

Staff Report

Date: March 3, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **14 Turner Avenue – Planting Plan Approval – No DEP#, Fairhaven CON 023-203**

DOCUMENTS REVIEWED

- Planting plan submitted February 28, 2021
- Determination of Applicability and associated documents
- Request for Determination of Applicability and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Coastal Dune
- Coastal Beach (no work proposed in the resource area)
- Barrier Beach (no work proposed in the resource area)
- Bordering Vegetated Wetland (no work proposed in the resource area)
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE

PERFORMANCE STANDARDS

- **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 was approved to do the following:
 - Replace the existing 8’ x 10’ shed with a new shed in the same dimensions on the existing concrete pad
 - Relocate and pave the driveway from the side of the house to the rear of the property; no more than 50% paved
 - Replace the old driveway with a wrap-around deck
 - Replace the existing wooden fence with vinyl plastic with 50% opening

COMMENTS

- The submitted planting plan shows two planting areas on either side of the driveway.
- The driveway apron will be paved and the remainder will be crushed stone.
- The majority of the plants proposed are native. I provided the below feedback to the property owner regarding the submitted plan:
 - Bigleaf hydrangea is not native. It is listed as non-native, native to Japan on the list from CZM. This should be replaced with an alternative.
 - There are several species of bee balm, some of which are native to this area, some of which are not. Which species of bee balm are you proposing?
 - You may need slightly more spacing for some of the larger shrubs, but otherwise, the area and density look good.
- I have not yet heard back from the property owner regarding my comments.

RECOMMENDATION

- I recommend the property owner make changes to the plan so as not to include any non-native species and include the scientific names of the species on the plan as that is what any nursery will be looking for.

Staff Report

Date: March 3, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **8 Chambers Street – Request for Certificate of Compliance – DEP# 023-1326, Fairhaven CON 023-160**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- Order of Conditions issued July 31, 2020
- 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) 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 proposed to install a 16-foot by 28-foot garage outside the buffer zone, but in the velocity flood zone.

COMMENTS

- This project was previously permitted under an RDA as a 6” slab. In order to comply with FEMA and State Building Code, the project was changed from a slab to a full foundation. A cease and desist was issued because the project was beyond the scope of what was permitted and a Notice of Intent was filed.
- There was no erosion control installed prior to beginning digging the foundation. The property owner has since installed erosion control around the project.
- No changes are proposed to the location or size of what was originally permitted by the Commission. The sole change is the foundation that is being installed.
- The work falls outside the 100-foot buffer zone to BVW but is within the velocity flood zone.
- I performed a site visit on March 2, 2021 and confirmed that the garage was constructed in accordance with the approved plans.
- There are two perpetual conditions that will need to be included on the Certificate of Compliance.
 - CHM-3: Pesticides, herbicides, fungicides, and fertilizers shall not be used within 100 feet of the wetlands, within the riverfront area, and within bordering land subject to flooding. Organic pesticides, herbicides, fungicides and fertilizers may be used subject to the review and approval of the Conservation Commission. This shall be noted in the Certificate of Compliance and shall be an ongoing condition.
 - 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.

- The Commission should determine whether including DER-4 on the COC is sufficient or if the applicant will need to prepare a separate document to be recorded on the deed.
 - Special Condition #D.39: RES-4: The deed language will be prepared by the applicant’s attorney or representative and it will be submitted to the Conservation Staff for review prior to the issuance of the Certificate of Compliance.
- The stone driveway was extended to the new garage, which was not on the plans. It does not appear to be a major deviation from what was approved.

RECOMMENDATION

- If the Commission feels including the deed language on the Certificate of Compliance as a perpetual condition, I recommend issuing a Certificate of Compliance for Complete Certification with two ongoing conditions:
 - CHM-3: Pesticides, herbicides, fungicides, and fertilizers shall not be used within 100 feet of the wetlands, within the riverfront area, and within bordering land subject to flooding. Organic pesticides, herbicides, fungicides and fertilizers may be used subject to the review and approval of the Conservation Commission. This shall be noted in the Certificate of Compliance and shall be an ongoing condition.
 - 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.
- If the Commission feels the deed language should be a separate document recorded on the deed, I recommend holding off on issuing a Certificate of Compliance until the language is submitted for review.

Staff Report

Date: March 3, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **2 Alcobia Drive – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-205**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage
- Salt Marsh
- Buffer Zone

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.”
- **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.”

