogg, MassDEP
Shaun Walsh, MassDEP
Mark Manganello, LEC Environmental Consultants, Inc.



February 13, 2020

Email [wmcclees@fairhaven-ma.gov]

Ms. Whitney McClees, Agent
Fairhaven Conservation Commission
40 Center Street
Fairhaven, MA 02179

Re: Preliminary Peer Review Report
DEP File No. SE 23-1309, 23-1101, 23-1127, & 23-1161
1 Bella Vista Island
Fairhaven, Massachusetts

[LEC File #: TOFai\20-018.01]

Dear Members of the Commission:

LEC Environmental Consultants, Inc., (LEC) is pleased to submit this initial Preliminary Peer Review Report associated with the Notice of Intent (NOI) Application and Request for Certificate of Compliance (COC) filed for the above-referenced site in Fairhaven, Massachusetts. LEC has been retained by the Commission to review the filings for compliance with the Massachusetts Wetlands Protection Act (M.G.L., Ch. 131, s. 40), and its implementing Regulations (310 CMR 10.00) and the Town of Fairhaven Wetlands Bylaw (Chapter 192).

LEC reviewed the NOI and COC submittals and relevant documents in the project file, and attended an on-site meeting and site walk with the Commission on February 9, 2020. Due to the complicated and extensive history of enforcement actions and Conservation filings dating back to the Applicant's purchase of the property in 2009, this letter is intended to be a preliminary review report outlining our initial comments and requests for information. Once the comments provided below are addressed, we will provide a more specific review of the project under the above-referenced state and local Regulations.

Permitting Overview and Background

The current NOI has been filed to permit activities referenced in an Administrative Consent Order with Penalty (ACOP) and Notice of Noncompliance (#00004701) issued by Massachusetts Department of Environmental Protection (MassDEP), dated June 25, 2019 for violations of the State Act and Regulations. The ACOP provides a detailed procedural history for the property dating back to 1970 when the existing driveway bridge was permitted through a DEP Waterways License, with a focus on Conservation Commission filings, enforcement actions, and other environmental permit applications which have occurred since 2009.

LEC Environmental Consultants, Inc.

www.lecenvironmental.com

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Suite 1
Plymouth, MA 02360
508-746-9491
508-746-9492 (Fax)

380 Lowell Street
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100 Grove Street
Suite 302
Worcester, MA 01605
508-753-3077
508-753-3177 (Fax)

P. O. Box 590
Rindge, NH 03461
603-899-6726
603-899-6726 (Fax)

PLYMOUTH, MA

WAKEFIELD, MA

WORCESTER, MA

RINDGE, NH



The Applicant purchased the property in 2009 and in 2010 the Commission issued the first of three Enforcement Orders (EO) for unpermitted activity. MassDEP also issued EOs in 2010 and 2013. In response to the EOs, the Applicant filed multiple NOIs, documented under DEP File No. SE 23-1101, 23-1127, and 23-1161. Based on our preliminary review, it appears that only certain aspects of the work permitted under these file numbers were completed as reviewed below:

Previous Conservation Filings

As noted above, there are three DEP file numbers associated with the property, each of which informs the current filing (DEP SE #23-1309) in some manner.

DEP File No. SE 23-1101

The Commission issued an Order of Conditions (OOC) dated February 7, 2011, approving the project, including improvements to the stone revetment and various landscaping activities including wetland restoration, as depicted on the *Plan of Site and Proposed Improvements*, prepared by Charon Associates, Inc., dated January 21, 2011. There is no record of a COC for this project and while the current NOI provides a list of activities permitted under the OOC, it states that “most of the items were completed” without specifying which items were not completed.

DEP File No. SE 23-1127

According to the current NOI, the NOI filed under this file number included a request for an access drive to the beach, beach nourishment, elimination of the wetland restoration stipulated in File No. SE 23-1101, *Phragmites* removal, and installation of a floating pier. The filing was significantly modified during the review process and the Commission ultimately issued an OOC dated February 13, 2012, which permitted general invasive species control for the island, dune restoration, restoration plantings, *Phragmites* removal from the “non-jurisdictional wetlands.” In addition, the Applicant was required to pay for wetland restoration at the Fairhaven DPW site as mitigation for filling the non-jurisdictional wetlands and converting them to rain gardens. The restoration plantings were detailed on a *Proposed Planting Plan*, prepared by Prime Engineering with consultation from G. Bourne Knowles & Company, Inc. The Applicant has requested a COC for this permit; however, it appears that the rain gardens were never created and the proposed plantings were never installed.

