

# Staff Report

Date: August 9, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **7 Union Street – Request for Field Change – DEP# 023-1283,  
Fairhaven CON 19-024**

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## DOCUMENTS REVIEWED

- Request for minor field change letter dated July 21, 2021 and associated Special Permit plan
- Order of Conditions dated March 18, 2019
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

## 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 Commission issued an Order of Conditions for the demolition of an existing building and the construction of a 2 story 50’ x 50’ building and a 120’ x 80’ temporary shed as well as the repaving of the existing parking lot.

## COMMENTS

- There had previously been some discussion related to the shed and the temporary or portable nature. The applicant submitted a request for minor field change to clarify the plans.
- The Wetlands Protection Act and Fairhaven Wetlands Bylaw do not regulate how a structure is used, rather the footprint and construction of a structure.
- The applicant has submitted the special permit plans and accompanying letter to help clarify the temporary nature of the structure as a portable one.
- There have been no footprint changes or an expansion or reduction in scope of work.

## **RECOMMENDATION**

- If the Commission feels the submitted clarification is sufficient, I recommend adding the special permit plan as a minor field change.
- If the Commission feels additional conditions are necessary to address the building use clarification, then the Commission could either add additional conditions subject to one of the current special conditions (ADD-1: The Commission reserves the right to impose additional condition 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) or could address the change through the Amended Order of Conditions process.

# DROHAN TOCCHIO & MORGAN, P.C.

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ADAM J. BRODSKY  
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July 21, 2021

**Via E-mail and Federal Express**

Whitney McClees, Conservation Agent  
Town of Fairhaven Conservation Commission  
Fairhaven Town Hall  
40 Center Street  
Fairhaven, Massachusetts 02719

**Re: Fairhaven Shipyard Companies, Inc. and Casey Boat Realty, LLC  
7 Union Street, Fairhaven  
OOO SE 23-1283, CON 19-024: Request for Minor Field Change**

Dear Ms. McClees:

You will recall that this office represents Fairhaven Shipyard Companies, Inc. and Casey Boat Realty LLC (the "Applicants") in connection with this matter. Pursuant to our recent telephone conversation regarding the Conservation Commission's February 19, 2021 letter to Kevin McLaughlin, we write on behalf of Applicants to request a minor field change to the Order of Conditions, DEP File #23-1293, CON #19-024, issued March 18, 2019 ("OOO"). We seek to supplement the Plan of Record for the project with the additional plan entitled "Special Permit Application, Building Demolition and Construction, 7 Union Wharf & 24 Water Street, Fairhaven, MA," prepared by Foth/CLE Engineering, dated June 22, 2018 ("Special Permit Plan"). A copy of the Special Permit Plan is enclosed.


You will recall that the Plan of Record entitled "Notice of Intent Site Plan" prepared by Foth/ CLE Engineering, dated February 27, 2019, identifies the proposed (and now constructed) shed as "temporary shed". While this description is accurate, a clearer description should be "portable shed" as reflected in the Special Permit Plan. While neither the Massachusetts Wetlands Protection Act nor the Fairhaven Wetlands Bylaw regulate uses of structures, the Applicants are willing to request this minor field change to resolve the Conservation Commission's concerns in its February 19, 2021 letter regarding the description of the shed.

Whitney McClees, Conservation Agent

July 21, 2021

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Please confirm that the requested minor field change resolves the issue. Should you need additional information, please do not hesitate to contact us. Thank you for your consideration.

Very truly yours,  


Adam J. Brodsky  
Drohan Tocchio & Morgan, P.C.

Enclosure

cc: Kevin McLaughlin, President (*via e-mail*)  
Susan Nilson, P.E. (*via e-mail*)

# Staff Report

Date: August 4, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **29 Winsegansett Avenue – Request for Determination of Applicability – Fairhaven  
CON 023-239**

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## DOCUMENTS REVIEWED

- Request for Determination of Applicability and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

## 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

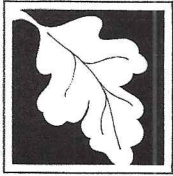
- The applicant is looking to upgrade the existing cesspool to a Title 5-compliant septic system.

## COMMENTS

- The applicant is proposing to utilize the Eljen Geotextile Sand Filter system, which has been approved for remedial use in Massachusetts by MassDEP under Title 5.
- Two large oak trees will need to be removed to install the leaching facility and the applicant has proposed to plan two replacement oak trees elsewhere on the property.
- All work is proposed to occur within the existing lawn.
- If the applicant was utilizing a more traditional septic system, the footprint would likely be larger and possible require a mounded system.
- The proposed project does not appear to have a negative impact on the resource area.

## RECOMMENDATION

- I recommend closing the public hearing for 29 Winsegansett Avenue, C\ V 023-239, and issuing a Negative 3 and Negative 6 Determination with the following conditions:
  - CAP-3
  - FZ-1
  - All of the applicable standards to the Eljen GSF A42 system, as outlined in MassDEP’s Standard Conditions for Alternative Soil Absorption Systems with General Use Certificate and/or Approved for Remedial Use, revised March 5, 2018, shall apply in full force and effect.



