

# Staff Report

Date: November 4, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 & 2 Marsh Island – Request for Certificate of Compliance – DEP# 023-1094**

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## DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- Order of Conditions issued August 19, 2010
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

## RESOURCE AREAS ON/NEAR SITE

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

## PROJECT SUMMARY

- The 2010 Order of Conditions was issued for the salt marsh restoration project.

## COMMENTS

- No work was ever started due to issues pertaining to the radio towers on the property. All permits issued for the project have since expires.
- The project is being redesigned for construction in two phases and new permits are in the process of being sought this fall.

## RECOMMENDATION

- I recommend issuing a Certificate of Compliance for an Invalid Order of Conditions for 1 & 2 Marsh Island, SE 023-1094.



[www.savebuzzardsbay.org](http://www.savebuzzardsbay.org)

114 Front Street, New Bedford, Massachusetts 02740 | Tel: 508-999-6363 Fax: 508-984-7913

# Staff Report

Date: November 4, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **230 Sconticut Neck Road – Request for Certificate of Compliance – DEP# 023-84**

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## DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- Order of Conditions issued July 27, 1983
- Notice of Intent submitted on July 7, 1983
- 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

## PROJECT SUMMARY

- The Order of Conditions permitted the construction of a single-family home on an open foundation, a driveway, carport, two decks, and the installation of water and sewer service.

## COMMENTS

- There were three special conditions attached to the project:
  - Letter from Fairhaven Board of Public Works allowing use of street for private sewer line and the privilege of other abutters being allowed to tie into this line if they desire without any monetary requirement for same.
  - Copies of easements from abutters must be on file before any building permits are issued.
  - Any fill used shall be clean, non-polluting, and for landscaping purposes only.
- The home has been constructed in what appears to be substantial compliance with the issued permit.
- The property owner is looking to close out the old order to facilitate selling the property.

## RECOMMENDATION

- I recommend issuing a Certificate of Compliance for Complete Certification for 230 Sconticut Neck Road, SE 023-0084.

# Staff Report

Date: November 8, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Scotcut Neck Road/Overlook Lane – Request for Extension – DEP# 023-1258, Fairhaven CON 023-162**

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## DOCUMENTS REVIEWED

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

## RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone
- Intermittent Stream (Land Under and Bank of)

## PROJECT SUMMARY

- The applicant is seeking a 24-month extension to allow for more time to complete the wetland crossing to Lot 6 and wetland replication monitoring.

## COMMENTS

- This Order of Conditions was issued on September 13, 2017 and will expire on December 19, 2021. The state of emergency stayed all permit expirations for permits issued before the state of emergency began.
- An extension to complete the remainder of the work does not seem unreasonable given the impact of the pandemic.
- An extension of the Order does not have to extend the approval of the wetland line.

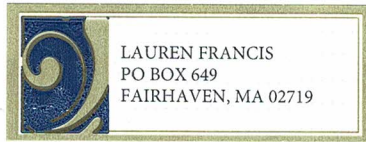
## RECOMMENDATION

- I recommend granting a 24-month extension for Scotcut Neck Road/Overlook Lane, SE 023-1258, CON 023-162, but the extension is for the work only and does not extend the approval of the wetland line.

Date: 11.4.2021

Applicant Name:

Applicant Mailing Address:



RE: Order of Conditions, DEP File # SE 23-1258  
Applicant Name: OVERLOOK REATY TRUST, LAUREN FRANCIS, TR  
Project Address: OVERLOOK LANE

Dear Members of the Conservation Commission,

Please accept this letter as a request for extension for the above-referenced Order of Conditions. I hereby request that the Order be extended for an additional 10 24 months (maximum of 36 months per permit).

The reason(s) for delay in commencing/completing the project is/are: THIS ORDER IS ABOUT TO EXPIRE. I NEEDED MORE TIME FOR REC TO PROVIDE THE MONITORING REPORT AND TO GET FORM E COVENANT RELEASE FROM PLANNING BOARD.

The Order of Conditions was recorded at the Registry of Deeds for Bristol (S.D.) County, Book 12304, Page 42.

Attached is a check payable to the Town of Fairhaven in the amount of \$75.00 (residential) OR \$200.00 (commercial/subdivision) for the extension fee.

Thank you for your consideration.

Sincerely,

Lauren L. Francis, Jr.  
Applicant/Applicant's Representative

# Staff Report

Date: November 10, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **36 Monondach Avenue – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-253**

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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)
- Revised site plan dated November 9, 2021

## RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE
- Barrier Beach
- Coastal Beach
- Coastal Dune
- Buffer Zone to Salt Marsh

## 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.”
- **Barrier Beach:** 10.29  
(3) ...Significant to Storm Damage Prevention, Flood Control, Marine Fisheries, or Protection of wildlife habitat, 310 CMR 10.27(3) through (6) (coastal beaches) and 10.28(3) through (5) (coastal dunes) shall apply to the coastal beaches and to all coastal dunes which make up barrier beaches.
- **Coastal Beach:** 10.27  
(3) Any project on a coastal beach...shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.
- **Coastal Dune:** 10.28  
(3) Any alteration of, or structure on, a coastal dune or within 100 feet of a coastal dune shall not have an adverse effect on the coastal dune by:
  - (a) affecting the ability of waves to remove sand from the dune;
  - (b) disturbing the vegetative cover so as to destabilize the dune;

(c) causing any modification of the dune form that would increase the potential for storm of flood damage;

(d) interfering with the landward or lateral movement of the dune;

(e) causing removal of sand from the dune artificially; or

(f) interfering with mapped or otherwise identified bird nesting habitat.

(4) ...when a building already exists upon a coastal dune, a project accessory to the existing building may be permitted, provided that such work, using the best commercially available measures, minimizes the adverse effect on the coastal dune caused by the [above] impacts. Such an accessory project may include, but is not limited to, a small shed or a small parking area for residences.

- **Salt Marsh: 10.32**

(3) A proposed project in a salt marsh, on lands within 100 feet of a salt marsh, or in a body of water adjacent to a salt marsh shall not destroy any portion of the salt marsh and shall not have an adverse effect on the productivity of the salt marsh. Alterations in growth, distribution and composition of salt marsh vegetation shall be considered in evaluating adverse effects of productivity.

- **Buffer Zone Wetlands Bylaw Regulations (Chapter 192 Regulations):**

6.0 50 to 100 Foot Buffer Zone Resource Area

6.1 Alterations including structures are allowed in the 50-100 foot buffer zone resource area. The Commission may require additional mitigation offsets when the slope within the buffer zone is steeper than 10%. Additionally, mitigation offsets may be required by the Commission when the applicant proposes that more than 30% of the 50-100 foot buffer zone resource area is proposed to be impervious surface.

## PROJECT SUMMARY

- The applicant is seeking to place a 45-foot-by-32-foot seashell driveway in front of the existing house.

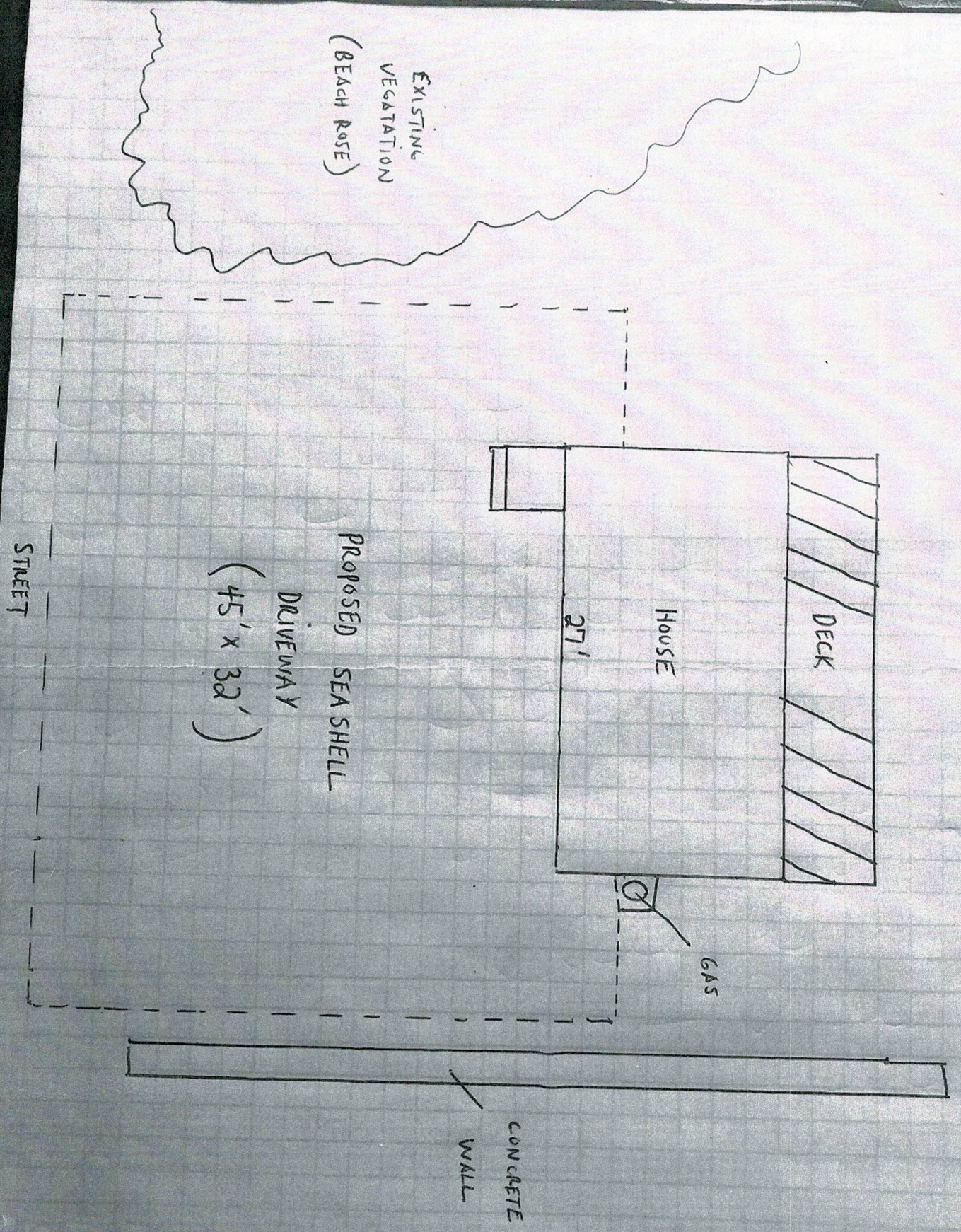
## COMMENTS

- The driveway seems rather large for the purposes of serving the house. The house is 560 square feet with a 280 square foot deck. The proposed driveway is 1,440 square feet.
- The Coastal Dune regulations state that an accessory project may be permitted, such as a small parking area, if there is a building already in existence on the dune.
- Subsequent to the site visit, the applicant revised the size of the driveway to be the area directly in front of the house to the street. They are looking to place 1-2 inches of shells over the area.

## RECOMMENDATION

- I recommend closing the public hearing for 36 Mononoch Ave, CON 023-253, and issuing a Negative 2 and Negative 6 Determination with the following conditions:
  - CAP-3
  - Shell driveway width shall not exceed the width of the house.
  - No grade or elevation changes are permitted beyond adding no more than 2 inches of shells.

