

Staff Report

Date: April 9, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **2 Starboard Drive – Request for Certificate of Compliance – DEP# 023-0033, Fairhaven CON 023-215**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance
- Order of Conditions issued April 1, 1977
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Coastal Dune
- Coastal Beach
- Barrier Beach
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE

PERFORMANCE STANDARDS

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

PROJECT SUMMARY

- The Order of Conditions was issued for the construction of a dwelling and associated septic system.

COMMENTS

- Based on the site plan from 1977, the dwelling and septic don't appear to have been constructed in the area that was approved. Instead, there are 5 small dwellings toward the rear of the property. It doesn't look like those were permitted under this filing.

RECOMMENDATION

- I recommend issuing a Certificate of Compliance for an Invalid Order of Conditions for 2 Starboard Drive.

Staff Report

Date: April 9, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **841 Sconticut Neck Road – Request for Certificate of Compliance – DEP# 023-0333, Fairhaven CON 023-221**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance
- Order of Conditions issued February 25, 1991
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE

PERFORMANCE STANDARDS

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

PROJECT SUMMARY

- Possibly a shed, but unclear.

COMMENTS

- I was not able to locate the original file, but it appears from the title of the approved plan, the work was for a shed. Possibly also for the septic system, but not positive of that.

RECOMMENDATION

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

Staff Report

Date: April 1, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **17 Abbey Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-209**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE

PERFORMANCE STANDARDS

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

(d) No project may be permitted which will have any adverse effect on specified habitat sites of rare species

(e) No work shall destroy or otherwise impair any Area of Critical Environmental Concern

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

PROJECT SUMMARY

- The applicant is proposing to install a 15-foot by 15-foot extension to an existing pool deck on 4 concrete sonotubes.

COMMENTS

- The deck expansion is located in the outer 50 feet of the buffer zone on existing lawn.
- The deck is proposed to be appropriately anchored.
- The project appears to comply with the Wetlands Protection Act and Fairhaven Wetlands Bylaw.

RECOMMENDATION

- I recommend closing the public hearing for 17 Abbey Street, CON 023-209, and issuing a Negative 3 and Negative 6 Determination with the following conditions:
 - CAP-3
 - All work shall comply with all federal, state, and local flood zone regulations.

Staff Report

Date: April 7, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **12 Huttleston Ave (Fairhaven High School) – Request for Determination of Applicability under the Bylaw only – Fairhaven CON 023-212**

DOCUMENTS REVIEWED

- Request for Determination of Applicability and associated documents
- Fairhaven Wetlands Bylaw (Chapter 192)
- Fairhaven Stormwater Bylaw (Chapter 194)

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE

PERFORMANCE STANDARDS

- The Fairhaven Wetlands Bylaw does not have performance standards specific to the 100-foot buffer zone to flood zone but the Commission should consider the project in the context of flood control, storm damage prevention, and prevention of pollution.

PROJECT SUMMARY

- The applicant is proposing to replace an existing natural turf field with a synthetic turf athletic field and construct an associated building.

COMMENTS

- The project falls under the jurisdiction of the bylaw because a portion of it falls within the 100-foot buffer zone to the flood zone.
- The change from natural turf to synthetic turf will increase the potential for contaminants.
- In installing the drainage associated with the construction of the field, best management practices should be adhered to in order to prevent pollution or contamination of stormwater, the storm drain system, or any waters of the US, especially since the area is being converted to synthetic turf instead of upgrading and improving the drainage for the existing natural turf field.
- *Question for Applicant:* Will this project require a NPDES permit?
- The Commission should consider whether the addition of rain gardens or vegetated bioswales might assist in treating any runoff not captured by the drainage system.

RECOMMENDATION

- If the Commission is satisfied with the information provided by the applicant in regards to the above comments, I recommend closing the public hearing and issuing a Negative 6 Determination for 12 Huttleston Ave, CON 023-212 with the following recommended conditions:
 - CAP-3
 - Best management practices shall be used to prevent pollution or contamination of stormwater, the storm drain system, or any waters of the US.

Staff Report

Date: April 8, 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 specific 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 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 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 the remaining outstanding peer review fee.
- The Planning Board has approved the project.

RECOMMENDATION

- I recommend closing the public hearing and issuing an Order of Conditions for 46 Scoticut Neck Road, SE 023-1296, CON 19-050, plans dated March 15, 2021, with the following recommended conditions:

Approve plan dated March 15, 2021

A. General Conditions

1. ACC-1
2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
3. REC-1
4. REC-2
5. ADD-1
6. ADD-2
7. ADD-4b
8. ADD-4c
9. ADD-5
10. The limit of work shall be the limit of work line as depicted on the approved plans. No work shall be permitted beyond this line.
11. The applicant as described in this Order must advise any potential buyer of any of the lots that fall within Conservation Commission jurisdiction 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 information shall be included with the deeds for Lots 3, 4, 5, 6, 7, and 8 and proof shall be provided to the Commission.
12. DER-5
13. REP-12
14. The wetland line, as approved in the ORAD issued April 4, 2019 (SE 023-1284), shall be modified to reflect the changes incorporated by the wetland replication/mitigation area and the areas of wetland fill, as depicted on the approved plans.