# WPA Form 1 - Request for Determination of Applicability

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

## A. General Information

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



1. Applicant:

Nora M. & Henry C. Bradford, III  
Name  
22 Brewster Road  
Mailing Address  
West Bridgewater  
City/Town  
508-985-8808  
Phone Number  
nbradford2@gmail.com  
E-Mail Address  
MA  
State  
02379  
Zip Code  
Fax Number (if applicable)

2. Representative (if any):

Charon Associates, Inc. - Engineers  
Firm  
Rick Charon, P.E.  
Contact Name  
323 Neck Road  
Mailing Address  
Rochester  
City/Town  
508-763-8362  
Phone Number  
charonengineers@comcast.net  
E-Mail Address  
MA  
State  
02770  
Zip Code  
Fax Number (if applicable)

## B. Determinations

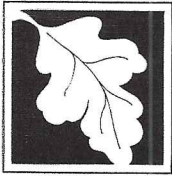
1. I request the Fairhaven Conservation Commission make the following determination(s). Check any that apply:

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

Fairhaven  
Name of Municipality

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

N/A



# WPA Form 1 - Request for Determination of Applicability

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

## C. Project Description

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

29 Winsegansett Ave.

Street Address

Fairhaven

City/Town

Map 42A

Assessors Map/Plat Number

Lot 148

Parcel/Lot Number

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

The subject parcel has 80 ft. frontage on the southerly side of Winsegansett Ave. and extends 170 ft. deep to Whisper Lane, with an existing 3-bedroom home and a one-car garage. The house is serviced by town water and has an existing cesspool for sewage disposal. The southerly side of the property lies within F.E.M.A. flood zone AE (EI.17') and the northerly side where the house and garage are located, lies within F.E.M.A. zone X, above the 100-year base flood elevation at 17 ft. MSL

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

Plan of Site & Repair of Subsurface Sewage Disposal

Title

July 21, 2021

Date

USGS Locus

Title

1975

Date

Title

Date

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

Install new sewage disposal system consisting of a new septic tank, dosing tank and leaching facility that utilizes the Eljen GSF system as approved by Mass. D.E.P. for remedial use. The new leaching facility will be at the southeast corner of the lot, where two large oak trees will be removed. Two new oak trees will be planted in the southwest corner of the property as replacements. The existing cesspool will be pumped out and backfilled. All disturbed areas shall be loamed and seeded with grass mix.





# Staff Report

Date: August 11, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **11 Balsam Street – Notice of Intent – DEP# SE 023-1361, Fairhaven CON 023-240**

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## DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- Violation letter dated December 14, 2020

## 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.”
- **Buffer Zone Wetlands Bylaw Regulations (Chapter 192 Regulations):**
  - 5.0 25 to 50 Foot Buffer Zone Resource Area
    - 5.1 Any applicant proposing a project within the 25-50 foot buffer zone resource area shall indicate that there are no structures including, but not limited to, concrete, stone, or other impervious foundations and/or slabs for construction purposes that would significantly increase runoff.
    - 5.2 Alteration of the 25-50 foot buffer zone resource area is limited to grading, tree clearing, stormwater management system components, lawns, gardens, and other low-impact uses as determined by the Commission or otherwise approved by the Commission by the variance procedures set forth in Section 8.0 of this regulation. Footings for building structures, such as a deck, as opposed to slabs or foundations, shall be used when technically feasible.
  - 6.0 50 to 100 Foot Buffer Zone Resource Area
    - 6.1 Alterations including structures are allowed in the 50-100 foot buffer zone resource area. The Commission may require additional mitigation offsets when the slope within the buffer zone is steeper than 10%. Additionally, mitigation offsets may be required by the Commission when the applicant proposes that more than 30% of the 50-100 foot buffer zone resource area is proposed to be impervious surface.
- **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 house and construct a new flood zone-compliant single-family house.

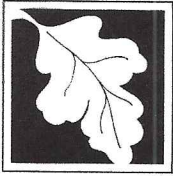
## COMMENTS

- The work on this property began last fall/winter without permits and the Commission issued a \$300 fine and required an after-the-fact filing within 90 days (March 7, 2021).
- The fine was paid in December 2020. This filing addresses the second part of the violation, to file an after-the-fact permit.
- The site plan shows the existing tree line in comparison to the tree line before any clearing was done.
- The plan shows that there was 10,300 square feet of clearing done, all within the velocity flood zone. Of that, 6,500 square feet was within the 100-foot buffer zone to BVW.

- The proposed work includes the demolition of the existing structure and the construction of a new flood zone-compliant house.
- Currently, the applicant proposes to let the 1,500 square foot area in the 0-25 foot buffer zone regrow and plant additional trees.
- Work proposed within 0-25 foot buffer zone
  - Planting of 15 white oak, maple, and sassafras trees between existing stumps
  - Existing tree stumps to remain and be allowed to regrow
- Work proposed within the 25-50 foot buffer zone
  - Stumps to be cleared
  - Area to be loamed and seeded
  - Shed to remain
- Work proposed within the 50-100 foot buffer zone
  - Demolition of the existing cottage
  - Grading associated with the new house
  - Rear deck attached to the house
  - Clearing of existing stumps
  - Area to be loamed and seeded
- Work proposed outside the 100-foot buffer zone in velocity flood zone only
  - Construction of new single-family flood zone-compliant house
  - Remainder of grading
  - New driveway
  - Utility connections
  - Clearing of existing stumps
  - Area to be loamed and seeded
- The Commission should consider whether the 1,500 square feet proposed to be replanted and left to regrow is sufficient replacement for the 6,500 square feet of buffer zone cleared.
  - The Commission could consider requiring the area in the 0-50 foot buffer zone be replanted with a mix of native trees, shrubs, and groundcover.
- During a site visit on August 10, members of the Commission expressed concern or had questions about the following items:
  - The low square footage of proposed planting in relation to what was cleared without a permit. A larger area of replanting in the 0-50 foot buffer zone with a variety of trees, shrubs, and groundcover was discussed.
  - The status of the driveway, whether it is intended to be paved or unpaved as the property is in the velocity flood zone
  - Whether the property owners intend to move or replace the shed

## **RECOMMENDATION**

- Based on comments from some members at the site visit, it seems the plan may need to be updated to reflect a closer match between the square footage cleared and the square footage to be replanted/left to regrow. I recommend asking the applicant to request a continuance to the next meeting to allow time to revise the plan.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 3 – Notice of Intent**

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

Provided by MassDEP:

MassDEP File Number

Document Transaction Number

**FAIRHAVEN**

City/Town

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



**Note:**  
Before completing this form consult your local Conservation Commission regarding any municipal bylaw or ordinance.

