

Staff Report

Date: September 16, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **4 Pequod Road – Request for Certificate of Compliance – DEP# 023-1311, Fairhaven CON 023-108**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- Order of Conditions issued January 29, 2020
- 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

PROJECT SUMMARY

- The Order of Conditions approved the reconstruction of the parking lot at 4 Pequod Road with associated drainage and reconfiguration of the sidewalks and accessibility entrances.

COMMENTS

- The applicant has submitted a request for certificate of compliance with an as-built plan, a certification from the engineer that the work was done in substantial compliance with the Order of Conditions, and an Operation & Maintenance Compliance Statement, as required by the OOC.
- I performed a site visit on September 10, 2021 and did not note any significant deviations from the approved plan nor did I observe any wetland impacts.
- It appears the project has been completed in substantial compliance with the Order of Conditions.

RECOMMENDATION

- I recommend issuing a Certificate of Compliance for Complete Certification for 4 Pequod Road, SE 023-1311, CON 023-108, under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following continuing conditions:

D. 43 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.

D. 44 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.

D. 45 All stormwater BMPs shall be operated and maintained in accordance with the design plans and the Operation and Maintenance Plan approved by Conservation Commission.

D. 46 The responsible party shall:

- i. maintain an operation and maintenance log for the last three years, including inspections, repairs, replacement, and disposal (for disposal, the log shall indicate the type of material and the disposal location);
- ii. make this log available to MassDEP and the Conservation Commission upon request; and
- iii. allow members and agents of the MassDEP and the Conservation Commission to enter and inspect the premises to evaluate and ensure that the responsible party complies with the Operation and Maintenance Plan requirements for each BMP.

D. 47 All stormwater best management practices (BMPs) shall be maintained as specified in the Operation and Maintenance Plan, section 2.9 of the Stormwater Report revised January 2020 submitted by Gordon R. Archibald, Inc. with the Notice of Intent, titled "Project Description and Stormwater Report for Proposed Pavement Resurfacing at the United States Postal Service Carrier Annex, 4 Pequod Road, Fairhaven, MA 02719," and incorporated in the Order of Conditions. Evidence of maintenance and complete and thorough inspections of the Stormwater Management system using the inspection and maintenance forms in Appendix F of the Stormwater Report shall be provided to the Commission on a semi-annual basis (once in the spring and once during the fall) and after major rain events or nor'easter storm events (approximately 2.0 inches of rain). This condition shall be noted on the Certificate of Compliance and shall continue in perpetuity.



September 13, 2021

Town of Fairhaven Conservation Commission
ATTN: Whitney McClees, Conservation Agent
Town Hall
40 Center Street
Fairhaven, MA 02719

Subject: United States Postal Service
Fairhaven Carrier Annex
4 Pequod Road, Fairhaven, MA 02719
Map 24 / Lot 14C
USPS Project Number B35638 - Pavement Resurfacing
Massachusetts Wetlands Protection Act
Request for Certificate of Compliance
DEP# SE 023-1311 / FCC# CON 023-108

200 MAIN STREET
PAWTUCKET, RI 02860
401.726.4084

317 IRON HORSE WAY
SUITE 100
PROVIDENCE RI 02908
401.383.6530

120 MIDDLESEX AVENUE
SUITE 20
SOMERVILLE, MA 02145
617.776.3350

115 GLASTONBURY BLVD
GLASTONBURY CT 06033
860.659.1416

6 CHESTNUT ST
SUITE 110
AMESBURY MA 01913
978.388.2157

197 LOUDON RD
SUITE 310
CONCORD NH 03301
603.856.7854

Dear Commission Members:

On behalf of the USPS, Applicant for the above-referenced project under the Massachusetts Wetlands Protection Act and Town of Fairhaven regulations, we are submitting herewith:

- *Request for Certificate of Compliance* (completed WPA Form 8A);
- Signed/stamped As-Built Plans (dated July 28, 2021; 8 sheets total);
- O&M Compliance Statement (1 p.); and
- Check payable to the Town of Fairhaven in the amount of \$200.00.

The current owner of the project parcel is:

Fairhaven Annex LLC
36 Beachside Ave
Westport, CT 06880

Please issue the Certificate of Compliance to:

Sheldon Scott, USPS Facilities, R&A East
6 Griffin Road North
Windsor, CT 06006-0300

As the project engineer/designer, I hereby certify that the completed improvements are in substantial compliance with the Order of Conditions issued on January 29, 2020 and recorded with the Bristol County Registry of Deeds on February 7, 2020, and that no material deviations exist from the plans approved in the Order.

Thank you for your time and assistance in this matter. Should you have any questions or require additional information, please call our office at (401) 726-4084.

Respectfully,

Todd A. Ravenelle, P.E.
Senior Vice President / RI Division Manager

cc: Chris DeFilippo, MM&T
Sheldon Scott, USPS
Laurel Schwartz, Fairhaven Annex LLC

USPS Fairhaven Carrier Annex
4 Pequod Road, Fairhaven, MA 02719
USPS Project Number B35638 - Pavement Resurfacing
Request for Certificate of Compliance
DEP# SE 023-1311 / FCC# CON 023-108

Stormwater O&M Compliance Statement

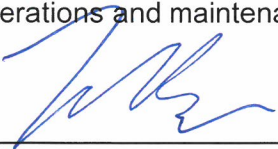
(Pursuant to Order of Conditions, Special Condition E.52)

The United States Postal Service (USPS) is the party responsible for implementation of the Operation and Maintenance (O&M) Plan for drainage and stormwater facilities at the 4 Pequod Road facility. O&M activities will be conducted as described in the Project Description / Stormwater Report submitted with the Notice of Intent, applicable excerpts of which are attached to the Order of Conditions issued on January 29, 2020. The O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance.

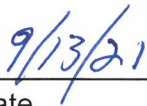
As the responsible party, the USPS hereby acknowledges the following:

- a. The site has been inspected for erosion and appropriate steps have been taken to permanently stabilize any eroded areas.
- b. All aspects of the stormwater BMPs have been inspected for damage, wear and malfunction, and appropriate steps have been taken to repair/replace the system or portions of the system (so that the stormwater at the site may be managed in accordance with the Massachusetts Stormwater Management Standards).
- c. Future responsible parties will be notified of their continuing legal responsibility to operate and maintain the structures.
- d. The Operation and Maintenance Plan for the stormwater BMPs is being implemented.

As project designer and signatory on the submitted Checklist for Stormwater Report, I certify that the above statements are accurate and that the USPS has been duly informed of their operations and maintenance responsibilities.



Todd A. Ravenelle, P.E.
Senior Vice President
GRA, a division of GM2



Date

+ + +

Staff Report

Date: September 13, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **39 Nakata Avenue – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-241**

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
- Coastal Beach
- Coastal Bank
- Buffer Zone

RELEVANT 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.”
- **Coastal Bank:** 10.30
(6) Any project on...a coastal bank [that is determined to be significant to storm damage prevention or flood control because it is a vertical buffer to storm waters] or within 100 feet landward of the top of such coastal bank shall have no adverse effects on the stability of the coastal bank.
- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
- **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 minor buffer zone activity (MZBA) 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
 - 5.1 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.

PROJECT SUMMARY

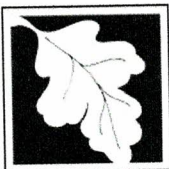
- The property owners are proposing to complete the installation of 75 feet of fence which was started without proper permits.

COMMENTS

- The property owners immediately contacted the office upon receiving the cease and desist and have done no work since it was posted.
- They were already in the process of installing a shadowbox fence, which satisfies the FEMA requirement of vertical structures in a velocity flood zone being 50% open.
- The fence is being installed on one side of the property along the paper street. There was previously a large stand of phragmites in the paper street affording them privacy. They returned home from vacation to find it gone and commenced with installing the fence to reestablish their privacy.
- They are also concerned with the amount of flooding in the area now that the vegetation has been removed and how that may affect their property.
- The fence does not appear to cause a barrier to wildlife movement or negatively impact storm damage prevention or flood control.