PROJECT SUMMARY

- The applicant is proposing to construct the following:
 - a 14-foot by 18-foot stamped concrete patio
 - an 8-foot by 12-foot concrete pad for a grill area
 - a 12-foot by 12-foot pergola over existing pavers
- The application notes that all required permits will be obtained and the mixing of cement will be contained to a designated area.

COMMENTS

- The proposed location for the patio is within the outermost 10-20 feet of the buffer zone to salt marsh.
- The applicant has proposed that a concrete washout area will be used to contain any concrete washout and prevent it from flowing into the marsh.
- The total area of impervious surface proposed is 348 square feet, less than 5% of the total lot size.
- The work is proposed in an existing lawn area.

RECOMMENDATION

- I recommend closing the public hearing and issuing a Negative 3 and Negative 6 Determination for 2 Alcobia Drive with the following conditions:
 - Construction must comply with all local, state, and federal flood zone regulations.
 - CAP-3
 - WAS-2

Staff Report

Date: March 5, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **46 Sconticut Neck Road – Notice of Intent – DEP#023-1296,
Fairhaven CON-19-050**

DOCUMENTS REVIEWED

- Notice of Intent and associated attachments submitted
- Revised plans dated September 18, 2019
- Revised mitigation plan dated August 10, 2019
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw
- Stormwater Management Plan Review by GCG Associates, Inc. dated June 25, 2019
- Second review by GCG Associates, Inc. dated August 26, 2019
- Third review by GCG Associates, Inc. dated October 2, 2019
- Revised Plans and documents submitted December 18, 2020
- Peer review letter by GCG Associates, Inc. dated February 16, 2021
- Revised mitigation calculations and plans dated February 28, 2021

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone
- Salt Marsh
- Priority and Estimated Habitat for Rare and Endangered Species
- 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
- **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."
 - No work is proposed within 100 feet of Salt Marsh, Priority and Estimated Habitat for Rare and Endangered Species, or Land Subject to Coastal Storm Flowage

PROJECT SUMMARY

- The Notice of Intent was filed for the construction of an 8-house subdivision, roadway, stormwater facility, and utilities and for wetland mitigation of historical impacts.
- The proposed construction is located in the most western portion of the property and will be located on approximately 2.3 acres of predominantly disturbed land or old field habitat. An additional impact to natural wood land will impact approximately 2,500 square feet (0.06 acres). The remainder of the property, approximately 25 acres, will remain undisturbed.
- The Fairhaven Conservation Commission issued an Order of Resource Area Delineation (ORAD) on April 4, 2019 confirming the wetland delineation on the property (DEP File # SE 023-1284).
- A historic wetland impact area was identified by MassGIS 2005 Human Altered Areas database. The entire area accounts for 24,751 square feet.
- Through subsequent permitting processes with MassDEP, Army Corps of Engineers, and the 401 Water Quality program, the project has been revised to mitigate the disturbed wetland in place.

COMMENTS

- The applicant has been engaged in permitting processes through the Army Corps of Engineers, MassDEP, and Water Quality.
- The project has been submitted to the Planning Department and will be presented to them later this month.
- The applicant has also submitted a signed affidavit certifying that they wish to present the project as if it were a new filing to mitigate quorum issues and allow all current members the ability to vote on the project.
- The newly submitted plan set does not include any sheets related to the wetland mitigation area. The mitigation plan needs to be added to the plan set in a similar scale and layout and include the wetland line from the ORAD, cross-sections, etc.

- The peer review letter outlines comments related to the Mass. Stormwater Handbook and wetland crossing.
- The applicant has not yet submitted a response to the peer review letter.

RECOMMENDATION

- I recommend asking the applicant if they would like to request a continuance to a future meeting to allow for further time to include sheets related to mitigation in the plan set as well as submit response to the most recent peer review.

Staff Report

Date: March 5, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **3 Hidden Drive – Notice of Intent – DEP# 023-1342, Fairhaven CON 023-196**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- Enforcement Order issued May 21, 2020
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Revised site plan dated February 20, 2021
- Revisions letter from applicant's representative dated March 1, 2021

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 to erect a fence as well as remove stumps and loam and seed the area.

