

Staff Report

Date: July 20, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **80 Fort Street – Request for Certificate of Compliance – DEP# 023-1256, Fairhaven CON 19-031**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- Amended Order of Conditions issued March 4, 2019
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

RESOURCE AREAS ON/NEAR SITE

- Coastal Beach
- Coastal Bank
- Buffer Zone
- Land Under Ocean
- Land Containing Shellfish
- Land Subject to Coastal Storm Flowage

PROJECT SUMMARY

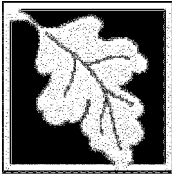
- The Order of Conditions approved the construction of a pier, ramp, and float system, which extends 200 feet into New Bedford Harbor as well as the construction of a boat lift. The pier is comprised of three 4-foot-by-50-foot aluminum gangways supported by pile bents. A 4-foot-by-30-foot gangway provides access to a 10-foot-by-30-foot float that is pile anchored. A 3-foot-by-5-foot concrete landing secures the pier landward of the existing concrete seawall. The boat lift utilized four pilings and the dock has water and power.

COMMENTS

- The project appears to have been constructed in substantial compliance with the Order of Conditions. No continuing conditions were listed.

RECOMMENDATION

- I recommend issuing a Certificate of Compliance for Complete Certification for SE 023-1256, CON 19-031, 80 Fort Street.



WPA Form 8A – Request for Certificate of Compliance

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

A. Project Information

Important:

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



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

1. This request is being made by:

Foth Infrastructure and Environment, LLC. Attn: Michael Count

Name

15 Creek Road

Mailing Address

Marion

MA

02738

City/Town

State

Zip Code

508-748-0937

Phone Number

2. This request is in reference to work regulated by a final Order of Conditions issued to:

Francis and Amanda Grueter

Applicant

25 June 2020

SE 23-1256

Dated

DEP File Number

3. The project site is located at:

80 Fort Street

Fairhaven

Street Address

City/Town

05

09

Assessors Map/Plat Number

Parcel/Lot Number

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

Property Owner (if different)

Bristol (SD)

11883

116

County

Book

Page

Certificate (if registered land)

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

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

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

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



July 1, 2021

Town of Fairhaven Conservation Commission
40 Center Street
Fairhaven, Massachusetts 02719

RE: **Residential Pier Project - 80 Fort Street, Fairhaven, MA**
Order of Conditions DEP # SE 23-1256

Dear Commissioners:

Foth Infrastructure and Environment, LLC (Foth). is pleased to certify that the pile supported pier construction located at 80 Fort Street has been completed in substantial compliance with the design and the conditions within the Order of Conditions DEP #SE 23-1256 and Minor Modification issued on 3/4/2019. Foth respectfully requests a Certificate of Compliance for the project in accordance with General Condition 12.

Please contact me with any questions at 508-748-0937.

Very truly yours,
Foth Infrastructure & Environment, LLC.

A handwritten signature in blue ink that reads "Susan E. Nilson".

Susan E. Nilson, P.E.
Director – Ports & Harbors

Cc: Michael Count (Foth)
Amanda Grueter

Enc.

Staff Report

Date: July 27, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **120 Balsam Street – Request for Certificate of Compliance – DEP# 023-1069**

DOCUMENTS REVIEWED

- Order of Conditions and approved plan dated July 13, 2009
- Notice of Intent submitted May 28, 2009
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

RESOURCE AREAS ON/NEAR SITE

- Coastal Dune
- Coastal Beach
- Coastal Bank
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE

PROJECT SUMMARY

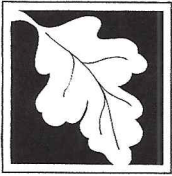
- The Order of Conditions approved a 6-foot-by-13-foot addition on a sonotube foundation, the repair of the existing patio and extending it 3-6 feet, the replacement of the existing concrete walkway, increasing the height of a masonry seawall with an 8" cap, and installing stairs over the wall.

COMMENTS

- The permit was due to expire July 14, 2012, which was extended to July 14, 2016 by the Permit Extension Act. At this point, the permit has been expired for 5 years.
- The applicants indicated that the only work that was completed was the addition. None of the other work commenced.
- There are no continuing conditions noted on the OOC.

RECOMMENDATION

- I recommend issuing a Certificate of Compliance for 120 Balsam Street with a Partial Certification for the completion of the addition, and including as an ongoing condition, "the Order of Conditions has lapsed and is therefore no longer valid. No future work subject to regulation under the Wetlands Protection Act or Fairhaven Wetlands Bylaw may commence without filing a new Notice of Intent and receiving a new Order of Conditions."



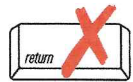
WPA Form 8A – Request for Certificate of Compliance

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

A. Project Information

Important:

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



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

1. This request is being made by:

Randolph J. Furtado

Name

120 Balsam St.

Mailing Address

Fairhaven

City/Town

MA

State

02719

Zip Code

Phone Number

2. This request is in reference to work regulated by a final Order of Conditions issued to:

Same

Applicant

July 13, 2009

Dated

SE 23-1069

DEP File Number

3. The project site is located at:

120 Balsam St.

Street Address

Fairhaven

City/Town

43A

Assessors Map/Plat Number

23

Parcel/Lot Number

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

Same

Property Owner (if different)

Bristol S.D.