RECOMMENDATION

- I recommend closing the public hearing for 39 Nakata Avenue, CON 023-241, and issuing a Negative 3 and Negative 6 Determination under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following conditions:
 - CAP-3
 - FZ-1



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):

39 Nakata Ave

Street Address

43

Assessors Map/Plat Number

Fairham

City/Town

114

Parcel/Lot Number

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

Cottage

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

Title

Date

Title

Date

Title

Date

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

Shadow Box 25 Ft long Gilt off Ground
with 1 inch spacing between Board on
both sides

39 Nakata Ave SITE PLAN



Staff Report

Date: September 13, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **5 Wamsutta Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-242**

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 VE

RELEVANT 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 remove the existing shed and construct a new 8-foot-by-10-foot shed in a different location on the property.

COMMENTS

- The shed is proposed on sonotubes along the side of the house.
- The size of the shed is under the maximum 100 square feet for sheds in a velocity flood zone.
- The project does not appear to propose a negative impact on storm damage prevention or flood control.

RECOMMENDATION

- I recommend closing the public hearing for 5 Wamsutta Street, CON 023-242, and issuing a Negative 2 and Negative 6 Determination under the Wetlands Protection Act and Fairhaven Wetlands Bylaw.



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):

5 Whimsutta St
Street Address

Fairhaven
City/Town

42A
Assessors Map/Plat Number

244
Parcel/Lot Number

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

single-family home

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

Modified mortgage plan

Title

Date

Title

Date

Title

Date

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

Removing old shed and moving new
8x10 shed to right side of house;
to be installed on sonotubes.

REGISTERED LAND

Reg. Book Sheet Lot(s):

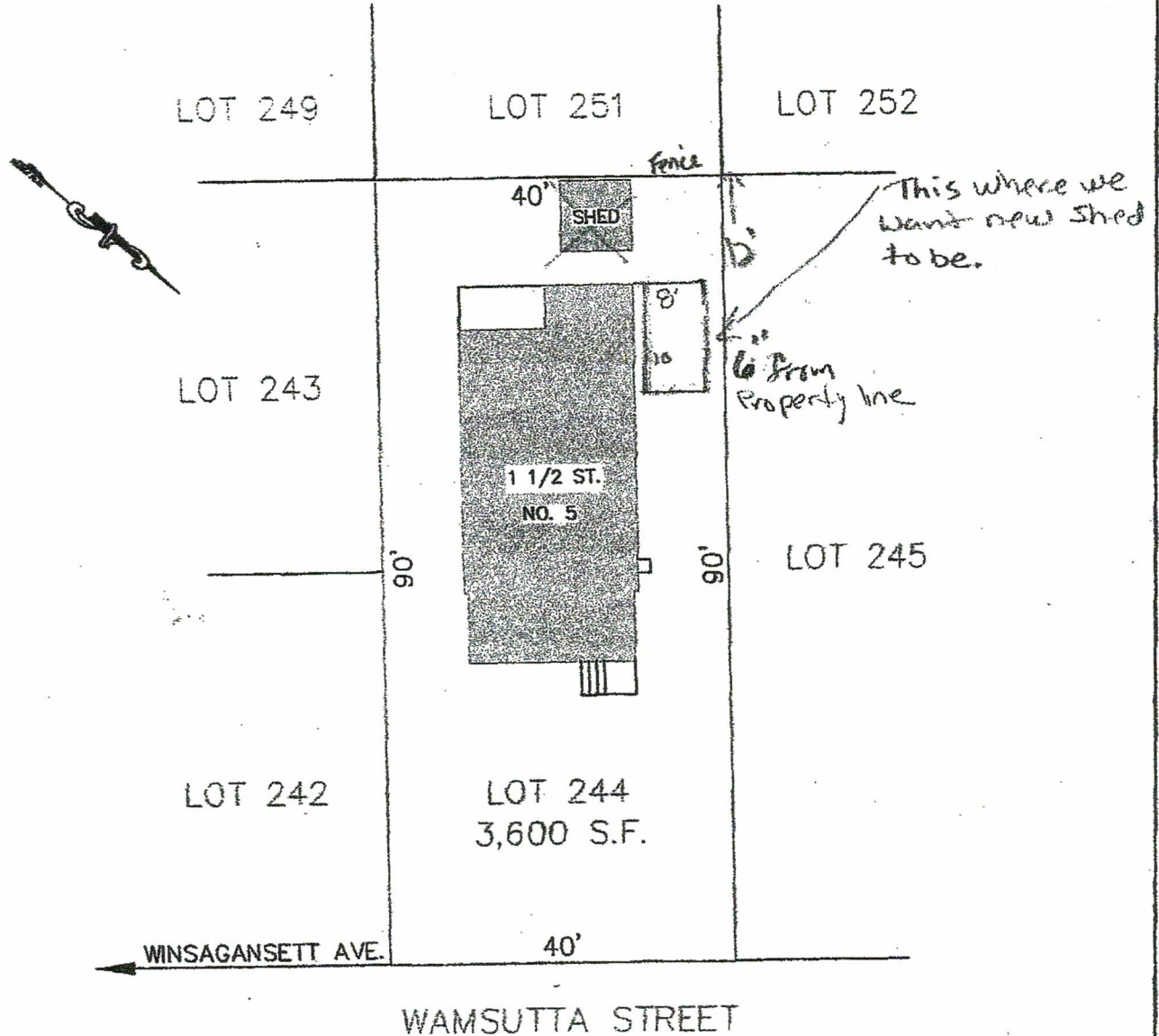
Certificate of Title

Blk: Lot 244

Census Tract

MORTGAGE INSPECTION PLAN
 5 WAMSUTTA STREET, FAIRHAVEN, MA

Scale: 1"=20'



CERTIFICATION

THE MAIN BUILDING, FOUNDATION OR DWELLING WAS IN COMPLIANCE WITH THE LOCAL ZONING BYLAWS IN EFFECT WHEN CONSTRUCTED (WITH RESPECT TO STRUCTURAL SETBACK REQUIREMENTS ONLY) OR IS EXEMPT FROM VIOLATION ENFORCEMENT ACTION UNDER MASS. GENERAL LAW TITLE VII, CHAPTER 40A, SECTION 7.

NOTE: SHED APPEARS TO BE CLOSE TO OR ON PROPERTY LINE. AN EXACT LOCATION WOULD REQUIRE AN INSTRUMENT SURVEY.

*** IN FLOOD ZONE ***

FLOOD DETERMINATION

AS SCALED THE DWELLING SHOWN HERE DOES FALL WITHIN A SPECIAL FLOOD HAZARD ZONE AS DELINEATED ON A MAP OF COMMUNITY # 25005C0501F AS ZONE VE 20' DATED 07/07/2009 BY THE NATIONAL FLOOD INSURANCE PROGRAM.



Staff Report

Date: September 13, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **78 Middle Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-243**

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
- Coastal Beach
- Buffer Zone

RELEVANT 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.”
- **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 minor buffer zone activity (MZBA) 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

- 5.1 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.

PROJECT SUMMARY

- The applicant is seeking to reconstruct an existing 90-foot stone wall at the edge of the parking lot on the property.