SITE PLAN  
10/18/2021

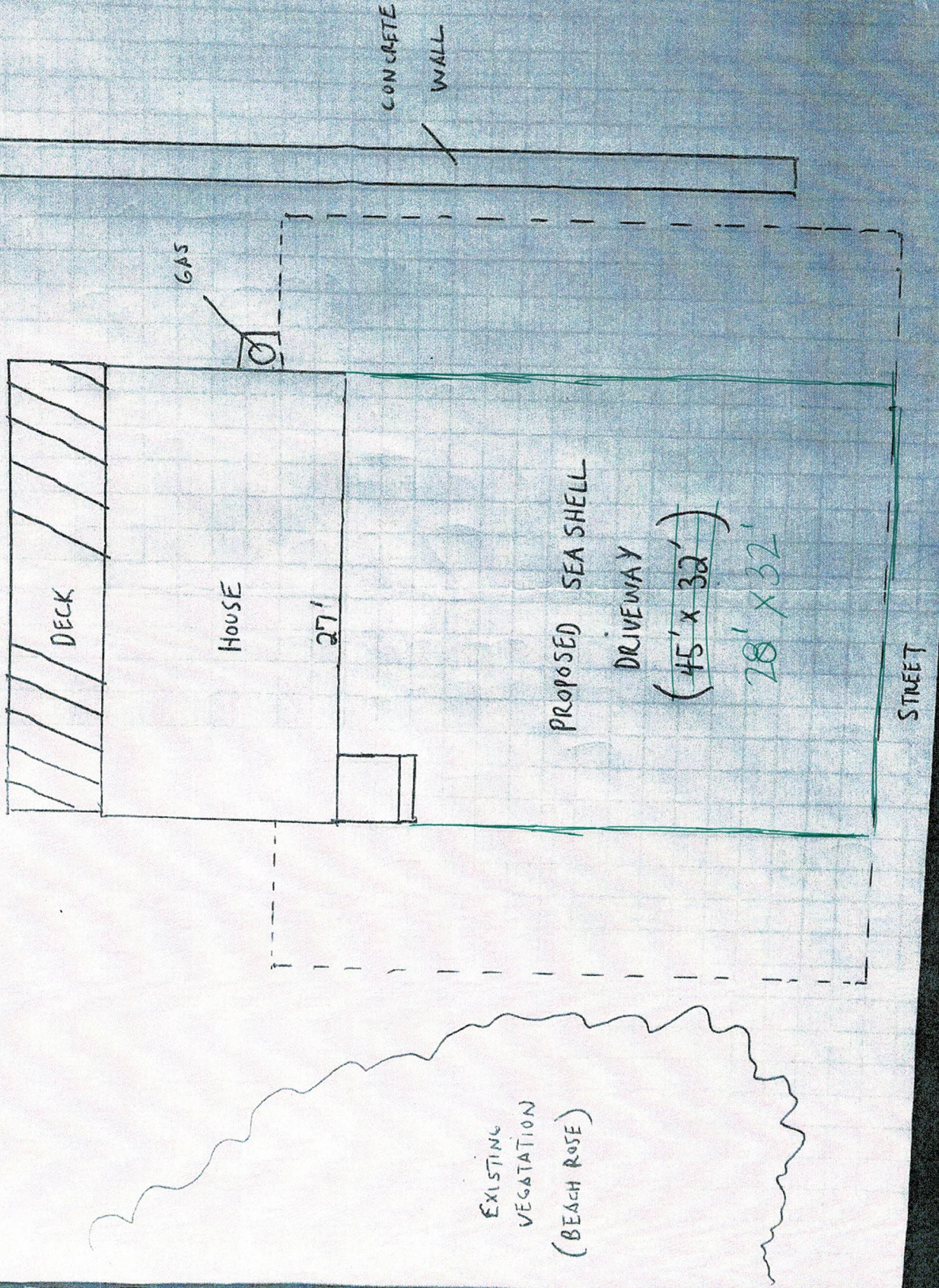




SITE PLAN

10/18/2021

REVISED 10/09/2021



# Staff Report

Date: November 8, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **0 & 277 Bridge Street – Abbreviated Notice of Resource Area Delineation – DEP# 023-1367, Fairhaven CON 023-254**

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## DOCUMENTS REVIEWED

- Abbreviated Notice of Resource Area Delineation and
- 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
- Bank
- Buffer Zone

## PROJECT SUMMARY

- The applicant is looking for confirmation of resource area boundaries.

## COMMENTS

- The applicant submitted an ANRAD for 600 linear feet of bordering vegetated wetland boundary.
- The Commission will need to determine whether they want peer review of the submission or if they would like the Agent to review the line.
- Because there is an open order of conditions for the adjacent property that includes some of the resource area near the subject property, this may be a slightly more complicated review than typical.
- The Commission’s winter conditions regulations state that “it is the policy of this Commission to presume that delineation, including verification of previous delineations, performed after November 15 and before March 31 [are] insufficient.”

## RECOMMENDATION

- If the Commission would like to see peer review of the project by a third party, I recommend allowing the Agent to coordinate the peer review process.
- I also recommend asking the applicant to request a continuance to allow sufficient time to review the line.



**Massachusetts Department of Environmental Protection**  
**Bureau of Resource Protection - Wetlands**  
**WPA Form 4A – Abbreviated Notice of**  
**Resource Area Delineation**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

MassDEP File Number

Document Transaction Number

Fairhaven  
 City/Town

**A. General Information**

1. Project Location (**Note:** electronic filers will click on button for GIS locator):

0 & 277 Bridge Street  
 a. Street Address

Latitude and Longitude:  
 30A  
 f. Assessors Map/Plat Number

Fairhaven  
 b. City/Town

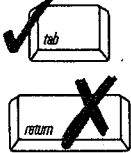
41-38-52.95  
 d. Latitude

70-52-56.49  
 e. Longitude

87 & 87A  
 g. Parcel /Lot Number

c. Zip Code

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



2. Applicant:

a. First Name  
 240B LLC  
 c. Organization

b. Last Name

275 Martine Street Suite 110  
 d. Mailing Address

Fall River  
 e. City/Town

774-264-2958  
 h. Phone Number

MA  
 f. State

02723  
 g. Zip Code

j. Email Address

3. Property owner (if different from applicant):

a. First Name  
 Bridge Street Holdings LLC  
 c. Organization

b. Last Name

275 Martine Street Suite 110  
 d. Mailing Address

Fall River  
 e. City/Town

774-264-2958  
 h. Phone Number

MA  
 f. State

02723  
 g. Zip Code

j. Email Address

Check if more than one owner (attach additional sheet with names and contact information)

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

4. Representative (if any):

a. Contact Person First Name  
 Daniel

b. Contact Person Last Name  
 Aguiar

c. Organization  
 SITEC/ CEC Inc

d. Mailing Address  
 31 Bellows Road

Raynham  
 e. City/Town

5089982125  
 h. Phone Number

MA  
 f. State

02726  
 g. Zip Code

daguiar@cecinc.com  
 j. Email Address

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

1200.00  
 a. Total Fee Paid

587.50  
 b. State Fee Paid

612.50+200.00 town fee  
 c. City/Town Fee Paid

Fees will be calculated for online users.



**Massachusetts Department of Environmental Protection**  
Bureau of Resource Protection - Wetlands

**WPA Form 4A – Abbreviated Notice of  
Resource Area Delineation**

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

Provided by MassDEP:

\_\_\_\_\_  
MassDEP File Number

\_\_\_\_\_  
Document Transaction Number

\_\_\_\_\_  
Fairhaven  
City/Town

**B. Area(s) Delineated**

1. Bordering Vegetated Wetland (BVW) 600'  
Linear Feet of Boundary Delineated
2. Check all methods used to delineate the Bordering Vegetated Wetland (BVW) boundary:
  - a.  MassDEP BVW Field Data Form (attached)
  - b.  Other Methods for Determining the BVW boundary (attach documentation):
    1.  50% or more wetland indicator plants
    2.  Saturated/inundated conditions exist
    3.  Groundwater indicators
    4.  Direct observation
    5.  Hydric soil indicators
    6.  Credible evidence of conditions prior to disturbance
3. Indicate any other resource area boundaries that are delineated:

\_\_\_\_\_  
a. Resource Area

\_\_\_\_\_  
b. Linear Feet Delineated

\_\_\_\_\_  
c. Resource Area

\_\_\_\_\_  
d. Linear Feet Delineated

**C. Additional Information**

Applicants must include the following plans with this Abbreviated Notice of Resource Area Delineation. See instructions for details. **Online Users:** Attach the Document Transaction Number (provided on your receipt page) for any of the following information you submit to the Department.

1.  ANRAD (Delineation Plans only)
2.  USGS or other map of the area (along with a narrative description, if necessary) containing sufficient information for the Conservation Commission and the Department to locate the site. (Electronic filers may omit this item.)
3.  Plans identifying the boundaries of the Bordering Vegetated Wetlands (BVW) (and/or other resource areas, if applicable).
4.  List the titles and final revision dates for all plans and other materials submitted with this Abbreviated Notice of Resource Area Delineation.

**D. Fees**

# Staff Report

Date: November 10, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Bella Vista Island – Request for Amended Order of Conditions – DEP# 023-1309, Fairhaven CON 023-110**

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## DOCUMENTS REVIEWED

- Request for Amended Order of Conditions and associated documents
- MassDEP Administrative Consent Order with Penalty and Notice of Noncompliance dated June 25, 2019
- Previous Notices of Intent, Order of Conditions, Enforcement Orders
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations

## RESOURCE AREAS ON/NEAR SITE

- Salt Marsh
- Coastal Beach
- Coastal Dune
- Coastal Bank
- Land Containing Shellfish
- Land Under the Ocean
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF)
- Isolated Vegetated Wetlands

## PROJECT SUMMARY

- This request does not propose any changes to the scope of work that was approved by the Order of Conditions issued in August. The applicant is looking for clarifications to the special conditions.

## COMMENTS

- The applicant's representative submitted an overview of the conditions they are seeking clarification on.
- There are no proposed changes to the project other than asking for clarification on the special conditions.
- The Harbormaster has agreed to a reduced shellfish mitigation fee directly related to the propagation of the shellfish beds on either side of the causeway.
- Based on a meeting among the applicant's representatives, the Agent, and the Chair, and a subsequent meeting with the Agent and the Harbormaster, the special conditions have been revised as outlined below.

## **RECOMMENDATION**

- If the Commission is amenable to the revisions as proposed, I recommend closing the public hearing for SE 023-1309, CON 023-110, 1 Bella Vista Island, and issuing an Amended Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the conditions outlined in Attachment A.



TOWN OF FAIRHAVEN, MASSACHUSETTS

# CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

## Attachment A

DEP File #: SE 023-1309  
Fairhaven File #: CON 023-110  
Applicant/Property Owner: Heiam Alsawalhi/Anwar Faisal  
Property: 1 Bella Vista Island

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### Findings, Plans, and Documents

1. This Order is issued under the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.00) and the Town of Fairhaven Wetlands Bylaw (Chapter 192). Salt Marsh, Coastal Beach, Coastal Dune, Coastal Bank, Land Containing Shellfish, and Land Subject to Coastal Storm Flowage (LSCSF) have been identified as Resource Areas subject to protection under the Wetlands Protection Act Regulations and the Fairhaven Wetlands Bylaw. The 100-foot buffer zone to each resource area has been identified as a resource area subject to protection under the Fairhaven Wetlands Bylaw (Chapter 192). These Resource Areas are significant to protecting the various interests of the Bylaw and the Act.
2. With regard to Land Containing Shellfish, the Commission is concerned about protecting wildlife habitat, water pollution control, fisheries, and recreation. The area around the subject property has been identified as Land Containing Shellfish. The portion of the project that clears the area underneath the causeway from obstructions has a direct impact on land containing shellfish, and in particular, possibly maintaining the health and functionality of the shellfishery on either side of the causeway. The Commission wants to ensure that the above wetland values of the Act and the Bylaw are protected by ensuring proper connection between and flushing of shellfish habitat on either side of the causeway.
3. This Property Owner and Property is subject to the terms of an Administrative Consent Order with Penalty (ACOP) and Notice of Noncompliance (#00004701) issued by Massachusetts Department of Environmental Protection (MassDEP), dated June 25, 2019 for violations of the State Act and Regulations. The Applicant purchased the property in 2009 and in 2010, the Commission issued three Enforcement Orders (EO) for unpermitted activity. MassDEP also issued EOs in 2010 and 2013. This Order has been issued to permit certain features as required in the ACOP.
4. The project purpose is to address the requirements of an Administrative Consent Order with Penalty (ACOP) and Notice of Noncompliance (#00004701) issued by Massachusetts Department of Environmental Protection (MassDEP), dated June 25, 2019 for violations of the State Act and Regulations.
5. The applicant filed the Notice of Intent on December 27, 2019, 21 days after MassDEP issued their letter approving the Seawall Plan and notification to proceed with the required actions. The Fairhaven Conservation Commission (FCC) opened the public hearing on January 27, 2020. The FCC received many continuance requests from the applicant after requesting additional information in response to comments from both Division of Marine Fisheries (DMF) and a third-

party peer reviewer. Finally, on June 10, 2021, the applicant provided the final information that the FCC had been requesting for the previous 16 months, allowing them to move forward with a decision on the project.