DEP File No. SE 23-1161

According to the current application, this NOI from 2013 sought permission to construct an access drive to the beach, a groin expansion, and installation of a pier, ramp and float. During review by the Commission, it was determined that some groin expansion had already occurred and that groin expansion was not supported by DMF. The subsequent chronology of events is uncertain, but according to the current NOI, no decision was issued, and the Applicant is requesting this file to be reopened so that the groin work and pier can be reviewed. It is our understanding that the Conservation file for this filing is missing, but that



MassDEP has indicated a denial was issued February 11, 2014. Since the hearing was closed and a denial issued, we recommend a new NOI filing for pier, ramp, and float.

Current NOI Filing DEP No. SE 023-1309

The current NOI filing scope of work includes items stipulated in the ACOP issued by MassDEP, including removal and reconstruction of 70 feet of seawall, dredging beneath the bridge, nourishment of the beach with the dredge spoils, beachgrass plantings, coastal dune fencing and construction of a coastal dune. The scope of work was approved by MassDEP pending approval by the Commission. The Commission is not mandated to approve the project because the MassDEP-ordered NOI filing resulting from the ACOP negotiations is based on MassDEP's view that the activities proposed generally meet the performance standards under the state *Act*. The Commission may review and comment on all aspects of this filing under the Act and Bylaw regardless of the ACOP. As noted above and further detailed below, the complexity of the filing and the need for additional details on the plans prevents a comprehensive review of the NOI at this time. Once the comments below are addressed we will provide a more thorough review of the current NOI.

Preliminary Findings and Recommendations

Based on our review of the site and the previous and current NOI filings, we have the following Preliminary Findings and Recommendations for the Commission to consider:

- The site plans submitted with the NOI are lacking information and should be updated to reflect existing conditions and clarify the scope of work proposed. The plans are lacking a current wetland delineation, including the boundaries of Salt Marsh, any Freshwater Wetlands (IVWs or BVWs), Coastal Dune, Coastal Beach, and Coastal Bank. These boundaries should be delineated by a qualified professional and depicted clearly on an Existing Conditions Plan, which should be a separate sheet in the plan set. Other resource areas should also be shown on the Existing Conditions Plan including Land Containing Shellfish, Land Subject to Coastal Storm Flowage, Rocky Intertidal Shore (if present), Land Subject to Tidal Action and any eelgrass beds in the vicinity of the island.
- The Existing Conditions Plan should be based on a current land survey that includes topography, all existing landscaping features, seawalls and toe plates, plantings specified under previous orders, the limit of lawn, mulch planting beds (identify species planted), lighting and benches along the perimeter of the island, and utilities (including perimeter electric). The Existing Conditions Plan should clearly label all features which are the subject to the ACOP and current NOI. No proposed features or activities should be depicted on the Existing Conditions Plan.
- The Applicant should clarify which activities have been completed and which activities have not been completed under DEP File No. SE 23-1101 and File No. SE 23-1127. It appears that the plantings depicted on the *Proposed Planting Plan* under File No. 23-1127 were not planted, and the area that was supposed to be mowed to no less than four inches twice per year is at least partially



manicured lawn. The isolated wetlands, also referenced as “isolated depressions,” that were to become rain gardens under File No. SE 23-1127 are now part of the lawn. If any incomplete work permitted under File No. SE 23-1101 or No. SE 23-1127 are included in this filing, they should be clearly identified on the plans and in writing.

- It is our understanding that the NOI filing under DEP File No. SE 23-1161 was denied by the Commission; therefore, we recommend the Applicant submit a new NOI for those activities, including the pier, ramp and float after the current NOI review is completed.
- We recommend the Commission seek additional clarification of the permitting status of the “toe plate” located at the base of the seawall. While we understand the purpose of the toe plate, it appears that it extends further seaward and includes two rows of flat stones which function more as a walking path than as support for the seawall. Consultation with MassDEP Waterways and DMF may also be advisable.
- Numerous items should be removed from resource areas as soon as possible, including booms, anchors, and associated wires, the wooden float, and the 6” x 6” wooden posts along the property line near the entrance.
- The Commission should not issue a COC for File No. SE 23-1127 since the landscaping activities have not been completed as noted above.
- The Applicant should address the comments provided in DMF’s letter in response to the NOI dated January 7, 2020.