COMMENTS

- The application states that no work will occur on the beach itself. The wall has deteriorated over the years and the applicant is looking to essentially restack them and add some to create a 12-inch stone wall at the edge of the parking lot in the rear of the property.
- The wall is not proposed to be cemented or solidified in any way. The work will all be done from the upland, parking lot side.
- Because there was a wall between the parking lot and the coastal beach, there is already a slope in the location where the wall is to be reconstructed. The work does not appear to change the existing slope, other than coming up above the existing parking lot in height.
- The edge of the parking lot is well above the high tide line, so Chapter 91 permitting as a seawall is not needed.
- The work is proposed in an area that is previously disturbed. The applicant mentioned that no vegetation is proposed to be removed.
- The property is flanked by two paved parking lots on either side with constructed rip rap sea walls.
- It doesn't appear the project will have a negative impact on the interests of the Act or the Bylaw.

RECOMMENDATION

- I recommend closing the public hearing for 78 Middle Street, CON 023-243, and issuing a Negative 3 and Negative 6 Determination under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following conditions:
 - CAP-3
 - No machinery is permitted on the beach at any point.
 - If any vegetation is required to be removed, native replacement plantings appropriate for coastal beaches shall be installed.



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):

78 MIDDLE STREET
Street Address

FAIRHAVEN
City/Town

11
Assessors Map/Plat Number

11 + 165
Parcel/Lot Number

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

property located between two properties
each having retaining areas next to
parking areas. approx. 90' between.
There appears to have been a previous stone wall.

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

SITE PLAN
Title

8/25/2021
Date

Title

Date

Title

Date

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

Re-construct a stone wall between beach
and parking area which is at a small
raised elevation. Wall to be at the
raised elevation, and beach will not include
any construction on beach itself.
90' long and approx 12" above
high elevation

SITE PLAN



8/25/2021











Staff Report

Date: September 14, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Crow Island – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-245**

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)
- Correspondence from Natural Heritage Endangered Species Program dated September 9, 2021

RESOURCE AREAS ON/NEAR SITE

- Land Under Ocean
- Land Containing Shellfish
- Land Subject to Coastal Storm Flowage

RELEVANT PERFORMANCE STANDARDS

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

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

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

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

PROJECT SUMMARY

- The applicant is seeking approval for the installation of a floating dock, in roughly the same location as the existing floating dock, and needs to install two additional 12-inch piles at the end of both sections of the dock.

COMMENTS

- The project occurs within designated Priority Habitat of Rare Species and requires a MESA review through direct filing with the Natural Heritage & Endangered Species Program (NHESP) before any work can begin.
- The project will also need a Chapter 91 License as the project occurs below Mean High Water.
- There is an existing dock with two pilings. The applicant proposes to utilize the existing two piling and add two to create an L-shaped floating dock.
- As the applicant is proposing to add two pilings, they are required to submit a shellfish mitigation fee per our bylaw fee schedule.

RECOMMENDATION

- I recommend closing the public hearing for 1 Crow Island, CON 023-245 and issuing a Negative 2 and Negative 6 Determination under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following conditions:
 - CAP-3
 - No work is permitted to begin until a MESA review is complete and a Chapter 91 license has been issued.
 - A shellfish mitigation fee of \$100.00, as required by the fee schedule established under Chapter 192-4, shall be submitted before work can begin.



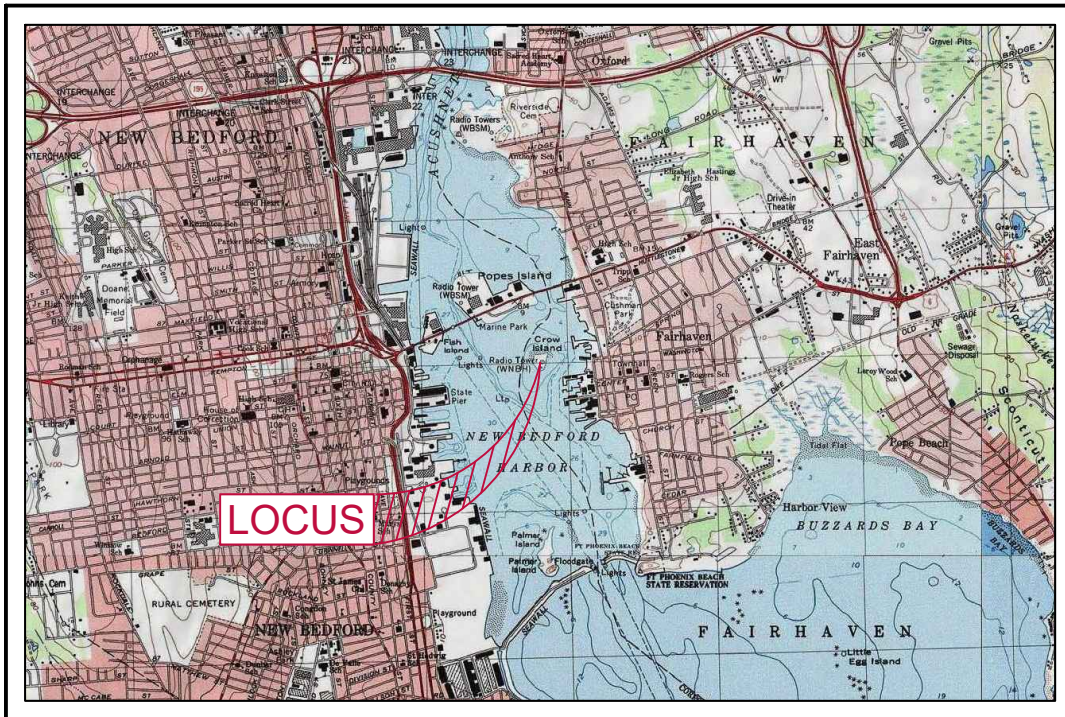
ENGINEERING A BETTER TOMORROW

ENGINEERING | SITE WORK | LAND SURVEYING

REQUEST FOR DETERMINATION OF APPLICABILITY

SITE PLAN

ASSESSORS MAP 44 - LOT 1
1 CROW ISLAND
FAIRHAVEN, MASSACHUSETTS



PREPARED FOR:

NEW BEDFORD INC.
72 NORTH WATER STREET - 3RD FLOOR
NEW BEDFORD, MA 02740



RDA NARRATIVE

Site Description

The subject property encompasses approximately 2.05 acres of residential island located in the Acushnet River, south of Pope's Island, west of mainland Fairhaven, Massachusetts. The site is currently developed as a residential lot. It is bounded on all sides by the Acushnet River. The topography is sloping from the highest point on the southern side of the island, surrounding the house at elevation 10 and slopes downward to sea level on all sides. The Soils underlying the island are Udorthents, smooth sands, 0% - 15% slopes, which are well drained. Soil information was taken from Web Soil Survey, Bristol County, Massachusetts. *Version 13, September 12, 2019.*

Project Description

The Applicant seeks approval for the construction of a 140' x 8' floating dock, of approximately 1130 square feet in area, in the same location as the existing dock. The proposed structure is the shape of an L with approximate dimensions of 81 feet in the west direction and 60 feet in the north direction. The construction includes the installation of two 12-inch piles at the end of both sections of dock.

This proposal is will not change any of the footprints or elevation of the existing dwelling nor will it modify the walkways, or boathouse.

The construction has been designed to comply in all respects with the requirements of the State and Local By-Laws.

Construction Sequence

The preparation of the site for the proposed construction will follow the normal procedures for work of this type. The steps that follow are to be used as a guideline and may have to be adjusted due to site or weather conditions or unforeseen circumstances.

