

# Staff Report

Date: September 27, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **101 Main Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-247**

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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

## 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 proposing to pave the existing 1600-square-foot dirt driveway.

## COMMENTS

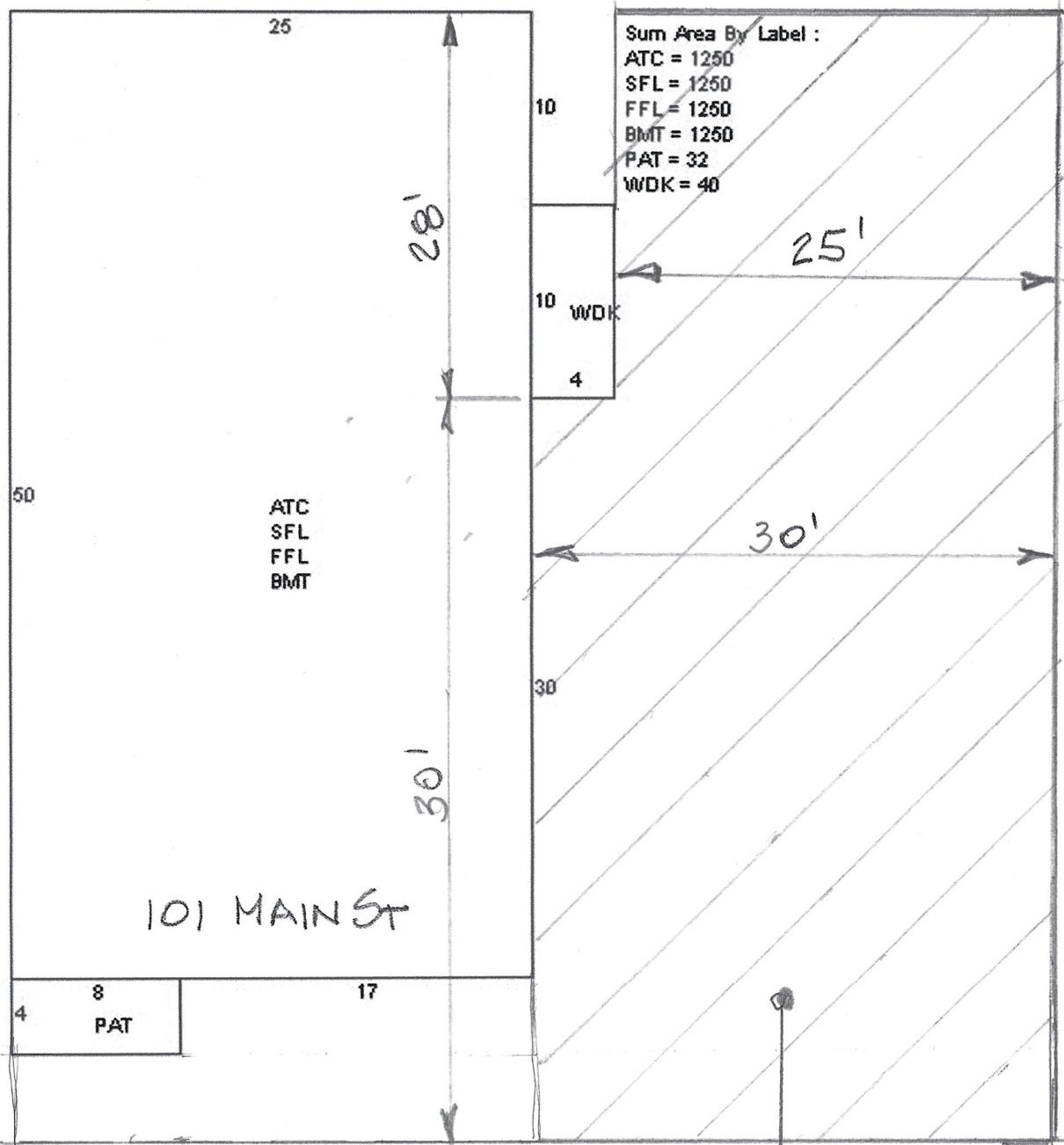
- The entire property falls within the AE flood zone inside the hurricane barrier.
- There are no other resource areas within 100 feet of the property.
- The majority of the property will remain pervious.
- The proposed project does not appear as if it will have a negative impact on storm damage prevention or flood control.

## RECOMMENDATION

- I recommend closing the public hearing for 101 Main Street, CON 023-247, and issuing a Negative 2 and Negative 6 Determination under the Wetlands Protection Act and Fairhaven Wetlands Bylaw.

I, Jonas Limantas, am submitting an application to the Conservation Commission of the town of Fairhaven for 101 Main Street, Fairhaven MA.

The proposed activity is to pave an existing dirt driveway with asphalt.