County

Book

Page

105622

Certificate (if registered land)

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

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

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

Addition, 6' x 13', completed at rear of house. Masonry work to extend patio, replace walkway and add cap to existing seawall was not done.

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

Charon Associates, Inc.

Consulting Engineers

*323 Neck Road
Rochester, MA 02770
Phone: 508-763-8362
Fax: 508-763-9582*

July 26, 2021

Conservation Commission
Town Hall
Fairhaven, MA 02719

Dear Members of the Commission:

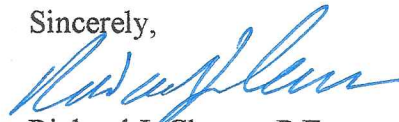
RE: DEP File #SE 23-1069; Randolph J. Furtado, Owner
120 Balsam Street

The order of conditions for the subject project was issued in July 2009 to allow a small addition at the rear of the house, plus masonry work on the existing patio, walkway and seawall.

The only portion of the permitted work that was completed is the 6' x 13' addition to the house in conformance with flood plain regulations in effect at the time. The masonry work was never done.

It is my professional opinion that the work of this project that was performed has been satisfactorily completed and that a certificate of compliance should be issued for the project.

Sincerely,



Richard J. Charon, P.E.

Cc: R. Furtado

Staff Report

Date: July 22, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Huttleston Ave, 21-115A & 117C – Request for Amended Order of Conditions – DEP# 023-1308, Fairhaven CON 023-095**

DOCUMENTS REVIEWED

- Request for Amended Order of Conditions
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland

COMMENTS

- The applicant has submitted a request for an amended order of conditions.
- Per Wetlands Program Policy 85-4: Amended Orders, the Commission is not required to consider or act upon a request to amend an Order of Conditions.
- Policy 85-4 recommends the following procedure:
 - Applicant makes a request for an amendment
 - The Commission first makes a determination whether the requested change is great enough to warrant the filing of a new Notice of Intent or whether it is minor in nature and can be considered as an amendment to the issued OOC. In making this determination, the Commission should consider factors such as:
 - Has the purpose of the project changed?
 - Has the scope of the project increased?
 - Does the project meet the relevant performance standards?
 - Has the potential for adverse impacts to the protected statutory interests been increased?
 - If the Commission determines that the project purpose has changed substantially, the Commission should not issue the amendment but should require the filing of a new NOI.
 - If the Commission determines that a new NOI is not necessary, a public hearing on the amendment should be held.
- Based on the submitted plans, it appears the scope of the project has increased.
- The plans the Commission approved did not have any direct resource area impacts. The revised plans now include work within the bordering vegetated wetland. Additionally, the size of the stormwater basin has increased and the applicant is now asking for a waiver to the Massachusetts Stormwater Standards.

RECOMMENDATION

- If the Commission concurs that the scope of the project has increased and the potential for adverse impacts to the protected resource area has increased, I recommend against issuing an amendment and recommend that the Commission require the applicant file a new Notice of Intent.

Staff Report

Date: July 20, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Bay Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-238**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (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 seeking to pave the existing pervious driveway.

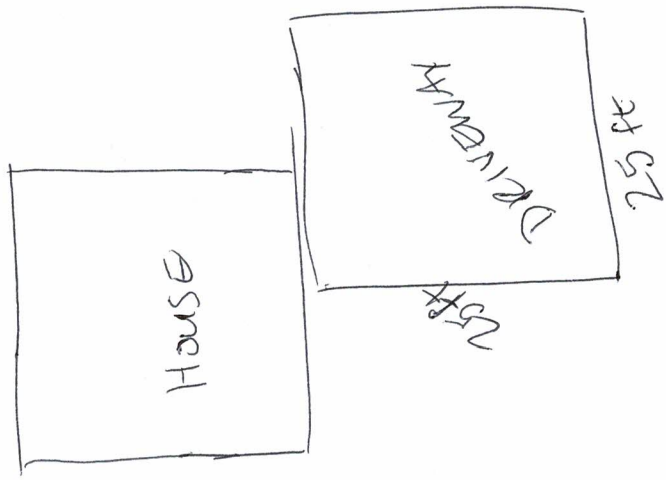
COMMENTS

- The applicant currently has a gravel driveway and would like to pave the existing footprint to make winter maintenance easier as well as improve accessibility to the house.
- The work falls within the AE Flood Zone and doesn’t appear that it will have a negative impact on storm damage prevention or flood control.