6. Due to the Property Owner's track record of repeated violations of the State Regulations and Bylaw, and non-compliance with previously issued Orders, the FCC will closely scrutinize completion of the activities permitted in this Order, including a requirement that the Property Owner fund a consultant working for the FCC to oversee the activities.
7. This permit authorizes the repair of two existing groins, removal of a portion of an existing groin, the reconstruction of an existing seawall, dredging under the causeway bridge with dredged material disposed offsite, construction of a buried seawall within existing lawn, stabilization of the coastal bank where 70 feet of seawall was removed, after the fact approval of an electric security gate with ancillary equipment and 48 10-in by 10-in granite posts along the causeway, and the placement of 12- to 24-inch stone to protect eroding roadside along the causeway, as shown on the Plan of Record.
8. No other work is approved by this Order.
9. The Plan-of-Record associated with this Order is titled "Proposed Improvements, Bella Vista Island", prepared by Prime Engineering, Inc., dated June 10, 2021, with attached Exhibits as follows:
  - a. "Exhibit A", 4 sheets depicting the seawall plan, prepared by Prime Engineering, Inc., dated June 10, 2021
  - b. "Exhibit B", 1 sheet depicting the causeway detail and dredging plan, prepared by Prime Engineering, Inc., dated June 10, 2021
  - c. "Exhibit C", 2 sheets depicting the groin improvements, prepared by Prime Engineering, Inc., dated June 10, 2021
10. The work depicted on Sheets 4 and 5 of the Plan-of-Record are subject to a separate Order of Conditions under DEP File No. SE 023-1340, Fairhaven File No. SE 023-195. This Order of Conditions does not supersede the Order of Conditions issued on May 28, 2021 for the non-ACOP activities approved by that Order.
11. The Division of Marine Fisheries (MA DMF) provided revised comments dated June 25, 2021.
  - a. The project site lies within mapped shellfish habitat for soft shell clam (*Mya arenaria*), quahog (*Mercenaria mercenaria*), and bay scallop (*Argopecten irradians*). Land containing shellfish is deemed significant to the interest of the Wetlands Protection Act (310 CMR 10.34) and the protection of marine fisheries.
  - b. The area offshore of the project site has been mapped by the Massachusetts Department of Environmental Protection as an eelgrass (*Zostera marina*) meadow.
  - c. MA DMF has identified Round Cove as winter flounder (*Pseudopleuronectes americanus*) spawning habitat. Winter flounder enter the area and spawn from January through May, laying clumps of eggs directly on the substrate. These demersal eggs hatch approximately fifteen to twenty days later. The Atlantic States Marine Fisheries Commission has designated winter flounder spawning habitat as "Habitat Areas of Particular Concern" (HAPC). Because of the winter founder stock status, every effort should be made to protect winter flounder and their spawning habitat.
  - d. The June 10, 2021 Prime Engineering response letter adequately addresses potential impacts to marine resources that were identified previously in MA DMF's January 7,



2020 comment letter. As stated in the response letter, any in-water silt-producing work should be stated to occur outside the January 15 to May 31 time-of-year (TOY) restriction period to protect winter flounder during spawning and juvenile development life history phases.

- e. The proposed roadside erosion protection (12" to 24" stone) should not displace any existing salt marsh habitat and construction activities should also avoid salt marsh habitat by working from the road.
12. The property contains mapped Priority and Estimated Habitat of Rare Species/Wildlife. The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife determined in their March 11, 2020 letter that "this project, as currently proposed, will not adversely affect the actual Resource Area Habitat of state-protected rare wildlife species...[and] will not result in a prohibited take of state-listed rare species."
  13. The issuance of an Amended Order of Conditions allowed the Fairhaven Conservation Commission to make further clarifications to the special conditions attached to the Order.

## **Special Conditions**

### **A. General Conditions**

1. ACC-1: The Conservation Commission, its employees, and its agents shall have a right of entry to inspect or compliance with the provisions of this Order of Conditions.
2. With respect to all conditions, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
3. The Plan-of-Record and this Order of Conditions shall be included in all construction contracts and sub-contracts dealing with the work proposed and shall supersede all other contract requirements.
4. ADD-1: 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. This Order applies only to the scope of work depicted on the Plan-of-Record (Sheets 1-3) and attached Exhibits. Any future work not approved within the Order subject to jurisdiction under the Wetlands Protection Act will require the filing, at a minimum, of a Request for Determination or Applicability or a new Notice of Intent with the Commission. Prior to the commencement of any such future work, a receipt of a Negative Determination or valid Order of Conditions will be required. If any activity beyond the scope of this Order occurs prior to the receipt of a Negative Determination or valid Order of Conditions, it shall be removed and restored to pre-construction conditions.
6. All work shall be done in accordance with the Plan-of-Record and Exhibits dated June 10, 2021 as approved by this Order. Any deviation must be approved by this Commission in writing prior to commencing work involved in this deviation.
7. The work depicted on Sheets 4 and 5 of the Plan-of-Record are subject to a separate Order of Conditions under DEP File No. SE 023-1340, Fairhaven File No. SE 023-195. This Order of Conditions does not supersede the Order of Conditions issued on May 28, 2021 for the non-ACOP activities approved by that Order.
8. ADD-4c: Any changes to the plans identified above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.

9. ADD-5: This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this order and to any contractor or other person performing work conditioned by this order.
10. The limit of work for this project is restricted to the scope of work outlined above and shown on the approved plans. No work is permitted beyond the specific activities approved by this Order.
11. Any in-water silt-producing work shall be staged to occur outside of the January 15 to May 31 time-of-year (TOY) restriction period of any year work is occurring to protect winter flounder during spawning and juvenile development life history phases.
12. A qualified professional hired by the Commission at the Property Owner's expense shall provide observations and report on all phases of the project that have the potential to cause direct impact to a resource area to ensure compliance with the issued Order. Updates with associated photographic documentation shall be submitted to the Commission or its Agent before each phase of the project begins, once per week during each phase, and at the completion of each phase. Phases that have the potential to cause impact to a resource area shall be defined as follows:
  - i. Removal of a portion of an existing groin and reconstruction of the remaining existing groins
  - ii. Setting of the boom and silt curtains
  - iii. Work on the base of the seawall on the water side
  - iv. Dredging under the causeway
13. Should any unpermitted habitat conversion occur during the project, habitat mitigation shall be required at the direction of the Fairhaven Conservation Commission and the Division of Marine Fisheries.
14. The proposed roadside erosion protection (12" to 24" stone) shall not displace any existing salt marsh habitat and construction activities shall also avoid salt marsh habitat by working from the road.
15. The section of seawall which has been removed and restored to coastal bank shall be restored to pre-revetment conditions with no artificial material, including filter fabric, left in place.
16. The dredging beneath the causeway bridge in order to keep the bridge opening clear shall be performed once annually for a minimum of two years during the month of May or during the time period as specified by the Massachusetts Division of Marine Fisheries. If after a minimum of two annual dredging events the applicant requests approval from MassDEP to discontinue annual dredging, the applicant shall concurrently notify the Fairhaven Conservation Commission of any such request and provide a complete copy of any documentation submitted accompanying the request.
17. Pursuant to Chapter 192-11, any violation of these conditions is an automatic fine of \$300.00 per day until such time as the project has come back into compliance.

**B. Prior to Construction**

18. The applicant shall submit a one-time shellfish mitigation fee of \$22,000, made payable to the Town of Fairhaven, in accordance with the Commission's fee schedule prior to the start of work. This fee, per the recommendation of the Fairhaven Shellfish Warden, covers seeding the areas on either side of the causeway where dredging is proposed with 800 bushels of shellfish and some staff time to oversee the sweeping and relocation of shellfish, as outlined in condition B17.
19. Prior to any work within Land Containing Shellfish, the area shall be swept by an individual approved by the Fairhaven Harbormaster/Shellfish Warden and all shellfish

within the area of work shall be relocated at the direction of the Fairhaven Harbormaster/Shellfish Warden.

20. CAP-3: All required permits, as needed, must be obtained, as needed, from the Army Corps of Engineers, Massachusetts Department of Environmental Protection, Planning Board, Zoning Board of Appeals, Board of Public Works, Board of Health, Building Department, and/or any other appropriate local, state, or federal agencies and proof of appropriate permits submitted to the Conservation Commission prior to the start of the project.
21. REC-3: Job site posting of a sign clearly visible from the road not less than two square feet or more than three square feet with the words,  
Massachusetts Department of Environmental Protection [or MassDEP]  
File Number SE 023-1309  
Fairhaven Conservation Commission [or FCC]  
File Number CON 023-110  
This order shall be weatherproofed and affixed to the job site sign. The necessary replacement and maintenance of these postings shall be the sole responsibility of the applicant.
22. DER-1: Proof of recording of these approved special conditions, plan of record, and materials at the Bristol County Registry of Deeds shall be provided by the applicant's liaison to the commission enforcement agent prior to the commencement of any work (including site preparation) on the site.
23. PCC-3: The applicant or the applicant's representative shall notify the Commission, in writing, as to the date that the work will commence on the project. Said notification must be received by the Commission no sooner than ten (10) days and no later than five (5) days prior to the commencement of the approved activity.
24. EMC-1: The Applicant shall provide the Commission with the name(s) and telephone numbers of the site contractor and the project manager(s) responsible on site for compliance with this Order. The project manager shall oversee any emergency placement of erosion and sedimentation controls and be responsible for the regular inspection or replacement of control devices and for the proper disposal of waste products. The commission shall be notified in the event that the project manager or site contractor is changed.
25. The 6" x 6" wooden posts in the salt marsh along the property line near the entrance shall be removed before any other work commences.