Sum Area By Label :  
 ATC = 1250  
 SFL = 1250  
 FFL = 1250  
 BMT = 1250  
 PAT = 32  
 WDK = 40

ATC  
 SFL  
 FFL  
 BMT

101 MAIN ST

8  
 PAT

SIDEWALK

MAIN STREET

CURRENT DIRT  
 DRIVEWAY AND  
 AREA TO BE  
 PAVED

101 MAIN STREET  
 EXTENT OF EXISTING  
 DIRT DRIVEWAY TO  
 BE PAVED



# Staff Report

Date: September 27, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **6 Bay Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-248**

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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
- Buffer Zone to Bordering Vegetated Wetland
  - Work is only proposed in the outer 15 feet of the 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.”

## PROJECT SUMMARY

- The applicant is proposing to pave the existing 900-square-foot dirt driveway and slightly expand it to accommodate three cars.

## COMMENTS

- The entire property falls within the AE flood zone.
- There are wetlands behind the property, but the location of the proposed driveway falls within the outer 15 feet of the buffer zone.
- The majority of the property will remain pervious.
- The proposed project does not appear as if it will have a negative impact on storm damage prevention or flood control.

## RECOMMENDATION

- I recommend closing the public hearing for 6 Bay Street, CON 023-248, and issuing a Negative 3 and Negative 6 Determination under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following condition:
  - No discharge or debris is permitted to be deposited in the wetland resource area.



# 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):

|                           |                   |
|---------------------------|-------------------|
| 6 Bay Street              | Fairhaven         |
| Street Address            | City/Town         |
| 28A                       | 494               |
| Assessors Map/Plat Number | Parcel/Lot Number |

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

dirt driveway owner is seeking to pave

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

|           |           |
|-----------|-----------|
| SITE PLAN | 9/14/2021 |
| Title     | Date      |
|           | Date      |
| Title     | Date      |

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

New asphalt driveway in place of existing dirt driveway. ~900 square feet

# 6 BAY ST SITE PLAN



9/14/2021



# Staff Report

Date: September 29, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Huttleston Ave, Map 31, Lots 115A & 117C – Notice of Intent – DEP# 023-1308, Fairhaven CON 023-095**

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## 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 Wetlands (310 CMR 10.55)
- Buffer Zone

## PERFORMANCE STANDARDS

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

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

## PROJECT SUMMARY

- It is proposed to construct four, two-story wood-framed three-unit residential buildings for a total of 12 residential 2-bedroom units. In addition, two ancillary storage buildings will be constructed and will be available as storage rental space for the apartment tenants as 12-foot-wide by 20-foot-deep areas with garage door access. There is also proposed to be a small maintenance building. A total of 26 standard parking spaces and 2 van-accessible spaces are proposed.
- The storm drainage system at the proposed development has been designed to create a reduction in the rate of stormwater runoff from the existing site. The collection and treatment systems will be in the form of deep sump catch basins, sediment forebays, and a detention basin. Hydrologic computations were performed in order to model the volume and rate of flow of stormwater from the site, under both existing and proposed conditions, for a broad range of design storms.

## 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 rebuilt 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 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.
- The total temporary impact to the BVW is 278 square feet.
- The location of the infiltration basin is within 50 feet of the BVW and needs a waiver from Mass. Stormwater Standards.
- Those present at the site visit on September 28, 2021 discussed the following:
  - Invasive species, such as bittersweet and autumn olive, in the areas outside of the proposed work limit could and should be removed.

- The infiltration basin does not need to be cleared, loamed, and seeded if the engineer does not feel it is necessary.
- The work to repair the manhole in the wetland is appropriately limited.
- A fence and additional planting along the front and north sides of the property might be needed.

## RECOMMENDATION

- I recommend closing the public hearing for Huttleston Avenue, SE 023-1308, CON 023-095, and issuing an amended Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw for plans dated August 5, 2021 with the following recommended conditions:

Approve plan dated August 5, 2021

### A. General Conditions

1. ACC-1
2. With respect to all conditions except\_\_\_\_\_, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
3. REC-1
4. ADD-1
5. ADD-2
6. ADD-4b
7. ADD-4c
8. ADD-5
9. LOW-2
10. SIL-5
11. SIL-9
12. SIL-10
13. WET-1
14. Issuance of this Order of Conditions shall not exempt or relieve the applicant from any actions imposed by the Massachusetts Department of Environmental Protection.
15. The infiltration basin may remain vegetated should the engineer of record determine it is not necessary to clear the infiltration basin of vegetation and loam and seed it. If the infiltration basin is to remain vegetated, erosion and sedimentation controls shall stop at the stone wall.

### B. Prior to Construction

16. CAP-3
17. REC-3
18. DER-1
19. PCC-3
20. EMC-1
21. TRP-3
22. PCC-1
23. SIL-7

### C. During Construction

24. REC-2
25. All erosion and sediment control notes on Sheet 4 of the approved plans shall be followed.

26. The installation of the drain line in the wetland shall be done by a small backhoe, such as a Bobcat, operating on mats. The organic topsoil shall be segregated from the underlying soil on plywood. The underlying soil shall also be placed on plywood. The process shall be observed by a qualified professional. Once the pipe is installed, it shall be backfilled so the organic topsoil is at the surface and is seeded with a wetland seed mix.