Thank you for the opportunity to assist you with this project. If you have any questions or require additional information regarding this review, please don’t hesitate to contact me.

Sincerely,

LEC Environmental Consultants, Inc.

Mark L. Manganello

Assistant Director of Ecological Services

cc: Dave Hill, MassDEP Waterways
Shaun Walsh, MassDEP
Eileen Feeney, Division of Marine Fisheries



The Commonwealth of Massachusetts

Division of Marine Fisheries

251 Causeway Street, Suite 400, Boston, MA 02114

p: (617) 626-1520 | f: (617) 626-1509

www.mass.gov/marinefisheries



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor

KATHLEEN A. THEOHARIDES
Secretary

RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

December 4, 2020

Fairhaven Conservation Commission
Town Hall
40 Center Street
Fairhaven, MA 02719

Dear Commissioners:

The Division of Marine Fisheries (MA DMF) has reviewed the Notice of Intent by Heiam Alsawalhi, 1 Bella Vista Island, to construct a pier, ramp, float, to install underground electric and water as well as planting trees, shrubs and a lawn on Round Cove in the Town of Fairhaven, with respect to potential impacts to marine fisheries resources and habitat. The plans included dredging, beach nourishment, etc. MA DMF is commenting on the pier/utilities/landscaping portion of the project.

The project site lies within mapped shellfish habitat for soft shell clam (*Mya arenaria*), quahog (*Mercenaria mercenaria*), and bay scallop (*Argopecten irradians*). Subtidal waters within the project site have habitat characteristics suitable for these species. Land containing shellfish is deemed significant to the interest of the Wetlands Protection Act (310 CMR 10.34) and the protection of marine fisheries.

The area abutting the proposed float system has been mapped by DEP as an eelgrass (*Zostera marina*) bed. Eelgrass beds provide one of the most productive habitats for numerous marine species [1,2] and are designated "special aquatic sites" under the Federal Clean Water Act 404(b) (1) guidelines. Historically mapped areas are significant because they indicate that habitat conditions may remain suitable for eelgrass growth, and any absence of eelgrass may fall within the normal wax and wane of the meadow edge over time [3].

MA DMF offers the following comments for your consideration:

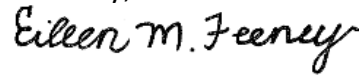
- Shading can reduce seagrass bed density, leading to habitat fragmentation [4,5]. Floating docks significantly impact eelgrass beds through shading and often completely eliminate underlying beds [5]. To minimize loss of eelgrass habitat, the floating dock should not be positioned over any underlying eelgrass beds. Given that beds have been mapped previously in this region, an eelgrass survey should be performed to demonstrate absence of eelgrass at the float site. The float should be situated in a

manner that avoids direct displacement (support pilings) or shading of any eelgrass identified in the survey.

- Anchoring the barge in the eelgrass beds while not in use could damage sensitive resource areas and should be prohibited.

Questions regarding this review may be directed to eileen.feeney@mass.gov.

Sincerely,



Eileen M. Feeney
Fisheries Habitat Specialist

cc: Richard Rheume, Prime Engineering, Inc.
Timothy Cox, Shellfish Constable
Christine Jacek, ACOE
Robert Boeri, CZM
Holly Williams, MA DMF
Tom Shields, MA DMF

EF

References

1. Heck KL, Jr., Carruthers TJB, Duarte CM, Hughes AR, Kendrick G, et al. (2008) Trophic transfers from seagrass meadows subsidize diverse marine and terrestrial consumers. *Ecosystems* 11: 1198-1210.
2. Jackson EL, Rowden AA, Attrill MJ, Bossey SJ, Jones MB (2001) The importance of seagrass beds as a habitat for fishery species. *Oceanography and Marine Biology: an Annual Review* 39: 269-303.
3. Duarte, C.M., J.W. Fourqurean, D. Krause-Jensen, and B. Olesen. 2006. Dynamics of seagrass stability and change. In *Seagrasses, biology, ecology and conservation*, ed. W.D. Larkum, R.J. Orth, and C.M. Duarte, 271–294. The Netherlands: Springer.
4. Burdick DM, Short FT (1999) The effects of boat docks on eelgrass beds in coastal waters of Massachusetts *Environmental Management* 23: 231-240.
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February 1, 2021

Fairhaven Conservation Commission
Town Hall
40 Center Street
Fairhaven, MA 02719

RE: BELLA VISTA ISLAND

Dear Commission Members,

This is in response to Whitney McClees January 27, 2021 letter to me. The responses have been set in the same order as the comments in that letter.