**C. During Construction**

26. REC-2: During the construction phase, the applicant shall be responsible for maintaining a copy of these Orders at the site. The applicant shall be responsible for compliance with the conditions of these Orders.
27. All groin and seawall work shall occur within a 3 hour window on either side of low tide.
28. All dredging work and work along the causeway bridge shall occur from the road to the maximum extent possible. Should any work need to be done that is not accessible from the road, it shall be done by lowering a tracked bobcat under the causeway, limited to the dredging footprint. This work shall occur within a 3 hour window on either side of low tide.
29. Before any dredging work is to begin, the Fairhaven Harbormaster shall be notified in a timely fashion so he or his designated representative can be onsite during all dredging operations.
30. At no time shall any construction materials, soils, fills, sediments, dredging or any other substances be stockpiled or stored within an area of statutory interest, except Land

- Subject to Coastal Storm Flowage. Stockpiling of material that has the potential to cause contaminated runoff or sedimentation is prohibited within 50 feet of vegetated wetland, salt marsh, coastal beach, coastal dune, or coastal bank.
31. All equipment used on site must be stored or parked in an area more than 50 feet from vegetated wetland, salt marsh, coastal beach, coastal dune, or coastal bank.
  32. STO-4: There shall be no discharge or spillage of petroleum product, hazardous material, or any other pollutant into any area of statutory interest.
  33. STO-5: There shall be no fueling or maintenance of any vehicles or equipment in any area of statutory interest.
  34. MAC-3: All mechanized vehicles under contract, subcontract or lease, participating in any manner, in any phase of activity within resource areas, shall carry on board absorbent materials to immediately respond to inadvertent discharge of petrochemicals.
  35. Motorized/construction equipment is prohibited from entering or crossing a vegetated wetland, salt marsh, or coastal dune.
  36. MAC-8: All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
  37. MAC-9: Spill kits shall be maintained on site at all times for the immediate response to any potential spill of anything that could cause harm to resource areas and water bodies.
  38. DEB-1: The construction site shall be left in a stable condition at the close of each day. Construction refuse and debris shall be removed daily. The Commission may require specific approval for the disposition of such materials prior to the start of construction.
  39. SIL-8: If soils are to be disturbed for longer than two (2) months, a temporary cover shall be established, following Natural Resources Conservation Service (NRCS) procedures, to prevent erosion and sedimentation.
    - i. If the season is not appropriate for plant growth, exposed surfaces shall be stabilized by straw, jute netting, or other NRCS-approved methods.
    - ii. Any stabilization materials such as jute netting shall be firmly anchored to prevent them from being washed from slopes by rain or flooding.
  40. WAT-3: There shall be no direct discharge of dewatering operations into any wetland, watercourse, or drainage system without the approval of the Commission. Any dewatering discharge shall be passed through a sedimentation control device to remove any solids. The contractor is to maintain said sedimentation control devices throughout the entire dewatering operation and repair deficiencies immediately.
  41. DRG-4: Siltation curtains shall be utilized at all times to prevent the intrusion of water-borne sediments into adjacent protected areas. It shall be the sole responsibility of the applicant to ensure the proper placement of this system during dredging, dewatering and spoil transfer activities.
  42. All dredged material shall be hauled offsite to be disposed of in an appropriate location over 100 feet from any wetland resource areas and shall not be used for beach nourishment on site. Disposal records for the dredged material shall be submitted to the Commission.

**D. After Construction/In Perpetuity**

43. Within 60 days of the completion of the work described herein, the applicant shall prepare an As-Built Plan based on instrument survey of the work area and request that a Certificate of Compliance be issued stating that the work has been satisfactorily completed in compliance with this Order and the Plan-of-Record. The Certificate of Compliance request and accompanying as-built plan, signed and stamped by a

Massachusetts Registered Professional Engineer, shall include, but is not limited to, the following information:

- i. Bathymetric contours of the entire dredge footprint
- ii. Full extent of dredge footprint
- iii. Disposal records of dredge material
- iv. Full extent of groin footprint
- v. Cross-sections of repaired groins
- vi. Full extent of seawall and associated cross-sections
- vii. Coastal bank restoration details, including cross-sections and revegetation documentation
- viii. All resource area boundaries and the date of confirmation of those boundaries
- ix. Confirmation that no salt marsh habitat has been damaged by the work or displaced by the placement of the 12- to 24-inch stone to stabilize the causeway road
- x. Confirmation that no habitat conversion below mean high water has occurred beyond the scope of work approved by this Order
- xi. Documentation that all construction debris and related items, such as boom and silt curtains, have been entirely removed from the site

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

#### Perpetual Conditions

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

44. No additional disturbance of this property to any jurisdictional areas is allowed without authorization from the Conservation Commission, including changes to existing developed areas and existing natural features as of the date of the issuance of this Order. If any activity beyond the scope of this Order occurs prior to the receipt of a Negative Determination or valid Order of Conditions, it shall be removed and restored to pre-construction conditions. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
45. 310 CMR 10.30(3), promulgated under M.G.L. c. 131, §40, requires that no coastal engineering structure, such as a bulkhead, revetment, or seawall shall be permitted on an eroding bank at any time in the future to protect the project allowed by this Order of Conditions.
46. 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.
47. 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.

48. Each time a dredging operation is to occur, the Fairhaven Conservation Commission and the Fairhaven Harbormaster shall be notified, to allow for any additional conditions resulting from modifications in dredging operations in the life of this Order or these perpetual conditions. All dredged material shall be hauled offsite to be disposed of in an appropriate location over 100 feet from any wetland resource areas and shall not be used for beach nourishment on site. Disposal records for the dredged material shall be submitted to the Commission.

DRAFT



October 5, 2021

Geoffrey A. Haworth, Chairperson  
Fairhaven Conservation Commission  
40 Center Street  
Fairhaven, MA

**RE: Request to Amend an Order of Conditions – SE23-1309  
Heiam Alsawalhi and Anwar Faisal  
One Bella Vista Island, Fairhaven, MA  
FCC #CON 023-110**

Dear Chairperson Haworth and Commission Members:

Prime Engineering Inc. (“Prime”) on behalf of the owners of Bella Vista Island, Fairhaven, Massachusetts, is submitting this Request to amend the Order of Conditions (“OOC”) issued on August 13, 2021 for the above-referenced project. This Request follows the guidance from the Massachusetts Department of Environmental Protection (“MassDEP”) Wetland Program Policy 85-4 and the Fairhaven Wetlands Bylaw, Chapter 192-6D.

The Fairhaven Conservation Commission shall hold a public hearing on the proposed amendment within twenty-one (21) days after receiving this Request.

The following provides a list of the requested changes to the OOC:

- Special Condition **A-4** is too ambiguous and open-ended, giving the Conservation Commission the ability to amend the recorded Order of Conditions if some of the improvements “could impact areas of statutory interest.” This condition should be stricken. If there is significant impact to a resource area, the Commission has the ability and the obligation to issue an Enforcement Order.
- Condition **A-12** is too ambiguous and open-ended. Having a consultant stop by intermittently to observe the process is reasonable. Having a non-professional engineer overseeing and directing the work 40 hours a week for months of construction is

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**CIVIL ENGINEERING      ENVIRONMENTAL ASSESSMENT      LAND SURVEYING**

**P.O. BOX 1088, 350 BEDFORD STREET, LAKEVILLE, MA 02347 · 508-947-0050 · FAX  
508-947-2004**

***www.primeengineering.org***



not acceptable. We recommend establishing a series of defined inspections such as:

1. When silt curtains have been set.
2. When construction is starting, and then one hour a week to check progress.
3. When each task has been completed.

The word “oversee” could imply “directing.” In no way shall the peer reviewer “direct.” The function should be to “observe” and report to the Commission and to the design engineer.

- **B-16** Submission of what the Commission considers an annual shellfish mitigation fee of \$31,440 is an onerous charge that requires detailed justification.
- **B-19** The requirement to post these special conditions at all activity sites throughout the island is unreasonable. Posting at the entrance to the island to which the public has access would be adequate.
- **C-25** Allowing seawall and groin work to take place three hours before to three hours after low tide is reasonable.
- **C-26** Allowing small equipment such as bobcats to drive on the earth that will be hauled off site is reasonable. Requiring hand labor to excavate the soil under the bridge is merely punitive and does nothing to protect the interests of the Act.
- **C-28** Almost all of the island is a resource area due to the presence of Land Subject to Coastal Flowage and Coastal Bank. Stockpiling material in the floodplain should be allowed. Stockpiling some stone against the seawall is imperative in order to do the work.
- **C-29** There is no area on the island that is outside the buffer zone. This condition should relate solely to “the buffer zone of the saltmarsh.”
- **C-33** This condition should only apply to saltmarsh and/or BVW, since Land Subject to Coastal Storm Flowage is a resource area, and takes up most of the island where work needs to be done.
- **D-41X** Requires confirmation that no habitat conversion has occurred below mean high water, where the work involves the





removal of groin and dredging, both of which are beneficial habitat conversion.

- **D-46** This is a matter regulated by a state agency, and is beyond the Commission's jurisdiction.
- **D-47** This condition is unclear whether it requests an e-mail or letter to let the Commission know that a dredging will occur or whether it requests a Notice of Intent. In addition, requiring the depositing of dredged material to be 200 feet from a floodplain is overly restrictive and unreasonable. Requiring a Notice to the Commission if it will be deposited in areas of their jurisdiction would be reasonable.

If you have any questions, please feel free to contact me. We look forward to discussing this amendment at your next available hearing.

Sincerely,

**PRIME ENGINEERING, INC.**

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

# Staff Report

Date: November 10, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **86-88 Middle Street – Request for Amended Order of Conditions – DEP# SE 023-1365, Fairhaven CON 023-250**

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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

- 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 requesting to concrete 100% of the lot, including after-the-fact approval for a portion of the work, construct a 4-foot concrete retaining wall with a fence on top, install a permanent structure, and construct associated stormwater as needed.

## COMMENTS

- This is part two of a two part filing to address the work that began without permits in October 2019. The Conservation Commission currently has a cease and desist issued for the property due to work beginning without permits.
- The previous filing was withdrawn without prejudice due to lack of a quorum to vote on the project.
- The applicant has been approved to pour a concrete pad to relocate the fuel tanks on the property away from the residential neighbors as required by the Fire Department and the Building Department.
- The applicant has proposed two scenarios related to managing stormwater for the property:
  - Scenario A: The Town installs a stormwater treatment system in the manhole behind the property to treat stormwater from the entire area before it discharges into the Harbor. I am waiting on confirmation from the Superintendent of Public Works as to what the likelihood is on getting funding for this project and what the timeline might be.

- Scenario B: In the event the Town is unable to install a stormwater treatment system, the applicant will install a stormceptor on their property to treat any stormwater before it discharges to the harbor.
- Items discussed at the site visit included:
  - Small modification to the plans needed to show a second catch basin that is not currently depicted as well as language related to what is being asked for approval after-the-fact.
  - Detail drawing for the structure on steel storage pods
  - Information showing the change in impervious surface over time
- The Commission will also need to determine whether they would like this new set of plans peer reviewed as the original submission was with regard to stormwater.

## **RECOMMENDATION**

- Until revised plans are submitted addressing the items discussed at the site visit and the Commission makes a determination regarding peer review, I cannot make a recommendation.



November 8, 2021

Fairhaven Conservation Commission  
40 Center Street  
Fairhaven, MA 02719

[conservation@fairhaven-ma.gov](mailto:conservation@fairhaven-ma.gov)

**RE: ORDER OF CONDITIONS – FILE #023-1365  
A-1 CRANE COMPANY, INC. - 86-88 MIDDLE STREET**

Dear Commission Members:

On behalf of Patrick Carr of A-1 Crane Company, Inc., we herewith submit a Petition to amend the Order of Conditions for pouring a 4-high concrete perimeter wall with a 5-foot-high steel fence on top as well as the placement of concrete pavement over the entire parking lot, and installation of a water quality inlet structure on the property located at 86-88 Middle Road to end the heavy silt load from flowing into the harbor, and to prevent contaminants from reaching the water table. The storm treatment system will only be installed if the Fairhaven DPW fails to install a storm treatment system for the entire drainage system.

The submittal package consists of two copies of the following:

- This letter,
- Site plans (3 sheets),
- A copy of the abutter's notification form and abutter's list,
- Proof of transmittal to MA DEP.

The filing fee and legal ad fee were previously submitted.

We look forward to presenting this project to you at your next meeting.