**A. General Information**

1. Project Location (Note: electronic filers will click on button to locate project site):

<u>11 Balsam St.</u>	<u>Fairhaven</u>	<u>02719</u>
a. Street Address	b. City/Town	c. Zip Code
<u>Latitude and Longitude:</u>	<u>41d35'09"</u>	<u>70d49'46"</u>
	d. Latitude	e. Longitude
<u>Map 43C</u>	<u>129</u>	
f. Assessors Map/Plat Number	g. Parcel /Lot Number	

2. Applicant:

<u>Nora &amp; Henry C. III</u>	<u>Bradford</u>	
a. First Name	b. Last Name	
<u>c. Organization</u>		
<u>22 Brewster St.</u>		
d. Street Address		
<u>W. Bridgewater</u>	<u>MA</u>	<u>02379</u>
e. City/Town	f. State	g. Zip Code
<u>508-985-8808</u>	<u>nbradfor2@gmail.com</u>	
h. Phone Number	i. Fax Number	j. Email Address

3. Property owner (required if different from applicant):  Check if more than one owner

Same

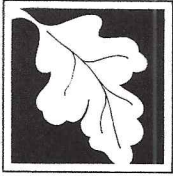
<u>a. First Name</u>	<u>b. Last Name</u>
<u>c. Organization</u>	
<u>d. Street Address</u>	
<u>e. City/Town</u>	<u>f. State</u> <u>g. Zip Code</u>
<u>h. Phone Number</u>	<u>i. Fax Number</u> <u>j. Email address</u>

4. Representative (if any):

<u>Richard</u>	<u>Charon, P.E.</u>	
a. First Name	b. Last Name	
<u>Charon Associates, Inc. - Engineers</u>		
c. Company		
<u>323 Neck Road</u>		
d. Street Address		
<u>Rochester</u>	<u>MA</u>	<u>02770</u>
e. City/Town	f. State	g. Zip Code
<u>508-763-8362</u>	<u>charonengineers@comcast.net</u>	
h. Phone Number	i. Fax Number	j. Email address

5. Total WPA Fee Paid (from NOI Wetland Fee Transmittal Form):

<u>\$500 + \$100 local fee</u>	<u>\$237.50</u>	<u>\$262.50 + \$100</u>
a. Total Fee Paid	b. State Fee Paid	c. City/Town Fee Paid



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

## WPA Form 3 – Notice of Intent

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

Provided by MassDEP:

MassDEP File Number

Document Transaction Number

FAIRHAVEN

City/Town

### A. General Information (continued)

6. General Project Description:

Raze existing house and construct new house on flood zone-compliant foundation, with connections to town sewer and water and re-planting of trees. Proposed work lies within the 100-year flood plain and within buffer zone of bordering wetlands.

7a. Project Type Checklist: (Limited Project Types see Section A. 7b.)

- |   |   |
|---|---|
| 1. <input checked="" type="checkbox"/> Single Family Home             | 2. <input type="checkbox"/> Residential Subdivision       |
| 3. <input type="checkbox"/> Commercial/Industrial                     | 4. <input type="checkbox"/> Dock/Pier                     |
| 5. <input type="checkbox"/> Utilities                                 | 6. <input type="checkbox"/> Coastal engineering Structure |
| 7. <input type="checkbox"/> Agriculture (e.g., cranberries, forestry) | 8. <input type="checkbox"/> Transportation                |
| 9. <input type="checkbox"/> Other                                     |   |

7b. Is any portion of the proposed activity eligible to be treated as a limited project (including Ecological Restoration Limited Project) subject to 310 CMR 10.24 (coastal) or 310 CMR 10.53 (inland)?

1.  Yes  No If yes, describe which limited project applies to this project. (See 310 CMR 10.24 and 10.53 for a complete list and description of limited project types)

2. Limited Project Type

If the proposed activity is eligible to be treated as an Ecological Restoration Limited Project (310 CMR10.24(8), 310 CMR 10.53(4)), complete and attach Appendix A: Ecological Restoration Limited Project Checklist and Signed Certification.

8. Property recorded at the Registry of Deeds for:

Bristol S.D.

a. County

22937

b. Certificate # (if registered land)

c. Book

d. Page Number

### B. Buffer Zone & Resource Area Impacts (temporary & permanent)

- Buffer Zone Only – Check if the project is located only in the Buffer Zone of a Bordering Vegetated Wetland, Inland Bank, or Coastal Resource Area.
- Inland Resource Areas (see 310 CMR 10.54-10.58; if not applicable, go to Section B.3, Coastal Resource Areas).

Check all that apply below. Attach narrative and any supporting documentation describing how the project will meet all performance standards for each of the resource areas altered, including standards requiring consideration of alternative project design or location.



# Staff Report

Date: August 6, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 & 2 Marsh Island – Notice of Intent – DEP# 023-1362, Fairhaven CON 023-237**

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## DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- Revised NOI submission for an ecological restoration limited project
- NHESP letter dated August 5, 2021

## RESOURCE AREAS ON/NEAR SITE

- Coastal Beach
- Coastal Dune
- Bordering Vegetated Wetland
- Salt Marsh
- Buffer Zone
- Riverfront Area
- Land Subject to Coastal Storm Flowage

## PERFORMANCE STANDARDS

- No work is proposed within Coastal Beach or Coastal Dune
- **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
- **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."
  - **Buffer Zone Wetlands Bylaw Regulations (Chapter 192 Regulations):**
    - 4.0 0 to 25 Foot Buffer Zone Resource Area
      - 4.2 The Commission may, in its discretion, permit a MBZA in a location closer than 25 feet to the resource area if, and only if, the proposed activity occurs exclusively within a previously disturbed area and is located no closer to the resource area than existing structures, activities, or disturbances. However, it is encouraged to increase the width of the buffer zone where possible.
    - 5.0 25 to 50 Foot Buffer Zone Resource Area
      - 5.4 Previously disturbed areas: When there is a pre-existing disturbance (disturbed as part of a previously recorded Certificate of Compliance or Determination of Applicability or disturbed prior to the enactment of the Massachusetts Wetlands Protection Act (MGL Ch. 131 §40) and the Fairhaven Wetlands Bylaw (Chapter 192)), and the work proposed is entirely within this previously disturbed area, an applicant may propose impervious surfaces or other uses, such as pools, buildings, porches, and sheds within the 25-50 foot buffer zone resource area. The Commission shall evaluate the proposed uses based on the demonstration by the applicant that the functions, characteristics, and values of the resource area will not be adversely impacted.
  - **Riverfront Area: 10.58(4)**
    - (c) Practicable and Substantially Equivalent Economic Alternatives