The procedure for construction, in general terms, will be as follows:

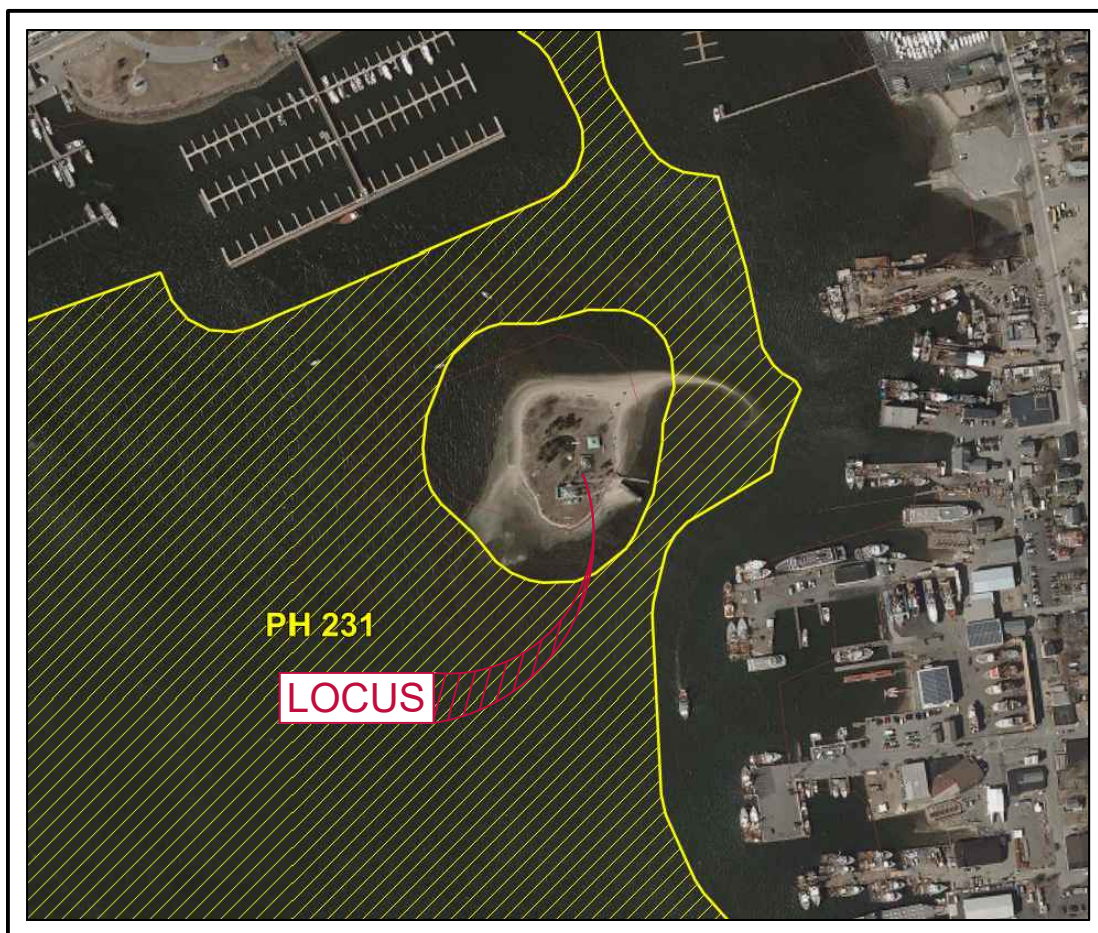
Phase 1- (Time 1 week)

- 1) Construct the first 81' section of floating dock.
- 2) Remove and properly dispose of the existing floating dock.
- 3) Install the new floating dock in the same location as the old dock, securing it to the existing piers.

Phase 2- (Time 1 week)

- 1) Install two new piles in the desired location at the end of each section.
- 2) Construct and install the 60' section of floating dock.

NHESP PRIORITY & ESTIMATED HABITAT MAP





Whitney McClees <wmcclees@fairhaven-ma.gov>

Floating Dock, 1 Crow Island, Fairhaven (NHESP 20-39506)

Holt, Emily (FWE) <emily.holt@state.ma.us>

Thu, Sep 9, 2021 at 8:48 AM

To: "al@newbedfordinc.com" <al@newbedfordinc.com>

Cc: "cfarland@farlandcorp.com" <cfarland@farlandcorp.com>, "conservation@fairhaven-ma.gov" <conservation@fairhaven-ma.gov>

The project occurs within designated *Priority Habitat of Rare Species* and therefore requires review through a direct filing with the Division for compliance with the MESA. The MESA is administered by the Division, and prohibits the Take of state-protected species, which includes actions that "in reference to animals...harm...kill...disrupt the nesting, breeding, feeding or migratory activity...and in reference to plants...collect, pick, kill, transplant, cut or process...Disruption of nesting, breeding, feeding, or migratory activity may result from, but is not limited to, the modification, degradation, or destruction of Habitat" of state-listed species (321 CMR 10.02).

For a MESA Project Review Checklist and additional information about the MESA review process, please visit our website: www.mass.gov/dfw/nhESP/regulatory-review. Please note that all proposed and anticipated development must be disclosed, as MESA does not allow project segmentation (321 CMR 10.16).

No soil or vegetation disturbance, work, clearing, grading or other activities related to the subject filing may be conducted anywhere on this project site until the Division has completed its MESA review.

I note we have also not received a MESA filing for previously proposed work on this property (see attached letter).

Emily Holt

Endangered Species Review Assistant

Natural Heritage & Endangered Species Program


Massachusetts Division of Fisheries & Wildlife

[1 Rabbit Hill Road, Westborough, MA 01581](https://www.mass.gov/nhESP)

p: (508) 389-6385 | f: (508) 389-7890

mass.gov/nhESP

Important: Our offices are currently closed and all non-essential state employees, including Environmental Review staff, are working remotely. Please visit our website (www.mass.gov/nhESP) for updates.

 **Fairhaven_20-39506.pdf**
245K



MASSWILDLIFE

DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581

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

MASS.GOV/MASSWILDLIFE

August 7, 2020

Fairhaven Conservation Commission
Town Hall
40 Center Street
Fairhaven MA 02719

Albert Santos
New Bedford Inc.
72 North Water Street, 3rd Floor
New Bedford MA 02740

RE: Applicant: Albert Santos
 Project Location: 1 Crow Island
 Project Description: Install Sewer Pump and Forcemain, Seasonal Tents
 DEP Wetlands File No.: 023-1325
 NHESP Tracking No.: 20-39506

Dear Commissioners & Applicant:

The applicant listed above has submitted a Notice of Intent with site plans (dated July 2, 2020) 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 10.37).

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 project occurs within designated *Priority Habitat of Rare Species* and therefore requires review through a direct filing with the Division for compliance with the MESA. The MESA is administered by the Division, and prohibits the Take of state-protected species, which includes actions that "in reference to animals...harm...kill...disrupt the nesting, breeding, feeding or migratory activity...and in reference to plants...collect, pick, kill, transplant, cut or process...Disruption of nesting, breeding, feeding, or migratory activity may result from, but is not limited to, the modification, degradation, or destruction of Habitat" of state-listed species (321 CMR 10.02).

MASSWILDLIFE

For a MESA Project Review Checklist and additional information about the MESA review process, please visit our website: www.mass.gov/dfw/nhosp/regulatory-review. Please note that all proposed and anticipated development must be disclosed, as MESA does not allow project segmentation (321 CMR 10.16).

No soil or vegetation disturbance, work, clearing, grading or other activities related to the subject filing may be conducted anywhere on this project site until the Division has completed its MESA review. If you have any questions regarding this letter please contact Emily Holt, Endangered Species Review Assistant, at (508) 389-6385.

Sincerely,



Everose Schlüter, Ph.D.
Assistant Director

cc: Crow Island Realty
Christian Farland, Farland Corp.
MA DEP Southeast Region

Staff Report

Date: September 14, 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 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

- Bordering Vegetated Wetland
- Buffer Zone

RELEVANT 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.”