Sincerely,  
**PRIME ENGINEERING, INC.**

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

**NARRATIVE IN SUPPORT OF A PETITION FOR AN  
AMENDED ORDER OF CONDITIONS FOR  
A-1 CRANE  
86-88 MIDDLE STREET  
FAIRHAVEN, MA**

**PREPARED BY:**

**PRIME ENGINEERING, INC.  
P.O. BOX 1088  
LAKEVILLE, MA**

**NOVEMBER 8, 2021**

## **1.0 INTRODUCTION**

It is proposed to install a 4-foot-high concrete wall with a 5-foot-high steel fence on top of the north, west and south boundaries of the site and to install a large concrete pad on the ground on the west side of the A-1 Crane property. That requires an amendment to the Order of Conditions from the Fairhaven Conservation Commission which allowed a portion of the ground to be covered with a concrete slab. This Narrative has been prepared in support of that petition.

## **2.0 EXISTING CONDITIONS**

The site, which is referenced as Assessor's Map 11, Lot 006E, is a 19,950 square foot parcel located at 86 Middle Street in Fairhaven, MA. It has an approximately 1,800 square foot, single-story masonry block building, and an approximately 1,700 square foot fabric temporary equipment shelter. The majority of the remaining lot area is covered with hydraulic concrete and/or bituminous concrete. West of the building is approximately 4,000 square feet of unpaved area covered with rip rap stone and steel plates.

There are several above-ground fuel tanks with secondary containment. There are also trucks and equipment staged in the western half of the site. There are no wetland resources on site, other than Land Subject to Coastal Storm Flowage. The ocean is 101 feet from the western property line. The site varies in elevation from 4.0 to 5.7 feet above mean sea level where 6.0 feet is the FEMA base flood elevation.

The town has a piped drainage system that carries runoff water from the neighborhood through the subject site without the benefit of an easement. In the recent past, the Fairhaven DPW initiated a request for funding to relocate that drainage to an area south of the site in order to eliminate the unauthorized encroachment on the subject lot. That proposed drainage project would cost the Town hundreds of thousands of dollars while providing no stormwater quality benefit. The DPW has now agreed instead to seek funding to install a stormwater treatment system that will treat all of the stormwater flow from the entire neighborhood in an area west of the subject lot, in exchange for an easement that would allow the Town drainage system to remain on the subject lot. This approach would save the Town money while providing highly beneficial treatment to the stormwater flow from the entire neighborhood.

It is proposed that the Conservation Commission allow the central portion of the site to have a concrete slab installed in the area not currently paved. This would prevent oil and fuel and other contaminants, that could possibly be dripping from the equipment from infiltrating into the ground and potentially impacting groundwater quality. The facility will maintain a spill containment kit, including speedy dry, oil booms, and other absorbent material and containment drums, so any spills onto the proposed concrete slab can be quickly and efficiently cleaned up.

There is a slight possibility that the Town will not secure the funding to install the overall stormwater treatment system. In which case, we have prepared "Plan B" which is shown on a plan (sheet 3 of 3) entitled "Plan B – Onsite Stormwater Treatment System" dated November 5, 2021." It calls for converting the existing catch basin frame and grate, to a manhole rim and cover, and then installing a storm treatment system that collects and treats only the A-1 Crane storm runoff.

It is proposed that the Conservation Commission allow the applicant to install all of the proposed concrete slab now, except for the area of the potential on-site treatment system. If, by the end of 2022, the Town has not secured the funding for the full system treatment, the amended Order of Conditions would mandate that the on-site treatment system be installed as shown on the contingency plan.

### **3.0 MASSDEP STORMWATER STANDARDS**

This redevelopment project meets all of the stormwater standards to the maximum extent practicable, as detailed in the following subsections.

#### **3.1 NO NEW UNTREATED DISCHARGES**

The stormwater from the proposed slab will be treated, therefore, Standard 1 will be met.

#### **3.2 PEAK ATTENUATION**

The site's runoff discharges to the ocean which is 101 feet away, so permission to not provide detention is requested.

#### **3.3 RECHARGE**

Due to the high-water table, the presence of urban fill and the closeness of the ocean, permission to not provide recharge is requested.

#### **3.4 WATER QUALITY**

The proposed treatment system will improve stormwater quality, therefore, Standard 4 will be met.

#### **3.5 LAND WITH HIGHER POLLUTANT LOADS**

This is a use with higher potential pollutant loads. The proposed proprietary BMP is suitable for this facility's stormwater, therefore Standard 5 will be met.

#### **3.6 CRITICAL AREAS**

The site is not at or near a critical area, therefore, Standard 6 will be met.

#### **3.7 REDEVELOPMENT**

This is a redevelopment project and meets the mandated standards, therefore, Standard 7 will be met.

#### **3.8 EROSION CONTROL PLAN**

Appendix A presents an Erosion Control Program. Therefore, Standard 8 will be met.

### **3.9 OPERATION AND MAINTENANCE PLAN**

Appendix B presents the Permanent Stormwater Operations and Maintenance Plan. Therefore, Standard 9 will be met.

### **3.10 ILLICIT DISCHARGE STATEMENT**

Appendix C presents the Interim Illicit Discharge Statement. Therefore, Standard 10 will be met.

### **4.0 CONCLUSION**

The proposed slab will help protect the soil and groundwater from potential contaminant impact and the proposed treatment system will improve stormwater quality. Except for groundwater recharge which is not needed, all performance standards will be met.



# Staff Report

Date: November 10, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **184 Balsam Street – Notice of Intent – DEP# 023-1368, Fairhaven CON 023-252**

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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)
- Division of Marine Fisheries comments dated 10/19/2021

## RESOURCE AREAS ON/NEAR SITE

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

## RELEVANT PERFORMANCE STANDARDS

- **Salt Marsh:** 10.32
  - (3) A proposed project in a salt marsh, on lands within 100 feet of a salt marsh, or in a body of water adjacent to a salt marsh shall not destroy any portion of the salt marsh and shall not have an adverse effect on the productivity of the salt marsh. Alterations in growth, distribution and composition of salt marsh vegetation shall be considered in evaluating adverse effects of productivity.
  - (4) A small project within a saltmarsh, such as an elevated walkway or other structure which has no adverse effects other than blocking sunlight from the underlying vegetation for a portion of each day may be permitted if such a project complies with all other applicable requirements of [the regulations for coastal wetlands].
- **Coastal Beach:** 10.27
  - (3) Any project on a coastal beach...shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.
  - (5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.

- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
- **LSCSF General Provisions:** 10.24(1) “If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests.”
- **Land under the Ocean** 10.25
  - (5) Projects...which affect nearshore areas of land under the ocean shall not cause adverse effects by altering the bottom topography so as to increase storm damage or erosion of coastal beaches, coastal banks, coastal dunes, or salt marshes.
  - (6) Projects...which affect land under the ocean shall if water-dependent be designed and constructed, using best available measures, so as to minimize adverse effects, and if non-water-dependent, have no adverse effects, on marine fisheries habitat or wildlife habitat caused by:
    - (a) alterations in water circulation;
    - (b) destruction of eelgrass (*Zostera marina*) or widgeon grass (*Rupia maritima*) beds;
    - (c) alterations in the distribution of sediment grain size;
    - (d) changes in water quality, including, but not limited to, other than natural fluctuations in the level of dissolved oxygen, temperature or turbidity, or the addition of pollutants; or
    - (e) alterations of shallow submerged lands with high densities of polychaetes, mollusks or macrophytic algae.
- **Land Containing Shellfish** 10.34
  - (4) ...any project on land containing shellfish shall not adversely affect such land or marine fisheries by a change in the productivity of such land caused by:
    - (a) alterations of water circulation;
    - (b) alterations in relief elevation;
    - (c) the compacting of sediment by vehicular traffic;
    - (d) alterations in the distribution of sediment grain size;
    - (e) alterations in natural drainage from adjacent land; or
    - (f) changes in water quality, including, but not limited to, other than natural fluctuations in the levels of salinity, dissolved oxygen, nutrients, temperature or turbidity, or the addition of pollutants
  - (5) ...projects which temporarily have an adverse effect on shellfish productivity but which do not permanently destroy the habitat may be permitted if the land containing shellfish can and will be returned substantially to its former productivity in less than one year from the commencement of work, unless an extension of the Order of Conditions is granted, in which case such restoration shall be completed within one year of such extension

## PROJECT SUMMARY

- The applicant is proposing to construct a 45-foot fixed pier, 16-foot gangway, two 8-foot-by-16-foot floats, and a 16,000-lb gear drive lift. A total of 14 pilings is proposed.

## COMMENTS

- The project appears to pose minimal impact on the resource areas it crosses. With regard to work that will require digging, 14 pilings are proposed as well as water and electrical service from the house.
- The project has been designed with Division of Marine Fisheries' comments in mind with regard to height over the salt marsh. DMF recommended that the lowest structural member of the dock be at least 1.5 times the width above the salt marsh. In this case, the dock is proposed to be 4 feet wide and they have proposed the lowest structural member at 6 feet.
- The Harbormaster/Shellfish Warden has no concerns about the project in relation to the summer mooring field or shellfish beds in the area.
- The project does not fall with mapped Priority Habitat for Rare and Endangered Species.
- The applicant has provided a shellfish mitigation fee of \$100 for 12 square feet of impact to Land Containing Shellfish.
- The project has been submitted to Board of Appeals to request needed variances. Conservation does not need to wait for Board of Appeals to make a decision on the project. The Wetlands Protection Act only requires that other applicable permits be submitted for prior to filing with Conservation.
- The project will also need a Chapter 91 license.
- The project as proposed appears to comply with Conservation regulations and does not appear to pose an adverse impact to resource areas.

## RECOMMENDATION

- I recommend closing the public hearing for 184 Balsam Street, SE 023-1368, CON 023-252, and issuing an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following conditions:

Approve site plan dated July 14, 2020 and dock plans dated September 27, 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. The limit of work for this project shall be the property boundaries and the scope of work to occur below Mean High Water as outlined on the approved plans.
10. WET-1
11. The dock shall be constructed so as to maintain 6 feet of height between the salt marsh and the lowest structural member of the dock. This is consistent with the Division of Marine Fisheries recommended 1.5:1 H:W ratio to reduce shading and marsh loss.

### B. Prior to Construction

12. CAP-3

13. REC-3
  14. DER-1
  15. PCC-3
  16. EMC-1
  17. PCC-2
- C. During Construction
18. REC-2
  19. FZ-1
  20. Construction access shall be from the subject property only.
  21. At no time shall any construction materials, soils, fills, sediments, dredging or any other substances be stockpiled or stored within the coastal beach or salt marsh. The existing lawn may be permitted to be used as a staging area.
  22. All equipment used on site must be stored or parked in an area at least 50 feet from the coastal beach and salt marsh.
  23. STO-4
  24. STO-5
  25. MAC-1
  26. MAC-2
  27. MAC-3
  28. MAC-7
  29. MAC-8
  30. MAC-9
  31. There shall be no disturbance of the site, including cutting of vegetation, outside of the approved scope of work.
- D. After Construction/In Perpetuity
32. REV-1
  33. COC-3

Perpetual Conditions

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

34. Appropriate signage related to public access shall be placed on both sides of the structure and maintained in perpetuity.
35. If the floats are removed for any period of time, storage of said floats shall comply with all applicable federal, state, and local flood zone regulations.
36. 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.
37. DER-4

Exhibit A -Index Map  
184 Balsam St.



LOCUS

20 m  
100 ft

Scale = 1:2,257

255,450.48m 816,869.36m

MassGIS Topographic Features Basemap

PH 887

Locus



Balsam St

Cherrystone Road

20 m  
100 ft  
Scale = 1:2,257

255,253.82m 816,958.06m

Robert Sullivan



## **INTRODUCTION**

Kenneth Thomson (Botanist) reviewed 184 Balsam Street in Fairhaven, MA for the presence of wetland resources. The property is 0.38 acre parcel located on the western shore of West Island. The property maintains a single family home with an outbuilding and shed. It is a treed lot with upland lawn and plantings. A small retaining wall separates the developed portion from the salt marsh located along the shore. A small area of coastal beach was located along the southern portion of the wall above the salt marsh.