COMMENTS

- The issued Enforcement Order required the submission of restoration plan on or before August 19, 2020 for the following items:
 - An assessment of the site and submission of a restoration plan by a qualified, licensed professional by August 19, 2020
 - Delineation of the wetland by a qualified professional
 - A list of the trees, shrubs, and other vegetation that were damaged and/or cut down, including indication of which are native and which are not
 - Restoring and revegetating the disturbed area to the original extent of the resource area by October 15, 2020 as laid out by the Fairhaven Conservation Commission in response to the submitted restoration plan
 - Assessments of vegetation for three growing seasons following the completion of the work shall be submitted to the Commission. If any of the planted vegetation fails to establish, the property owner shall be required to replace those that fail.
- The applicant submitted this Notice of Intent rather than a restoration plan. That aside, the only item on the above list that has been addressed is the delineation of the wetland by a qualified professional.
- The letter accompanying the revised plans noted the following:
 - Approximately 12-15 small diameter trees and other vegetation were disturbed from the 100-foot buffer zone to a Bordering Vegetated Wetland.
 - The owner proposes the planting of five (5) Red Oaks coupled with ten (10) Highbush Blueberry to restore this portion of the parcel.
 - The applicant is also requesting permission to construct a chain link fence to connect to the existing highway fence along the rear of the property and to extend the existing wood fence along the side-yard approximately 30 feet. Both fences would provide a clear line of demarcation between the upland and wetland portions of the backyard.

- The revised plan shows that the disturbed area will be seeded with a wetland seed mix. They also note that a gate will be installed with the chain link fence, though the location is not indicated on the plans.
- The enforcement order specified a list of the trees, shrubs, and other vegetation that were damaged and/or cut down, including indication of which are native and which are not. This has not been provided with the most recently submitted information. The only item provided was an estimate of how many trees were felled.
- The plantings proposed do not approximate what was removed. The letter submitted by the applicant's representative indicates 12-15 trees were removed in addition to other vegetation. Only 5 trees are proposed to be planted.
- Since the disturbed area is proposed to be seeded with a native wetland seed mix, a mowing plan should accompany the NOI so as to preserve the wildlife habitat functions of buffer zone areas.
- Side details of the fences should be included on the plans. The fences should not constitute a barrier to wildlife movement.

RECOMMENDATION

- I recommend asking the applicant if they would like to request a continuance to a subsequent meeting to allow time to address the above items.

Staff Report

Date: March 5, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **North Street, Map 15 Lot 43 – Notice of Intent – DEP# 023-1341, Fairhaven
CON 023-194**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Revised site plan dated February 26, 2021

RESOURCE AREAS ON/NEAR SITE

- Salt Marsh
- Coastal Beach
- Buffer Zone
- Land Subject to Coastal Storm Flowage

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].
- **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.”

- **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 proposes to install a six-foot fence along two sides of the property, a portion of stockade and a portion of vinyl. They applicant also proposes to install a gate across a portion of the property along Cherry Street.

COMMENTS

- The plans include riverfront area, but this property is south of the designated mouth of the Acushnet River. Therefore, there is no riverfront area on the property.
- The performance standards apply to the salt marsh as well as the 100-foot buffer zone.
- Salt marshes will migrate landward as sea levels rise, therefore reducing and/or eliminating vertical barriers in the buffer zone will allow for successful salt marsh migration corridors that will not cause an adverse effect on productivity.
- Based on the current notation, it appears the only proposed vinyl fence is along the rear of Lot 48A and the rest of the proposed fence for the property is stockade
- Portions of the fence along Cherry Street fall within the AE flood zone. The full extent of the flood zone is not depicted on the site plan, specifically across Lots 48, and 48A.
- Several abutters have expressed concern over the installation of a fence directly behind existing fences.
- The Wetlands Protection Act Regulations state that “an Order of Conditions does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of property rights.” (310 CMR 10.05(6)(i))
- Many sections of the fence and associated erosion control barrier appear to be through areas of dense vegetation. A note on the plan states that the equipment to be used shall be limited to hand tools, mechanical auger, and a bobcat in the areas where the available space allows the use of this equipment.
- The Commission should consider in areas that have dense vegetation whether that vegetation is serving as a fence already and if removing that vegetation to install a chain link fence would negatively impact the salt marsh either by removing buffer vegetation or restricting the ability of the salt marsh to migrate inland in the future.
- Additionally, the Commission should consider the impact of a fence on migratory patterns for wildlife as well as the potential for debris to collect along the fence after high tide events.
- The removal of that vegetation could also impact flood control and storm damage prevention.
- There are two notes on the plan to remove items. One appears to refer to a yard waste pile. The other appears to refer to a tree on the corner of Lot 48A and North Street.
- The revised plans have made the following changes:
 - A dumpster is depicted to be located on Cherry Street across from Cooke Street next to the sidewalk.
 - Orange construction fence has been paired with the straw wattles to provide a clearly visible limit of work.
- The revised plans include the following additional construction notes:
 - Access to the site shall be through the cherry street frontage