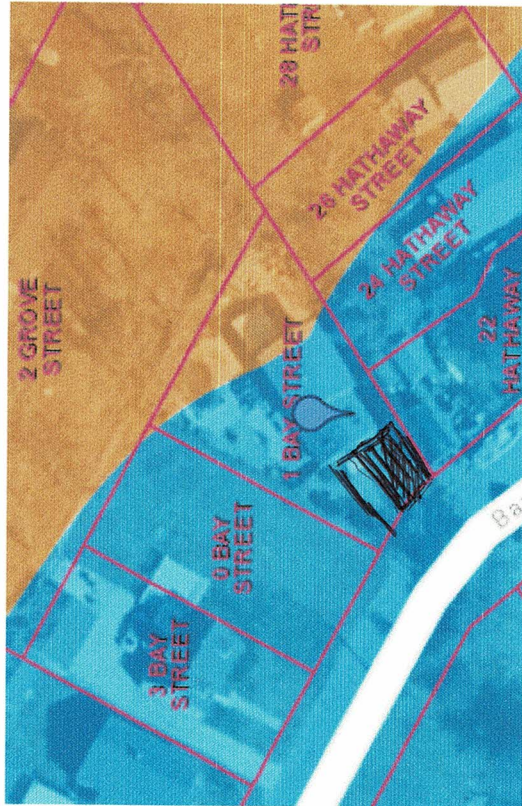
RECOMMENDATION

- I recommend closing the public hearing for CON 023-238, 1 Bay Street, and issuing a Negative 3 and Negative 6 Determination with the following recommended conditions:
 - 1) CAP-3
 - 2) FZ-1: All work shall comply with all local, state, and federal flood zone regulations, including, but not limited to, regulations regarding fill in the flood zone.

1 Bay Street



SITE PLAN



6/24/2021

1 Bay Street



Staff Report

Date: July 20, 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
- Revised plans dated June 10, 2021
- Letter from engineer dated June 10, 2021 addressing DMF comments
- Division of Marine Fisheries comments dated June 25, 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

- 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 groins
 - dredge under the bridge to allow the bridge channel to be deep enough for small crafts to navigate and dispose of the dredge material offsite
 - 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 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.
- The above items have been to be addressed. The applicant’s representative met with the Agent on Thursday, June 10 to discuss the outstanding items. Later that day, he provided revised plans and a letter addressing the comments from DMF.
- DMF has issued a second comment letter noting that their concerns have been addressed and recommending certain restrictions and conditions to be included in any Order issued.
- The applicant was sent an affidavit to rectify quorum issues. Once it is signed and returned and after presenting the project as it currently stands, the Commission will be able to vote on the project.

RECOMMENDATION

- I recommend closing the public hearing for SE 023-1309, CON 023-110, 1 Bella Vista Island, and issuing an Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the following recommended conditions:

Approve plan dated June 10, 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. The Plan-of-Record and this Order of Conditions shall be included in all construction contracts and sub-contracts dealing with the work proposed and shall supersede all other contract requirements.
4. ADD-1
5. This Order applies only to the scope of work depicted on the Plan-of-Record (Sheets 1-3) and attached Exhibits. Any future work not approved within the Order subject to jurisdiction under the Wetlands Protection Act will require the filing, at a minimum, of a Request for Determination or Applicability or a new Notice of Intent with the Commission. Prior to the commencement of any such future work, a receipt of a Negative Determination or valid Order of Conditions will be required. If any activity beyond the scope of this Order occurs prior to the receipt of a Negative Determination or valid Order of Conditions, it shall be removed and restored to pre-construction conditions.

6. All work shall be done in accordance with the Plan-of-Record and Exhibits dated June 10, 2021 as approved by this Order. Any deviation must be approved by this Commission in writing prior to commencing work involved in this deviation.
 7. The work depicted on Sheets 4 and 5 of the Plan-of-Record are subject to a separate Order of Conditions under DEP File No. SE 023-1340, Fairhaven File No. SE 023-195. This Order of Conditions does not supersede the Order of Conditions issued on May 28, 2021 for the non-ACOP activities approved by that Order.
 8. ADD-4c
 9. ADD-5
 10. The limit of work for this project is restricted to the scope of work outlined above and shown on the approved plans. No work is permitted beyond the specific activities approved by this Order.
 11. Any in-water silt-producing work shall be staged to occur outside of the January 15 to May 31 time-of-year (TOY) restriction period of any year work is occurring to protect winter flounder during spawning and juvenile development life history phases.
 12. A qualified professional hired by the Commission at the Property Owner's expense shall oversee all phases of the project to ensure compliance with the issued Order.
 13. Should any habitat conversion occur during the project, habitat mitigation shall be required at the direction of the Fairhaven Conservation Commission and the Division of Marine Fisheries.
 14. The proposed roadside erosion protection (12" to 24" stone) shall not displace any existing salt marsh habitat and construction activities shall also avoid salt marsh habitat by working from the road.
 15. Pursuant to Chapter 192-11, any violation of these conditions is an automatic fine of \$300.00 per day until such time as the project has come back into compliance.
- B. Prior to Construction
16. The applicant shall submit a shellfish mitigation fee of \$31,440, made payable to the Town of Fairhaven, in accordance with the Commission's fee schedule prior to the start of work.
 17. Prior to any work within Land Containing Shellfish, all shellfish within the area of work shall be relocated at the direction of the Fairhaven Harbormaster/Shellfish Warden.
 18. CAP-3
 19. REC-3
 20. DER-1
 21. PCC-3
 22. EMC-1
 23. The 6" x 6" wooden posts in the salt marsh along the property line near the entrance shall be removed before any other work commences.
- C. During Construction
24. REC-2
 25. All groin and seawall work shall occur at low tide.
 26. All dredging work and work along the causeway bridge shall occur from the road only. Should any work need to be done that is not accessible from the road, it shall be done by hand only. No equipment is permitted on the resource areas at any time.
 27. Before any dredging work is to begin, the Fairhaven Harbormaster shall be notified in a timely fashion so he or his designated representative can be onsite during all dredging operations.
 28. 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.
 29. STO-3

