

Staff Report

Date: December 7, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **48 Torrington Road (29B-171) – Request for Certificate of Compliance – DEP# 023-1289, Fairhaven CON 19-034**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- Approved Amended Site Plan dated January 13, 2020
- Amended Order of Conditions issued March 27, 2020
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

RESOURCE AREAS ON/NEAR SITE

- Buffer Zone
- Bordering Vegetated Wetland (no work proposed in this resource area)
- Land Subject to Coastal Storm Flowage (no work proposed in this resource area)
- Barrier Beach (no work proposed in this resource area or within 100 feet)

RELEVANT PERFORMANCE STANDARDS

- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”

PROJECT SUMMARY

- The original OOC was issued on March 4, 2019 approving a site plan with depicted a proposed single family dwelling, the construction of a driveway, a 9-foot-high concrete block retaining wall, an in-ground swimming pool and an associated perimeter patio, the installation of underground utilities, and the placement of fill to properly grade the site.
- The amended OOC was issued on March 27, 2020 approving a different house footprint, driveway configuration, and grading schematic, resulting in a significant reduction in the scope of work.
- A subsequent Determination was issued on May 26, 2021 for the installation of a small greenhouse and slight expansion to the rear patio.

COMMENTS

- It appears the project has been constructed in substantial compliance with the issued permit.
- The grading appears to be correct and the landscaper submitted a letter stating the plans were followed when the grading and landscaping were done.
- The as-built for the foundation shows the house to be the same footprint as was approved by the Amended OOC.

RECOMMENDATION

- I recommend issuing a Certificate of Compliance for Complete Certification for 48 Torrington Road, SE 023-1289, CON 19-034, with the following continuing conditions:
 - CHM-3: Pesticides, herbicides, fungicides, and fertilizers shall not be used within 100 feet of the wetlands, within the riverfront area, and within bordering land subject to flooding. Organic pesticides, herbicides, fungicides and fertilizers may be used subject to the review and approval of the Conservation Commission. This shall be noted in the Certificate of Compliance and shall be an ongoing condition.
 - 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.
 - At no point shall any work occur beyond the placed boulders on the property as depicted on the approved plans, unless expressly permitted by the Conservation Commission.

Schofield and Sons Landscape Construction

1490 Middleboro Ave.

E. Taunton, MA 02718

Email: Schof7@Comcast.net *** (508) 965-6514

11/21/2021

To Whom it may concern

This letter is to certify that Schofield and Sons Landscape Const. scope of work at 48 Torrington Road, Fairhaven, was completed and in compliance with the order of conditions approved by the conservation commission in the Town of Fairhaven MA.

Sincerely,

David Schofield

Staff Report

Date: December 7, 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**

DOCUMENTS REVIEWED

- Abbreviated Notice of Resource Area Delineation and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- 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 open order of conditions for the subject property and adjacent property is valid through 2024, making this ANRAD superfluous. As such, the applicant has submitted a request to withdraw the filing without prejudice.

RECOMMENDATION

- I recommend the Commission accept the applicant's request to withdraw without prejudice for 0 & 277 Bridge Street, SE 023-1367, CON 023-254.

MEMORANDUM

DATE: December 5, 2021

TO: Town of Fairhaven – Conservation Commission

FROM: Bridge Street Holdings LLC

RE: SE 023-1367, CON 023-254: 0 & 277 Bridge Street

After further review and consideration of outstanding order of conditions on the subject property at 0 & 277 Bridge Street Map 30A Lot 87 & 87A, Bridge Street Holdings LLC is formally withdrawing the ANRAD request and the confirmation of resource areas under the Wetland Protection Act and Fairhaven Wetland bylaw. We appreciate the time and help in assisting us with this submittal. Should you have any follow up questions, please reach out to Robert Carrigg at [REDACTED]

Staff Report

Date: December 7, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Bridge Street (36-015J) – Abbreviated Notice of Resource Area Delineation – DEP# 023-1366, Fairhaven CON 023-251**

DOCUMENTS REVIEWED

- Abbreviated Notice of Resource Area Delineation and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- Peer Review Report dated November 22, 2021
- Revised site plan dated November 29, 2021

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 2,205 linear feet of BVW as well as 913 linear feet of bank.
- The peer reviewer reviewed the submitted documentation for this ANRAD as well as resource areas in the field. She made revisions to several of the flags in the field for both the bordering vegetated wetland and the top of inland bank.
- The peer review report noted that the following additional information is needed:
 - If the Nasketucket River within the property limits has received a previous Intermittent Stream determination from the Fairhaven Conservation Commission, the RB1 to RB20 line should be revisited by the Applicant to confirm that the line, as shown in the field, is representative of the first observable break in slope or the mean annual flood level of an inland Bank [as required by the regulatory definition of inland Bank, according to the MA WPA].