- Trimming of branches, as needed, from the tree located on the boundary at Map 15-Lot 90 shall only be completed by a qualified arborist. Trimming shall be limited to branches encroaching on the applicant's property to the extent needed to install the fence.
- Trees over 4" in diameter shall not be removed unless directly on the fence line. Any trees that are removed shall be replaced with Leyland cypress or approved equal.
- A portable chipper shall be used to create mulch from material cut in the work zone.
- Leyland cypress is not native. No planting plan for the shrub vegetation proposed to be removed has been submitted.
- The use of a bobcat and chipper are proposed in the areas north of the extension of Cooke Street.
- The amount of vegetation to be removed still has not been addressed.
- Given the history of non-compliance by the applicant on other open Order of Conditions, the Commission could consider requiring a security under the bylaw.
 - §192-9(A). As part of a permit issued under this chapter...the Conservation Commission may require that the performance and observance of any conditions imposed hereunder be secured wholly or in part...by a proper bond or deposit or money or negotiable securities or other undertaking of financial responsibility in an amount sufficient in the opinion of the Commission.

RECOMMENDATION

- I recommend asking the applicant if he would like to request a continuance to a subsequent meeting to address the above items and submit a revised plan.

Staff Report

Date: March 5, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Bella Vista Island – Notices of Intent – DEP# 023-1309, Fairhaven CON 023-110 – DEP# 023-1340, Fairhaven CON 023-195**

DOCUMENTS REVIEWED

- Notice of Intent and associated site plans and documents
- MassDEP Administrative Consent Order with Penalty and Notice of Noncompliance dated June 25, 2019
- Previous Notices of Intent, Order of Conditions, Enforcement Orders
- Division of Marine Fisheries comments dated January 7, 2020
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Preliminary Peer Review Report, prepared by LEC Environmental Consultants, Inc. dated February 13, 2020
- Overall Site Plan dated April 16, 2020
- Existing Conditions plan dated June 6, 2020
- Additional revised documents submitted February 1, 2021
- Peer review letter dated February 22, 2021
- Letter from engineer dated March 5, 2021 with associated photos regarding debris removal

RESOURCE AREAS ON/NEAR SITE

- Salt Marsh
- Coastal Beach
- Coastal Dune
- Coastal Bank
- Land Containing Shellfish
- Land Under the Ocean
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF)
- Isolated Vegetated Wetlands

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].
- **Coastal Beach: 10.27**

(3) Any project on a coastal beach...shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.

(5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.
 - **Coastal Dune: 10.28**

(3) Any alteration of, or structure on, a coastal dune or within 100 feet of a coastal dune shall not have an adverse effect on the coastal dune by:

 - (a) affecting the ability of waves to remove sand from the dune;
 - (b) disturbing the vegetative cover so as to destabilize the dune;
 - (c) causing any modification of the dune form that would increase the potential for storm of flood damage;
 - (d) interfering with the landward or lateral movement of the dune;
 - (e) causing removal of sand from the dune artificially; or
 - (f) interfering with mapped or otherwise identified bird nesting habitat.
 - **Coastal Bank: 10.30**

(4) Any project on a coastal bank or within 100 feet landward of the top of a coastal bank...shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action.

(6) Any project on [a coastal bank significant to storm damage prevention or flood control] or within 100 feet landward of the top of such coastal bank shall have no adverse effects on the stability of the coastal bank.
 - **Land Containing Shellfish: 10.34**

(4) Any project on land containing shellfish shall not adversely affect such land or marine fisheries by a change in the productivity of such land...

(6) ...the issuing authority may, after consultation with the Shellfish Constable, permit the shellfish to be moved from such area under the guidelines of, and to a suitable location approved by, the Division of Marine Fisheries, in order to permit a proposed project on such land.
 - **Land Under Ocean: 10.25**

(3) Improvement dredging for navigational purposes affecting land under the ocean shall be designed and carried out using the best available measures so as to minimize adverse effects...

(4) Maintenance dredging for navigational purposes affecting land under the ocean shall be designed and carried out using the best available measures so as to minimize adverse effects...

(5) Projects...which affect nearshore areas of land under the ocean shall not cause adverse effects by altering the bottom topography so as to increase storm damage or erosion of coastal beaches, coastal banks, coastal dunes, or salt marshes.