30. STO-4
31. STO-5
32. MAC-3
33. MAC-7
34. MAC-8: All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
35. MAC-9: 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.
36. DEB-1
37. SIL-8
38. WAT-3
39. DRG-4: Siltation curtains shall be utilized at all times to prevent the intrusion of water-borne sediments into adjacent protected areas. It shall be the sole responsibility of the applicant to ensure the proper placement of this system during dredging, dewatering and spoil transfer activities.
40. All dredged material shall be hauled offsite to be disposed of in an appropriate location over 200 feet from any wetland resource areas and shall not be used for beach nourishment on site. Disposal records for the dredged material shall be submitted to the Commission.

D. After Construction/In Perpetuity

41. Within 60 days of the completion of the work described herein, the applicant shall prepare an As-Built Plan based on instrument survey of the work area and request that a Certificate of Compliance be issued stating that the work has been satisfactorily completed in compliance with this Order and the Plan-of-Record. The Certificate of Compliance request and accompanying as-built plan, signed and stamped by a Massachusetts Registered Professional Engineer, shall include, but is not limited to, the following information:
 - i. Bathymetric contours of the entire dredge footprint
 - ii. Full extent of dredge footprint
 - iii. Disposal records of dredge material
 - iv. Full extent of groin footprint
 - v. Cross-sections of repaired groins
 - vi. Full extent of seawall and associated cross-sections
 - vii. Coastal bank restoration details, including cross-sections and revegetation documentation
 - viii. All resource area boundaries and the date of confirmation of those boundaries
 - ix. Confirmation that no salt marsh habitat has been damaged by the work or displaced by the placement of the 12- to 24-inch stone to stabilize the causeway road
 - x. Confirmation that no habitat conversion below mean high water has occurred
 - xi. Documentation that all construction debris and related items, such as boom and silt curtains, have been entirely removed from the site

The as-built plan shall be submitted with all information on one sheet as much as possible and in the same dimensions and scale as the approved plans.

Perpetual Conditions

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

42. No additional disturbance of this property to any jurisdictional areas is allowed without authorization from the Conservation Commission, including changes to existing developed areas and existing natural features as of the date of the issuance of this Order. If any

activity beyond the scope of this Order occurs prior to the receipt of a Negative Determination or valid Order of Conditions, it shall be removed and restored to pre-construction conditions. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.

43. 310 CMR 10.30(3), promulgated under M.G.L. c. 131, §40, requires that no coastal engineering structure, such as a bulkhead, revetment, or seawall shall be permitted on an eroding bank at any time in the future to protect the project allowed by this Order of Conditions.
44. CHM-2: No liquid or solid chemical lawn fertilizers, pesticides, herbicides or chemical or petroleum dust control agents shall be applied within the area of statutory interest or anywhere that the surface drainage is discharged into an area of statutory interest. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
45. DER-4: The owner of the property described in this Order must advise any potential buyer of the property that any construction or alteration to said property, including brush cutting or clearance, may require approval by the Fairhaven Conservation Commission. Any instrument conveying any or all of the owners' interest in said property or any portion thereof shall contain language similar to the following:

"This property is subject to the Fairhaven Wetlands Bylaw and/or the Massachusetts Wetlands Protection Act. Any construction or maintenance work performed on this property requires an Order of Conditions and/or a Determination of Applicability from the Fairhaven Conservation Commission."

This condition is ongoing and shall not expire with the issuance of a Certificate of Compliance and shall be recorded in the deed.
46. As required by Chapter 91 License No. 5746, the area underneath the causeway bridge shall be kept clear for the free passage of small craft and maintained at a depth of at least 1 foot below mean low water in perpetuity. Dredging to maintain the opening shall be done in accordance with all applicable Division of Marine Fisheries TOY restriction windows and from the road. No equipment is permitted on the resources areas for the purposes of dredging.
47. Each time a dredging operation is to occur, the Fairhaven Conservation Commission and the Fairhaven Harbormaster shall be notified, to allow for any additional conditions resulting from modifications in dredging operations in the life of this Order or these perpetual conditions. All dredged material shall be hauled offsite to be disposed of in an appropriate location over 200 feet from any wetland resource areas and shall not be used for beach nourishment on site. Disposal records for the dredged material shall be submitted to the Commission.