B. Prior to Construction

15. CAP-3
16. Proof of transfer of Lot 11 as depicted on the approved plan to the Fairhaven-Acushnet Land Preservation Trust shall be provided to the Commission prior to the start of work.
17. REC-3

18. DER-1
19. PCC-3
20. EMC-1
21. The Compliance and Certification Statement in the Operation and Maintenance Plan shall be signed by the appropriate parties and submitted to the Conservation Commission prior to the commencement of any work.
22. LOW-6
23. PCC-1
24. SIL-5
25. SIL-7
26. SIL-9
27. SIL-10

C. During Construction

28. The wetland restoration shall be conducted first, in accordance with the approved plans and documents and all other applicable permits. Once the restoration/mitigation area has been established and protected with erosion and sedimentation control, the applicant shall contact the Agent to perform a site inspection. Once the wetland restoration area and erosion and sedimentation controls have been inspected and approved by the Agent, the development of the subdivision can commence.
29. All work shall be done in such a manner as to prevent soils from being left disturbed for significant amounts of time. The applicant shall conduct construction in a phased manner that limits the amount of time bare soil is exposed.
30. STO-1
31. STO-3
32. STO-4
33. STO-5
34. STO-6
35. MAC-3
36. MAC-6
37. MAC-7
38. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
39. Spill kits shall be maintained on site at all times for the immediate response to any potential spill of anything that could cause harm to resource areas and water bodies.
40. DEB-1
41. DEB-5
42. BLD-3
43. BLD-4
44. EMC-2
45. SIL-3
46. SIL-4
47. SIL-8
48. LOW-3
49. WAS-2
50. WAS-3
51. WAT-3
52. RUN-2

D. Stormwater Management

53. SW-1
 54. SW-3
 55. SW-5
 56. SW-6
 57. SW-7
 58. SW-8
 59. The Stormwater Pollution Prevention Plan shall be complied with in full for this project.
- E. Replication/Mitigation
60. REP-1
 61. REP-2
 62. REP-3
 63. REP-5
 64. REP-8
 65. REP-9
 66. REP-10
 67. Monitoring shall be in accordance with the issued Army Corps of Engineers General Permit.
- F. After Construction/In Perpetuity
68. REV-1
 69. All disturbed areas within 25 feet of the resource area shall be seeded with a native wildflower mix.
 70. REP-4
 71. The Commission shall receive copies of the ACOE-required annual monitoring reports for the duration of the 10 years of monitoring.
- Perpetual Conditions
- The below conditions do not expire upon completion of the project.*
72. CHM-2 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
 73. SW-2
 74. SW-9

Staff Report

Date: April 5, 2021
To: Conservation Commission
From: Whitney McClees, Conservation Agent
Subject: **9 Taber Street – Notice of Intent – DEP# SE 023-1348, Fairhaven CON 023-211**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE

PERFORMANCE STANDARDS

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

PROJECT SUMMARY

- The applicant is proposing to demolish the existing garage and construct a 24-foot by 24-foot garage.

COMMENTS

- The house is located outside of the flood zone. The southern half of the property falls within the AE flood zone (100-year floodplain)
- The garage will be constructed partially in and partially outside of the flood zone.
- The site plan doesn’t show grading changes. Based on a site visit and the notation on the plan that the lowest adjacent grade to the proposed garage is approximately a foot lower than the flood zone elevation, it appears some grading changes will be needed to level the rear of where the garage is proposed.
- The garage is proposed to be constructed on a full foundation as of right now. This may need to be amended in order to comply with flood zone building regulations, but that should not change the footprint of the project.
 - Compliance with flood zone regulations can be included as a potential condition.