27. TRP-1

28. STO-1

29. STO-3

30. STO-4

31. STO-5

32. MAC-3

33. MAC-7

34. MAC-8

35. MAC-9

36. DEB-1

37. DEB-5

38. BLD-3

39. BLD-4

40. SIL-3

41. SIL-4

42. SIL-8

43. There shall be no disturbance of the site beyond the work limit. The only activity approved beyond the work limit is the removal of invasive species, overseen by a qualified professional.

44. WAS-2

45. WAT-3

46. EC-1

47. EC-2

D. Stormwater Management

48. SW-1

49. SW-3

50. SW-5

51. SW-6

52. SW-7

E. After Construction/In Perpetuity

53. REV-1

54. COC-3

Perpetual Conditions

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

55. CHM-3

56. DER-4

57. SW-2

58. SW-9

59. RUN-3

# Staff Report

Date: September 27, 2021  
To: Conservation Commission  
From: Whitney McClees, Conservation Agent  
Subject: **4 Fox Run Lane – Notice of Intent – DEP# 023-1363, Fairhaven CON 023-244**

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## 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)
- Revised site plan dated September 20, 2021
- Revised variance request dated September 20, 2021

## 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 pervious driveway
  - 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 pervious material placed over the existing gravel base. This will reduce the wetland impact to a degree less than current exists and reduce 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.
- After another site visit with the applicant and the applicant's representative, the following changes were made to the plan:
  - Keep the apron at the beginning of the driveway impervious due to concerns related to snow plowing on the dead-end street and the location of snow deposition
  - Plan notes the remainder of the driveway, which will be reduced in size, will be pervious
    - The property owner did not want to be locked into a specific pervious surface before she could see what the final garage construction will look like as there are many different options for pervious driveway material. She agreed that the Commission could add a condition stating that the specific pervious material and layout will be submitted for review and approval prior to beginning the conversion of the driveway.
- The variance request was also revised to note that the driveway will be pervious rather than specifying crushed stone.
- The property owner noted that when the town plows her street in the winter, they typically push the snow across the apron of her driveway into the vicinity of wetland flag #6. Thus, to prevent crushed stone or other pervious material from being pushed into the wetland, the plan has been revised to keep a paved apron.

## 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 September 20, 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. Prior to the commencement of converting driveway from impervious to pervious, the design of the driveway and the pervious material to be used shall be submitted to the Commission or its Agent for review and approval.
  26. STO-1
  27. STO-4
  28. 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.
  29. MAC-3
  30. No motorized/construction equipment is to enter or cross a wetland resource area at any time.
  31. MAC-8
  32. MAC-9
  33. DEB-1
  34. DEB-5
  35. BLD-3

- 36. SIL-3
  - 37. SIL-4
  - 38. SIL-8
  - 39. WAS-2
  - 40. EC-1
  - 41. EC-2
  - 42. 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.
  - 43. PS-1: Cultivars of any new vegetation to be installed are not permitted.
- D. After Construction/In Perpetuity
- 44. REV-1
  - 45. COC-1
  - 46. COC-2

Perpetual Conditions

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

- 47. 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.
- 48. 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.
- 49. 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.
- 50. DER-4



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.*

***(REVISED 09/20/21)***

*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 pervious material placed over the existing gravel base. This will reduce the wetland impact to a degree less than currently exists and reduce 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 30, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Eaton Road – Notice of Intent – DEP# 023-1364, Fairhaven CON 023-246**

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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)

## RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE
- Bordering Vegetated Wetland
- 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.”
- **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 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.
      - 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.

## PROJECT SUMMARY

- The applicant is proposing to pave Eaton Road and install a drainage swale to address flooding issue at the bottom of the street.

## COMMENTS

- The project is proposing to pave the Eaton gravel road to 18-foot width and including the intersection with Waybridge Road. The pavement will be approximately 182 feet from the intersection with Briercliff Road to the pump station at the end of Eaton Road.
- The existing gravel road is considered impervious based on compaction. The proposed pavement area will reduce the gravel roadway surface by 1,185 square feet, decreasing peak flow rate and runoff volume. It will also eliminate the need to spread gravel on the road every 2-3 years.

- The road is pitched to take advantage of the proposed drainage swale, directing water to an existing low area beneath a boardwalk.
- The project meets Mass. Stormwater Standards for a reconstruction project.
- The paving work falls within an existing disturbed area and maintains a 25-foot buffer to the nearby wetlands.
- The drainage swale is proposed within a wetland resource area, but utilizes existing topography. The area is overrun with phragmites and Japanese knotweed.
- It appears the project will not adversely impact storm damage prevention or flood control.