WAIVER AND STIPULATION

WHEREAS, under a rule established by the courts of the Commonwealth, the so-called "Mullin rule," circumstances may arise in which an adjudicatory agency may be unable to proceed with consideration of an application due to the absence of members, or a change of membership, over the course of multiple hearing dates, leaving the applicant with limited practical recourse; and

WHEREAS, we, Heiam Alsawalhi, the applicant, and Anwar Faisal, the owner of the subject property located at 1 Bella Vista Island, Fairhaven, Massachusetts, under a Notice of Intent filed with the Fairhaven Conservation Commission, MA DEP file number SE 023-1309, Fairhaven file number CON 023-110, wish to avoid delay in the further consideration of that Notice of Intent; therefore,

1. We hereby waive our rights, if any, under the so-called "Mullin rule" with respect to any proceedings concerning the property located at 1 Bella Vista Island, Fairhaven, Massachusetts, which were held by the Commission prior to the date of this Waiver and Stipulation.
2. For purposes of the application of the Mullins rule to the proceedings on this Notice of Intent, we stipulate that the public hearing scheduled to be held by the Commission on August 2, 2021 shall, be considered the commencement of the Commission's adjudicatory proceeding on DEP File No. SE 023-1309/CON 023-110, and we consent to the adjudication of that Notice of Intent by a quorum made up of current members of the Commission.
3. We hereby waive the twenty-one (21) time period for the issuance of an Order of Conditions from the Fairhaven Conservation Commission (on the Notice of Intent, which was filed with the Fairhaven Conservation Commission [Fairhaven File No. CON 023-110]) under Massachusetts General Laws, Ch.131, Section 40, and/or the Wetlands Protection Bylaw, Chapter 192 of the Fairhaven Conservation Commission.

Date: 7/19/21


Heiam Alsawalhi, Applicant

Date: 7/19/21


Anwar Faisal, Owner

Staff Report

Date: July 26, 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
- Revised site plan dated April 16, 2021
- Response memo dated April 19, 2021
- Revised site plan dated May 17, 2021
- Supplemental information submitted June 10, 2021
- Revised site plan dated July 26, 2021

RESOURCE AREAS ON/NEAR SITE

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

PERFORMANCE STANDARDS

- **Coastal Bank:** 10.30
(4) Any project on a coastal bank or within 100 feet landward of the top of a coastal bank...shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action.
(6) Any project on...a coastal bank [that is determined to be significant to storm damage prevention or flood control because it is a vertical buffer to storm waters] or within 100 feet landward of the top of such coastal bank shall have no adverse effects on the stability of the coastal bank.
- **Coastal Beach:** 10.27
(3) Any project on a coastal beach...shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.

- (4) Any groin, jetty, solid pier, or other such solid fill structure which will interfere with littoral drive, in addition to complying with 310 CMR 10.27(3), shall be constructed as follows:
- (a) It shall be the minimum length and height demonstrated to be necessary to maintain beach form and volume. In evaluating necessity, physical oceanographic and/or coastal geologic information shall be considered.
 - (b) Immediately after construction any groin shall be filled to entrapment capacity in height and length with sediment of grain size compatible with that of the adjacent beach.
 - (c) Jetties trapping littoral drift materials shall contain a sand by-pass system to transfer sediments to the downdrift side of the inlet or shall be periodically redredged to provide beach nourishment to ensure that downdrift or adjacent beaches are not starved of sediments.
- (5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.
- **Rocky Intertidal Shore: 10.31**
 - (3) ...Significant to Storm Damage Prevention, Flood Control, or Protection of Wildlife Habitat, any proposed project shall be designed and constructed...so as to minimize adverse effects on the form and volume of exposed intertidal bedrock and boulders.
 - (4) ...Significant to the Protection of Marine Fisheries or Wildlife Habitat, any proposed project [that is water-dependent shall be] designed and constructed...so as to minimize adverse effects...on water circulation and water quality [and any proposed project that is not water-dependent shall have no adverse effects on water circulation and water quality.]
 - **Buffer Zone General Provisions: 10.53(1)** “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
 - **LSCSF General Provisions: 10.24(1)** “If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests.”

PROJECT SUMMARY

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

COMMENTS

- This project was initiated prior to permits being requested and an Enforcement Order was issued because no permits were granted by the Commission and the property owner had large equipment on the Coastal Beach with no protections for the resource area.
- MassDEP noted that work is proposed in a Coastal Beach resource area and that the performance standards in 310 CMR 10.27 Coastal Beaches should be addressed.

- Filing with DEP for a 401 Water Quality permit may be necessary. The addition of the fence posts on the revetment may need Chapter 91 licensing as they are proposed on an already licensed structure.
- The applicant should submit information detailing how the project complies with each of the performance standards outlined in 310 CMR 10.27.
- The Division of Marine Fisheries provided a number of comments, which should be addressed before any decision is made on this submittal.
 - No narrative was submitted with the NOI. *Questions for Applicant:* How will the two groins be repaired/reconstructed? Will there be concrete forms in the water to contain the concrete? Will the work be conducted behind cofferdams in the dry? Will a barge be used to transport materials?
 - No side profile of the two groins was included. *Questions for Applicant:* Will the elevation of the groins be higher than the original groins? Is there any seaward encroachment of either groin?
 - Impacts to adjacent eelgrass beds is a concern for the project.
- 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:
 - 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.
 - 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.
 - 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.
- 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 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 a previous 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.
- The planting bed includes one non-native species (daylily) and does not include any shrubs, such as Northern Bayberry, Bearberry, or Beach Heather.
- At the May 10 meeting, the following motion was made and approved:
 - Deny after-the-fact construction of a concrete groin as new construction which serves no purpose and has caused damage to the beach.
- The supplemental information submitted June 10, 2021 included two photos and states the following:
 - “As we have discussed, it appears that the concern regarding the north groin is centered around the distinction between new construction and repair or maintenance. As you can see the photo taken a week before the Delano's initiated the work depicts a mostly intact groin with the one gap in the center where the steps have been built [photo dated May 16, 2020].