RECOMMENDATION

- I recommend closing the public hearing and issuing an Order of Conditions for 9 Taber Street, SE 023-1348, CON 023-211, with the following recommended conditions:

Approve plan dated March 12, 2021

- A. General Conditions

1. ACC-1
 2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
 3. REC-1
 4. REC-2
 5. ADD-1
 6. ADD-2
 7. ADD-4b
 8. ADD-4c
 9. ADD-5
 10. STO-4
 11. STO-5
 12. The limit of work shall be the property boundary of 9 Taber Street as depicted on the approved site plan.
 13. All work shall comply with all federal, state, and local flood zone regulations and the lowest structural member of any structures in the AE flood zone shall be one foot above the flood zone elevation.
 14. Any fill used for structural purposes shall comply with all local, state, and federal flood zone regulations.
- B. Prior to Construction
15. CAP-1
 16. CAP-3
 17. REC-3
 18. DER-1
 19. PCC-3
 20. EMC-1
- C. During Construction
21. STO-1
 22. MAC-3
 23. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 24. DEB-1
 25. DEB-5
 26. BLD-3
 27. BLD-4
 28. EMC-2
 29. SIL-8
 30. LOW-3
 31. WAS-2
 32. WAT-3
- D. After Construction/In Perpetuity
33. REV-1
 34. COC-1
 35. COC-2
- Perpetual Conditions
The below conditions do not expire upon completion of the project.
36. DER-4

Staff Report

Date: April 8, 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
- Revised site plan dated

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.
- 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 most recently submitted revised plan notes the following:
 - 10 trees (red, white, or pin 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.

RECOMMENDATION

- I recommend closing the public hearing and issuing an Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw for 3 Hidden Drive, SE 023-1342, CON 023-196, plans dated March 23, 2021, with the following recommended conditions:

Approve plan dated

A. General Conditions

1. ACC-1
2. With respect to all conditions except _____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
3. REC-1
4. REC-2
5. ADD-1
6. ADD-2
7. ADD-4b
8. ADD-4c
9. ADD-5
10. The existing and proposed fence shall serve as the limit of work. No work shall be permitted beyond this limit line.
11. WET-2

B. Prior to Construction

12. CAP-3
13. REC-3
14. DER-1
15. PCC-3
16. EMC-1
17. All planting locations shall be staked in the field prior to planting for review and approval by the Commission or its Agent.
18. PCC-1
19. SIL-5
20. SIL-9
21. SIL-10

C. During Construction

22. STO-1
23. STO-3

24. MAC-3
 25. MAC-7
 26. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 27. DEB-5
 28. No fill is permitted to be used aside from minimal soil needed to establish the shrubs and trees. No grading changes are permitted.
 29. EMC-2
 30. SIL-3
 31. SIL-4
 32. SIL-8
 33. LOW-3
- D. After Construction/In Perpetuity
34. REV-1
 35. The disturbed area shall be seeded with either a native wetland mix or a native wildflower/meadow mix. The source and type of seed mix shall be provided to the Commission.
 36. REP-4
 37. The satisfactory completion of this Order with an issuance of a Certificate of Compliance shall satisfy the Enforcement Order issued May 21, 2020.

Perpetual Conditions

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

38. The berm as depicted on the approved plan shall remain without changes in perpetuity.
39. CHM-2 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
40. DER-4
41. The restoration/planting area between the berm and the fence shall be restricted to mowing once or twice between November 15 and March 31, which is outside the active wildlife season. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.

Staff Report

Date: April 9, 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.
- The project appears to comply with the Wetlands Protection Act. As such, I have recommended conditions associated with an approval under the Act.
- The Commission will need to determine whether the project complies with the Fairhaven Wetlands Bylaw. I have outlined both an approval and a denial under the Fairhaven Wetlands Bylaw.

RECOMMENDATION

- I have included several draft motions below that the Commission will need to consider in turn. The first to close the public hearing, the second to make a decision under the Wetlands Protection Act, and the third to make a decision under the Fairhaven Wetland Bylaw.
- I recommend closing the public hearing for North Street, Map 15, Lot 43, SE 023-1341, CON 023-194.
- I recommend issuing an Order of Conditions under the Wetlands Protection Act for North Street, Map 15, Lot 43, SE 023-1341, plans dated March 15, 2021, with the following recommended conditions:

Approve plan dated March 15, 2021

- A. General Conditions
 - 1. ACC-1

2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
 3. REC-1
 4. REC-2
 5. ADD-1
 6. ADD-2
 7. ADD-4b
 8. ADD-4c
 9. ADD-5
 10. STO-4
 11. LOW-2
 12. WET-1
 13. No equipment whatsoever is permitted in the salt marsh or in the 100-foot buffer zone at any time during any phase of the project.
 14. All work shall be done by hand using hand tools only.
 15. There shall be no grubbing or removal of any vegetation to the point where the vegetation is unable to regrow.
 16. Leyland cypress are not a permitted replacement for any removed trees. Only native trees are permitted to be planted as replacement for those removed.
 17. There shall be no addition of loam, soil, or any other materials in the area of work or anywhere else on the property.
 18. No grade changes are permitted anywhere on the property associated with any of the approved work.
 19. So as not to cause undue stress and damage to the resource area, the project shall be completed within one year of initiation.
 20. A qualified professional shall oversee all phases of the project to ensure compliance with the issued Order. Weekly updates with associated photographic documentation shall be submitted to the Commission or its Agent.
 21. The project shall be completed in phases as follows:
 - i. Installation of erosion and sedimentation control and work limit fence
 - ii. Marking of vegetation to be removed
 - iii. Inspection of erosion and sedimentation control and marked vegetation by the Commission or its Agent
 - iv. Submission of a replacement planting plan for review and approval by the Commission or its Agent once which vegetation is to be removed is determined
 - v. Trimming/removal of approved vegetation
 - vi. Installation of fence by hand
 - vii. Natural revegetation period and planting of replacement vegetation
 - viii. If necessary, supplemental planting plan is submitted for review and approval by the Commission
 - ix. If necessary, supplemental plantings are installed
 22. If a cease and desist needs to be issued at any point for non-compliance with these conditions, it is an automatic fine of \$300.00 per day under Chapter 192-11 until such time as the reason the cease and desist was issued is rectified.
- B. Prior to Construction
23. Under the Fairhaven Wetlands Bylaw, Chapter 192 Section 9, a bond of \$25,000 made payable to the Town of Fairhaven shall be submitted prior to any work beginning on the

project to act a security to require the performance and observance of all conditions imposed be complied with. Should any of the conditions outlined by this permit be violated, the bond will not be returned to the applicant.

24. CAP-3
25. REC-3
26. DER-1
27. PCC-3
28. EMC-1
29. Erosion and sedimentation control and limit of work fence shall be installed without the removal of vegetation and with absolute minimal impact.
30. PCC-1
31. Before any work begins, all vegetation that will be absolutely necessary to remove for the purposes of installing the fence by hand shall be clearly marked in the field by flagging tape or other similar means by a qualified professional. After marking, the Conservation Commission or its Agent shall be contacted to review and approve the vegetation marked for removal. The Commission or its Agent reserves the right to prohibit any of the proposed vegetation from being removed.
32. A replacement planting plan shall be submitted for review and approval by the Commission or its Agent once which vegetation is to be removed is determined. This planting plan must be reviewed and approved prior to work beginning.
33. SIL-5
34. SIL-9
35. SIL-10

C. During Construction

36. The wood chipper shall not be utilized within the salt marsh resource area or its 100-foot buffer zone at any point. The wood chipper may be used outside the buffer zone on the Cherry Street side of the property or strictly within the stockpile area along North Street. The stockpile area along North Street is the only location within the 100-foot buffer zone where the wood chipper is permitted to be used at any point during the project.
37. At no point shall any wood chips be placed in any resource area or its 100-foot buffer zone.
38. At no point shall any debris be removed from the property through the salt marsh. Access to the site and removal of debris shall be done from the upland Cherry Street side of the property across from Cooke Street.
39. Any and all construction materials, soils, fills, sediments, or any other substances shall be stockpiled or stored only in the stockpile area noted on the approved plans.
40. STO-3
41. The trimming of all branches along the property line for the purposes of installing the fence by hand shall only be completed by a qualified arborist. Trimming shall be limited to branches encroaching on the applicant's property only to the extent needed to install the fence by hand. Proof of the qualified arborist conducting the work shall be provided to the Commission.
42. DEB-1
43. DEB-5
44. EMC-2
45. SIL-3
46. SIL-4

- 47. SIL-8
- 48. LOW-3
- 49. Only the approved marked vegetation shall be removed.
- 50. If the dumpster is to move to the North Street side of the property, all debris shall be removed through the Cherry Street side of the property across from Cooke Street, placed in a truck, and driven to the dumpster location.

D. After Construction/In Perpetuity

- 51. The disturbed areas shall be allowed to revegetate naturally. At the end of the first growing season after the fence is completed, the disturbed areas shall be inspected by the Commission or its Agent. If the disturbed areas are not sufficiently revegetating on their own, a planting plan shall be submitted for review and approval by the Commission.
- 52. RES-4
- 53. COC-1
- 54. COC-2

Perpetual Conditions

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

- 55. No additional vegetation beyond what is approved for the installation of the fence is permitted to be removed in perpetuity. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
- 56. No disturbance to the salt marsh resource area is permitted at any point. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
- 57. CHM-2 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
- 58. DER-4

- If the Commission chooses to deny the project under the Bylaw, I recommend the following:
 - Issue a denial under the Fairhaven Wetlands Bylaw (Chapter 192) for North Street, Map 15, Lot 43, CON 023-194, for failure to avoid or prevent significant or cumulative effects upon the wetland values protected by Chapter 192.
 - The proposed work in the buffer zone will adversely impact the adjacent Salt Marsh's functions and values, including impacts to public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution control, wildlife habitat, recreation, and aesthetics.
- If the Commission chooses to approve the project under the Bylaw, I recommend the following:
 - Issue an Order of Conditions under the Fairhaven Wetlands Bylaw for North Street, Map 15, Lot 43, CON 023-194, plans dated March 15, 2021, with the following recommended conditions:

Approve plan dated March 15, 2021

A. General Conditions

- 1. ACC-1

2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
 3. REC-1
 4. REC-2
 5. ADD-1
 6. ADD-2
 7. ADD-4b
 8. ADD-4c
 9. ADD-5
 10. STO-4
 11. LOW-2
 12. WET-1
 13. No equipment whatsoever is permitted in the salt marsh or in the 100-foot buffer zone at any time during any phase of the project.
 14. All work shall be done by hand using hand tools only.
 15. There shall be no grubbing or removal of any vegetation to the point where the vegetation is unable to regrow.
 16. Leyland cypress are not a permitted replacement for any removed trees. Only native trees are permitted to be planted as replacement for those removed.
 17. There shall be no addition of loam, soil, or any other materials in the area of work or anywhere else on the property.
 18. No grade changes are permitted anywhere on the property associated with any of the approved work.
 19. So as not to cause undue stress and damage to the resource area, the project shall be completed within one year of initiation.
 20. A qualified professional shall oversee all phases of the project to ensure compliance with the issued Order. Weekly updates with associated photographic documentation shall be submitted to the Commission or its Agent.
 21. The project shall be completed in phases as follows:
 - i. Installation of erosion and sedimentation control and work limit fence
 - ii. Marking of vegetation to be removed
 - iii. Inspection of erosion and sedimentation control and marked vegetation by the Commission or its Agent
 - iv. Submission of a replacement planting plan for review and approval by the Commission or its Agent once which vegetation is to be removed is determined
 - v. Trimming/removal of approved vegetation
 - vi. Installation of fence by hand
 - vii. Natural revegetation period and planting of replacement vegetation
 - viii. If necessary, supplemental planting plan is submitted for review and approval by the Commission
 - ix. If necessary, supplemental plantings are installed
 22. If a cease and desist needs to be issued at any point for non-compliance with these conditions, it is an automatic fine of \$300.00 per day under Chapter 192-11 until such time as the reason the cease and desist was issued is rectified.
- B. Prior to Construction
23. Under the Fairhaven Wetlands Bylaw, Chapter 192 Section 9, a bond of \$25,000 made payable to the Town of Fairhaven shall be submitted prior to any work beginning on the

project to act a security to require the performance and observance of all conditions imposed be complied with. Should any of the conditions outlined by this permit be violated, the bond will not be returned to the applicant.

24. CAP-3
25. REC-3
26. DER-1
27. PCC-3
28. EMC-1
29. Erosion and sedimentation control and limit of work fence shall be installed without the removal of vegetation and with absolute minimal impact.
30. PCC-1
31. Before any work begins, all vegetation that will be absolutely necessary to remove for the purposes of installing the fence by hand shall be clearly marked in the field by flagging tape or other similar means by a qualified professional. After marking, the Conservation Commission or its Agent shall be contacted to review and approve the vegetation marked for removal. The Commission or its Agent reserves the right to prohibit any of the proposed vegetation from being removed.
32. A replacement planting plan shall be submitted for review and approval by the Commission or its Agent once which vegetation is to be removed is determined. This planting plan must be reviewed and approved prior to work beginning.
33. SIL-5
34. SIL-9
35. SIL-10

C. During Construction

36. The wood chipper shall not be utilized within the salt marsh resource area or its 100-foot buffer zone at any point. The wood chipper may be used outside the buffer zone on the Cherry Street side of the property or strictly within the stockpile area along North Street. The stockpile area along North Street is the only location within the 100-foot buffer zone where the wood chipper is permitted to be used at any point during the project.
37. At no point shall any wood chips be placed in any resource area or its 100-foot buffer zone.
38. At no point shall any debris be removed from the property through the salt marsh. Access to the site and removal of debris shall be done from the upland Cherry Street side of the property across from Cooke Street.
39. Any and all construction materials, soils, fills, sediments, or any other substances shall be stockpiled or stored only in the stockpile area noted on the approved plans.
40. STO-3
41. The trimming of all branches along the property line for the purposes of installing the fence by hand shall only be completed by a qualified arborist. Trimming shall be limited to branches encroaching on the applicant's property only to the extent needed to install the fence by hand. Proof of the qualified arborist conducting the work shall be provided to the Commission.
42. DEB-1
43. DEB-5
44. EMC-2
45. SIL-3
46. SIL-4

- 47. SIL-8
- 48. LOW-3
- 49. Only the approved marked vegetation shall be removed.
- 50. If the dumpster is to move to the North Street side of the property, all debris shall be removed through the Cherry Street side of the property across from Cooke Street, placed in a truck, and driven to the dumpster location.