(d) No Significant Adverse Impact

2. Within 200 foot riverfront areas, the issuing authority may allow the alteration of up to 5000 square feet or 10% of the riverfront area within the lot, whichever is greater ..., provided that:
    - a. At a minimum, a 100' wide area of undisturbed vegetation is provided... preserved or extended to the max. extent feasible....
    - b. Stormwater is managed ...
    - c. Proposed work does not impair the capacity of the riverfront area to provide important wildlife habitat functions. ...
    - d. ... incorporating erosion and sedimentation controls and other measures to attenuate nonpoint source pollution.
- **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 approximately 8.2 acres of invasive plant control and management as part of a larger 12-acre salt marsh restoration project.

## COMMENTS

- The applicant is proposing to control approximately 7.9 acres of common reed (*Phragmites australis*) and approximately 0.3 acres of other invasive plants.
- They are proposing control for at least two growing seasons ahead of the future salt marsh restoration project and annual monitoring and spot treatment of invasive plants is proposed to continue thereafter.
- They are proposing to control the invasive species onsite through a combination of manual cut-stem treatments as well as foliar herbicide application to limit their presence and prevent their continued spread on the property. Management techniques are species-specific and include:
  - Cut-stem treatments for woody species
  - Selective foliar treatments for herbaceous species
  - Hand wiping or cut and drip applications when near sensitive plant communities
- A solution of herbicide, surfactant, and marking dye will be used for all treatments and conducted by licensed contractors.
- Beginning to control these plants this summer ahead of the larger restoration project, which is proposed for fall 2022, will result in a much greater chance of success to establish native vegetation in areas of newly created salt marsh.
- In subsequent years, monitoring of treated areas will be conducted annual and spot treatments applied as needed with foliar spray, hand wiping, or cut-stem treatment of herbicide by pesticide-licensed staff. Hand pulling will be utilized where possible for species such as spotted knapweed.
- Based on MassDEP's recommendations, the applicant has revised their submission to an ecological restoration limited project.
- Ecological restoration limited projects permitted by a order of conditions may result in the temporary or permanent loss of resource areas and/or the conversion of one resource area to

another when such loss and/or conversion is necessary to the achievement of the project's ecological restoration goals.

- Based on the revised submitted documentation, the project meets all of the eligibility criteria for a restoration order of conditions, as outlined in 310 CMR 10.13.

## RECOMMENDATION

- I recommend closing the public hearing for SE 023-1362, CON 023-237, 1 & 2 Marsh Island, and issuing an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following recommended conditions:

Approve plans dated July 30, 2021

Special 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. ADD-1
4. ADD-2
5. This Order of Conditions is valid for five years since the work involves invasive species management of conservation land.
6. This Order and a copy of approved drawings and plans shall be available at the project site at all times for easy reference.
7. DER-1
8. CAP-3
9. PCC-3
10. All invasive species control work shall be overseen by a qualified professional.
11. Invasive species control and monitoring shall be done in accordance with the project narrative, as attached to this Order.
12. The applicant shall work to minimize and avoid impacts to rare plants during invasive plant management efforts and shall coordinate, as needed, with Natural Heritage & Endangered Species Program.

### Perpetual Conditions

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

13. Annual monitoring of the site and spot treatment of invasive species as needed is permitted without re-filing with or notification to the Commission.



July 30, 2021

Town of Fairhaven Conservation Commission  
c/o Whitney McClees, Conservation Agent  
Town Hall, 40 Center Street  
Fairhaven, MA 02719

Re: Notice of Intent for Invasive Plant Management at Marsh Island

Dear Conservation Commission,

On July 6, 2021, Buzzards Bay Coalition (BBC) submitted a Notice of Intent to control approximately 8.2 acres of invasive plants at Marsh Island, located at the western terminus of Taber Street in Fairhaven, MA. Upon review of the July 6<sup>th</sup> submission, the Massachusetts Department of Environmental Protection feels the project meets the eligibility criteria for an Ecological Restoration Limited Project. Therefore, they have requested that we provide supplemental application forms for consideration as a Limited Project. Additionally, the extent of the riverfront area resource area has been updated on the project map and in WPA Form 3. Enclosed are the following:

- Updated WPA Form 3
- WPA Form 3, Appendix A: Ecological Restoration Limited Project Checklists
- Updated project map, dated July 30, 2021

BBC seeks to implement invasive plant management beginning in late summer 2021. Target species include approximately 7.9 acres of invasive common reed (*Phragmites australis*) and approximately 0.3 acres of other invasive plants. These aggressive non-native species have been establishing and expanding in recent years. Control is proposed to reduce their presence on the site, limit further spread, and prevent them from invading newly restored habitat. The entire property has been heavily anthropogenically disturbed throughout the 1900's, including mining of granite stone and filling of wetland resources with dredged material from New Bedford Harbor. Invasive species management is proposed as the first step toward ecological restoration of the site.

Please let me know if you have any questions or require further information for review. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sara N. da Silva Quintal".

Sara N. da Silva Quintal

cc: MassDEP SERO





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

## WPA Form 3 – Notice of Intent

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

Provided by MassDEP:

MassDEP File Number

Document Transaction Number

Fairhaven

City/Town

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



**Note:**  
Before completing this form consult your local Conservation Commission regarding any municipal bylaw or ordinance.