COMMENTS

- The following changes are being requested to be approved through the amendment process:
 - The addition of a large number of infiltrators to provide better recharge to the groundwater
 - A 12-inch pipe controlled by an orifice has been added to the detention basin outlet. It is to be connected to the existing dilapidated manhole that is in the wetlands. The nonfunctioning manhole, which is contributing to neighborhood flooding, is to be re-built and reinforced. It will be necessary to temporarily impact the wetlands to install a 30-foot length of pipe beneath the wetlands (approximately 4-foot depth). The hydric soil will be sequestered and replaced so there will be no permanent impact to the wetlands. The work can be done by an excavator positioned on the upland.
 - Clearing of all the vegetation in the infiltration basin/area
 - Increase in the size of the stormwater BMP
- The most recent peer review recommended revising the minimum spot grade at the top of the infiltration chambers within the pavement to 66.58 to meet the manufacturer’s required 10-inch minimum gravel cover plus pavement thickness over the system. The submitted plans show the spot grade at the top of the chambers to be 66.50.
- The plans the Commission approved did not have any direct resource area impacts. The revised plans now include work within the bordering vegetated wetland.
- Because there is work now occurring within a resource area, the applicant will need to submit a narrative describing how the proposed work conforms to the performance standards.
- *Questions for Applicant*
 - What is the total square footage of impact to the BVW?
 - According to the most recent peer review as well as the Mass. Stormwater Handbook, the infiltration basin along Huttleston Avenue requires a waiver from the Mass. Stormwater Standards to be located within 50 feet of a wetland. How do you not need a waiver from Mass. Stormwater Standards with the infiltration basin in its current location?
- The Commission should consider whether the inconsistencies among what was submitted, the assurance from the engineer that no waivers were needed, the most recent peer review, and the fact that the plans approved by the Planning Board note that a waiver is needed from Mass. Stormwater Standards warrants a final stormwater peer review to confirm the most recent plans do indeed conform to Mass. Stormwater Standards.
- The applicant’s representative also submitted an email stating that they are requesting a waiver to the Stormwater Standards for the infiltration basin location.

RECOMMENDATION

- Without information regarding the impact to the BVW and the inconsistencies regarding stormwater, I cannot make a recommendation at this time. The Commission should consider whether a final stormwater peer review is warranted.



July 15, 2021

Fairhaven Conservation Commission
40 Center Street
Fairhaven, MA 02747
Attn: Whitney McClees

**RE: LEWIS LANDING – FILE #023-1308
AMEND ORDER OF CONDITIONS**

Dear Commission Members:

On behalf Dana Lewis of 18 Tanner Lane, Fairhaven, MA 02719, we are hereby request that you amend the above referenced Order of Conditions. The submittal consists of:

- Two copies of this letter;
- Two copies of the checklist;
- Two copies of the plans;
- Two copies of the abutter notification form;
- Two copies of the certified abutter's list;
- A check for \$75 payable to the Town of Fairhaven for the legal ad and
- A check for \$200 payable to the Town of Fairhaven for the bylaw fee.

We have also sent the materials electronically to the Conservation Agent.

The revisions to the plans are as follows:

1. A large number of infiltrators have been added to provide better recharge to the groundwater.
2. A 12-inch pipe controlled by an orifice has been added to the detention basin outlet. It is to be connected to the existing delapidated manhole that is in the wetlands. The non-functioning manhole, which is contributing to neighborhood flooding, is to be re-built and reinforced. It will be necessary to temporarily impact the wetlands to install a 30-foot length of pipe beneath the wetlands (approximately 4-foot depth). The hydric soil will be sequestered and replaced so there will be no permanent impact to the wetlands. The work can be done by an excavator positioned on the upland.

We look forward to presenting this to you at your next hearing.

Sincerely,
PRIME ENGINEERING, INC.

Richard J. Rheume, P.E., LSP
Chief Engineer



August 4, 2021

Fairhaven Conservation Commission
40 Center Street
Fairhaven, MA 02719

RE: LEWIS LANDING

Dear Commission Members:

Enclosed are revised plans that have been changed to delete the request for a waiver on the cover sheet and to add a dimension from the infiltrators to the BVW. Also enclosed is an excerpt from Vol. 2 of the Stormwater Manual that shows that infiltrator structures are to be a minimum of 50 feet from water bodies. There are no setback standards for detention basins or the other BMPs.

We have also added details and notes on how the wetland drain line crossing is to take place.

We look forward to your favorable review.

PRIME ENGINEERING, INC.

A handwritten signature in cursive script that reads 'Richard J. Rheaume'.

Richard J. Rheaume, P.E., LSP
Chief Engineer

summarizes setback requirements for infiltration BMPs.

Table 2.3: Setbacks for Infiltration Structures

General Setback Requirements:

Soil Absorption Systems for Title 5 Systems: 50ft.

Private wells: 100 ft.

Public wells: Outside Zone I

Public reservoir, surface water sources for public water systems and their tributaries:

Outside Zone A

Other surface waters: 50 ft.

Property Line: 10 feet

Building foundations: >10 to 100 ft., depending on the specific type of infiltration BMP. See infiltration BMP for specific setback.

Specific BMPs have additional setback requirements. See Chapter 2.

Proximity to Foundations

Infiltration of stormwater can cause seepage into foundations when BMPs are located too close to buildings; MassDEP requires a 10 to 100 foot setback depending on specific type of infiltration BMP.

Public Acceptance

Aesthetics are important in gaining acceptance of BMPs. BMPs can either enhance or degrade the amenities of the natural environment and the adjacent community. Careful planning, landscaping and maintenance can make a BMP an asset to a site. Frequently, ownership and maintenance responsibilities for BMPs in new developments fall on adjacent property owners. If adjacent residents will be expected to pay for maintenance, education and acceptance of the BMP are necessary.

BMP Treatment Trains

BMPs in series incorporate several stormwater treatment mechanisms in sequence to enhance the treatment of runoff. Known as “stormwater treatment trains,” they consist of a combination of source control measures, natural features, and structural BMPs to maximize pollutant removal and subsurface recharge. Combining nonstructural and structural measures in series rather than using a single method of treatment improves the levels and reliability of pollutant removal. The effective life of a BMP can be extended by combining it with pretreatment BMPs, such as a vegetated filter strip or sediment forebay, to remove sediment prior to treatment in the downstream “units.” Sequencing BMPs can also reduce the potential for re-suspension of settled sediments by reducing flow energy levels or providing longer flow paths for runoff.

The most suitable components for a treatment train depend on the pollutants to be removed. Pollutants in stormwater fall into two groups: suspended solids and dissolved pollutants. Particle sizes greater than 0.45 micron are considered suspended solids. Pretreatment BMPs (e.g. sediment forebay, oil grit separator) are ordinarily designed to remove suspended solids that have larger particle sizes than the dissolved solids removed by treatment practices that rely on settling (e.g. extended dry detention basins and wet basins) or filtration (e.g. sand filters and filtering bioretention areas).

There are many combinations of BMPs that can be placed in a treatment train to maximize



Whitney McClees <wmcclees@fairhaven-ma.gov>

Lewis Landing

Richard Rheume [REDACTED]
To: Whitney McClees <wmcclees@fairhaven-ma.gov>

Mon, Sep 13, 2021 at 2:53 PM

Based on what you last sent me, we do request that the Commission grant a waiver from the 50 feet from an infiltration basin to the BVW



Whitney McClees <wmcclees@fairhaven-ma.gov>

Lewis Landing Stormwater

Paul Foley <pfoley@fairhaven-ma.gov>

Fri, Aug 27, 2021 at 11:06 AM

To: Whitney McClees <wmcclees@fairhaven-ma.gov>

Whitney,

Attached please find the last response from Prime Engineering to the 5th GCG Peer Review dated January 28, 2021. They did not issue a response to the final (6th) GCG Peer Review of February 22, 2021. This response is dated the same date as the approved plans cited in the Special Permit Decision. The January 28 response notes that they have moved the subsurface infiltration chambers out of the 50' buffer to the BVW and states they still need a waiver from MSH. The approved plans also note a waiver from the MSH is required. In the Stormwater Report of June 7, 2021 they only mention (4.4) "Compliance with Fairhaven Stormwater Standards". He seems to have excluded state requirements in this report. But it is on the approved plans and in the last response to GCG after moving the subsurface infiltration chambers.