This appears to confirm that this is more a repair/maintenance than a new construction project. These photos are also consistent with the aerial photos I sent a couple of weeks ago.”

- The revised plans dated July 26, 2021 include the following changes to the north groin:
 - The removal of the north groin to a point upgradient of the Mean High Water mark. This will take the groin out of the normal tidal area and outside of the Chapter 91 area.
 - The photographic evidence shows that this portion of the groin was intact last year at the time of the repair/reconstruction work.
- Removing 32 feet of groin should reduce the long-term impacts of a hardened structure on the coastal beach on both the up- and downdrift sides and eliminates the concern of the reconstruction of the groin meeting coastal beach performance standards.

RECOMMENDATION

- I recommend closing the public hearing for SE 023-1344, CON 023-207, 10 Nelson Avenue, and issuing an Order of Conditions for plans dated July 26, 2021, with the following recommended conditions:

Approve plan dated July 26, 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. ADD-1

5. ADD-2
 6. If any activity beyond the scope of this Order occurs prior to the receipt of a Negative Determination or valid Order of Conditions, it shall be removed and restored to pre-construction conditions.
 7. ADD-4b
 8. ADD-4c
 9. ADD-5
 10. The limit of work shall be the scope of work depicted on the Plan-of-Record. No work or activity beyond this scope shall be permitted.
 11. SIL-5
 12. SIL-9
 13. SIL-10
 14. WET-1
- B. Prior to Construction
15. CAP-3
 16. REC-3
 17. DER-1
 18. PCC-3
 19. EMC-1
 20. PCC-2
- C. During Construction
21. REC-2
 22. All work on the groins shall be done at low tide only and all work within the rocky intertidal shore shall be done, using the most practical measures, in a fashion that minimizes adverse effects on the form and volume of exposed intertidal bedrock and boulders.
 23. All work shall be done from the landward side of the existing seawall as much as possible.
 24. STO-1
 25. STO-3
 26. STO-4
 27. STO-5
 28. MAC-3
 29. MAC-7
 30. MAC-8
 31. MAC-9
 32. DEB-1
 33. DEB-5
 34. SIL-3
 35. SIL-4
 36. SIL-8
 37. WAS-2
 38. WAT-3
 39. EC-1
 40. EC-2
- D. After Construction/In Perpetuity
41. REV-1

42. Within 60 days of the completion of the work described herein, the applicant shall prepare an As-Built Plan based on instrument survey of the work area and request that a Certificate of Compliance be issued stating that the work has been satisfactorily completed in compliance with this Order and the Plan-of-Record. The Certificate of Compliance request and accompanying as-built plan, signed and stamped by a Massachusetts Registered Professional Engineer, shall include, but is not limited to, the following information:
- i. Final footprints and profiles of the groins
 - ii. Confirmation that no damage to resource areas from equipment or activity has occurred
 - iii. Confirmation that no work beyond the approved scope of work has been undertaken

Perpetual Conditions

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

43. If any activity beyond the scope of this Order occurs prior to the receipt of a Negative Determination or valid Order of Conditions, it shall be removed and restored to pre-construction conditions. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
44. 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.
45. DER-4

10 Nelson Ave, July 26, 2021





TOWN OF FAIRHAVEN, MASSACHUSETTS

CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

July 19, 2021

Natalie Reis
[REDACTED]
[REDACTED]

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

Ms. Reis,

It has come to my attention that there are numerous violations of the current Order of Conditions (SE 023-1302, CON 19-066) issued March 27, 2020, and amended November 16, 2020. One of the Commissioners visited the site on July 19, 2021 and observed violations of the issued Order of Conditions and approved site plan under the Massachusetts Wetlands Protection Act (MGL c. 131, §40), its associated regulations (310 CMR 10.00), and the Fairhaven Wetlands Bylaw (Chapter 192) as well as work done beyond the scope of the issued Order of Conditions.

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

There is still an outstanding \$300.00 fine for previous violations of the issued Order of Conditions, as outlined in my January 29 and February 17 letters, pursuant to the Fairhaven Wetlands Bylaw (§192-11).