D. After Construction/In Perpetuity

- 51. The disturbed areas shall be allowed to revegetate naturally. At the end of the first growing season after the fence is completed, the disturbed areas shall be inspected by the Commission or its Agent. If the disturbed areas are not sufficiently revegetating on their own, a planting plan shall be submitted for review and approval by the Commission.
- 52. RES-4
- 53. COC-1
- 54. COC-2

Perpetual Conditions

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

- 55. No additional vegetation beyond what is approved for the installation of the fence is permitted to be removed in perpetuity. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
- 56. No disturbance to the salt marsh resource area is permitted at any point. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
- 57. CHM-2 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
- 58. DER-4

Staff Report

Date: April 8, 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
- Revised site plan dated April 5, 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 310CMR 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 dredged 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 need 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.
- An abutter submitted a correction based on the discussion at the last meeting: the two groins were systematically demolished with a sledge hammer over quite a few years, eliminating cement, putting the northern groin in a similar state of deterioration to the southern groin. Additionally, the northern groin appears to have been installed longer than what was previously there.
- With the revised plans, the engineer included the following comments:
 - The south groin is no longer proposed for reconstruction. We are suggesting that the concrete be saw cut and we will remove the excess debris and concrete from the broken section;
 - The limits of the licensed groins has been added to the plan for reference;
 - A landscaped planting bed has been added along the revetment together with a small concrete landing in the current lawn area. Plant types selected by the owners have been added to the plan. They consulted CZM and www.grownative.mass.org in selecting the plants.
- The planting bed includes one non-native species (daylily) and does not include any shrubs.
- The revised plans and comments from the engineer do not address much of what was discussed on the site visit or during the first meeting.
 - What was the plan for the large pipes that were removed before the cease and desist was issued last year?
 - What is the cross-section of the northern groin?
 - What was the footprint of the licensed groin versus what was installed without permits?
 - Division of Marine Fisheries comments have not been addressed.
 - MassDEP comments have not been addressed.

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.

Staff Report

Date: April 7, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **198 Balsam Street – Notice of Intent – DEP# 023-1346, Fairhaven CON 023-208**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Natural Heritage Endangered Species Program comments dated April 1, 2021
- Division of Marine Fisheries comments dated April 7, 2021

RESOURCE AREAS ON/NEAR SITE

- Coastal Beach
- Salt Marsh
- Buffer Zone
- Land Under the Ocean
- Land Containing Shellfish
- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE

PERFORMANCE STANDARDS

- **Coastal Beach:** 10.27
(3) Any project on a coastal beach...shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.
(5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.
- **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.”
- **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.”

PROJECT SUMMARY

- The applicant is proposing to construct a 133-foot-long fixed dock with a 20-foot gangway and a 10-foot-by-30-foot float.

COMMENTS

- The majority of the work will take place below mean low water.
- Approximately 12 pilings are proposed within the coastal beach area. No work is proposed within the salt marsh, though work is proposed within 100 feet of it.
- Natural Heritage provided comments that the proposed project will not adversely affect the resource area habitat of state-protected rare wildlife species and that their opinion is that the project complies the state-listed species performance standard for the issuance of an Order of Conditions.
- The applicants have provided an initial shellfish mitigation fee but are open to additional measures as determined by the Shellfish Warden due to the popularity of the area for shellfishing.
- Division of Marine Fisheries had no specific concerns or comments on the project.
- The project was approved by the Board of Appeals on April 6, 2021.

RECOMMENDATION

- I recommend closing the public hearing and issuing an Order of Conditions for 198 Balsam Street, SE 023-1346, CON 023-208, plans dated February 8, 2021, with the following recommended conditions:

Approve plan dated February 8, 2021

A. General Conditions

1. ACC-1
2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
3. REC-1
4. REC-2
5. ADD-1
6. ADD-2
7. ADD-4b
8. ADD-4c
9. ADD-5
10. STO-4
11. STO-5
12. LOW-2
13. WET-1

B. Prior to Construction

14. The applicant shall confer with the Harbormaster/Shellfish Warden to determine any additional shellfish mitigation requirements. These must be completed to the Harbormaster's satisfaction prior to the start of work. The applicant will notify the Commission or its Agent of the Harbormaster's requirements and provide proof that they have been completed.
15. CAP-3
16. REC-3
17. DER-1
18. PCC-3