The property is located with the National Flood Hazard Layer velocity zone with an elevation of 17 feet NAVD88. The 100-year storm has an elevation 14 NAVD88 both extend inland from the property, see attached Firmette. Located 116 feet from the shore, Natural Heritage Program has mapped as Estimated and Priority (PH 887) Habitat of rare & endangered species. Offshore of the parcel is mapped shellfish suitability for quahog and soft shell clams.

## **WETLAND REGULATORY REVIEW**

### **Massachusetts Wetland Resource Areas**

Wetland resource areas on the site regulated under the Massachusetts Wetlands Protection Act (MGL Chapter 131, Section 40) and its Regulations (310 CMR 10.00) include:

- *Coastal Beach*
- *Salt Marsh*
- *Land Under the Ocean*
- *Land Containing Shellfish*
- *Land Subject to Coastal Storm Flowage*

## WETLAND DELINEATION

Kenneth Thomson (Botanist/Wetland Scientist) identified and delineated wetlands subject to regulatory jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. 1344) or the Massachusetts Wetlands Protection Act, M.G.L., Chapter 131, Section 40. Fieldwork was conducted on July 20<sup>th</sup>, 2021. The predominance of hydrophytic vegetation, evidence of hydric soils, and wetland hydrology were used to define the boundary of vegetated wetlands following the Interim Regional Supplement to the 1987 Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region, January 2012, and the 1995 MA DEP Delineation Manual Guidelines. The wetlands were flagged with pink pin flags numbered 1 to 7, tied to woody vegetation. DEP wetland data sheets were developed for wetland flag #4.

### MassGIS OLIVER REVIEW - 7/19/2021

The following data layers are associated with the site under review.

Present	Absent	Natural Heritage (Within 500 Feet, ACOE)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Certified Vernal Pools
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Potential Vernal Pools
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Estimated Habitat
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Priority Habitat
<b>Ground Water Protection</b>		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Interim Well Head Protection
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Zone 2
<b>Surface Water Protection</b>		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Zone A
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Zone B
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Zone C
<b>Wetlands</b>		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	DEP Wetland Layer
<input type="checkbox"/>	<input type="checkbox"/>	Perennial Stream (USGS Quad blue line stream)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	2005 Human Altered Area/Wetland Change Layer
<b>Floodplain</b>		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	FEMA Flood Hazard Data
<b>Out Standing Resource Waters (ORW)</b>		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ORW
<b>Area of Environmental Concern (ACEC)</b>		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ACEC



Sincerely,  
*5 Wetlands*

Kenneth Thomson  
Botanist

## MassDEP Bordering Vegetated Wetland (310 CMR 10.55) Delineation Field Data Form

Applicant: **Robert Sullivan** Prepared by: **Ken Thomson / Botanist** Project location: **184 Balsam Street, Fairhaven** DEP File:

Check all that apply:

- Vegetation alone presumed adequate to delineate BVW boundary: fill out Section I only
- Vegetation and other indicators of hydrology used to delineate BVW boundary: fill out Sections I and II
- Method other than dominance test used (attach additional information)

### Section I.

Vegetation	Observation Plot Number: <b>Wetland</b>		Transect Number: <b>WF# 4</b>	Date of Delineation: <b>7/20/2021</b>
A. Sample Layer & Plant Species (by common/scientific name)	B. Percent Cover (or basal Area)	C. Percent Dominance	D. Dominant Plant (yes or no)	E. Wetland Indicator Category*

**TREE TOTAL = N/A**

**SHRUB TOTAL = N/A**

**GROUND COVER TOTAL = 97%**

Salt Marsh Cord Grass, *Spartina patens*

95

(95/97) \*100=98%

Yes

FACW\*

Marsh Elder, *Iva frutescens*,

2

(2/97) \*100=2%

No

**VINE TOTAL = N/A**

\* Use an asterisk to mark wetland indicator plants: plant species listed in the Wetlands Protection Act (MGL c.131, s.40); plants in the genus *Sphagnum*; plants listed as FAC, FAC+, FACW-, FACW, FACW+, or OBL; or plants with physiological or morphological adaptations. If any plants are identified as wetland indicator plants due to physiological or morphological adaptations, describe the adaptation next to the asterisk.

### Vegetation conclusion:

Number of dominant wetland indicator plants: **1**

Number of dominant non-wetland indicator plants: **0**

Is the number of dominant wetland plants equal to or greater than the number of dominant non-wetland plants?

**YES** NO

If vegetation alone is presumed adequate to delineate the BVW boundary, submit this form with the Request for Determination of Applicability or Notice of Intent

## MassDEP Bordering Vegetated Wetland (310 CMR 10.55) Delineation Field Data Form

Applicant: **Robert Sullivan** Prepared by: **Ken Thomson / Botanist** Project location: **184 Balsam Street, Fairhaven** DEP File:

Check all that apply:

- Vegetation alone presumed adequate to delineate BVW boundary: fill out Section I only
- Vegetation and other indicators of hydrology used to delineate BVW boundary: fill out Sections I and II
- Method other than dominance test used (attach additional information)

### Section I.

Vegetation	Observation Plot Number: <b>Upland</b>	Transect Number: <b>WF# 4</b>	Date of Delineation: <b>7/20/2021</b>
A. Sample Layer & Plant Species (by common/scientific name)	B. Percent Cover (or basal Area)	C. Percent Dominance	D. Dominant Plant (yes or no)
E. Wetland Indicator Category*			

**TREE TOTAL = N/A**

**SHRUB TOTAL = N/A**

**GROUND COVER TOTAL = 100%**

Upland Lawn

100

(100/100) \*100=100%

Yes

FACW\*

**VINE TOTAL = N/A**

*Lawn located above a retaining wall.*

\* Use an asterisk to mark wetland indicator plants: plant species listed in the Wetlands Protection Act (MGL c.131, s.40); plants in the genus *Sphagnum*; plants listed as FAC, FAC+, FACW-, FACW, FACW+, or OBL; or plants with physiological or morphological adaptations. If any plants are identified as wetland indicator plants due to physiological or morphological adaptations, describe the adaptation next to the asterisk.

### Vegetation conclusion:

Number of dominant wetland indicator plants: **0**

Number of dominant non-wetland indicator plants: **1**

Is the number of dominant wetland plants equal to or greater than the number of dominant non-wetland plants?

YES **NO**

If vegetation alone is presumed adequate to delineate the BVW boundary, submit this form with the Request for Determination of Applicability or Notice of Intent



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

251 Causeway Street, Suite 400, Boston, MA 02114

p: (617) 626-1520 | f: (617) 626-1509

[www.mass.gov/marinefisheries](http://www.mass.gov/marinefisheries)



CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lt. Governor

KATHLEEN A. THEOHARIDES  
Secretary

RONALD S. AMIDON  
Commissioner

DANIEL J. MCKIERNAN  
Director

October 19, 2021

Fairhaven Conservation Commission  
Town Hall  
40 Center Street  
Fairhaven, MA 02719

Dear Commissioners:

The Division of Marine Fisheries (MA DMF) has reviewed the Notice of Intent (NOI) by Robert and Karen Sullivan for a proposed dock, gangway, and floats at 184 Balsam Street on Nasketucket Bay in the Town of Fairhaven. Existing marine fisheries resources and habitat and approaches to avoid or minimize impacts to these resources are described below.

The proposed dock would partly overly salt marsh vegetation based on a wetland survey performed by Kenneth Thomson. Salt marsh provides a variety of ecosystem services, including habitat and energy sources for many fish and invertebrate species [1–3].

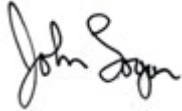
The project site also includes mapped shellfish habitat for bay scallop (*Argopecten irradians*), quahog (*Mercenaria mercenaria*), and soft shell clam (*Mya arenaria*). Land containing shellfish is deemed significant to the interest of the Wetlands Protection Act (310 CMR 10.34) and the protection of marine fisheries.

MA DMF offers the following comments for your consideration:

- The NOI plans do not specify proposed dock height over salt marsh. MA DMF recommends that dock decking constructed over salt marsh maintain a minimum 1.5:1 H:W ratio measured relative to the base of any horizontal support structures associated with the dock decking. This would require a minimum six foot height for the proposed four foot wide decking. The MA DMF 1.5:1 H:W ratio recommendation is based on a controlled study that showed reductions in shading and marsh loss at this H:W threshold in experimental docks set at a north-south orientation [4]. A companion study of different dock designs over salt marsh in Massachusetts showed that docks set at an east-west orientation caused greater shading and marsh loss than equivalent designs installed in a north-south orientation [5]. The proposed decking has an approximate east-west orientation, providing further support for properly achieving a 1.5:1 H:W ratio to reduce the overall shading effect of the dock structure.

Questions regarding this review may be directed to John Logan in our New Bedford office at john.logan@mass.gov.

Sincerely,



John Logan, Ph.D.  
Fisheries Habitat Specialist

cc: Michael Koska, Michael J. Koska & Associates, Inc.  
Tim Cox, Fairhaven Shellfish Constable  
Holly Williams, Kaley Towns, Emma Gallagher, Keri Anne Goncalves, MA DMF

### **References**

1. Boesch DF, Turner RE. Dependence of fishery species on salt marshes: the role of food and refuge. *Estuaries*. 1984;7: 460–468.
2. Deegan LA, Garritt RH. Evidence for spatial variability in estuarine food webs. *Mar Ecol Prog Ser*. 1997;147: 31–47.
3. Deegan LA, Hughes JE, Rountree RA. Salt marsh ecosystem support of marine transient species. In: Weinstein MP, Kreeger DA, editors. *Concepts and Controversies in Tidal Marsh Ecology*. Kluwer Academic Publisher, The Netherlands; 2000. pp. 333–365.
4. Logan JM, Voss S, Davis A, Ford KH. An experimental evaluation of dock shading impacts on salt marsh vegetation in a New England estuary. *Estuaries Coasts*. 2018;41: 13–24.
5. Logan JM, Davis A, Markos C, Ford KH. Effects of docks on salt marsh vegetation: an evaluation of ecological impacts and the efficacy of current design standards. *Estuaries Coasts*. 2018;41: 661–675.

JL/kg

# Staff Report

Date: November 10, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **20 Yankee Lane – Violation/Enforcement – Fairhaven EO 023-014**

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## DOCUMENTS REVIEWED

- Submitted restoration plan
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- Revised restoration plan dated October 27, 2021

## RESOURCE AREAS ON/NEAR SITE

- Riverfront Area
- Inland Bank
- Land Under Water Bodies and Waterways
- Bordering Vegetated Wetland
- Buffer Zone

## RELEVANT PERFORMANCE STANDARDS

- **Bank:** 310 CMR 10.54(4)
  - (a) ...Work on a Bank shall not impair the following:
    1. The physical stability of the Bank;
    2. The water carrying capacity of the existing channel within the Bank;
    3. Ground water and surface water quality;
    4. The capacity of the Bank to provide breeding habitat, escape cover and food for fisheries;
    5. The capacity of the Bank to provide important wildlife habitat functions. A project or projects on a single lot, for which Notice(s) of Intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 50 feet (whichever is less) of the length of the bank found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. In the case of a bank of a river or an intermittent stream, the impact shall be measured on each side of the stream or river. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures contained in 310 CMR 10.60.
    6. Work on a stream crossing shall be presumed to meet the performance standard set forth in 310 CMR 10.54(4)(a) provided the work is performed in compliance with the Massachusetts Stream Crossing Standards by consisting of

a span or embedded culvert in which, at a minimum, the bottom of a span structure or the upper surface of an embedded culvert is above the elevation of the top of the bank, and the structure spans the channel width by a minimum of 1.2 times the bankfull width. This presumption is rebuttable and may be overcome by the submittal of credible evidence from a competent source. Notwithstanding the requirement of 310 CMR 10.54(4)(a)5., the impact on bank caused by the installation of a stream crossing is exempt from the requirement to perform a habitat evaluation in accordance with the procedures contained in 310 CMR 10.60.

