

Staff Report

Date: March 19, 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
- Revised planting plan dated March 15, 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.”

- **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 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 revised 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.
- All of the proposed plants are native. They have included scientific names. Each symbol on the plan represents one plant. They plan to space out the plants appropriately and seed with some type of native wildflower or native pollinator mix between the larger vegetation.

RECOMMENDATION

- I recommend approving the planting plan with the following conditions:
 - Only non-cultivars are to be used.
 - Should any of the plans fail to establish within the first year of planting, they are to be replaced.

Staff Report

Date: March 19, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Bridge Street, Map 36, Lot 15 – Invasive Plant Management Plan Approval – DEP# 023-1299, Fairhaven CON 023-081**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- Order of Conditions issued June 26, 2020
- Invasive Plan Management Plan dated March 3, 2021 prepared by Groundscapes Express, Inc.
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

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

PERFORMANCE STANDARDS

- **Bordering Vegetated Wetland: 10.55(4)**
 - (a) work in a Bordering Vegetated Wetland shall not destroy or otherwise impair any portion of the BVW
 - (b) The ConCom may permit the loss of up to 5000 square feet of BVW when said area is replaced IF:
 1. The area is equal;
 2. The ground water and surface elevation are approximately equal;
 3. The overall horizontal configuration and location are similar;
 4. There is an unrestricted hydraulic connection to the same water body or waterway;
 5. It is in the same general area of the water body;
 6. At least 75% of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons; and
 7. The replacement area is provided in a manner which is consistent with all other regs in 310 CMR 10.00.
 - (c) The ConCom may permit the loss of a portion of BVW when;
 1. Said portion has a surface area less than 500 square feet;
 2. Said portion extends in a distinct linear configuration ("finger-like") into adjacent uplands; and
 3. In the judgment of the issuing authority it is not reasonable to scale down, redesign or otherwise change the proposal.

- (d) No project may be permitted which will have any adverse effect on specified habitat sites of rare species
- (e) No work shall destroy or otherwise impair any Area of Critical Environmental Concern
- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”

PROJECT SUMMARY

- The Order of Conditions approved the construction of an auto dealership consisting of a 14,000 square foot building with a paved automotive display area/parking lot.
- The Order of Conditions required the submission of an invasive management plan for review.

COMMENTS

- The submitted management plan proposes the following for a five year treatment plan:
 - For the initial year of management (2021), grind the invasive species in the area prior to the growing season, with a 48” grinder/mulcher attached to a low-impact skid steer. Then apply the cut & dab and foliar application methods before the dormant season.
 - For the following year through the remainder of the project, cut back any growth before the growing season and use foliar application before the dormant season.
- *Question for Applicant:* Does leaving the debris onsite contribute to the invasive seed bank?
- *Question for Applicant:* Do you foresee any planting needed or is there enough native seed stock onsite to flourish once the invasive species have been knocked back?
- *Question for Applicant:* How will cutting everything impact the native species on site?
- The goal is to return the area to a wet meadow wetland rather than an area either being overtaken by invasives or a manicured lawn.

RECOMMENDATION

- If the Commission feels comfortable with the responses to the questions above and the plan laid out by the applicant, I recommend approving the use of this invasive plant management plan associated with SE 023-1299, CON 023-081 for the five year period, subject to Special Condition D53 on the Order:
 - Invasive vegetation on site shall be managed as laid out in the Operation and Maintenance Plan. The applicant shall provide the name and contact information of the selected contractor to the Commission or its Agent and written notice shall be given to the Commission or its agent at least one week prior to when the work is to be performed. Every effort shall be made to control and eradicate invasive species without chemicals and natural herbicide options shall be explored and utilized prior to the use of harsh chemicals such as glyphosate. Herbicide application shall only be used after review of the site and approval by the Commission and in such a manner that does not damage any native vegetation or have any residual impact to groundwater. Documentation shall be submitted to the Commission or its Agent indicating the date of the work, the extent of the work, and the methods employed.

Staff Report

Date: March 19, 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
- Revised submission dated March 15, 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.
- 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 revised plan set provides a larger mitigation area to account for the wetland being filled in Lot 7 and associated with the road access to the stormwater BMP.
- The applicant provided a response to the peer review. The majority of the comments relate to Planning Board items. The items under Conservation jurisdiction appear to have been addressed.
- The applicant needs to provide additional peer review fee. Any unused portion of the fee will be returned to the applicant.
- The project will be before the Planning Board again the day after Conservation, so the response to the peer review has not yet been provided to the peer reviewer.

RECOMMENDATION

- If the Commission feels the most recent response does not need to be returned to the peer review for a final check for compliance with Conservation regulations, I recommend asking the applicant to request a continuance to the next meeting to allow time for the Planning Board to hold their meeting and to allow time for draft conditions to be provided to the Commission.

Staff Report

Date: March 19, 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
- Revised site plan dated March 11, 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 previously submitted 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.
- No additional information regarding what vegetation was removed was submitted.
- The most recently submitted revised plan notes the following:
 - 6 trees (red oak) and 10 highbush blueberry are proposed to be planted. The disturbed area will be seeded with a wetland seed mix.
 - Side details of the fences have been included on the plans.
- The Commission requested information on the berm and whether or not it needed to be repaired. No information has been submitted.
- The Commission also requested information confirming that there was no damage to the resource area itself. No information has been submitted

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 19, 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
- Revised site plan dated March 15, 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.”

- **LSCSF General Provisions:** 10.24(1) “If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests.”

PROJECT SUMMARY

- The applicant proposes to install 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.
- 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.
- 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 note the following:
 - The fence contractor shall mark any trees over 4” diameter prior to clearing. Upon completion of marking, the contractor shall notify the Conservation Office to schedule an inspection.

- 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.
- Equipment used to complete the fence installation shall be limited to hand tools and hand auger.
- Leyland cypress is not native, but the note does include "or approved equal," so the Commission could require native plants as a substitution for Leyland cypress.
- No planting plan for the shrub vegetation proposed to be removed has been submitted.
- The amount of vegetation to be removed still has not been addressed.
- The note referring to a Bobcat has been removed from the plans. The engineer indicated that the applicant agreed not to use a Bobcat or the wood chipper, but the reference to the wood chipper remains on the plans.
- The Commission had previously requested the date the salt marsh was delineated and noted that peer review might be considered.
- The engineer confirmed that the salt marsh was flagged by Chris Capone in October 2018.
- 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

- If the Commission feels it is important to have the salt marsh line reviewed or have a planting plan associated with the cleared vegetated submitted, I recommend asking the applicant for a continuance to provide time to address those concerns.
- If the Commission feels the project can be conditioned to comply with the Wetlands Protection Act and Fairhaven Wetlands Bylaw, I recommend asking the applicant for a continuance to the subsequent meeting to allow time for draft conditions to be provided to the Commission.