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

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

Sincerely,

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

CC: Geoffrey Haworth, Chairman, Fairhaven Conservation Commission
Chris Carmichael, Fairhaven Building Commissioner
Daniel Gilmore, MassDEP, Southeast Regional Office Wetlands Program
Carlos Fragata, MassDEP, Southeast Region Waterways Program



A. Violation Information

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



This Enforcement Order is issued by:

Fairhaven Conservation Commission 7/19/2021
 Conservation Commission (Issuing Authority) Date

To:

Natalie Reis
 Name of Violator
6 Emerson Avenue, Fairhaven, MA 02719
 Address

1. Location of Violation:

Property Owner (if different)
6 Emerson Avenue
 Street Address
Fairhaven 02719
 City/Town Zip Code
29A 119-122
 Assessors Map/Plat Number Parcel/Lot Number

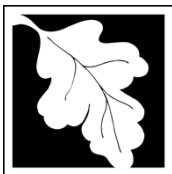
2. Extent and Type of Activity (if more space is required, please attach a separate sheet):

See Attachment A

B. Findings

The Issuing Authority has determined that the activity described above is in a resource area and/or buffer zone and is in violation of the Wetlands Protection Act (M.G.L. c. 131, § 40) and its Regulations (310 CMR 10.00), because:

the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone without approval from the issuing authority (i.e., a valid Order of Conditions or Negative Determination).



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

WPA Form 9 – Enforcement Order

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

DEP File Number: _____

B. Findings (cont.)

the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone in violation of an issuing authority approval (i.e., valid Order of Conditions or Negative Determination of Applicability) issued to:

Natalie Reis	3/27/2020, amended on 11/16/2020
_____ Name	_____ Dated
SE 023-1302	See Attachment A
_____ File Number	_____ Condition number(s)

The Order of Conditions expired on (date): _____
Date

The activity violates provisions of the Certificate of Compliance.

The activity is outside the areas subject to protection under MGL c.131 s.40 and the buffer zone, but has altered an area subject to MGL c.131 s.40.

Other (specify):

The activity has been/is being conducted in an area subject to protection under the Fairhaven Wetlands Bylaw, Chapter 192 of the Code of the Town of Fairhaven, or the buffer zone without approval from the issuing authority (i.e., a valid Order of Conditions or Negative Determination).

C. Order

The issuing authority hereby orders the following (check all that apply):

The property owner, his agents, permittees, and all others shall immediately cease and desist from any activity affecting the Buffer Zone and/or resource areas.

Resource area alterations resulting from said activity shall be corrected and the resource areas returned to their original condition.

A restoration plan shall be filed with the issuing authority on or before October 1, 2021
Date

for the following:

See Attachment A

The restoration shall be completed in accordance with the conditions and timetable established by the issuing authority.



C. Order (cont.)

Complete the attached Notice of Intent (NOI). The NOI shall be filed with the Issuing Authority on or before:

_____ Date

for the following:

No further work shall be performed until a public hearing has been held and an Order of Conditions has been issued to regulate said work.

The property owner shall take the following action (e.g., erosion/sedimentation controls) to prevent further violations of the Act:

Immediately re-establish proper erosion and sedimentation controls per the Order of Conditions (SE 023-1302, CON 019-066); no activity at all is permitted on site until such time the Commission determines work may continue.

Failure to comply with this Order may constitute grounds for additional legal action. Massachusetts General Laws Chapter 131, Section 40 provides: "Whoever violates any provision of this section (a) shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than two years, or both, such fine and imprisonment; or (b) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation". Each day or portion thereof of continuing violation shall constitute a separate offense.

D. Appeals/Signatures

An Enforcement Order issued by a Conservation Commission cannot be appealed to the Department of Environmental Protection, but may be filed in Superior Court.

Questions regarding this Enforcement Order should be directed to:

Whitney McClees, Agent

_____ Name

508-979-4023, ext. 128

_____ Phone Number

8:30am-4:30pm, Monday-Friday

_____ Hours/Days Available

Issued by:

Fairhaven Conservation Commission

_____ Conservation Commission

Conservation Commission signatures required on following page.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 9 – Enforcement Order
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: _____

D. Appeals/Signatures (cont.)

In a situation regarding immediate action, an Enforcement Order may be signed by a single member or agent of the Commission and ratified by majority of the members at the next scheduled meeting of the Commission.

Signatures:

Whitney McClees

_____	_____
_____	_____
_____	_____
_____	_____

7016 2710 0001 1692 8438

Signature of delivery person or certified mail number



TOWN OF FAIRHAVEN, MASSACHUSETTS
CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

Attachment A

DEP File #: SE 023-1302
Fairhaven File #: CON 19-066
Applicant: Natalie Reis
Property: 6 Emerson Avenue

Extent and Type of Activity

Upon inspection of the permitted work under SE 023-1302, CON 19-066 on July 19, 2021, a member of the Commission observed that proper erosion controls were not properly maintained, the protective fencing around the root zone of the mature tree was not properly maintained, several areas of debris around the work site, and that work had occurred beyond the limit of work. The Commissioner observed the creation of a groin on the coastal beach and into the water. Large boulders have been placed in the resource area beyond the existing retaining wall. No work or activity associated with the project permitted under SE 023-1302, CON 19-066 was permitted to occur on the coastal beach or below mean high water at any point. The Commissioner was not permitted to access the property to inspect the area subject to the Order of Conditions and was limited to viewing the site from adjacent paper streets.

Photos taken by the Commissioner on July 19, 2021 are attached to this Order.

Condition Numbers Violated

General Conditions:

13. The work shall conform to the plans and special conditions referenced in this order.

15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.