(6) Projects...shall...be designed and constructed...so as to minimize adverse effects [or] have no adverse effects on marine fisheries habitat or wildlife 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 first NOI (SE 023-1309, CON 023-110) is a result of an Administrative Consent Order with Penalty (ACOP) with MassDEP that establishes corrective actions to bring the property into compliance. The applicant proposes to:
 - repair the existing eastern groin and provide beach nourishment
 - dredge under the bridge to allow the bridge channel to be deep enough for small crafts to navigate and place the dredged sand on the beach for nourishment purposes
 - repair the southeast end of the causeway side slope by placing large stones
- The second NOI (SE 023-1340, CON 023-195) is seeking after-the-fact approval for:
 - Wooden posts and rope line that extend north and south perpendicular to the causeway along the eastern property line
 - Reconstruction of the existing stone seawall, including removing the southern end of the seawall
 - Conversion of seasonal depressions to manicured lawn and relief from installing the previously agreed-to plantings

COMMENTS

- MA DMF has provided commentary on the ACOP project with regard to potential impacts to several marine fisheries resources and habitat.
 - Prohibit silt-producing activities or dredging from January 15 through May 31 of any year
 - Plan does not indicate where beach fill will be deposited. Disposal of beach fill in the intertidal area should be consistent with DEP’s Beach Nourishment Guide and be of equal grain size and appropriate slope to avoid premature loss from the beach and impacts to nearshore bottom habitat.
 - Proposed relocated seawall shall not be constructed below the mean high water line within the intertidal area
 - Plan does not depict the groin work. MA DMF recommends that groin repairs remain within the existing footprint. Groin shall be constructed with interstitial spaces to support marine fisheries habitat for macroalgae
- The ACOP NOI is missing the square footage of Land Subject to Coastal Storm Flowage impacted and the square footage of Land Containing Shellfish impacted.
- A portion of the proposed dredging associated with the ACOP filing is located within Natural Heritage Estimated Habitat.
- The applicant has submitted to Natural Heritage.
- The applicant’s representative submitted additional information on February 1, 2021 including revised plans, revised Notice of Intent, photographs of the dredge area, and some photographs of areas that had debris, but not all.
- The submitted photographs of debris removal do not document all areas where debris was located.
- The Commission conducted a site visit with the applicant’s engineer on February 17, 2021. The items discussed at the site visit included:
 - The debris still has not been removed from the resource area. Before any decisions are made on either filing, numerous items should be removed by hand 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. These items need to be removed by the March 8 Conservation Commission meeting and proof provided to the Commission. Otherwise, the applicant may risk daily fines.

- Under the non-ACOP filing, the applicant needs to submit a planting plan for the buffer zone that includes the removal of the planting beds, electrical features, etc. and the installation of native shrubs and grasses within the first 25 feet of the resource areas and then another 25-50 feet at least of meadow creation, complete with maintenance plan involving limited mowing and no fertilizers, herbicides, or pesticides. This should also include a phased installation plan and monitoring.
 - If the float that is currently on the coastal beach is intended to be used, it should be depicted on the non-ACOP plans.
 - This plan, once approved, needs to be started by the end of May 2021. Otherwise, the applicant will face daily fines for an ongoing violation of non-permitted items installed within a jurisdictional area.
 - Under the ACOP filing, proof should be submitted that the disposal of beach fill in the intertidal area is consistent with DEP's Beach Nourishment Guide and be of equal grain size and appropriate slope to avoid premature loss from the beach and impacts to nearshore bottom habitat.
- The applicant's representative submitted a letter and photographs documenting the removal of debris in the resource areas and buffer zones.
 - The follow items still need to be addressed so the Commission can move forward on the ACOP filing:
 - Fully address DMF's letter in response to the NOI, dated January 7, 2020, including information related to the disposal of dredged material in the intertidal area and compliance with DEP's Beach Nourishment Guide.
 - The applicant's representative should initiate dialogue with DMF with the Agent copied, providing the most up-to-date revised plans for this filing (SE 023-1309, CON 023-110).
 - Once DMF has issued commentary stating they are satisfied with the plans as revised, the Commission can move forward and incorporate DMF's comments into any conditions.
 - The condition of the Coastal Bank where the seawall was removed needs to be addressed. It appears that the slope should be covered with loam and seed to minimize erosion, though we recognize that it is a naturally eroding Coastal Bank. The existing fabric on the slope should be removed in favor of stabilizing with loam and seed.
 - The following items still need to be addressed so the Commission can move forward on the non-ACOP filing:
 - A revised plan depicting the removal of the landscaping (plantings, mulch beds, lighting/plumbing) and lawn from the buffer zone.
 - The revised plan should also include a proposed restoration plan to establish native vegetation in the 25-foot buffer zone, including native shrubs and seed mixes consisting of salt tolerant seed and wildflower seed.
 - The Commission should consider including an additional 25-50 feet at least to be restored to meadow with seed mix, complete with maintenance plan involving limited mowing and no fertilizers, herbicides, or pesticides. The meadow restoration area should be mowed only once a year outside the active wildlife season (mowing should occur between November 15 and March 31).
 - The revised plan should also include a phased installation/restoration plan and monitoring.
 - The limit of lawn area/limit of restored Buffer zone should be demarcated with permanent markers such as concrete monuments, pressure-treated four-by-fours, or a post-and-rail