Enclosed is a revised Notice for file #SE023-1309 which deals only with items required by the Administrative Consent Order. It consists of four sets of plans:

- The first set of plans includes a cover sheet, an existing conditions plan, a resource area plan and an ACOP improvements plan.
- The second set of plans has two sheets and is marked Exhibit C-1. It presents details of the groin removal and groin re-construction, as well as the beach nourishment.
- The third plan attachment is Exhibit B and shows the mandated dredging under the causeway bridge.
- The fourth set of plans marked as Exhibit A and shows the details of the proposed seawall re-construction (four sheets).

With regard to File # SE23-1340, please find the requested items:

- Photos showing the rocky beach that show the booms, ropes and debris have been removed.
- A revised Notice of Intent form and plans that show non-ACOP requested improvements.

Last year, we submitted two plans to you both with a revision date of 12/1/2020 which showed all existing conditions. The plan entitled "Resource Area Map" has the limit of resources in different colors including coastal dune, top of bank, bottom of bank, land subject to coastal storm flowage, etc. The other plan entitled "Existing Conditions" shows the existing conditions without the limits of resource areas. The existing conditions plan shows all trees, shrubs, electric boxes, water spigots, sheds, drives, fences, stairs, etc. This plan shows no proposed improvements as you had requested.



We are requesting that the rain gardens not be required and that the lawn be allowed to remain as a manicured lawn for the following reasons:

- During the review process for the phragmites – choked depressions, we demonstrated to the Commissions' satisfaction that those depressions were non-jurisdictional isolated depressions under the MA wetland regulations.
- In spite of the Commissions' agreement that the depressions were non-jurisdictional, the proponent voluntarily agreed to restore a wetland that had been illegally filled by the Town in the DPW yard. Brandon Faneuf oversaw the restoration and reported back to the Commission on the successful completion of that voluntary effort.
- The lawn is in the resource "land subject to coastal storm flowage" which doesn't have any performance standards, so a lawn is allowed. In fact, it does a superior job at stabilizing the ground from erosion. An appropriate condition in the Order is to not allow regular fertilization.

It is not practical to conduct an accurate eel grass assessment at this time of year. We have therefore removed the proposed pier, gangway and floats from the Notice of Intent. The Notice of Intent SE23-1340 is in essence a request to allow the existing conditions to remain.

We look forward to presenting these improvements to you at your next meeting.

Sincerely,
PRIME ENGINEERING, INC.

Richard J. Rheume, P.E., LSP
Chief Engineer

Bella Vista Island, Fairhaven
List of Plans

Proposed Improvements Mandated by Administrative Consent Order

- Cover Sheet (Sheet 1)
- Existing Conditions Plan (Sheet 2)
- Resource Areas Plan (Sheet 3)
- ACOP Improvements Plan (Sheet 4)

Proposed Improvements

- Cover Sheet (Sheet 1)
- Existing Conditions Plan (Sheet 2)
- Resource Areas Plan (Sheet 3)
- Proposed Improvements Plan (Sheet 4)

- Exhibit A
- Seawall Plan and Cross Sections (Sheet 1)
 - Proposed Plan (Sheet 2)
 - Proposed Seawall Improvement (Sheet 3)
 - Proposed Seawall Improvement (Sheet 4)

- Exhibit B
- Causeway Detail and Dredging Plan

- Exhibit C
- Proposed Improvement Layout View (Sheet 1)
 - Profile Plan of Groin Improvement (Sheet 2)



LOCUS

BELLA VISTA ISLAND

PH 945

BALSAM STREET

COTTONWOOD STREET



WEST SIDE



LOOKING WEST



LOOKING WEST



LOOKING NORTH



LOOKING NORTH



LOOKING EAST





DREDGE

LOOKING SOUTH



LOOKING SOUTH



LOOKING SOUTH



LOOKING SOUTH









Bella Vista Island, Fairhaven



Bella Vista Island, Fairhaven



Bella Vista Island, Fairhaven



Bella Vista Island, Fairhaven







TOWN OF FAIRHAVEN, MASSACHUSETTS

CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

January 29, 2021

Natalie Reis
6 Emerson Avenue
Fairhaven, MA 02719

RE: Violations of Order of Conditions, SE 023-1302, CON 19-066
Cease and Desist Issued for 6 Emerson Avenue