- The Applicant should show the location where the Intermittent Stream transitions to a Perennial Stream, either on the ANRAD plan if the location is within 200 feet of the property limits, or on a USGS quadrangle map.
- A note should be added to the ANRAD Plan documenting the Intermittent Stream determination, including the associated DEP file number(s), property name(s), property address(es), and OOC issuance date(s).
- The Applicant should provide the Conservation Commission with documentation of the date when the stormwater basin, forebay, and swale were construction as well as documentation that the basin, forebay, and swale have been consistently maintained in order to confirm that these features are not jurisdictional wetlands.
- The applicant provided a revised site plan that amended the flag locations, but has not yet responded to the above items.
- In order for the Commission to be able to issue an Order of Resource Area Delineation (ORAD), the additional information as outlined in the peer review report is needed.

RECOMMENDATION

- Until the applicant submits the additional information needed, there is not enough information to issue an ORAD. I recommend asking the applicant to request a continuance to either the January 3 or January 24 meeting to allow time to submit the additional information.
- If the applicant elects to continue to the January 3 meeting, revised documents are due no later than December 16.

LAM EcoLogical

238 Wareham Road
PO Box 486
Marion, MA 02738
508-858-8678

November 22, 2021

Whitney McClees
Conservation Agent and Sustainability Coordinator
Town of Fairhaven
40 Center Street
Fairhaven, MA 02719

RE: *Bridge Street, Fairhaven, MA (Map 36, Lot 15J)*
Wetland Delineation / ANRAD Peer Review Report

Dear Ms. McClees,

LAM EcoLogical (LAM) completed the peer review of the Abbreviated Notice of Resource Area Delineation (ANRAD) for Bridge Street (Map 36, Lot 15J), Fairhaven as prepared by SITEC, Inc. / Civil & Environmental Consultants, Inc. for Fairhaven Properties, LLC. The ANRAD was filed with the Fairhaven Conservation Commission on October 12, 2021 in accordance with the Massachusetts Wetlands Protection Act (MGL c. 31, § 40) (MA WPA) and its associated regulations (310 CMR 10.00) and the Fairhaven Wetlands Bylaw (Chapter 192 of the Code of the Town of Fairhaven) and its associated regulations.

The property is a 9.5-acre lot on the corner of Bridge Street and Route 240 in Fairhaven, MA (Figures 1 & 2). An existing paved parking lot and associated drainage facilities are located on the property. The Nasketucket River flows from north to south through and adjacent to the eastern property boundaries. A forested deciduous wetland borders the bank of the river. The property is located within the Fairhaven Industrial District with the Mobil gas station complex to the south and the former AT&T building that is now occupied by the First Citizen's Credit Union to the east.

Bordering Vegetated Wetland (BVW) and River Bank associated with the Nasketucket River were delineated in the field with blue flagging by Avizinis Environmental Services, Inc (AES), on June 21, 2021. Both BVW and inland Bank are wetland resource areas regulated under the MA WPA Regulations and Town of Fairhaven Bylaw and Regulations.

The Nasketucket River is shown as a solid blue line stream on the most recent New Bedford North, MA USGS Quadrangle (2021). According to the November 10, 2021 memorandum from SITEC, Inc. to the Fairhaven Conservation Commission, the Nasketucket River has been previously studied as a part of other Wetland Protection Act filings and has been determined to be an Intermittent Stream and not a Perennial Stream.

Method

On November 13, 14, 16, 20 and 21, LAM reviewed BVW Flags A-1 to A-30 and River Bank Flags RB-1 to RB-20 as hung in the field by AES. LAM's delineation peer review of BVW flags was completed using the Massachusetts Department of Environmental Protection's "Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act Handbook" (March 1995) and the "Buzzards Bay National Estuary Program's Pocket Guide to Hydric Soils for Wetland Delineations in Massachusetts" (Version 4.1, June 2019). Permission from the adjacent property owner was received so that off property and on property resource area flags could be accessed and reviewed by LAM.

LAM checked AES's flag locations in the field, comparing AES's flags to site topography, vegetation, soils, and the presence of other hydrologic indicators. LAM counter flagged AES's flags by either placing a flag at AES's current flag location to show confirmation or by installing a flag at the edge of the resource area as interpreted by LAM.

- LAM used orange flagging labeled A2-1 to A2-30 to counter flag AES's blue A1 to A30 BVW flags.
- LAM used pink flagging labeled RB2-1 to RB2-20 to counter flag AES's blue and green RB1 to RB20 flags.

LAM's counter flags are listed with offset distances and bearings in the attached Table 1 and are also shown on the attached Site Plan mark up.