Palul

Paul H. Foley, AICP

Director of Planning & Economic Development

Fairhaven, Massachusetts

Town Hall, 40 Center Street

(508) 979-4082 EXT. 122

2 attachments

**LEWIS LANDING-RESPONSE TO COMMENTS LETTER-20210128.pdf**

194K

**LEWIS LANDING-PLANS-20210128 (1).pdf**

10233K

Staff Report

Date: September 16, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **4 Fox Run Lane – Notice of Intent – DEP# 023-1363, Fairhaven CON 023-244**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents, including buffer zone regulations variance request
- 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

RELEVANT 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
 - 5.4 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.
 - 8.0 Variance Procedure
 - 8.1 The Commission may grant a variance from this regulation upon a showing by the applicant that any proposed activity, or its natural and consequential impacts and effects, will not have any adverse effect upon any of the interests protected in Chapter 192 of the Code of the Town of Fairhaven (Wetlands).

PROJECT SUMMARY

- The applicant is proposing the following activities:
 - 22-foot-by-30-foot 2-story garage addition
 - Conversion of existing paved driveway to crushed stone
 - Addition of wetland plantings
 - Removal of all refuse and foreign objects within 25 feet of wetland and within wetland
 - Removal of a small amount of Japanese knotweed

COMMENTS

- This house and driveway were constructed under an Order of Conditions, SE 023-0833, in 2004 and a certificate of compliance was issued in 2006.
- The project complies with the Wetlands Protection Act.
- The vast majority of the work occurs within the 0-25 foot buffer zone, which will need a variance to the buffer zone regulations to be able to proceed.
- The applicant has submitted a variance request under the buffer zone regulations that states the following:
 - The original proposal called for a 26' x 30' attached garage. The current plan reduces the width to 22' which is the minimum required for a 2 car garage – resulting in 4' more of a wetland separation. The major mitigation factor is our proposal calling for elimination of

the existing paved impervious driveway and replacing same with a narrower drive (16' wide) consisting of a 4" layer of crushed stone placed over the existing packed gravel base. This results in much less impervious surface and reduced the wetland impact to a degree less than current exists – also reducing contamination from grease, oil, pesticides, or other foreign substances. This proposal also increases the size of the resource area with new wetland plantings.

- The Commission will need to determine if, under section 8.0 of the buffer zone regulations, this request shows that the proposed activity, or its natural and consequential impacts and effects, will not have any adverse effect on the resource area.
- The reduction in impervious surface and the addition of a vegetated buffer will help with infiltration and runoff.
- The applicant is also proposing to add in a roof drain and drywell, which was a requirement of the original order of conditions when the house was first constructed.
- The applicant is also proposing to remove all debris currently in the wetland and within 25 feet of the wetland.

RECOMMENDATION

- If the Commission feels this project will not create a greater impact on the resource area, I recommend granting the variance under the Chapter 192 buffer zone regulations to allow work within the 25-foot no disturb zone with the condition that the driveway that will remain pervious.
- If the variance is granted, I recommend closing the public hearing for 4 Fox Run Lane, SE 023-1363, CON 023-244, and issuing an Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the following conditions:

Approve plan dated August 25, 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: 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 Fairhaven Wetlands Bylaw, subject to Chapter 192-6(D).
5. ADD-2
6. ADD-4b
7. ADD-4c
8. ADD-5
9. LOW-2
10. SIL-5
11. SIL-9
12. SIL-10
13. WET-1
14. All refuse, foreign objects, and debris located within the wetland and within the 25-foot no disturb zone shall be removed.

B. Prior to Construction

15. CAP-3
 16. REC-3
 17. DER-1
 18. PCC-3
 19. EMC-1
 20. Erosion and sedimentation controls shall be placed along the edge of the existing wetland extending east and west to points at least 25 feet from any proposed disturbance. All erosion and sedimentation controls shall use either compost filter socks or a combination of siltation fence and straw wattle/silt sock.
 21. PCC-1
 22. SIL-7
- C. During Construction
23. REC-2
 24. Trimming of all mature trees in the work area shall be overseen by a qualified arborist.
 25. STO-1
 26. STO-4
 27. STO-5: There shall be no fueling or maintenance of any vehicles or equipment in any area of statutory interest, including the 25-foot no disturb zone.
 28. MAC-3
 29. No motorized/construction equipment is to enter or cross a wetland resource area at any time.
 30. MAC-8
 31. MAC-9
 32. DEB-1
 33. DEB-5
 34. BLD-3
 35. SIL-3
 36. SIL-4
 37. SIL-8
 38. WAS-2
 39. EC-1
 40. EC-2
 41. The area on the plan of record to be planted with wetland plantings shall be planted with a combination of native trees, shrubs, and groundcover. A planting plan utilizing the Commission's Buffer Zone Restoration Guidelines shall be submitted to the Agent for review and approval prior to the installation of vegetation.
 42. PS-1: Cultivars of any new vegetation to be installed are not permitted.
- D. After Construction/In Perpetuity
43. REV-1
 44. COC-1
 45. COC-2

Perpetual Conditions

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

46. The driveway shall not be permitted to be paved as a condition of the variance granted to do work in the 25-foot no disturb zone under the Chapter 192 buffer zone regulations.

47. RUN-3: Annual inspection and maintenance of the recharge system shall be the responsibility of the property owner and any successor in interest or successor in control of the property subject to this order. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
48. 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.
49. DER-4

*F. W. Westgate & Associates
Surveyors – Engineers – Land Planners
189 R Main St. Wareham, MA 02571
(508) 295-8200
fwestgate@aol.com*

August 30, 2021

*Fairhaven Conservation Commission
40 Center Street
Fairhaven, MA 02719*

RE: 4 FOX RUN LANE – NOTICE OF INTENT


Attached please find a completed Notice of Intent for the construction of a proposed garage addition at 4 Fox Run Lane along with copies of the Site Plan and the 100 ft. abutters list. I have also included a filing fee check in the amount of \$67.50 as well as a copy of the \$47.50 check to the Commonwealth as well as mailing confirmations. A Variance Request is also included. I want to thank your Agent, Whitney McClees for walking the site with me and offering valuable suggestions on how to proceed with this environmentally sensitive project.

The Applicant states that she was unaware, at the time of acquiring the property, of any restrictions that would prohibit the addition of a garage. She has agreed to allow me to make any proposals that will aid in moving this project forward. The major one calls for demolishing the existing 20 ft. wide paved drive way and replacing it with 4" of crushed stone 16 feet in width in order to reduce the impervious impact. An inground roof drain is also proposed.

The BVW was flagged by this office without the need of an Environmental Scientist since the vegetated boundary is self evident.

The name of the co-owner, not listed on the application, is Piotr Dyznski of the same address as the Applicant.

I am looking forward to the hearing scheduled for September 20 and will be representing the Applicant. I do not anticipate any attorneys being involved.

*Respectfully submitted,

Francis (Frank) Westgate, RLP*

Copy: Justyna Kaisig



TOWN OF FAIRHAVEN, MASSACHUSETTS

CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

Buffer Zone Regulations Variance Request

Pursuant to Section 8.0 of the Buffer Zone Regulations under the Fairhaven Wetlands Bylaw, Chapter 192, the Commission may grant a variance from the regulations upon a showing by the applicant that any proposed activity will not have any adverse effect upon any of the interests protected in Chapter 192 of the Code of the Town of Fairhaven (Wetlands).