19. EMC-1
 20. PCC-1
 21. SIL-5
 22. SIL-9
 23. SIL-10
- C. During Construction
24. All work done on the coastal beach shall not cause permanent damage to the coastal beach. Any damages to the resource area shall be rectified and restored to the previous condition.
 25. At no time shall any construction materials, soils, fills, sediments, dredging or any other substances be stockpiled or stored within an area of statutory interest. The existing lawn may be permitted to be used as a staging area.
 26. STO-3
 27. MAC-1
 28. MAC-2
 29. MAC-3
 30. MAC-7
 31. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 32. DEB-1
 33. DEB-5
 34. EMC-2
 35. SIL-3
 36. SIL-4
 37. There shall be no disturbance of the site, including cutting of vegetation, outside of the approved scope of work.
- D. After Construction/In Perpetuity
38. REV-1
 39. COC-1
 40. COC-2

Perpetual Conditions

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

41. CHM-2 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
42. DER-4

Staff Report

Date: April 9, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Boulder Court – Notice of Intent – DEP# 023-1347, Fairhaven CON 023-210**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Revised site plan dated April 2, 2021

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE

PERFORMANCE STANDARDS

- **Bordering Vegetated Wetland:** 10.55(4)
 - (a) work in a Bordering Vegetated Wetland shall not destroy or otherwise impair any portion of the BVW
 - (b) The ConCom may permit the loss of up to 5000 square feet of BVW when said area is replaced IF:
 1. The area is equal;
 2. The ground water and surface elevation are approximately equal;
 3. The overall horizontal configuration and location are similar;
 4. There is an unrestricted hydraulic connection to the same water body or waterway;
 5. It is in the same general area of the water body;
 6. At least 75% of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons; and
 7. The replacement area is provided in a manner which is consistent with all other regs in 310 CMR 10.00.
 - (c) The ConCom may permit the loss of a portion of BVW when;
 1. Said portion has a surface area less than 500 square feet;
 2. Said portion extends in a distinct linear configuration ("finger-like") into adjacent uplands; and
 3. In the judgment of the issuing authority it is not reasonable to scale down, redesign or otherwise change the proposal.
 - (d) No project may be permitted which will have any adverse effect on specified habitat sites of rare species

- (e) No work shall destroy or otherwise impair any Area of Critical Environmental Concern
- **Buffer Zone General Provisions:** 10.53(1) "For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work."
 - **LSCSF General Provisions:** 10.24(1) "If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests."

PROJECT SUMMARY

- The applicant is proposing to construct a single family home and associated driveway and utilities.

COMMENTS

- Because the applicant did not schedule a meeting with the Agent prior to submitting per Commission policy, a number of items need to be addressed before moving forward. During the site visit, the following items were discussed:
 1. inconsistencies with the wetland line
 2. identify on the plans whether the driveway will be pervious or impervious
 3. identify the flood zone on the plans
 4. address compliance with FEMA flood regulations, i.e. no fill for structural purposes and de minimus fill (2 feet or less for non-structural purposes) only in the velocity flood zone
 5. lowest structural member of house needs to be at 17 feet minimum
 6. address % of 25-foot buffer zone that will be impacted
 7. address amount of vegetation to be removed/impacted; Commission may require some sort of planting plan depending on amount of vegetation impacted
 8. include what the closest distance of work to the edge of the wetland is and why it is necessary to do work so close to the wetland edge
 9. provide an explanation as to why the driveway can't come in from the front of the property and has to come around the side; address size of driveway in relation to the house
 10. address the apparent excessive "vista pruning"/underbrush clearing on the property
- The following activities are proposed within 0-25 feet of the wetland: grading, vegetation removal, installation of the blue stone driveway
- Based on estimates from the site plan, the driveway is proposed to encompass a larger area than the proposed house.
- A second site visit was conducted with the Agent and the applicant's wetland scientist. Some of the flags were moved and need to be resurveyed. The wetland scientist indicated he would talk to the applicant and engineer and recommend requesting a continuance to revise the plans.

RECOMMENDATION

- I recommend limiting discussion on the project and asking the applicant if they would like to continue to a subsequent meeting to allow time to address the above items.

Staff Report

Date: April 8, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Cherrystone Road/Fir Street (Map 43B, Lots 313-315) – Notice of Intent – DEP# 023-1349, Fairhaven CON 023-213**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Revised site plan dated April 2, 2021

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE

PERFORMANCE STANDARDS

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

PROJECT SUMMARY

- The applicant is proposing the construct a single family house and associated septic.