## RECOMMENDATION

- I recommend closing the public hearing for Eaton Road, SE 023-1364, CON 023-246, and issuing an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following conditions:

Approve plan dated March 17, 2020

### A. General Conditions

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

### B. Prior to Construction

14. CAP-3
15. REC-3
16. DER-1
17. PCC-3
18. Erosion and sedimentation controls shall be installed along the north side of Waybridge Road just past the pump station property line, run in front of the pump station, around the proposed riprap swale, to the property line of #5 Eaton Road.
19. PCC-1

### C. During Construction

20. The road shall be pitched toward the drainage swale near the pump station as reflected by the spot grades on the plan-of-record.
21. The drainage swale shall be installed with minimal impact possible to the resource area.
22. REC-2
23. STO-4

- 24. MAC-3
- 25. MAC-7
- 26. MAC-8
- 27. MAC-9
- 28. DEB-1
- 29. DEB-5
- 30. SIL-3
- 31. SIL-4
- 32. SIL-8
- 33. EC-1
- 34. EC-2
- D. Stormwater Management
  - 35. SW-1
  - 36. SW-3
  - 37. SW-5
  - 38. SW-6
  - 39. SW-7
- E. After Construction/In Perpetuity
  - 40. REV-1
  - 41. COC-1
  - 42. COC-2

Perpetual Conditions

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

- 43. DER-4
- 44. SW-2
- 45. SW-9

## Eaton Road – Roadway Improvements – Fairhaven, Massachusetts

Date: September 2, 2021

### Project Narrative:

Eaton Road is an existing gravel road connecting between Briercliff Road and Weybridge (Waybridge) Road. Eaton Road was accepted by the Town of Fairhaven in 2002 as shown on the Acceptance Plan of Eaton Road 40 Feet Wide, From Briercliff Road to Weybridge Road, Fairhaven, MA. Plan prepared by SMC Surveying and Mapping Consultants, dated March 8, 2002, signed by the Fairhaven Board of Selectmen on 6-10-02 and by the Planning Board on 6-11-02. And recorded to the Bristol County Southern District Registry of Deeds on 10-18-2002. (Copy of Plan included in the NOI package.)

Briercliff Road is a paved roadway serves approximately 30 residential dwellings, both Eaton Road and Waybridge Road are gravel roads, Eaton Road serves 2 residential dwellings and Waybridge Road also serves 2 residential dwellings. In addition, Eaton Road also connects to an existing Town of Fairhaven pump station.

Eaton Road consists of 40 feet wide right-of-way and the gravel road width varies between 20 to 25 feet and approximately 200 feet in length.

This project proposed to pave the Eaton gravel road to 18' width and including the Waybridge Road intersection. The length of the pavement will be approximately 182+/- feet to the front of the pump station. The pavement will eliminate frequent repair (adding crushed gravel every 2 to 3 years) of the gravel road surface and prevent erosion. The paved roadway will reduce the gravel surface by approximately 1,185 s.f.

This project is a "re-development project" per MSH Standard #7 and a "limited project" per 310 CMR 10.24(7)(c)1 – 'Maintenance and improvement of existing public roadways, but limited to widening less than a single lane, adding shoulders, correcting substandard intersections, and improving drainage systems.' Eaton Road is an accepted Town road, the proposed work does not create any new uses nor new building structures. The existing compacted gravel road has a CN value of 96 in comparison with pavement's CN value of 98. Hence, the gravel road is considered as impervious. This proposed pavement area will reduce the gravel roadway surface from 4,745 s.f. to 3,560 s.f. and decrease the post-development peak flow rate and runoff volume in all four study storm events. Therefore, this project qualified for Re-development and Limited project.

### Stormwater Management Requirements. (For Redevelopment Project)

Standard #1 - no new outfall untreated. The existing outfall is located at the Eaton Road and Waybridge Road intersection. We proposed rip-rap apron at the intersection will eliminate any erosion and sedimentation. Therefore, the project conforms with standard #1.

Standards #2 – no increase of peak runoff, (maximum extent practicable for re-development project). We reduced the gravel surface by 1,185 s.f. and reduced the peak runoff and volume (as required by the Fairhaven Stormwater Management regulations). Therefore, it meets Standard #2 requirements, see attached HydroCAD report.

Standard #3 – Groundwater Recharge, (maximum extent practicable for re-development project). Eaton Road roadway is located within the HSG 'C' soil per NRCS Web Soil Survey Report, attached; However, the down stream discharge point is in HSG 'D'. Therefore, groundwater recharge is unfeasible and hence a waiver is requested.

Standard #4 – TSS removal - as a minimum, pre-treatment should be provided for redevelopment project. The proposed pavement directed the roadway runoff toward the westside abutters' property (with wood/brush vegetation surface) and toward the northwest Waybridge Road intersection (a wooded area),

the same existing flow path/discharge points. Where qualified as 'qualifying pervious area' as defined by the MSH's LID site design credit, which also functioning as a vegetated filter strip BMP. However, the Town does not have control of the properties (and without the benefit of an easement). Therefore, no LID site design credit claimed in this project. The applicant has proposed rip-rap swale apron at the discharge point to prevent erosion.

Standard #5 – LUHPPL. Not applicable.

Standard #6 - Zone II. Not applicable.

Standard #7 – This project is a redevelopment project, no new uses and dwelling/building created. This is a roadway improvement project converting existing gravel roadway to pavement with reduced roadway surface area.

Standard #8 - Construction period O&M plan is included in the NOI package, (copy attached).

Standard #9 - Long term O&M Plan is included in the NOI package, (copy attached). Please be aware of that the Town (DPW) does not just maintain any specific project(s) but maintaining the entire Town according with the MS4 permit requirements.