Location of Proposed Project: 4 FOX RUN LANE Map 30 Parcel 452

Owner/Applicant Name: JUSTYNA KAISIG ET AL

Mailing Address: 4 FOX RUN LANE FAIRHAVEN MA 02719

Phone Number: (508) 717-2765 Email: kaisig@comcast.net

Contractor/Representative: FRANK WESTGATE Phone Number: (508) 295-8200

Type of Application Submitted: NOI RDA

Project Description:

PROPOSED GARAGE SITUATED WITHIN 25 FT. BUFFER ZONE

Explanation of why variance is needed: *Please describe in detail how the project can be completed without significant adverse impacts on the functions, characteristics, and values of the resource areas. Such detail must include, but is not limited to, an alternatives analysis. Attach additional sheets as necessary.*

Original proposal called for a 26' x 30' attached garage. The current plan reduces the width to 22' which is the minimum required for a 2 car garage - resulting in 4' more of a wetland separation. The major mitigating factor is our proposal calling for elimination of the existing paved impervious driveway and replacing same with a narrower drive (16' wide) consisting of a 4" layer of crushed stone placed over the existing packed gravel base. This results in a much less impervious surface and reduces the wetland impact to a degree less than currently exists - also reducing contamination from grease, oil, pesticides or other foreign substances. This proposal also increases the size of the resource area with new wetland plantings.

Staff Report

Date: September 16, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **6 Emerson Avenue – Violations – DEP# 023-1302, Fairhaven CON 19-066**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- Amended Order of Conditions dated November 16, 2020
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and its regulations
- Enforcement Order dated July 19, 2021
- Interim as-built plan dated August 25, 2021
- Approved site plan dated September 29, 2020
- Original site plan dated May 8, 2019

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE
- Buffer Zone
- Coastal Beach, Barrier Beach, Marsh: No work proposed in these resource areas

SUMMARY

- The Enforcement Order was issued for non-compliance with the approved plans and Order of Conditions.

COMMENTS

- The Commission levied a second \$300 fine and stipulated that no work could continue until the fines had been paid and the project came back into compliance.
- I requested an interim as-built plan based on the visual assessment that the patio in the rear of the property was out of compliance with the Order of Conditions and approved plan.
- The as-built dated August 25, 2021 shows the patio to be significantly larger than what was approved on the September 29, 2020 plans.
- Additionally, the patio has been enlarged beyond what was shown on the plans originally filed with the Commission, dated May 8, 2019.
- I have communicated the following to the property owner:
 - The following items need to be addressed before any work, aside from whatever is determined to be necessary for safety, can continue on the garage:
 - reduction of patio to approved size (36' x 15')
 - address changes in fire pit area

- confirmation that installation of both french drain and drywell system are going to be done once the garage is complete
 - confirmation that the shed will be removed and plantings will be installed once garage is complete
- Following up on my site visit with the Building Commissioner, the following items only are permitted to be done for safety reasons:
 - hurricane clips on the breezeway
 - attaching the first floor beams to the concrete columns
 - doorknobs in the breezeway doors
- The Chair asked the property owner be present at the September 20 meeting to receive a status update as to what work has been started to bring the project back into compliance.

RECOMMENDATION

- Until I receive an update from the property owner as to what has been done to bring the project back into compliance, I cannot make a recommendation.



Whitney McClees <wmcclees@fairhaven-ma.gov>

20 Yankee Lane

Tim McGuire <tim@goddardconsultingllc.com>
To: wmcclees@fairhaven-ma.gov
Cc: Scott Goddard <scott@goddardconsultingllc.com>

Thu, Sep 16, 2021 at 4:54 PM

Good afternoon Whitney,

We are in the process of finalizing the Restoration Plan for 20 Yankee Lane. Scott will be present at Monday's hearing to provide the Commission with an update on the status project and to explain that we are working to have the restoration plan in soon. It is our goal to begin construction of any restoration areas in the Spring.

My best,

--
Tim McGuire
Wildlife Biologist & Wetland Scientist

Goddard Consulting, LLC
291 Main Street, Suite 8
Northborough, MA 01532

tim@goddardconsultingllc.com
Office: (508) 393-3784
Cell: (774) 265-2779



TOWN OF FAIRHAVEN, MASSACHUSETTS

CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

Memorandum

Date: September 16, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

RE: 732 Scoticut Neck Road, Notice of Intent to Sell Land Under Chapter 61A

The Commission received notice that the property owner of 732 Scoticut Neck Road intends to take the property out of Chapter 61A and sell it for development. Under Chapter 61A, the Town has right of first refusal.

The property is across from Shipyard Farm Conservation Area and abuts the Monondach Salt Marsh Conservation Area, both owned by the Fairhaven Acushnet Land Preservation Trust.

The property contains open field, bordering vegetated wetland, salt marsh, and access to the water via Monondach Avenue.

I strongly urge the Commission to consider sending a letter to the Selectboard recommending the Town exercise right of first refusal to acquire all or part of the property.

Coordinating with Buzzards Bay Coalition, FALPT, the Planning Department, the Conservation Commission, and the Community Preservation Committee, Fairhaven could further protect this area of Scoticut Neck for public enjoyment.

David W. Hebert
173 Dogwood Street
Fairhaven, MA 02719
508-922-1387

Conservation Commission
40 Center Street
Fairhaven, MA 02719

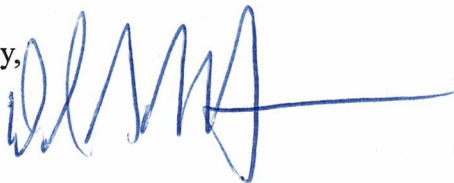
Re: Notice of Intent to Sell Land Valued, Assessed, and Taxed under M.G.L. c.61A

Dear Members of the Board,

Notice is hereby given in accordance with the provisions of M.G.L. c.61A that I, David W. Hebert, have entered into an agreement to sell and convert the remaining lots of the property at 732 Sconticut Neck Road, Fairhaven, MA 02719 (map 42 lot 6) to residential house lots to buyer Scott Snow. Kindly refer to the attached executed Purchase and Sales Agreements, as well as the subdivision map dated 7/29/19. The buyer's portion is referred to as lots 1, 2, & 4. Lot 1 includes a parcel of land of 30,580 square feet. Lot 2 includes a residence described as a garage with a 2 bedroom apartment above as well as a 321,399 square foot lot. Lot 4 includes a 45,286 square foot parcel of land.