### A. General Information

1. Project Location (**Note:** electronic filers will click on button to locate project site):

Taber Street Fairhaven 02719  
a. Street Address b. City/Town c. Zip Code

Latitude and Longitude:  
41° 39' 4.54" -70° 54' 58.36"  
d. Latitude e. Longitude

Map 15 Lot 1 and Map 17 Lot 129  
f. Assessors Map/Plat Number g. Parcel /Lot Number

2. Applicant:

Sara Quintal  
a. First Name b. Last Name

Buzzards Bay Coalition

c. Organization

114 Front Street

d. Street Address

New Bedford MA 02740  
e. City/Town f. State g. Zip Code

508-999-6363 x225 508-984-7913 quintal@savebuzzardsbay.org  
h. Phone Number i. Fax Number j. Email Address

3. Property owner (required if different from applicant):  Check if more than one owner

a. First Name b. Last Name

c. Organization

d. Street Address

e. City/Town f. State g. Zip Code

h. Phone Number i. Fax Number j. Email address

4. Representative (if any):

a. First Name b. Last Name

c. Company

d. Street Address

e. f. State g. Zip Code

h. Phone Number i. Fax Number j. Email address

5. Total WPA Fee Paid (from NOI Wetland Fee Transmittal Form):

\$165 \$70 \$95  
a. Total Fee Paid b. State Fee Paid c. City/Town Fee Paid



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 3 – Notice of Intent**

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

Provided by MassDEP:

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Fairhaven

City/Town

**A. General Information (continued)**

6. General Project Description:

Invasive plant management including control of approximately 8.2 acres of invasive Common Reed (*Phragmites australis*) and other invasive plants.

7a. Project Type Checklist: (Limited Project Types see Section A. 7b.)

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Single Family Home                        | 2. <input type="checkbox"/> Residential Subdivision       |
| 3. <input type="checkbox"/> Commercial/Industrial                     | 4. <input type="checkbox"/> Dock/Pier                     |
| 5. <input type="checkbox"/> Utilities                                 | 6. <input type="checkbox"/> Coastal engineering Structure |
| 7. <input type="checkbox"/> Agriculture (e.g., cranberries, forestry) | 8. <input type="checkbox"/> Transportation                |
| 9. <input checked="" type="checkbox"/> Other                          |   |

7b. Is any portion of the proposed activity eligible to be treated as a limited project (including Ecological Restoration Limited Project) subject to 310 CMR 10.24 (coastal) or 310 CMR 10.53 (inland)?

1.  Yes  No If yes, describe which limited project applies to this project. (See 310 CMR 10.24 and 10.53 for a complete list and description of limited project types)

Other Restoration Project (invasive plant management for habitat enhancement)

2. Limited Project Type

If the proposed activity is eligible to be treated as an Ecological Restoration Limited Project (310 CMR 10.24(8), 310 CMR 10.53(4)), complete and attach Appendix A: Ecological Restoration Limited Project Checklist and Signed Certification.

8. Property recorded at the Registry of Deeds for:

Bristol County Southern District

a. County

Bk 5894, Pg 220 (Map 17 Lot 129)

c. Book

b. Certificate # (if registered land)

Bk 9585, Pg 73 (Map 15 Lot 1)

d. Page Number

**B. Buffer Zone & Resource Area Impacts (temporary & permanent)**

1.  Buffer Zone Only – Check if the project is located only in the Buffer Zone of a Bordering Vegetated Wetland, Inland Bank, or Coastal Resource Area.
2.  Inland Resource Areas (see 310 CMR 10.54-10.58; if not applicable, go to Section B.3, Coastal Resource Areas).

Check all that apply below. Attach narrative and any supporting documentation describing how the project will meet all performance standards for each of the resource areas altered, including standards requiring consideration of alternative project design or location.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 3 – Notice of Intent**

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

Provided by MassDEP:

MassDEP File Number

Document Transaction Number

Fairhaven

City/Town

**B. Buffer Zone & Resource Area Impacts (temporary & permanent) (cont'd)**

For all projects affecting other Resource Areas, please attach a narrative explaining how the resource area was delineated.

Resource Area	Size of Proposed Alteration	Proposed Replacement (if any)
a. <input type="checkbox"/> Bank	1. linear feet	2. linear feet
b. <input checked="" type="checkbox"/> Bordering Vegetated Wetland	6,836 1. square feet	2. square feet
c. <input type="checkbox"/> Land Under Waterbodies and Waterways	1. square feet 3. cubic yards dredged	2. square feet

Resource Area	Size of Proposed Alteration	Proposed Replacement (if any)
d. <input type="checkbox"/> Bordering Land Subject to Flooding	1. square feet 3. cubic feet of flood storage lost	2. square feet 4. cubic feet replaced
e. <input type="checkbox"/> Isolated Land Subject to Flooding	1. square feet 2. cubic feet of flood storage lost	3. cubic feet replaced
f. <input checked="" type="checkbox"/> Riverfront Area	Acushnet River (coastal) 1. Name of Waterway (if available) - specify coastal or inland	

2. Width of Riverfront Area (check one):

- 25 ft. - Designated Densely Developed Areas only
- 100 ft. - New agricultural projects only
- 200 ft. - All other projects

3. Total area of Riverfront Area on the site of the proposed project: 379,310 square feet

4. Proposed alteration of the Riverfront Area:

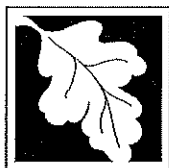
<u>105,724</u>	<u>41,132</u>	<u>64,592</u>
a. total square feet	b. square feet within 100 ft.	c. square feet between 100 ft. and 200 ft.