Standard #10 – No Illicit discharge – a Statement is included in the NOI package, (copy attached).

# Staff Report

Date: September 30, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **25 & 29 Mangham Way – Violation/Enforcement**

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## DOCUMENTS REVIEWED

- Previous permitting history for 29 Mangham Way
- 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

## COMMENTS

- A cease and desist was issued to the property owner of 29 Mangham Way for a pile of fill placed in the buffer zone, to be spread in a wetland resource area.
- A subsequent site visit revealed a large cleared area within a Bordering Vegetated Wetland. The cleared area appears to span both 25 and 29 Mangham Way. The property owner of 29 Mangham Way indicated he has been utilizing it for his camper.
- The property owner of 29 Mangham Way indicated there was a lot of debris in the resource area from the developer of the house.
- No additional fill can be placed in the resource area and the existing fill will need to be removed and the wetland possibly restored.
- No permits were ever filed for the clearing and fill in the wetland on either property.
- The wetland line from the Order of Conditions permitting the construction of the house appears to be fairly accurate, with the approximate edge of the wetland being at the edge of the yard.

## RECOMMENDATION

- The Commission should consider issuing two enforcement orders for restoration, one to the property owner of 25 Mangham Way regarding the fill in the resource area on that property and one to the property owner of 29 Mangham Way regarding fill in the resource area on both properties.



25 Mangham Way

29 Mangham Way

Area of possible violation



Whitney McClees &lt;wmcclees@fairhaven-ma.gov&gt;

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## Copy of Letter

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**Teresa Augenti** [REDACTED]  
To: Whitney McClees <wmcclees@fairhaven-ma.gov>  
Cc: Chris Augenti [REDACTED]

Fri, Sep 24, 2021 at 11:26 AM

Good morning Whitney,

Thank you again for speaking with me on Wednesday about the beach access on the Chambers St extension at Silver Shell Beach Drive.

As you requested, I am sending this email as a formal request for determination from the Conservation Committee for continued mowing of a foot path to the beach on this extension.

As I mentioned in our conversation, it was approved by the BPW that they would add this mow once approved by Conservation, and that Mr. Furtado would assist us with presenting it to the Conservation Commission. For reference, please see public BPW meeting held on May 26, 2020. In minutes 24:25 – 38:35 of the video is the detail of our meeting on this matter. We were hopeful at the time as Mr. Gary Lavelatte of the Conservation Commission also spoke in favor of this mow having already done a site visit.

It was after this meeting that Mr. Furtado met with Conservation for a site visit where he reported to us Conservation did not approve mowing and that we should use the west side of the extension.

I am attaching a current photo of this public access today that is overgrown with thorn brush as it was prior to it being mowed. We were not able to use this beach access at all this year because of the overgrowth. As I showed you, my latest attempt to get to the water left my legs completely scratched and bloodied. There is no defined pathway that leads to the safest access to the beach where the drop down to the water is about a foot, and where the town had once mowed for us in 2018, which if facing the ocean is to the left of the road extension. The west side, as suggested, closest to the abutting neighbor has what appears to be a 3 foot drop down to the water which is unsafe access. And, in fact has a rock sea wall built that appears to be private property. Attached, is the photo for your reference taken in May, 2019.

My last photo attached is a picture showing the mowed path that was established in the summer of 2018 by DPW at our request when they were doing their ongoing regular mowing of the sides of Chambers St. My husband then re-mowed the same path once in the summer of 2019 not knowing of the Conservation issue until we received your letter, and which has not been mowed since.

It is our hope that Conservation will vote to approve regular DPW mowing to re-establish the same path to the beach at the upcoming meeting.

Please let me know if there is further information required for determination.

Thank you,

Teresa Augenti

[8 Chambers Street](#)

Fairhaven

Sent from [Mail](#) for Windows

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**3 attachments**



**IMG\_0424.JPG**  
518K



**IMG\_4570.JPG.png**  
5950K



**Blouins photo of beach access.JPG**  
74K







TOWN OF FAIRHAVEN, MASSACHUSETTS

# CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

August 16, 2019

Christopher and Teresa Augenti  
8 Chambers Street  
Fairhaven, MA 02719

RE: Chambers Street Vegetation Cutting

Dear Mr. and Mrs. Augenti,

It has come to the attention of the Conservation Commission that a strip of Beach and Dune vegetation is being repeatedly cut and maintained on the unpaved extension of Chambers Street. I performed site visits on July 12 and July 26 and documented the cutting of vegetation. This is a violation of the Wetlands Protection Act (M.G.L. c. 131 §40) and its regulations (310 CMR 10.00) and the Fairhaven Wetlands Bylaw (Chapter 192).

I have confirmed with John Charbonneau, Highway Superintendent, that Public Works has never maintained the unpaved extension of Chambers Street for beach access. As such, there is no precedent for cutting a path through the existing vegetation. There is beach access within the 40-foot street layout to the north side of the dune vegetation.