(b) Structures may be permitted in or on a Bank when required to prevent flood damage, including the renovation or reconstruction (but not substantial enlargement) of such facilities, buildings and roads,...

(c) No project may be permitted which will have any adverse effect on specified habitat sites of Rare Species.

- **Land under Water Bodies and Waterways (under any Creek, River, Stream, Pond, or Lake)**

10.56 (4)

(a) Work shall not impair the following:

1. The water carrying capacity within the defined channel, which is provided by said land in conjunction with the banks;

2. Ground and surface water quality;

3. The capacity of said land to provide breeding habitat, escape cover and food for fisheries; and

4. The capacity of said land to provide important wildlife habitat functions. A project or projects on a single lot, for which Notice(s) of intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 5,000 square feet (whichever is less) of land in this resource area found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures established under 310 CMR 10.60.

5. Work on a stream crossing shall be presumed to meet the performance standard set forth in 310 CMR 10.56(4)(a) provided the work is performed in compliance with the Massachusetts Stream Crossing Standards by consisting of a span or embedded culvert in which, at a minimum, the bottom of a span structure or the upper surface of an embedded culvert is above the elevation of the top of the bank, and the structure spans the channel width by a minimum of 1.2 times the bankfull width. This presumption is rebuttable and may be overcome by the submittal of credible evidence from a competent source. Notwithstanding the requirements of 310 CMR 10.56(4)(a)4., the impact on Land under Water Bodies and Waterways caused by the installation of a stream crossing is exempt from the requirement to perform a habitat evaluation in accordance with the procedures established under 310 CMR 10.60.

(b) ...the issuing authority may issue an Order...to maintain or improve boat channels

(c) ...no project may be permitted which will have any adverse effect on [rare species].

- **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

## VIOLATION SUMMARY

- Evidence of work without permits was observed during an erosion control inspection for a permitted solar array project. The observed activities are located on the resource area side of the erosion control barrier and are not affiliated with the approved solar array project. The following was observed:
  - Significant vegetation clearing and grubbing within Riverfront Area and Bordering Vegetated Wetland
  - Evidence of machinery within Riverfront Area and Bordering Vegetated Wetland
  - Removal of large amounts of debris from Riverfront Area and Bordering Vegetated Wetland
  - Impact to bank of perennial stream
- Based on the depicted edge of vegetation on the approved plans for the solar array (SE 023-1269), approximately 2.41 acres of Riverfront Area and approximately 6.88 acres of Bordering Vegetated Wetland have been impacted.

## COMMENTS

- The wetland scientist submitted a restoration plan in response to the issued Enforcement Order. The restoration plan needs revision.
- I sent the following comments to the wetland scientist:
  - Overall, much more detail is needed. The submitted documents talk about restoring on-site grades to match those on the 2017 plan but do not provide any information about current grades on site and what level of work may be needed to potentially restore to 2017 conditions. A current conditions plan is needed that details much more specifically what the status of the site is. The restoration site plan also does not address that the east-west stream channel appears to have been lengthened from the 2017 plans and



there is a new stream channel that is now present on the property running north-south that the 2017 plans do not show. The lengthening of the east-west channel needs to be addressed and the addition of the north-south channel needs to be restored to bordering vegetated wetlands and included in this restoration plan. Additionally, if there are any large fill piles currently in the resource area, those need to be shown on a current conditions plan and a plan for their removal included.

- There are several questions that need to be answered. Is there fill in the resource area that needs to be removed? What are the current elevations and grades? Is it currently pit and mound topography? Have areas been so compacted that they no longer drain properly? What is the proposed method of restoration of grades and where are the access paths to restore those areas?
- The restoration plan also discusses restoring the stream but does not provide any details as to how the stream will be restored. In order to ensure the stream is being restored so it is functioning properly hydrologically and providing the appropriate hydrology to the wetland, an engineer and wetland scientist will have to work collaboratively. Hydraulic calculations will likely be needed.
- The proposed seed mix is also identified as a Pennsylvania ecotype. This is inappropriate for Massachusetts. Additionally, there should be some shrub and tree plantings proposed, especially if early succession had started in the area. Using the higher end of spacing as outlined in MassDEP's Massachusetts Inland Wetland Replication Guidelines is fine, i.e. 10 feet on center for shrubs and 15 feet on center for trees. If herbaceous cover is already 75% or more, seeding is not necessary in those areas. This will allow some of the expense of purchasing seed to be shifted to planting some trees and shrubs. Areas that don't have good herbaceous cover will need to be seeded, including areas that are disturbed for restoration purposes.
- An invasive species management plan also needs to be part of this restoration plan as there is *Phragmites* on site already.
- This should be a phased restoration plan both because it is a large area and because there are several facets to this project. Start with revegetation of areas that are not going to be disturbed by stream restoration, removal or fill, or equipment in the resource area. Include an access plan as to how you will get to the areas to be restored. A planting plan for areas that are not going to be disturbed by other restoration work can be presented to the Commission so planting may be able to occur this fall. That gives until the spring/summer for subsequent phases of the restoration work. If you are proposing to wait until a low-flow period for the stream restoration, other restoration work can and should be occurring in the meantime.
- In order to determine whether or not this restoration will be successful and complies with the regulations, much more information is needed.
- Because the revised restoration plan was only submitted two business days before the meeting, I have had limited time to review it and provide feedback to the wetland scientist.
- While the revised restoration plan is an improvement, some of my previous comments and concerns still need to be addressed, including:
  - Why is the entire 100-foot buffer zone not included in the restoration plan? The Fairhaven Wetlands Bylaw lists the 100-foot buffer zone as its own resource area. Therefore, not just the 25-foot buffer zone should be included for restoration. The entire buffer zone should be included, especially since work within the 100-foot buffer zone needs permits just as working within a resource area does.

- There is still significant lack of information regarding access for the various stages of restoration. Wetland crossing areas need to be very specifically laid out so as not to cause further damage.
- There is a significant lack of detail regarding the removal of the manmade stream. How is it being filled? With what? Where is the access? What is the method of restoration for that area once the stream is discontinued?
- Why are the fill and brush piles in the 100-foot buffer zone not included for removal? What is the access for removal of fill and brush piles? How will it be done?
- Invasive species management: what is the access for the excavator? How will the glyphosate be applied if needed? Will it be done by a licensed applicator?
- Regrade site and natural stream: An engineer needs to be involved regarding the stream restoration. Hydraulic calculations are needed to determine that stream flow and functionality is being restored properly. How are you addressing the extension of the stream to the west? What is the access? How will the work be done? How will grades be restored? How will you confirm that areas aren't overly compacted?
- Re-establish topsoil: Will re-exposed, buried topsoils to be reused onsite be screened to ensure invasive species aren't being spread?
- Live-stake shrubs: What is the access?
- Monitoring: Monitoring should be for at least three years given the scale of the project. Monitoring should also include soil characteristics, hydrology, and stream functionality.
- Once again, this restoration plan needs revision and incurring further delays for an enforcement order that stated a restoration plan was required to be submitted by August 4, 2021 and work was to have started by November 15, 2021.
- The wetland scientist submitted a revised restoration plan on November 7. I provided comments for further revision on November 9. I have not yet received a response, so I have no update regarding potential approval of the first phase of the restoration plan. The Commission previously voted to have a restoration plan submitted on November 8 for review to be approved at the November 15 meeting, otherwise \$300/day fines may begin to incur.

# Staff Report

Date: November 10, 2021  
To: Conservation Commission  
From: Whitney McClees, Conservation Agent  
Subject: **217 Alden Road – Violation/Enforcement – EO 023-015**

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## DOCUMENTS REVIEWED

- Enforcement Order issued August 19, 2021
- Previous site plan dated November 9, 1999
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- Preliminary response letter dated September 19, 2021

## RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone

## PERFORMANCE STANDARDS

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

3. In the judgment of the issuing authority it is not reasonable to scale down, redesign or otherwise change the proposal.
  - (d) No project may be permitted which will have any adverse effect on specified habitat sites of rare species
  - (e) No work shall destroy or otherwise impair any Area of Critical Environmental Concern
- **Buffer Zone General Provisions:** 10.53(1) "For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work."
- **Buffer Zone Wetlands Bylaw Regulations (Chapter 192 Regulations):**
  - 4.0 0 to 25 Foot Buffer Zone Resource Area
    - 4.1 An applicant shall demonstrate that no alteration is proposed within the 0-25 foot buffer zone resource area.
  - 5.0 25 to 50 Foot Buffer Zone Resource Area
    - 5.1 Any applicant proposing a project within the 25-50 foot buffer zone resource area shall indicate that there are no structures including, but not limited to, concrete, stone, or other impervious foundations and/or slabs for construction purposes that would significantly increase runoff.
    - 5.2 Alteration of the 25-50 foot buffer zone resource area is limited to grading, tree clearing, stormwater management system components, lawns, gardens, and other low-impact uses as determined by the Commission or otherwise approved by the Commission by the variance procedures set forth in Section 8.0 of this regulation. Footings for building structures, such as a deck, as opposed to slabs or foundations, shall be used when technically feasible.
  - 6.0 50 to 100 Foot Buffer Zone Resource Area
    - 6.1 Alterations including structures are allowed in the 50-100 foot buffer zone resource area. The Commission may require additional mitigation offsets when the slope within the buffer zone is steeper than 10%. Additionally, mitigation offsets may be required by the Commission when the applicant proposes that more than 30% of the 50-100 foot buffer zone resource area is proposed to be impervious surface.

## ACTIVITY SUMMARY

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

## COMMENTS

- The property owner immediately came into the office to address the issue. He explained that he was unaware that he needed a permit to spread fill and remove vegetation on his property.

- A certificate of compliance was issued in 2018 around the time he purchased the house, but he explained that he was unaware that meant the property fell within the jurisdiction of the Commission.
- The property owner expressed that he wants to work with the Commission to rectify the situation.
- I conducted a site visit to see if I could determine whether the wetland line from 1999 had shifted.
- There is probably 4-5 feet of fill on site, making it incredibly difficult to determine where the edge of the wetland is without further investigation.
- The recommendations I made on site to incorporate into any restoration plan were as follows:
  - Removal of much of the fill and regrading so the lawn more gradually slopes back toward the drainage ditch and doesn't displace water onto the neighboring property
  - Incorporate native trees, shrubs, and groundcover into planting proposal
- The Commission issued an Enforcement Order to require the property owner to have a delineation done and provide a restoration plan by November 15, 2021 based on what the delineation showed.
- The property owner engaged a wetland scientist, who did a preliminary review, but a formal restoration plan has not yet been submitted.
- I reached out to the property owner requesting an update, but have not yet received one.

## **RECOMMENDATION**

- Until I receive an update from the property owner as to the status of the work, I cannot make a recommendation.



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

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**217 Alden St - Response to EO**

5 messages

**STEVE IVAS** <spivas@comcast.net>

Mon, Sep 20, 2021 at 10:49 AM

To: Whitney McClees &lt;wmcclees@fairhaven-ma.gov&gt;, Deanasia Silveira &lt;[REDACTED]&gt;

Whitney,

Here's an initial response to the EO at 217 Alden Street. Happy to discuss it with you, and make changes to the response as you and the Commission sees fit.

Hope you get to see the holes on site today.