Results

BANK (RB-1 TO RB-20)

LAM reviewed AEC's RB1 to RB20 flags along the Nasketucket River after the November 13 to November 15 rain event. The New Bedford, MA Regional Weather Station reported 0.71, 0.11 & 0.12 inches of rain on November 13, 14, & 15, respectively (Mt Pleasant - KMANEWBE28). At the time of review, the Nasketucket River was flowing and water levels were high. StreamStats lists the Nasketucket River as having a 0.1 square mile watershed with a 51% chance of perennial flow.

The banks of the Nasketucket River within the project limits are gently sloping and poorly defined in some areas with areas of overwash into herbaceous wetland vegetation. Vegetation along the banks and in overwash areas include sensitive fern (*Onoclea sensibilis*), common reed (*Phragmites australis*), soft rush (*Juncus effusus*), silky dogwood (*Cornus amomum*), common

winterberry (*Ilex verticillata*), arrowwood (*Viburnum dentatum*), sweet pepperbush (*Clethra alnifolia*) and red maple (*Acer rubrum*). The RB flags, as reviewed in the field, appear to represent bankfull indicators associated with the MA WPA's Regulatory Definition of Riverfront Area. The first observable break in slope of the main part of the river channel was not readily observable due to the highwater levels. AES's RB4 to RB20 flags, were relatively consistent with bankfull field indicators and the water elevation of the river on November 20 and November 21.

RB1 to RB3 were not consistent with bankfull indicators and appeared to be too high up on the landscape. The bank of the Nasketucket River, starting north of RB4, appears to continue in a north/northeasterly direction, following the flow of the channel more closely than as represented by AES's RB-1 to RB-3 flags. No obvious, continuous bank, ponding, or flow were observed from RB1 up to RB4.

It should be noted, that the regulatory definition of inland Bank, according to the MA WPA Regulations is as follows:

310 CMR 10.54 (2) (c): The upper boundary of a Bank is the first observable break in the slope or the mean annual flood level, whichever is lower. The lower boundary of a Bank is the mean annual low flow level.

If the Nasketucket River within the property limits has received a previous Intermittent Stream determination from the Fairhaven Conservation Commission, the RB1 to RB20 line should be revisited by the Applicant to confirm that the line, as shown in the field, is representative of the first observable break in slope or the mean annual flood level of an inland Bank.

The Applicant provided DEP file numbers of previous filings voted on by the Fairhaven Conservation Commission and states that the Commission found the Nasketucket River to be an Intermittent Stream. The Applicant should show the location where the Intermittent Stream transitions to a Perennial Stream, either on the ANRAD Plan if the location is within 200 feet of the property limits, or on a USGS quadrangle map. A note should be added to the ANRAD Plan documenting the Intermittent Stream determination including the associated DEP file number(s), property name(s), property address(es) and OOC issuance date(s).

BORDERING VEGETATED WETLAND (A1 TO A30)

LAM reviewed AEC's BVW flags A1 to A30 on November 13, 14, and 16. Due to the recent storm event and associated high water table, soils and wetland flag positions were reviewed again and confirmed on November 20 and 21. In particular, soils were rechecked to ensure hydric soil characteristics were retained after 7 days from a major rain event.

Wetland flags A1 to A30 border the Nasketucket River starting north of the site, continuing south along the north and east sides of the parking lot, and ending southwest of the site bridge.

Vegetation

The wetland is a forested deciduous wetland with red maple, swamp white oak (*Quercus bicolor*), highbush blueberry (*Vaccinium corymbosum*), common winterberry, swamp azalea (*Rhododendron viscosum*), silky dogwood, arrowwood, sweet pepperbush, cinnamon fern (*Osmunda cinnamomeum*), poison ivy (*Toxicodendron radicans*) and common greenbrier (*Smilax rotundifolia*). The wetland is mapped by MA DEP on the updated 2021 MA DEP Wetland Datalayer (Figure 3).

Adjacent upland vegetation includes red oak (*Quercus rubra*), white oak (*Quercus alba*), black oak (*Quercus velutina*), black cherry (*Prunus serotina*), American holly (*Ilex opaca*), honey suckle (*Lonicera sp.*), multi-flora rose (*Rosa multiflora*), arrowwood, sweet pepperbush, Russian olive (*Elaeagnus angustifolia*), grape (*Vitis sp.*) and goldenrod (*Solidago sp.*).

Soils

According to the USDA Natural Resource Conservation Service (NRCS) Soils Survey for Bristol County, Massachusetts, Southern Part (Figure 4), upland soils on site are Woodbridge fine sandy loam, 0 to 3% slopes or Woodbridge fine sandy loam, 0 to 8% slopes, very stony. These soils are generally found on nearly level to moderately steep slopes on hills, drumlins, till plains and ground moraines.