18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

Special Conditions:

A2. ACC-1: The Conservation Commission, its employees, and its agents shall have a right of entry to inspect or compliance with the provisions of this Order of Conditions.

A8. ADD-4b: All work shall be done in accordance with final plans dated September 29, 2020 as approved by this Commission. Any deviation must be approved by this Commission in writing prior to commencing work involved in this deviation.

A13. LOW-2: The erosion and sedimentation barrier shall serve as the alteration limit line. Said barrier shall fully protect the adjacent wetland/resource area, and no work shall be permitted beyond this limit line. Where there is no erosion and sedimentation barrier as shown on the approved plans, the limit of work shall be the property line.

B23. SIL-5: Adequate erosion and sedimentation control measures, as specified in the Notice of Intent and in this Order, shall be installed and maintained throughout the entire construction phase, until the site has been stabilized and their removal has been authorized (in writing or by issuance of the Certificate of Compliance) by the Commission or its agent. The erosion control specifications in the Notice of Intent and the erosion control provisions in the Order will be the minimum standards for this project; the Commission may require additional measures. The Commission reserves the right to require additional or modified erosion and siltation controls during construction if it deems that site conditions warrant such measures.

C33. DEB-1: The construction site shall be left in a stable condition at the close of each day. Construction refuse and debris shall be removed daily. The Commission may require specific approval for the disposition of such materials prior to the start of construction.

C34. DEB-5: Food trash and related waste shall at all times be confined to appropriate containers, which shall enjoy a routine removal schedule. Air and water-borne disposal of non-indigenous materials from this project into resource areas is hereby prohibited.

C39. SIL-4: All erosion control devices shall be inspected, cleaned, or replaced during construction and shall remain in place until such time as stabilization of all areas that may impact resource areas is permanent. These devices shall be inspected to assure that maximum control has been provided after any rainfall.

C41. LOW-3: There shall be no disturbance of the site, including cutting of vegetation, beyond the work limit.

A restoration plan shall be filed with the issuing authority on or before October 1, 2021 for the following:

1. An assessment of the resource areas onsite by qualified wetland professional and submission of said assessment to the Commission by September 1, 2021.
2. Submission of a restoration plan by a qualified wetland professional to remove all boulders and debris placed within the resource areas or within 100 feet of them and restore any damage by October 1, 2021.
3. Oversight of all restoration work by a qualified wetland professional as laid out by the Fairhaven Conservation Commission in response to the submitted restoration plan.
4. The Conservation Commission, its employees, and its agents shall have a right of entry to inspect or compliance with the provisions of this Enforcement Order.
5. The Commission reserves the right to impose additional conditions on any or all portions of this project that could impact an area of statutory interest under the Act and/or the Fairhaven Wetlands Bylaw.
6. The restoration plan shall be in compliance with the Performance Standards for Coastal Beach (310 CMR 10.27(3)-(7)) and shall be in compliance with any other performance standards that may apply to impacted resource areas on site.
7. The restoration plan shall be in compliance with the Buffer Zone Regulations under the Fairhaven Wetlands Bylaw (Chapter 192).















TOWN OF FAIRHAVEN, MASSACHUSETTS

CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

July 22, 2021

Anne E. Rogers, Trustee
The Anne Rogers Indenture of Trust

[REDACTED]
[REDACTED]

RE: Potential Wetlands Protection Act and Fairhaven Wetlands Bylaw Violation
106 Balsam Street, Fairhaven, MA
Request to attend meeting of August 2, 2021

Ms. Rogers,

It has come to my attention that there is a potential wetlands violation at your property at 106 Balsam Street, Fairhaven, MA. A member of the Commission performed a site visit on July 21, 2021 and observed the installation of a paved driveway in a flood zone. A cease and desist notice was posted.

In order to determine whether a violation has occurred, we request that you immediately cease and desist from any further activity and that you or your designated representative appear before the Conservation Commission at its next meeting on Monday, August 2, at 6:30pm. Currently, Conservation Commission meetings are being held remotely via Zoom. The remote access information for the August 2 meeting, which can be found on the Town calendar and will also be posted on the meeting agenda, is:

Meeting ID: 942 0648 2500
Passcode: 353006

As you may or may not know, any work or activity in a wetland resource area, within 100 feet of a resource area, 200 feet of a river, or within a flood zone is subject to review and approval by the Conservation Commission pursuant to its authority under the Massachusetts Wetlands Protection Act (M.G.L c. 131 §40) and its regulations (310 CMR 10.00) and the Fairhaven Wetlands Bylaw (Chapter 192). Your property falls within Land Subject to Coastal Storm Flowage (flood zone) and the 100-foot buffer zone to Coastal Beach, and contains Coastal Dune and the associated 100-foot buffer zone. Any activity, such as expanding or paving an existing driveway, within these areas without approval from the Commission constitutes a violation of the Act and the Bylaw.

Please be prepared to explain the work or activity that has occurred so that the Commission can prescribe the appropriate corrective actions for you to come into compliance with the Act and the Bylaw. Please be advised, the Conservation Commission reserves the right to assess fines for said violations or non-compliance with this letter pursuant to the Fairhaven Wetlands Bylaw (§192-11).

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

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

Sincerely,

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