Thanks, Steve

PS: Dee, please copy to Jessy and Mr. DeGrace. Do you have an e-mail for him? Thanks, Steve

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**Steve Ivas, MS, PWS # 2860**  
**Ivas Environmental**  
**315 Winter St., Norwell MA 02061-1401**  
**781.659.1690, spivas@comcast.net**



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**2021\_09\_20\_FAIRHAVEN\_217\_ALDEN\_RD\_LET\_RESP\_TO\_EO\_PKG\_reduced.pdf**  
337K

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**Whitney McClees** <wmcclees@fairhaven-ma.gov>

Thu, Sep 23, 2021 at 11:37 AM

To: STEVE IVAS &lt;spivas@comcast.net&gt;

Hi Steve,

I took a look at the flags and holes today. Flag #7 may need some adjustment once the debris pile is removed and Flag #2 might need a small adjustment, but let's go with this rough line for now until the fill is removed and we can get a better look at actual conditions.

I checked in with the Chair of the Commission. He said we can move forward with phase 1 (addressing the fill) and then put the restoration plan before the Commission once the fill is addressed. That way we might be able to still hit the fall planting window. Happy to chat further if you'd like.

Best,  
Whitney

Whitney McClees

Conservation Agent and Sustainability Coordinator

Town of Fairhaven

40 Center Street

Fairhaven, MA 02719

508-979-4022 ext. 128

*she/her/hers*

[Quoted text hidden]

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**STEVE IVAS** <spivas@comcast.net>

Thu, Sep 23, 2021 at 11:48 AM

To: Whitney McClees <wmcclees@fairhaven-ma.gov>, Deanasia Silveira <[REDACTED]>

Thanks Whitney - your observations are right on, and [we will let you know when we are proceeding with the next step so that you can review work as it occurs.](#)

Thanks kindly, Steve

[Quoted text hidden]

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**Whitney McClees** <wmcclees@fairhaven-ma.gov>

Mon, Sep 27, 2021 at 12:00 PM

To: jptreesllc@gmail.com, shaun degrace <[REDACTED]>

Good morning,

Please see the below correspondence related to next steps. Working with Steve, you can begin to remove the fill and debris pile so the wetland line can be fine-tuned. Once the line is fine-tuned, Steve can put together a restoration plan for the Commission to review.

Let me know if you have any questions.

Best,  
Whitney

Whitney McClees

Conservation Agent and Sustainability Coordinator

Town of Fairhaven

40 Center Street

Fairhaven, MA 02719

508-979-4022 ext. 128

*she/her/hers*

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**shaun degrace** <[REDACTED]>

Mon, Sep 27, 2021 at 3:01 PM

Reply-To: shaun degrace <[REDACTED]>

To: wmcclees@fairhaven-ma.gov, jptreesllc@gmail.com

Thank you for all your help I appreciate you Have a blessed day

[Sent from Yahoo Mail on Android](#)

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**Ivas Environmental  
Environmental Sciences  
Wetlands and Planning Services**

**315 Winter Street  
Norwell MA 02061-1401  
781.659.1690, [spivas@comcast.net](mailto:spivas@comcast.net)**

**Town of Fairhaven Conservation Commission  
Fairhaven Town Hall  
40 Center Street  
Fairhaven, MA 02719**

**19 Sep 21**

**RE: Enforcement Order Issued 19 Aug 21 - 217 Alden Road, Fairhaven**

**Dear Mr. Chairman and Members of the Commission:**

This letter report and attachment address actions taken to date regarding the Enforcement Order (EO) issued 19 Aug 21 to Shaun DeGrace for the site at 217 Alden Road, Fairhaven.

The requirements within the EO and Attachment A include the following items:

- **Placement of erosion controls at the perimeter of the cleared/filled area.** Ivas Environmental visited the site on Friday morning, 17 Sep 21 (weather conditions were intermittent rain, temperatures in the 60s, and heavy clouds). Erosion controls were noted as extant on site at least six feet away from the toe of the slope of a recent area of filling at 217 Alden Road, as placed by JP Trees, LLC soon after the EO was received by the owner of the site..
- 1. **Attachment A requires a site assessment and a delineation by a qualified Wetland Scientist and the submission of a restoration plan on or before 15 Nov 2021.**

Work completed with JP Trees, LLC on 17 Sep 21 was the boring of one-foot wide holes into the fill area to attempt to discover the previous Bordering Vegetated Wetland (BVW) line and the previous upland area. Nineteen holes were bored between four and five feet deep to attempt to find hydric soils and upland soils. The rationale for the locations on site was a 1999 wetland delineation surveyed in by FitzGerald Engineering, Inc that was within Town of Fairhaven Conservation Commission (with thanks to Agent W. McClees for providing the plan).

The holes were bored with a one-foot wide auger mounted on a Caterpillar 277D tracked machine. This is a Multi-Terrain Loader, also called a Skid Steer, that was perfectly appropriate for the work, as it travels on tracks rather than wheels over the very muddy surface of the fill material. The Operator was J. Pimentel of JP Trees, LLC. The auger holes were left open for the Fairhaven Agent to review.

Detailed review of the various soil horizons was not recorded, due to the weather conditions. The majority of the soil was fill, including former farm soils, since a strong smell of cow manure was detected in some of the fill in some of the auger holes. Small pieces of charcoal were also found in the fill, indicating former coal-burning waste.

Pink pins were placed at approximate locations between the holes that **may describe the BVW/Upland interface. The locations indicate an approximate location that should be the subject of more intensive review once the removal of the fill is underway.**



**Fill removal should occur from the toe of the fill working back towards the single-family residence that is on site.** The pins provide a logical goal for this work, but are not detailed regarding the wetland/upland line that previously existed before the fill. No representations are made here that the pins represent a legal jurisdictional BVW line: the representation is that the pins represent a simulacrum created on a rainy day of the BVW line that is buried beneath four to five feet of fill.

The surface of the filled area is replete with small seedlings (or perhaps rhizome sections that have grown) invasive common reed (*Phragmites australis*). Other vegetation that appeared to be dominant on top of the fill was American pokeweed (*Phytolacca americana*).

2. **Attachment A #2 requires a list of the trees and shrubs and other vegetation that was damaged and/or cut down, including indication which are native and which are not.**

Ivas Environmental staff reviewed the pile of trees that was staged near the southwest corner of the site. Trees noted included: invasive black locust (*Robinia pseudoacacia*, FACU), northern white cedar (*Thuja occidentalis*, FACW), eastern red cedar (*Juniperus virginiana*, FACU), red maple (*Acer rubrum*, FAC), and northern red oak (*Quercus rubra*, FACU). Invasive Asian bittersweet (*Celastrus orbiculata*, FACU) also may have been in the pile.
3. **Attachment A, #3 requires that the disturbed area is restored and re-vegetated to the original extent by 01 Jun 2022.** This is a goal for the project.
4. **Attachment A, #4 requires assessments of vegetation for three growing seasons following the completion of the work.** This shall be completed.
5. **#s 5 - 8 include access rights from the Commission, the right to impose additional conditions, performance standards for BVWs, and remedy for non-compliance with the order.** These conditions shall be adhered to.

The attached graphic, Fig. 1, provides a 2019 Orthophoto with some MA DEP and NRCS data layers, e.g., soils and wetland boundaries, and Town of Fairhaven assessors tax parcels. Very rough approximations of the locations of the pins have been added to the graphic. Please note:

- A. It appears that the **assessors tax parcels line** between the subject site at 217 Alden Road and the property to the immediate north **may be mis-justified within the data layer**, as the assessors parcel layer is offset from both Alden Road and what appears to be the adjacent parcel.
- B. The MA DEP Wetland Boundary that shows the **stream (a light blue line) is also mis-justified and does not follow the stream on the 2019 orthophoto.**
- C. The MA DEP Wetlands data layer **does not show the former wetland (BVW along the stream) within the rear yard at 217 Alden Street.**

**Proposed next steps are:**

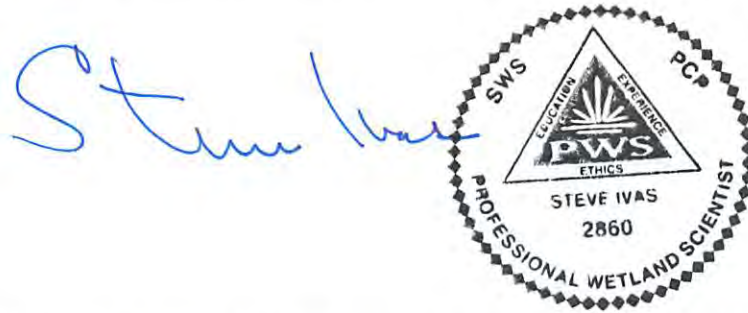
1. Begin to **remove the fill** from the easterly toe of the slope, and working backwards towards the single-family residence.
2. **Fill removal to an off-site location** after a possible staging on the site, that would be ringed with erosion controls, due to the difficulty of working on the surface of saturated soils.

3. The removal operator and/or consultant would be **required to identify the original top of the soil** under the fill, with consulting from the Town and/or a Wetlands Scientist.
4. The Town of Fairhaven Conservation Commission, Agent, and the Wetlands Scientist consultant for the owner would be required to **agree on the limit of the fill** so that the toe of slope of the fill would be just up-gradient of the wetland delineation line parallel to the stream.

The owner, Mr. DeGrace, is ready to begin the next stage of addressing this EO with approval from the Commission.

If you have any questions regarding the above or attached information, please contact me.

Sincerely,



Steve Ivas, Principal

Encl: Fig. 1 - MassGIS Orthophoto and Data Layers around 217 Alden Road, Fairhaven - 19 Sep 21

XC: S. Degrace, 217 Alden \Road, Fairhaven MA 02719  
J. Pimentel, JP Trees LLP, 875 State Road, Unit 3B, Westport MA 02970  
(Both via email)

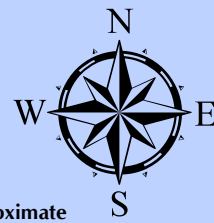
File: C:\Wetlands\2021\Fairhaven\217 Alden Road\Letter Response to ConCom re: EO\19 Sep 21.wpd

# Fig. 1 - MassGIS 2019 Orthophoto & Data Layers Around 217 Alden Road, Fairhaven



- 217\_ALDEN\_RD\_FAIRHAVEN
- DEP 2009 Wetlands Polygons
- DEP 2009 Wetlands Lines
- MassGIS Elevation Contours - ft
- MassGIS / Fairhaven Tax Parcels
- NRCS Bristol Co. Soils
- Wetland Flag Points & Nos. - 17 Sep 21 - Approximate

Soil Map Unit Numbers:  
 Less than or equal to 74: Hydric  
 Above 74: Upland, w/Exceptions



Scale: 1:500



Ivas Environmental  
 315 Winter St., Norwell MA 02061-1401  
 781.659.1690, spivas@comcast.net

E:\2021\Wetlands\Fairhaven\217 Alden Rd\Fig. 1\19Sep21.mxd

- Sources:
- MassGIS 2019 Orthophotos (19TCG420125jp2)
  - MA DEP 2009 Wetlands Polygons (wetlandsdep\_poly.shp)
  - MA DEP 2009 Wetlands Lines (wetlandsdep\_arc.shp)
  - MassGIS / Fairhaven Assessors' Tax Parcels (M94TaxPar.shp)
  - NRCS Bristol Co. Soils (soi\_bris.shp)
  - MassGIS / Fairhaven Elevation Contours (hp94.shp)

Projection: Massachusetts State Plane NAD83 M



TOWN OF FAIRHAVEN, MASSACHUSETTS

# CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

## Memorandum

Date: November 10, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

RE: North Street Marsh Enforcement Order

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The Enforcement Order specified that a restoration plan was to be submitted by November 8, 2021. Nothing has been submitted yet. I spoke to the applicant's engineer today and he indicated there may have been a miscommunication and will hopefully be sending something in on Friday.

I have not confirmed whether erosion control was placed on the upland side of the boulders to prevent leaching into the salt marsh as was required by the Order.