fence to ensure no future encroachment into the Buffer Zone. These markers should be specified and shown on the revised plans.

- The revised plan should also show the float since it is now in the water rather than on the beach.
- These items were outlined on the peer reviewer's letter of February 22, 2021 as well as in the previous staff report dated February 19, 2021, and were provided to the applicant's representative on February 22, 2021.

RECOMMENDATION

- Since the applicant and the applicant's representative have been aware of the comments from DMF on the ACOP filing for over a year, they should be more than prepared to submit that information no later than March 15 for review prior to the March 22 Conservation Commission meeting. I recommend asking the applicant to submit the outstanding information for the ACOP filing for the March 22 meeting no later than March 15 so the agent and peer reviewer have ample time to review it and provide recommendations to the Commission.
- If the applicant feels it will take more than one week to revised the plans and put together a comprehensive restoration plan for the non-ACOP filing, I recommend the applicant consider requesting a continuance to the April 12 meeting with the understanding that the Commission will be expecting a fully revised plan addressing the restoration at that time so the restoration work can begin this spring. The Commission could consider imposing daily fines if the work is not started by the end of May 2021 for an ongoing violation of non-permitted items installed within a jurisdictional area.

Staff Report

Date: March 4, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **2 Oxford Street – Notice of Intent – DEP# 023-1345, Fairhaven CON 023-206**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Comments submitted by Division of Marine Fisheries on March 3, 2021

RESOURCE AREAS ON/NEAR SITE

- Land Under the Ocean
- Land Containing Shellfish
- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE
- Coastal Beach
- Coastal Bank
- Buffer Zone

PERFORMANCE STANDARDS

- **Land under the Ocean** 10.25
 - (5) Projects...which affect nearshore areas of land under the ocean shall not cause adverse effects by altering the bottom topography so as to increase storm damage or erosion of coastal beaches, coastal banks, coastal dunes, or salt marshes.
 - (6) Projects...which affect land under the ocean shall if water-dependent be designed and constructed, using best available measures, so as to minimize adverse effects, and if non-water-dependent, have no adverse effects, on marine fisheries habitat or wildlife habitat caused by:
 - (a) alterations in water circulation;
 - (b) destruction of eelgrass (*Zostera marina*) or widgeon grass (*Rupia maritima*) beds;
 - (c) alterations in the distribution of sediment grain size;
 - (d) changes in water quality, including, but not limited to, other than natural fluctuations in the level of dissolved oxygen, temperature or turbidity, or the addition of pollutants; or
 - (e) alterations of shallow submerged lands with high densities of polychaetes, mollusks or macrophytic algae.
- **Land Containing Shellfish** 10.34
 - (4) ...any project on land containing shellfish shall not adversely affect such land or marine fisheries by a change in the productivity of such land caused by:

- (a) alterations of water circulation;
- (b) alterations in relief elevation;
- (c) the compacting of sediment by vehicular traffic;
- (d) alterations in the distribution of sediment grain size;
- (e) alterations in natural drainage from adjacent land; or
- (f) changes in water quality, including, but not limited to, other than natural fluctuations in the levels of salinity, dissolved oxygen, nutrients, temperature or turbidity, or the addition of pollutants

(5) ...projects which temporarily have an adverse effect on shellfish productivity but which do not permanently destroy the habitat may be permitted if the land containing shellfish can and will be returned substantially to its former productivity in less than one year from the commencement of work, unless an extension of the Order of Conditions is granted, in which case such restoration shall be completed within one year of such extension

- **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."
- **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."