5. Has an alternatives analysis been done and is it attached to this NOI?  Yes  No

6. Was the lot where the activity is proposed created prior to August 1, 1996?  Yes  No

3.  Coastal Resource Areas: (See 310 CMR 10.25-10.35)

**Note:** for coastal riverfront areas, please complete Section B.2.f. above.



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 3 – Notice of Intent**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:  
 \_\_\_\_\_  
 MassDEP File Number  
 \_\_\_\_\_  
 Document Transaction Number  
 Fairhaven  
 City/Town

**B. Buffer Zone & Resource Area Impacts (temporary & permanent) (cont'd)**

Check all that apply below. Attach narrative and supporting documentation describing how the project will meet all performance standards for each of the resource areas altered, including standards requiring consideration of alternative project design or location.

Online Users:  
 Include your document transaction number (provided on your receipt page) with all supplementary information you submit to the Department.

<u>Resource Area</u>	<u>Size of Proposed Alteration</u>	<u>Proposed Replacement (if any)</u>
a. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below	
b. <input type="checkbox"/> Land Under the Ocean	1. square feet _____ 2. cubic yards dredged _____	
c. <input type="checkbox"/> Barrier Beach	Indicate size under Coastal Beaches and/or Coastal Dunes below	
d. <input type="checkbox"/> Coastal Beaches	1. square feet _____	2. cubic yards beach nourishment _____
e. <input type="checkbox"/> Coastal Dunes	1. square feet _____	2. cubic yards dune nourishment _____

	<u>Size of Proposed Alteration</u>	<u>Proposed Replacement (if any)</u>
f. <input type="checkbox"/> Coastal Banks	1. linear feet _____	
g. <input type="checkbox"/> Rocky Intertidal Shores	1. square feet _____	
h. <input checked="" type="checkbox"/> Salt Marshes	93,195 1. square feet _____	2. sq ft restoration, rehab., creation _____
i. <input type="checkbox"/> Land Under Salt Ponds	1. square feet _____ 2. cubic yards dredged _____	
j. <input type="checkbox"/> Land Containing Shellfish	1. square feet _____	
k. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above	
	1. cubic yards dredged _____	
l. <input checked="" type="checkbox"/> Land Subject to Coastal Storm Flowage	253,322 1. square feet _____	

4.  Restoration/Enhancement  
 If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.2.b or B.3.h above, please enter the additional amount here.

\_\_\_\_\_ a. square feet of BVW \_\_\_\_\_ b. square feet of Salt Marsh

5.  Project Involves Stream Crossings

\_\_\_\_\_ a. number of new stream crossings \_\_\_\_\_ b. number of replacement stream crossings



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

Provided by MassDEP:

MassDEP File Number

Document Transaction Number

Fairhaven  
City/Town

# WPA Form 3 – Notice of Intent

## Appendix A: Ecological Restoration Limited Project Checklists

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

### Certification that the Ecological Restoration Project Meets the Eligibility Criteria

I hereby certify under penalties of perjury that the Ecological Restoration Project Notice of Intent application does not meet the Eligibility criteria for an Ecological Restoration Order of Conditions set forth in 310 CMR 10.13, but does meet the Eligibility Criteria for a Ecological Restoration Limited Project set forth in 10.24(8) or 10.53(4) whichever is applicable. I certify that I am familiar with the information contained in the application, and that to the best of my knowledge and belief such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities.

Signature of Applicant or Authorized Agent

Sara Quintal

Printed Name of Applicant or Authorized Agent

7/30/21  
Date

The certification must be signed by the applicant; however, it may be signed by a duly authorized agent (named in Item 2) if this form is accompanied by a statement by the applicant designating the agent and agreeing to furnish upon request, supplemental information in support of the application.



# Marsh Island, Fairhaven Invasive Plants to be Managed



Legend	
	Marsh Island Parcels
	Tidal Wetland
	Freshwater Wetland
	Upland Inclusions (0.23 ac)
	Flood Zone (AE, BFE 6)
	Mouth of River (DEP)
	Riverfront (200 ft)
	Phragmites (~7.9 ac)
	Phragmites (EPA Buffer, ~0.6 ac)
	2017 EPA Remediation Areas
	30-ft EPA Buffer (Ex. Phrag Treatment)
	Other Invasive Plants (~0.3 ac)





MASSWILDLIFE

## DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581

p: (508) 389-6300 | f: (508) 389-7890

MASS.GOV/MASSWILDLIFE

August 5, 2021

Sara Quintal  
The Coalition for Buzzards Bay  
114 Front Street  
New Bedford MA 02570

Fairhaven Conservation Commission  
Town Hall  
40 Center Street  
Fairhaven MA 02719

RE:     Applicant:             Sara Quintal  
       Project Location:       Marsh Island, Taber Street  
       Project Description:    Invasive Plant Management  
       DEP Wetlands File No.: Not Issued  
       NHESP Tracking No.:    **21-40346**

Dear Commissioners & Applicant:

The applicant listed above has submitted a Notice of Intent with a Habitat Management Plan to the Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division"), in compliance with the rare wildlife species section of the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.58(4)(b), 10.59).

### **MA WETLANDS PROTECTION ACT (WPA)**

Based on a review of the information that was provided and the information that is currently contained in our database, the Division has determined that this project, as currently proposed, will **not** adversely affect the actual Resource Area Habitat of state-protected rare wildlife species. Therefore, it is our opinion that this project meets the state-listed species performance standard for the issuance of an Order of Conditions.

Please note that this determination addresses only the matter of **rare** wildlife habitat and does not pertain to other wildlife habitat issues that may be pertinent to the proposed project.

### **MA ENDANGERED SPECIES ACT (MESA)**

The Division hereby approves the submitted management plan, provided the following conditions are met:

1. The Applicant shall work to minimize and avoid impacts to rare plants during invasive plant management efforts. The Division is available for further consultation, as needed.

MASSWILDLIFE

Therefore, the proposed activities are **exempt from MESA review** pursuant to 321 CMR 10.14 which states: “[t]he following Projects and Activities shall be exempt from the requirements of 321 CMR 10.18 through 10.23...”.