COMMENTS

- During the site visit, the following items were discussed:
 - plan should include the LiMWA (Limit of Moderate Wave Action)
 - plan should show any proposed grading changes associated with the proposed work; no fill for structural purposes and the lowest structural member of the dwelling should be at 15 feet at least, preferably 16 feet
 - there is a possibility the structure will need to meet V-zone standards
 - total number of trees larger than 4" dbh proposed to be removed
 - estimated amount of smaller vegetation to be removed
 - planting plan or agreement to do a planting plan to offset what is removed
 - will the structure have a driveway?
 - move the erosion control line to match the limit of clearing rather than property line

- The applicant submitted a revised site plan and some additional information in response to the above items. The changes included:
 - Inclusion of the LiMWA on the plan
 - Addition of a driveway on the plans, no notation as to whether it is paved or unpaved
 - The applicant submitted the following information related to the removal of vegetation: “there will be 9 trees greater than 4” in diameter cut down at cherrystone. There will also be up to 11 smaller trees that could potentially be cut down. As for replanting, I am happy to work with the commission to create a planting plan.”
 - The erosion control line was moved to match the limit of clearing
- The revised plans still do not address what grading changes will be necessary for the house and septic.

RECOMMENDATION

- I recommend asking the applicant if they would like to request a continuance to a subsequent meeting. The items discussed during the site visit have not yet fully been addressed.

Staff Report

Date: April 9, 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
- Comments submitted by Natural Heritage Endangered Species Program on March 31, 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 (*Ruppia 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.
- 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.
- 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.
- Natural Heritage Endangered Species Program determined that the project as proposed will not adversely affect the actual resource area habitat of state-protected rare wildlife species. It is their opinion that the project meets the state-listed species performance standard for the issuance of an Order of Conditions.
- 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.
- The Harbormaster noted that the project is just outside the dredging radius for the superfund project and the property owners would have to pursue dredging themselves in order to shorten the length of the dock.

RECOMMENDATION

- I recommend closing the public hearing and issuing an Order of Conditions for 2 Oxford Street, SE 023-1345, CON 023-206, plans dated January 19, 2021, with the following recommended conditions:
Approve plans dated January 19, 2021.
- A. General Conditions
 1. ACC-1
 2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
 3. REC-1
 4. REC-2
 5. ADD-1
 6. ADD-2
 7. ADD-4b

8. ADD-4c
 9. ADD-5
 10. STO-4
 11. STO-5
 12. The limit of work shall be the existing lawn and the area of the proposed work.
 13. WET-1
- B. Prior to Construction
14. The applicant shall confer with the Harbormaster/Shellfish Warden to determine any additional shellfish mitigation requirements. These must be completed to the Harbormaster's satisfaction prior to the start of work. The applicant will notify the Commission or its Agent of the Harbormaster's requirements and provide proof that they have been completed.
 15. CAP-3
 16. REC-3
 17. DER-1
 18. PCC-3
 19. EMC-1
- C. During Construction
20. All work done on the coastal beach shall not cause permanent damage to the coastal beach. Any damages to the resource area shall be rectified and restored to the previous condition.
 21. At no time shall any construction materials, soils, fills, sediments, dredging or any other substances be stockpiled or stored within an area of statutory interest. The existing lawn may be permitted to be used as a staging area.
 22. STO-3
 23. MAC-1
 24. MAC-2
 25. MAC-3
 26. MAC-7
 27. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 28. DEB-1
 29. DEB-5
 30. EMC-2
 31. There shall be no disturbance of the site, including cutting of vegetation, outside of the approved scope of work.
- D. After Construction/In Perpetuity
32. REV-1
 33. COC-1
 34. COC-2

Perpetual Conditions

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

35. CHM-2 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
36. DER-4

Staff Report

Date: April 9, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Bella Vista Island – Notice of Intent – 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
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Division of Marine Fisheries comments dated December 4, 2020
- Additional revised documents submitted February 1, 2021
- Peer review letter dated February 22, 2021
- Planting plan dated April 5, 2021

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 applicant 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

- 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 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.
 - 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.
- 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.
- The planting plan shows the following:
 - A 40-foot indigenous shrub replanting area comprising the first 40 feet of the buffer zone
 - A 40-foot wildflower planting area comprising the second 40 feet of the buffer zone.
 - The relocation of all existing fruit trees, water spigots, and lighting to the second 40 feet of the buffer zone.
 - Removal of the mulched beds
- The planting plan does not address the mulched beds along the northwestern side of the island.
- The existing fruit trees, water spigots, and lighting should be moved outside of the meadow planting area entirely and the specific locations should be depicted on the plans.
- The work should be done in phases and those phases should be included on the plans.

RECOMMENDATION

- I recommend asking the applicant if they would like to request a continuance to a subsequent meeting to revise the planting plan.
- 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: April 9, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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

- This NOI 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

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 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.
- 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 April 19 for review prior to the April 26 Conservation Commission meeting. I recommend asking the applicant to submit the outstanding information for the ACOP filing for the April 26 meeting no later than April 19 so the agent and peer reviewer have ample time to review it and provide recommendations to the Commission.