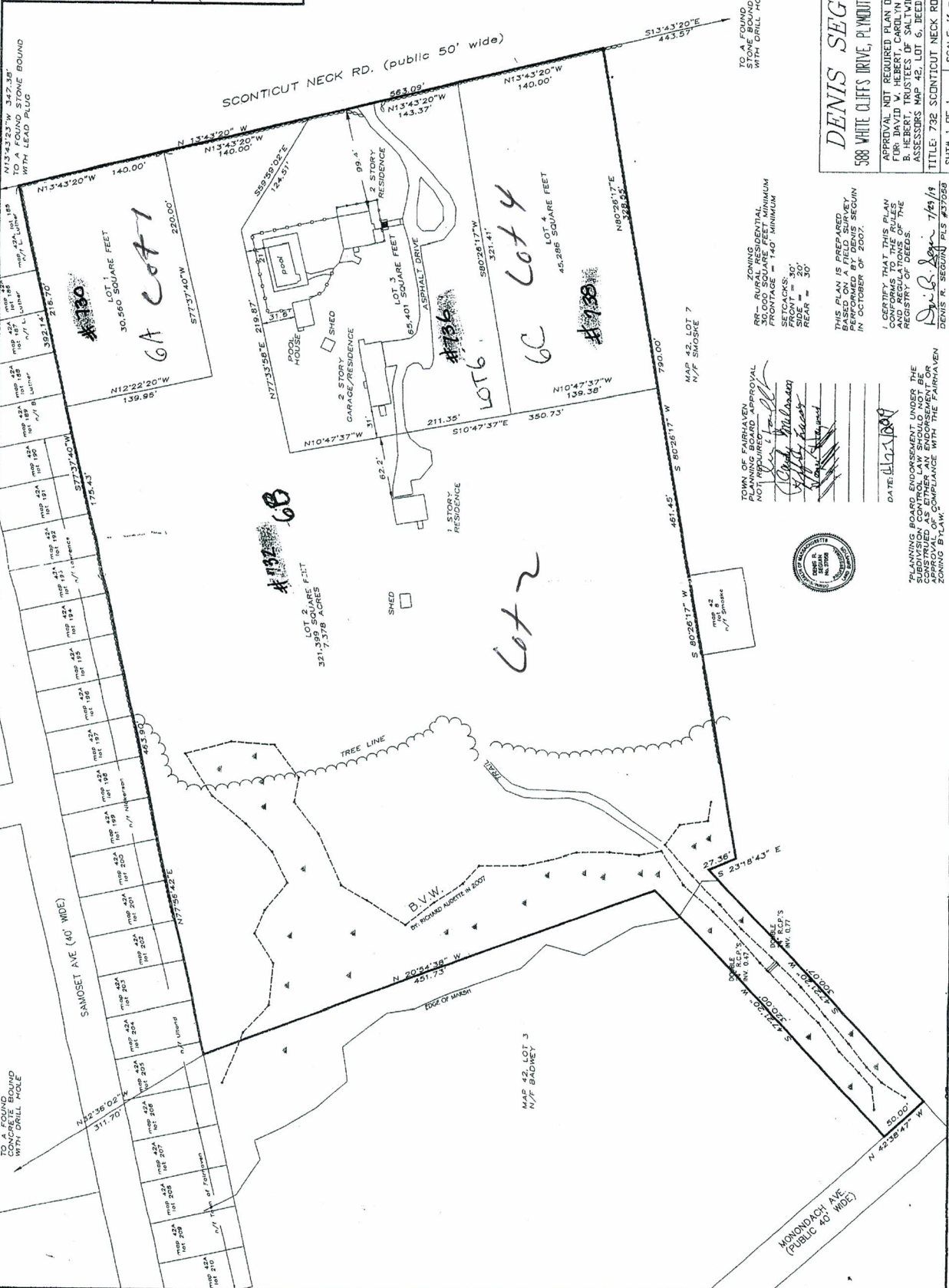
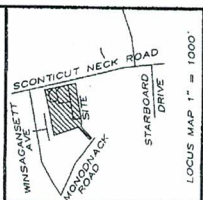
I respectfully request to be added to your agenda for the next scheduled meeting to answer any further questions. If the Board does not intend to exercise its right to purchase the property, I would appreciate if the Board would notify myself or my attorney's office, Pateakos & Poulin, P.C. (324 Union Street New Bedford, MA), in writing so the parties may proceed with the closing.

Sincerely,



David W. Hebert

RECEIVED
 2007
 AUG 23 AD 49
 FAIRHAVEN,
 MASS.



0 20 40 80 FT

DENIS SEGUIN, PLS.

588 WHITE CLIFFS DRIVE, PLYMOUTH MA, 02360, 508-509-0513

APPROVAL NOT REQUIRED PLAN OF LAND IN FAIRHAVEN MA
 FOR: DAVID V. HERBERT, CAROLYN V. HERBERT AND ELEANOR
 B. HERBERT, TRUSTEES OF SALTWINDS TRUST
 ASSESSORS MAP 42, LOT 6, DEED BOOK 9030, PAGE 281

TITLE: 732 SCONTICUT NECK ROAD DRAWN BY: D.R.S.
 SHEET 1 OF 1 SCALE: 1" = 40' DATE: 7/26/2019

ZONING: RESIDENTIAL
 30,000 SQUARE FEET MINIMUM
 FRONTAGE = 140' MINIMUM
 SETBACKS:
 SIDE = 20'
 REAR = 30'

THIS PLAN IS PREPARED
 BASED ON A FIELD SURVEY
 PERFORMED BY DENIS SEGUIN
 IN OCTOBER OF 2007.

I CERTIFY THAT THIS PLAN
 AND ALL INFORMATION
 AND REGULATIONS OF THE
 REGISTRY OF DEEDS.

DATE: 7/26/2019
 DENIS R. SEGUIN PLS #37058

TOWN OF FAIRHAVEN
 PLANNING BOARD APPROVAL
 NOT REQUIRED



PLANNING BOARD ENDORSEMENT UNDER THE
 SUBDIVISION CONTROL LAW SHOULD NOT BE
 INTERPRETED AS AN ENDORSEMENT OR
 APPROVAL OF COMPLIANCE WITH THE FAIRHAVEN
 ZONING BY-LAW.



TOWN OF FAIRHAVEN, MASSACHUSETTS

CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

Memorandum

Date: September 17, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

RE: 1 Bella Vista Island Request, SE 023-1309, CON 023-110

The attorney representing the owner of Bella Vista Island submitted a query seeking to resolve some concerns they have with some of the special conditions. They have also submitted a request for Superseding Order of Conditions from DEP.

Town Counsel has reviewed the attorney's request and offered the following opinion:

The town's wetlands protection bylaw provides at 192-6D: "Any permit issued under this chapter may be revoked or modified by the Commission after public notice and notice to the holder of the permit and a public hearing thereon, upon a finding of the existence of circumstances which would justify the denial of or imposition of conditions on a permit."

Where a permit has issued with conditions with which the applicant disagrees, one option for the applicant is to appeal to the superior court. That can tie the town up in costly litigation.

I would suggest that if 192-6D is interpreted broadly, it would allow the applicant a second option, that is to ask the commission to modify the permit by addressing the specific concerns that he challenges. If the commission decides to modify the permit that would avoid litigation. If the commission denies the modification, the applicant would still have 60 days to appeal to court.

If the Commission agrees with Town Counsel's interpretation of 192-6D, I will work with Town Counsel and the applicant's attorney to follow the procedure outlined in 192-6D to bring the Order of Conditions issued under the Bylaw back before the Commission for reconsideration. This will allow the Commission to respond to the applicant's concerns and address them more clearly in the Order. This will also allow the Commission to issue an Order under the Bylaw only, which will help separate the decision by DEP under the Wetlands Protection Act from the decision by the Commission under the Bylaw.



Whitney McClees <wmcclees@fairhaven-ma.gov>

One Bella Vista Island, Fairhaven, MA, FCC #CON 023-110, DEP File #SE 23-1309

3 messages

james marsh <jmarsh@jwmarshlaw.com>

Tue, Sep 14, 2021 at 1:34 PM

To: Whitney McClees <wmcclees@fairhaven-ma.gov>

Cc: [Redacted]

Ms. McClees,

We represent the owner of Bella Vista Island, Fairhaven, Massachusetts concerning the above-referenced matter, as you know.

We recently requested a Superseding Order of Conditions from MassDEP from the Order of Conditions issued by the Fairhaven Conservation Commission; a copy of the request was provided to the Commission. The request was made because certain conditions in the OOC are not consistent with an Administrative Consent Order issued by MassDEP, unreasonable, overly restrictive and non-jurisdictional.

We seek to resolve the same with the Commission under the local wetland bylaw. Attached to this email is a redline markup of the OOC identifying the conditions and our requested changes.

We reserve our right to take action in the event we are unable to resolve this matter with the Commission short of the time for appeal.

Thank you for your anticipated attention to this matter, and look forward to hearing from you or Atty Crotty.

Best,

James W. Marsh, Esq.
Law Offices of James W. Marsh
[128 Union Street, Suite 203](#)
New Bedford, MA 02740
Tel. (508) 991-5000
Fax (508) 991-5252
www.jwmarshlaw.com

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Redacted.OOC.9-2021.pdf
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