(15) The active management of State-listed Species habitat, including but not limited to mowing, cutting, burning, or pruning of vegetation, or removing exotic or invasive species, for the purpose of maintaining or enhancing the habitat for the benefit of rare species, provided that the management is carried out in accordance with a habitat management plan approved in writing by the Division”

Any changes to the proposed activities or any additional work beyond that described in the approved management plan may require a filing with the Division pursuant to MESA. This approval is valid for five (5) years from the date of issuance. If you have any questions about this letter, please contact Emily Holt, Endangered Species Review Assistant at 508-389-6385 or [Emily.Holt@mass.gov](mailto:Emily.Holt@mass.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Everose Schlüter". The signature is fluid and cursive, with the first name being the most prominent.

Everose Schlüter, Ph.D.  
Assistant Director

cc: MA DEP Southeast Region

# Staff Report

Date: August 11, 2021  
To: Conservation Commission  
From: Whitney McClees, Conservation Agent  
Subject: **217 Alden Road – Violation/Enforcement**

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## DOCUMENTS REVIEWED

- Previous site plan dated November 9, 1999
- 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
- 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.”
- **Buffer Zone Wetlands Bylaw Regulations (Chapter 192 Regulations):**
  - 4.0 0 to 25 Foot Buffer Zone Resource Area
    - 4.1 An applicant shall demonstrate that no alteration is proposed within the 0-25 foot buffer zone resource area.
  - 5.0 25 to 50 Foot Buffer Zone Resource Area
    - 5.1 Any applicant proposing a project within the 25-50 foot buffer zone resource area shall indicate that there are no structures including, but not limited to, concrete, stone, or other impervious foundations and/or slabs for construction purposes that would significantly increase runoff.
    - 5.2 Alteration of the 25-50 foot buffer zone resource area is limited to grading, tree clearing, stormwater management system components, lawns, gardens, and other low-impact uses as determined by the Commission or otherwise approved by the Commission by the variance procedures set forth in Section 8.0 of this regulation. Footings for building structures, such as a deck, as opposed to slabs or foundations, shall be used when technically feasible.
  - 6.0 50 to 100 Foot Buffer Zone Resource Area
    - 6.1 Alterations including structures are allowed in the 50-100 foot buffer zone resource area. The Commission may require additional mitigation offsets when the slope within the buffer zone is steeper than 10%. Additionally, mitigation offsets may be required by the Commission when the applicant proposes that more than 30% of the 50-100 foot buffer zone resource area is proposed to be impervious surface.

## ACTIVITY SUMMARY

- A member of the Commission responded to a report of a possible violation and found that vegetation had been cleared and fill spread within a buffer zone and within a BVW. The Commissioner instructed the property owner to stop work and contact the Agent.

## COMMENTS

- The property owner immediately came into the office to address the issue. He explained that he was unaware that he needed a permit to spread fill and remove vegetation on his property.
- A certificate of compliance was issued in 2018 around the time he purchased the house, but he explained that he was unaware that meant the property fell within the jurisdiction of the Commission.
- The property owner expressed that he wants to work with the Commission to rectify the situation.

- I conducted a site visit to see if I could determine whether the wetland line from 1999 had shifted.
- There is probably 4-5 feet of fill on site, making it incredibly difficult to determine where the edge of the wetland is without further investigation.
- The recommendations I made on site to incorporate into any restoration plan were as follows:
  - Removal of much of the fill and regrading so the lawn more gradually slopes back toward the drainage ditch and doesn't displace water onto the neighboring property
  - Incorporate native trees, shrubs, and groundcover into planting proposal
- The Commission will need to determine whether or not they feel an accurate wetland line is needed based on the 1999 site plan. If that line is still accurate, a portion of the work was done in a BVW rather than solely buffer zone and any restoration will have to take that into account.

## **RECOMMENDATION**

- If the Commission feels an accurate line is necessary, I recommend requiring the property owner have a wetland delineation done and provide a restoration plan for review and approval.
- If the Commission feels the line from 1999 is sufficient, I recommend requiring the property owner to submit a restoration plan that complies with the BVW performance standards for the portion of the impacted area that is BVW and includes buffer zone restoration.



TOWN OF FAIRHAVEN, MASSACHUSETTS

# CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

August 3, 2021

Shaun DeGrace  
217 Alden Road  
Fairhaven, MA 02719

RE: Possible Wetland Violation  
217 Alden Road  
Request to attend meeting of August 16, 2021

Mr. DeGrace,

It has come to my attention that there may be a possible wetlands violation at your property at 217 Alden Road, Fairhaven, MA. A member of the Commission performed a site visit on August 3, 2021 and observed clearing of vegetation in a bordering vegetated wetland and its associated 100-foot buffer zone.

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 contact the Conservation Commission or its Agent, Whitney McClees, at (508) 979-4022 ext. 128 by August 13, 2021 and appear before the Conservation Commission at its next meeting on Monday, August 16, at 6:30pm. Currently, Conservation Commission meetings are being held remotely via Zoom. The remote access information for the August 16 meeting, which can be found on the Town calendar and will also be posted on the meeting agenda, is:

Meeting ID: 938 6751 6139  
Passcode: 326289

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 contains bordering vegetated wetland and the associated 100-foot buffer zone. Any activity 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 up to \$300.00 per day 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](mailto:conservation@fairhaven-ma.gov).