PROJECT SUMMARY

- The applicant is proposing to construct a 70-foot fixed pier, 30-foot gangway, and a 115-foot floating dock with finger floating docks attached.

COMMENTS

- The project is proposed directly adjacent to the proposed CAD cell for Phase V of the New Bedford Harbor Superfund Cleanup.

- The applicant notified the EPA and the EPA should reach out to the applicant directly with any concerns.
- *Question for Applicant:* Has the EPA been in touch with you regarding the location of the proposed dock in relation to the CAD cell just south?
- The Harbormaster's concerns relate to the proximity to the newest CAD cell.
- The property is a bed-and-breakfast, so the dock may need review and approval by the Planning Board.
- *Question for Applicant:* Is this proposed as a private dock or will it function more like a marina?
 - Zoning prohibits a marina in a RA district.
- The end of the dock system currently falls within Priority and Estimated Habitat; so the applicant either needs to submit a revised plan that shifts the dock system out of that area or submit the filing to the Natural Heritage and Endangered Species Program.
- The Planning Director submitted the following comments:
 - It should come to the PB as part of Chapter 91 and the PB may very well decide to have a Public Hearing under that program. I am not sure how long this has been a B&B but it should have a Special Permit from the ZBA for that use.
 - A quick look at the plans tells me that the proposed pier is too long per Section 198-32.2.C(3)(b) which limits the length of piers including floats inside the Hurricane Barrier to no more than 150 feet in length.
 - The Oxford Street Right of Way should be public access but on the ground it looks as though it is part of the 2 Oxford Street property. Also, notice that the Town Commons was on the other side of the Oxford Street terminus. This also appears as if it is someone's yard when in fact it should probably be Town waterfront parkland open to the public (see attached Oxford Map 1791).
- Division of Marine Fisheries provided feedback and had no recommendations for sequencing, timing, or methods that would avoid or minimize impact to marine fisheries resources and habitat.
- The fixed dock is proposed from an existing seawall. The total impact to Land Under the Ocean and Land Containing Shellfish is approximately 23 square feet. It appears the project will cause minimal impact to those resource areas.
- 4 pilings are proposed on the coastal beach. It doesn't appear the work will create significant impacts on the coastal beach.
- There is also a pipe on the beach that should be verified as not being impacted by the dock system as well as the function of the pipe.
- Any revision of the plans should show NHESP limits, the coastal beach resource area, and the existing pilings just south of the project as they indicate the bounds of the CAD cell.

RECOMMENDATION

- Until the necessity of filing with NHESP is confirmed, no action can be taken on the project.

Staff Report

Date: March 4, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **10 Nelson Ave – Notice of Intent – DEP# 023-1344, Fairhaven CON 023-207**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- Enforcement Order issued June 15, 2020
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Comments from MassDEP dated March 4, 2021
- Comments from Division of Marine Fisheries dated March 3, 2021

RESOURCE AREAS ON/NEAR SITE

- Coastal Bank
- Coastal Beach
- Rocky Intertidal Shore
- Buffer Zone
- Land Subject to Coastal Storm Flowage

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.
- **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.

(4) Any groin, jetty, solid pier, or other such solid fill structure which will interfere with littoral drive, in addition to complying with 310 CMR 10.27(3), shall be constructed as follows:

 - (a) It shall be the minimum length and height demonstrated to be necessary to maintain beach form and volume. In evaluating necessity, physical oceanographic and/or coastal geologic information shall be considered.

(b) Immediately after construction any groin shall be filled to entrapment capacity in height and length with sediment of grain size compatible with that of the adjacent beach.

(c) Jetties trapping littoral drift materials shall contain a sand by-pass system to transfer sediments to the downdrift side of the inlet or shall be periodically redredged to provide beach nourishment to ensure that downdrift or adjacent beaches are not starved of sediments.

(5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.

- **Rocky Intertidal Shore:** 10.31

(3) ...Significant to Storm Damage Prevention, Flood Control, or Protection of Wildlife Habitat, any proposed project shall be designed and constructed...so as to minimize adverse effects on the form and volume of exposed intertidal bedrock and boulders.

(4) ...Significant to the Protection of Marine Fisheries or Wildlife Habitat, any proposed project [that is water-dependent shall be] designed and constructed...so as to minimize adverse effects...on water circulation and water quality [and any proposed project that is not water-dependent shall have no adverse effects on water circulation and water quality.]