Any activity within a resource area falls under the jurisdiction of the Conservation Commission and requires a permit. If the activity is not being proposed by the property owner, the property owner must be notified and grant approval prior to the submission of any application.

As you may or may not know, the Wetlands Protection Act provides for civil penalties of up to \$25,000 per day for each violation of the Wetlands Protection Act, and each day that a violation continues constitutes a separate offense. Additionally, the Fairhaven Wetlands Bylaw provides for a fine of up to \$300 per day for each violation of the Fairhaven Wetlands Bylaw, and each day that a violation continues constitutes a separate offense.

I have included the Commission's "Living with Wetlands" brochure for further information. Should you have any questions, do not hesitate to contact me in the Conservation Office at (508) 979-4023 ext. 128 or via email at [conservation@fairhaven-ma.gov](mailto:conservation@fairhaven-ma.gov).

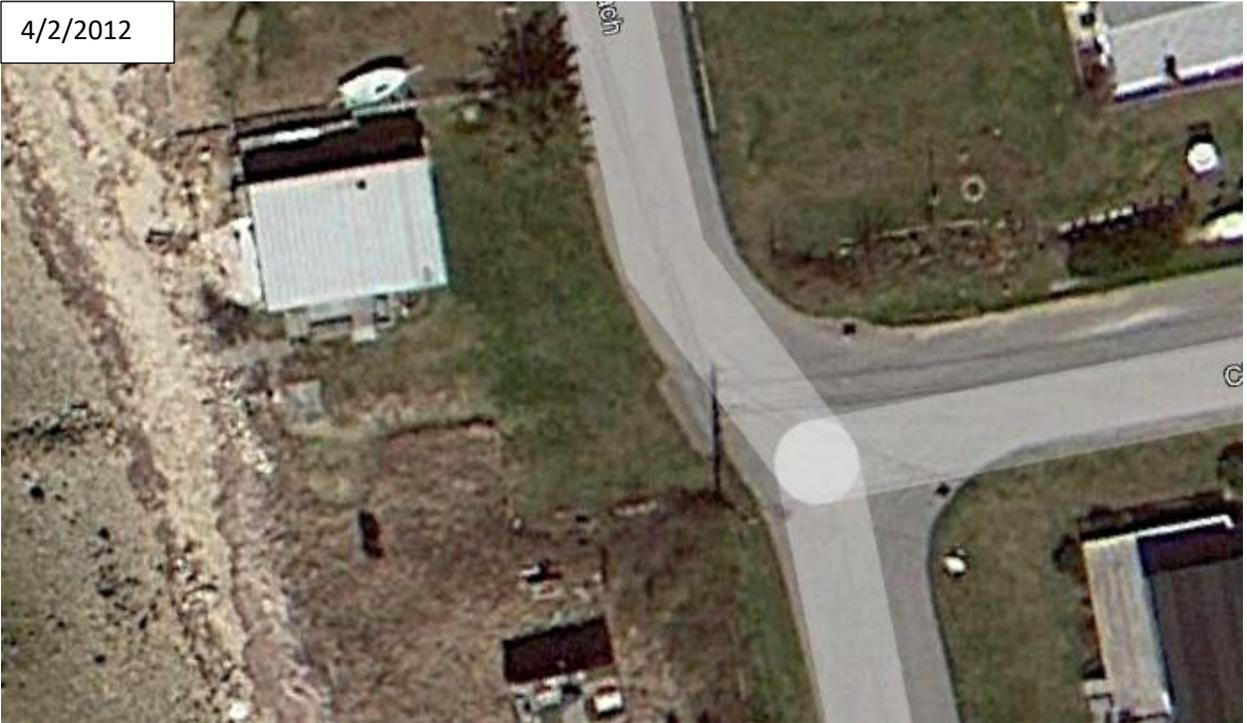
Sincerely,

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

4/30/2010



4/2/2012



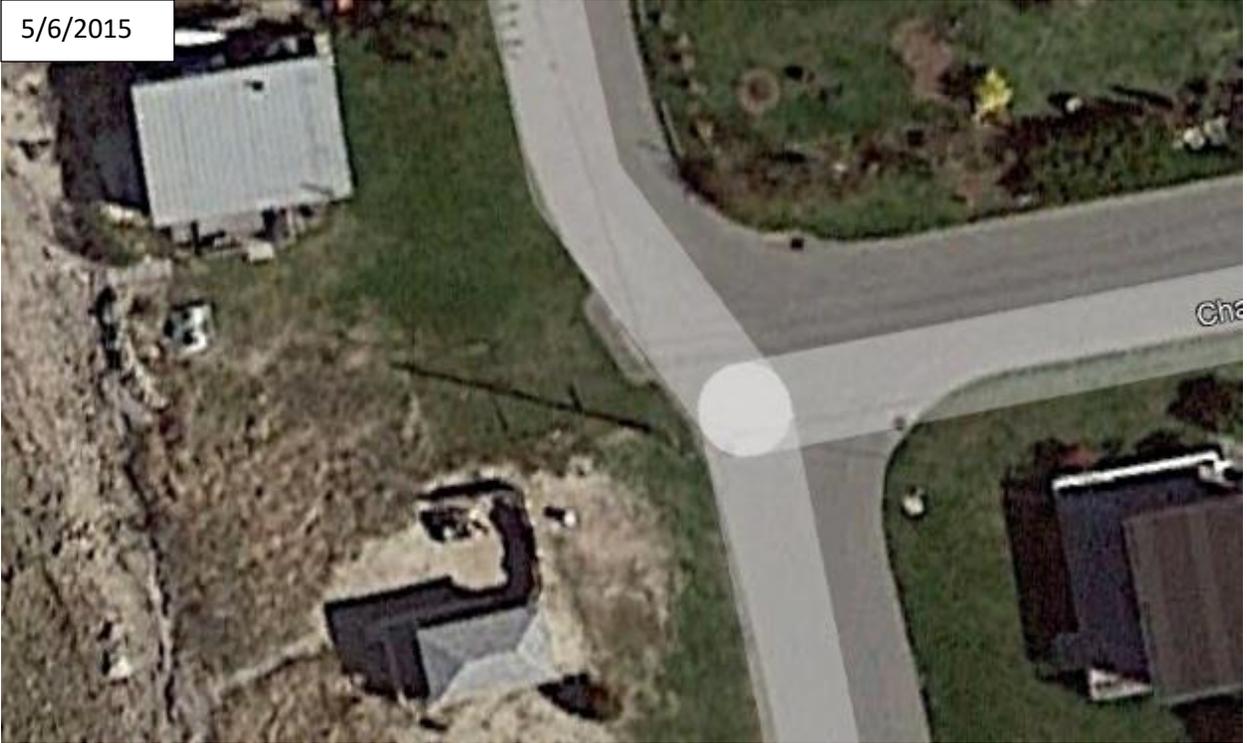
4/27/2013



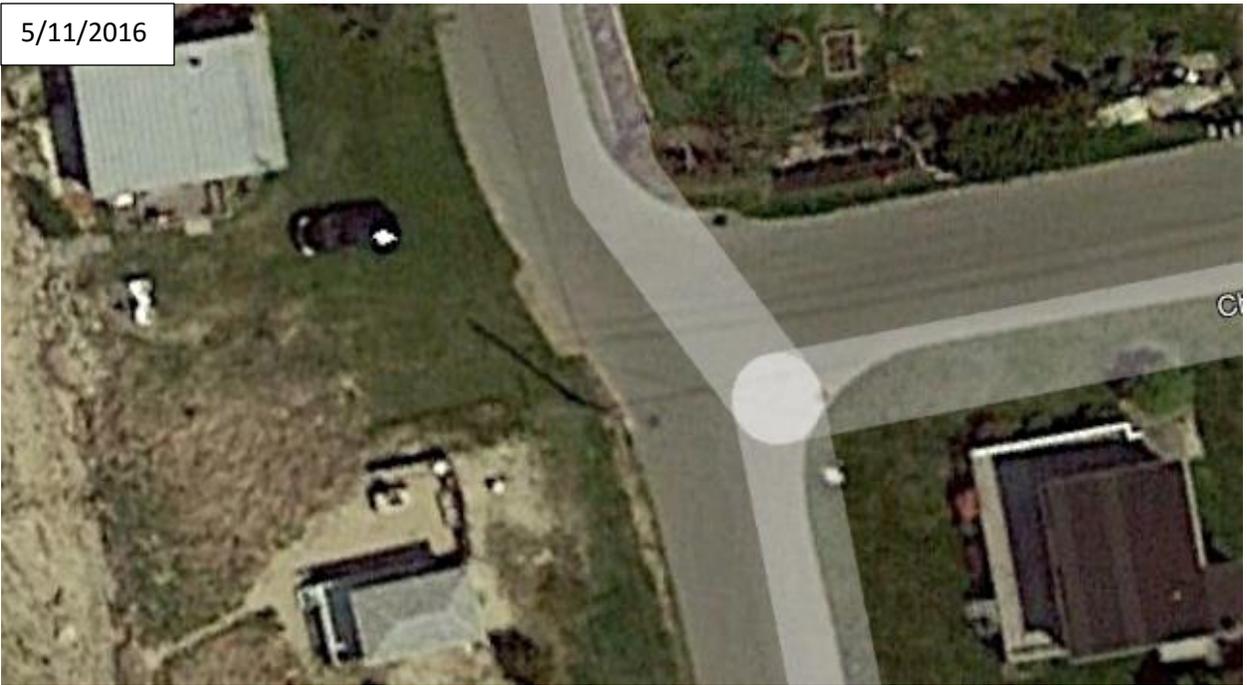
9/11/2014



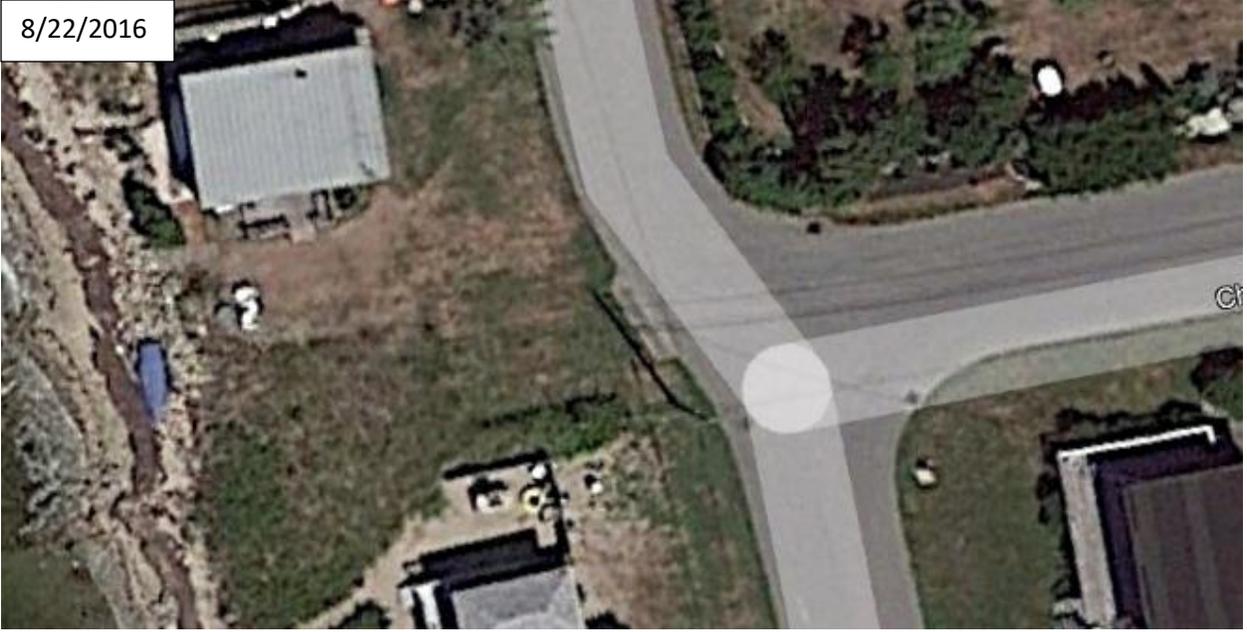
5/6/2015



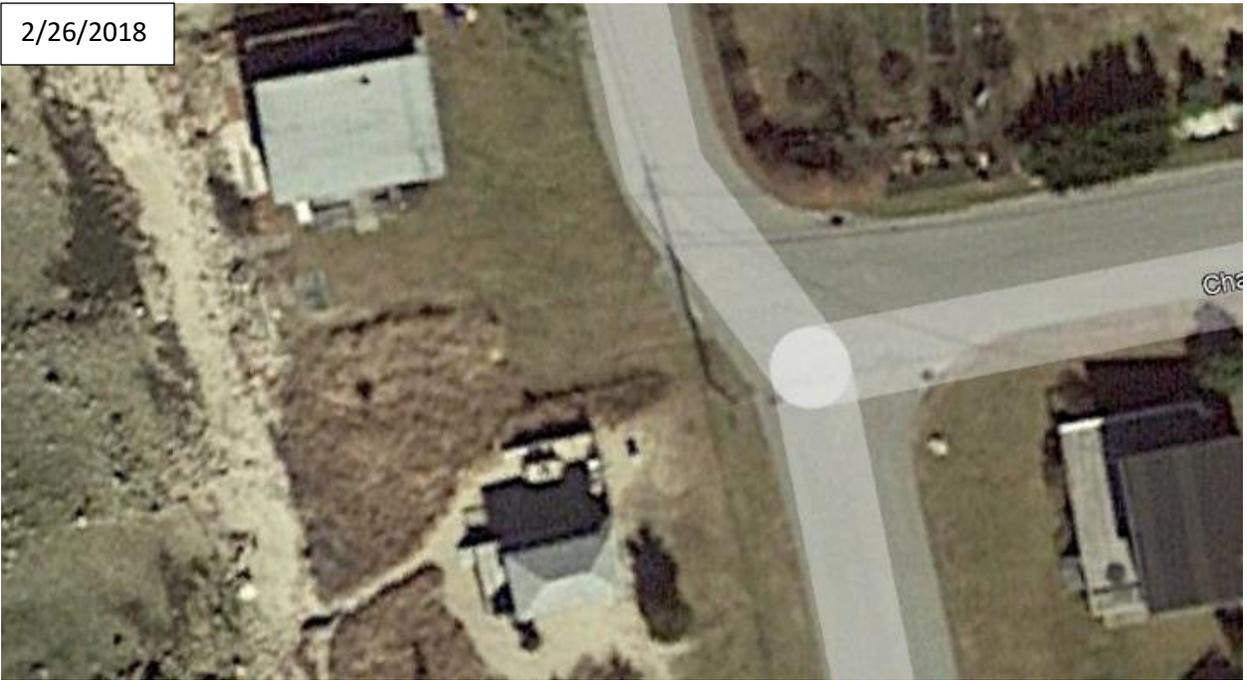
5/11/2016



8/22/2016



2/26/2018



9/19/2019