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

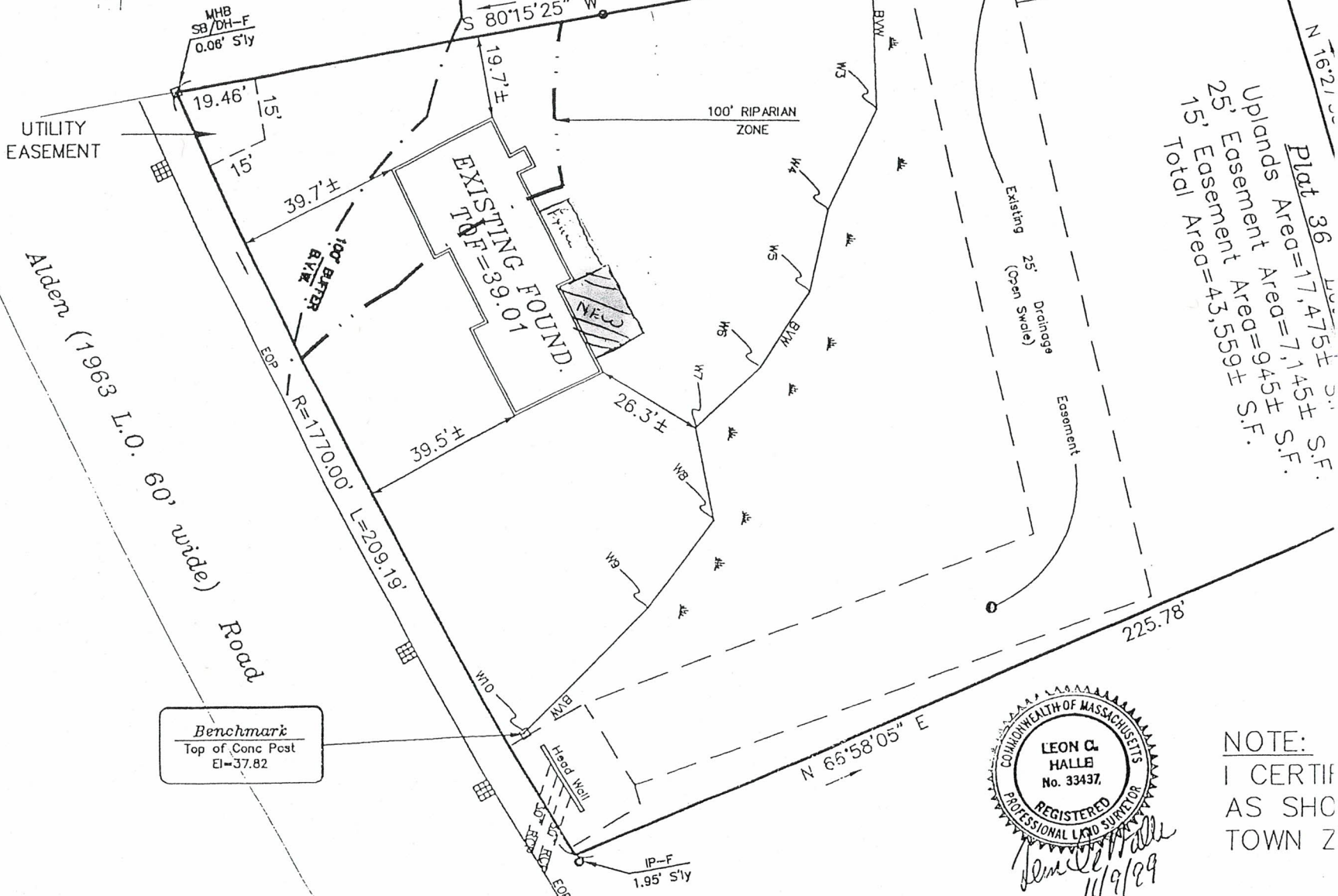
Sincerely,

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



ESTABLISHED

Nov 10 11 33 AM '99



**Benchmark**  
 Top of Conc Post  
 El = 37.82

COMMONWEALTH OF MASSACHUSETTS  
 LEON C. HALLE  
 No. 33437  
 REGISTERED  
 PROFESSIONAL LAND SURVEYOR  
*Leon C. Halle*  
 11/9/99

NOTE:  
 I CERTIFY  
 AS SHOWN  
 TOWN ZONING

FITZGERALD ENGINEERING INC. P.O. BOX 398	DRAWN BY: G.D.B. CHECKED BY: R.R.B. APPROVED BY: L.C.H.	DATE: 11/09/99	"AS-BUILT" CLIENT: BILL OLIVER
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Whitney McClees &lt;wmcclees@fairhaven-ma.gov&gt;

**Lopes – 20 Yankee Lane**

2 messages

**John E. Zajac** <jezesq@cs.com>  
Reply-To: "John E. Zajac" <jezesq@cs.com>  
To: "conservation@fairhaven-ma.gov" <conservation@fairhaven-ma.gov>  
Cc: [REDACTED]

Wed, Aug 4, 2021 at 4:50 PM

Dear Ms. McClees,

Thank you for speaking with me yesterday. I am trying to assist Mr. Lopes concerning his issues with the Conservation Commission. Only late yesterday he received some information from the former engineer on the project that I think will be very helpful. The transition between attorneys and engineers has posed some significant challenges to Mr. Lopes; especially as we discussed given how backed up the workloads of most professionals involved in land use planning have become. I also spoke with Stevie Carvalho of Farland Corp., who Mr. Lopes intends to retain to prepare the appropriate plans. He is putting together a scope of work agreement but is somewhat hindered by not knowing to what extent he can rely on prior plans/surveys and to what extent he has to develop new ones. Perhaps this is something we could discuss? That being said, once he gets a handle on that he thinks that plans to address the current order can be prepared in 4-6 weeks. I know that this is not the ideal timeframe from the Commissions' standpoint, but Mr. Lopes is committed to resolving this matter; hopefully in a manner that satisfies the Commission without onerous expense.

Please do not hesitate to contact me if you have any questions or concerns or if I can provide you with any additional information.

Regards,

John

John E. Zajac, Esquire  
Attorney at Law  
Cornerstone Law Group, LLC  
One [Taunton Green, Suite 2](#)  
[Taunton, MA 02780](#)  
telephone (508) 821-2552  
e-mail: [jezesq@cs.com](mailto:jezesq@cs.com)

CONFIDENTIALITY NOTICE: The information transmitted in this e-mail and/or any attachments thereto are for the exclusive use of the person or entity to which it is addressed and may contain legally privileged or confidential information. This information is intended only for the use of the