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

PROJECT SUMMARY

- The applicant is seeking after-the-fact approval for reconstruction of the northern groin on the property and approval for reconstruction of the southern groin and adding a concrete cap on top of the concrete revetment. The plans also show stabilizing disturbed lawn area and the installation of a fence on top of the existing revetment.

COMMENTS

- This project was initiated prior to permits being requested and an Enforcement Order was issued because no permits were granted by the Commission and the property owner had large equipment on the Coastal Beach with no protections for the resource area.
- MassDEP noted that work is proposed in a Coastal Beach resource area and that the performance standards in 310 CMR 10.27 Coastal Beaches should be addressed.
- Filing with DEP for a 401 Water Quality permit may be necessary. The addition of the fence posts on the revetment may need Chapter 91 licensing as they are proposed on an already licensed structure.
- The applicant should submit information detailing how the project complies with each of the performance standards outlined in 310 CMR 10.27.

- The Division of Marine Fisheries provided a number of comments, which should be addressed before any decision is made on this submittal.
 - No narrative was submitted with the NOI. *Questions for Applicant:* How will the two groins be repaired/reconstructed? Will there be concrete forms in the water to contain the concrete? Will the work be conducted behind cofferdams in the dry? Will a barge be used to transport materials?
 - No side profile of the two groins was included. *Questions for Applicant:* Will the elevation of the groins be higher than the original groins? Is there any seaward encroachment of either groin?
 - Impacts to adjacent eelgrass beds is a concern for the project.
- Plans do not show the original licensed footprint of the groins, only what is proposed. The plan should show both what was originally licensed and permitted and what is being requested.
- Plans need to include side profiles of the groins to be reconstructed, again superimposed over what was originally licensed and permitted.
- During the site visit, the submission of a planting plan for the top of the seawall structure was discussed to help increase flood control and storm damage prevention.
- The southern groin is significantly deteriorated and work would constitute rebuilding the structure rather than repair. As such, it should be treated as new construction, and therefore comply with 310 CMR 10.27(4):
 - Any groin, jetty, solid pier, or any other such solid fill structure which will interfere with littoral drift...shall be constructed as follows:
 - a) It shall be the minimum length and height demonstrated to be necessary to maintain beach form and volume. In evaluating necessity, physical oceanographic and/or coastal geologic information shall be considered.
 - b) Immediately after construction any groin shall be filled to entrapment capacity in height and length with sediment of grain size compatible with that of the adjacent beach.
 - c) Jetties trapping littoral drift materials shall contain a sand by-pass system to transfer sediments to the downdrift side of the inlet or shall be periodically redredged to provide beach nourishment to ensure that downdrift or adjacent beaches are not starved of sediments.
- The applicant will need to submit documentation of compliance of the above.
- Hardened coastal engineering structures such as groins can impede downdrift sediment transfer, directly impacting the coastal beach from serving the purposes of storm damage prevention and flood control by dissipating wave energy, by reducing the height of storm waves, and by providing sediment to supply other coastal features, including coastal dunes, land under the ocean, and other coastal beaches (310 CMR 10.27(1)).
- The applicant must demonstrate how the proposed work does 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 (310 CMR 10.27(3)).
- Reconstruction of the northern groin had already begun and was substantially completed by the time the Commission issued a cease and desist. Had the project come before the Commission before work was initiated, my comments would be the same as for the southern groin. If the northern groin was substantially deteriorated similar to the southern groin, compliance with the above would need to be demonstrated.
- The applicant is asking for after the fact approval for the work that has already been completed on the northern groin. The plans needs to clearly reflect this.

- Additionally, the Commission should determine the impacts of the northern groin remaining as is versus removing portions of it to minimize the length and height of the structure.
 - Having a comparison of what was originally licensed and constructed to what is proposed to be permitted would be helpful in determining this.
- A portion of the northern groin falls within rocky intertidal shore and must comply with those performance standards as well. The applicant should submit information demonstrating compliance with the performance standards outlined in 310 CMR 10.31.
- The applicant also needs to submit detailed information on what was done without a permit so the Commission can determine the exact scope of work that is being requested to be approved after-the-fact and whether or not it complies with the Wetlands Protection Act and Fairhaven Wetlands Bylaw. A narrative addressing what was done, what is proposed, and compliance with all applicable performance standards would be helpful.

RECOMMENDATION

- Until all of the above information is addressed, I don't feel there is enough information to determine whether or not this project complies with the Wetlands Protection Act and Fairhaven Wetlands Bylaw. As such, I recommend asking the applicant if they would like to continue to a subsequent meeting to address the above items.