Ms. Reis,

It has come to my attention that there are numerous violations of the current Order of Conditions (SE 023-1302, CON 19-066) issued March 27, 2020, and amended November 16, 2020. I accompanied the Building Commissioner on a site visit on January 29, 2021, and observed the following violations of the issued Order of Conditions and approved site plan under the Massachusetts Wetlands Protection Act (MGL c. 131, §40), its associated regulations (310 CMR 10.00), and the Fairhaven Wetlands Bylaw (Chapter 192):

- 1) Failure to conform to the plans and special conditions referenced in the order (General Condition #13)
- 2) Failure to do work in accordance with final plans dated September 29, 2020 (Special Condition #A8)
- 3) Failure to post the MassDEP/FCC sign in a location that is clearly visible from the road (Special Condition #B18)
- 4) Failure to provide the Commission with the name(s) and telephone number of the site contractor and project manager(s) responsible on site for compliance with the Order (Special Condition #B21).
- 5) Failure to maintain all sedimentation barriers in good repair until all disturbed areas have been fully stabilized with vegetation or other means (General Condition #18)
- 6) Failure to maintain adequate erosion and sedimentation control measures through construction until the site has been stabilized (Special Condition #B23)
- 7) Failure to maintain protective fencing around the root zone of the mature tree (Special Condition #B24)
- 8) Failure to submit the source of the fill used for the project for approval prior to use (Special Condition #C36)
- 9) Failure to conform to the requirements of local, state, and federal regulations for construction within a coastal floodplain (Special Condition #B16)
 - a. ASCE 24-14 Section 4.5.4 specifies that the placement of nonstructural fill is permitted for minimal site grading and landscaping.
 - b. NFIP Technical Bulletin 5 (TB 5) Section 7.5 states that “minor grading and the placement of minor quantities of nonstructural fill are allowed in Zone V but only for landscaping, drainage under and around buildings, and support of parking slabs, pool decks, patios, walkways, and similar site elements. Nonstructural fill should not

prevent the free passage of floodwater and waves beneath elevated buildings, divert floodwater or waves such that building damage is exacerbated, or lead to damaging flood and wave conditions on a site or adjacent sites. Nonstructural fill should be assumed to wash away and should not be used in foundation design calculations.”

- c. NFIP TB 5 Section 7.5.2 states that “placement of up to 2 feet of fill under or around an elevated building can generally be assumed to comply with free-of-obstruction requirements and be acceptable without an engineering analysis or certification, provided basic site drainage principles are not violated and provided there are no other site-specific conditions or characteristics that would render the placement of the fill damaging to nearby buildings.”
- d. NFIP TB 5 Section 7.5.2 states that “if fill is proposed for a site, the proposed final grade should be compared to local topography.”

A cease and desist has been issued, and any and all activity on the site must stop until such time that non-compliance with the issued Order of Conditions is addressed and rectified. Please be advised, under General Condition #1 of the issued Order of Conditions, failure to comply with all conditions stated in the permit, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify the Order. Pursuant to the Fairhaven Wetlands Bylaw (§192-11), the Conservation Commission reserves the right to assess fines up to \$300.00 for each violation or non-compliance with the issued permit and this letter. Additionally, each day a specific violation continues constitutes a separate offense.

Should you have any questions or need further information, do not hesitate to contact me in the Conservation Office at (508) 979-4022 ext. 128 or via email at conservation@fairhaven-ma.gov.

Thank you for your immediate time and attention in this matter.

Sincerely,



Whitney McClees, Agent
Fairhaven Conservation Commission
conservation@fairhaven-ma.gov
(508) 979-4022 ext. 128

CC: Geoffrey Haworth, Chairman, Fairhaven Conservation Commission
Chris Carmichael, Fairhaven Building Commissioner
Chief Michael Myers, Fairhaven Police Department
Chief Todd Correia, Fairhaven Fire Department
Paul Foley, Fairhaven Planning Department