Woodbridge fine sandy loam, 0 to 3% slopes are a moderately well drained loam formed on coarse loamy lodgment till with a depth to water at 18 to 30 inches. Minor soil components of this mapped unit consist of 7% Paxton Soils and 6% Ridgebury Soils. Ridgebury soils have a hydric soil rating from NRCS.

Woodbridge fine sandy loam, 0 to 8% slopes, very stony a moderately well drained soil formed on coarse loamy lodgment till with a depth to water at 19 to 27 inches. Minor soil components consist of 10% Paxton, very stony and 8% Ridgebury, very stony. Ridgebury, very stony also has a hydric soil rating from NRCS.

Wetland soils found on site are mapped as Whitman fine sandy loam, 0 to 3% slopes, extremely stony. Whitman soils are a very deep, very poorly drained soils formed in lodgment till. The soils are nearly level or gently sloping soils found in depressions and drainageways on uplands. Depth to water is 0 to 6 inches with frequent ponding. The soil is rated as a hydric soil according to NRCS. This soil unit consists of 10% Ridgebury, extremely stony, 5% Scarborough, and 3% Swansea soils, all of which have a hydric soil rating. Woodbridge, extremely stony make up 1% of this soil map unit.

Topography

The wetland is flat to gradually sloping towards the Nasketucket River with several areas of shallow ponding and pit and mound topography.

Wetland Flags A1 to A30 Review

AEC's wetland flags **A1 to A13** generally follow the bottom of a manmade berm that separates a stormwater basin and swale from the BVW. LAM agreed with AEC flags A1, A2, A3, A5, A8, A12 and A13. The remaining AEC flags (A4, A6, A7, A9, A10 and A11) were counter flagged by LAM, to the west of AEC's flags and closer to the bottom of the manmade berm. During the field review, an area of persistent ponded area was located at AEC flag A8.

ACEC flags A13 up to A15 were counter flagged by LAM. The LAM wetland line in this area turns upslope from AEC's line. LAM counter flagged AEC's line with flags A2-13A to A2-13C and A2-14A to A2-14G. The wetland in this location turns west from the AEC line at A13/A14, generally following the manmade berm's northernmost bottom of slope until the wetland meets the parking lot's bottom of slope. The wetland line then continues north to flag A2-14F where the wetland line turns east to tie into AEC's wetland line at A15. Both hydric soils and hydric vegetated were identified in this area. Soils in this area have generally 3" of fibric organics over 8" of sandy loam topsoil (10 YR 2/1). Subsoils start at 8" below the organic layer and are a coarse sandy loam with cobble and stone. The subsoil matrix is 5 Y 5/1 to 5 Y 5/2 with redox features (10 YR 4/4, 7.5 YR 4/4, and 5 Y 2.5/1). The C layer starts at approximately 17" below the organic layer and is a loamy coarse sand with a matrix of 5 Y 6/2. Weeping was first observed at 20" from the surface with standing water in the test pit at 18" from the surface. Saturated soil conditions were observed above the documented depth to standing water. Vegetation in this area consists of red maple with black oaks on hummocks, highbush blueberry, arrowwood, common winterberry, swamp azalea, sweet pepperbush and common greenbrier.

LAM agreed with AEC's flags **A15 to A21**.

LAM counter flagged AEC's wetland line from **A22 to A27** with a new line set closer to the parking area. LAM's flags installed in the field in this area are A2-22 to A2-24A, A2-24B, A2-24C, A2-24D and A25 to A27.

LAM agreed with AEC's flags **A28, A29 and A30**.

Other Unflagged Potential Wetland Resource Areas on Site

The remainder of the property was inspected for the presence of wetland resource area not shown on the ANRAD Delineation Plans. The review for additional wetlands located on the property was conducted in accordance with wetland regulatory definitions found in the Massachusetts Wetlands Protection Act (MGL c. 31, § 40) (MA WPA) and its associated regulations (310 CMR 10.00) and the Fairhaven Wetlands Bylaw (Chapter 192 of the Code of the Town of Fairhaven) and its associated regulations.

The most recent MA DEP Wetland GIS Datalayer shows a wetland located on the property which was not flagged by the Applicant (Figure 4). The wetland is located west of the site bridge and north of the access road. The wetland appears to be associated with the original stormwater

basin and swale constructed on site as a part of the AT&T complex which according to the Online Town Assessor's Records for 220 Mill Road was constructed in 1976. The swale and basin run along the north/northeast edge of the parking lot and are separated from wetland flags A1 to A12 by an upland vegetated berm which was partly constructed out of remnant hydric soils. The stormwater basin and vegetated swale appear abandoned and to have not been maintained for some time. The basin slopes are armored with rip rap. Stormwater from the parking lot discharges to the basin via an 18" diameter concrete flared end section. No basin outlet was observed. A forebay with ponding is located to the northeast of the basin. The basin and forebay were holding approximately 1- to 2-feet of standing water at the time of the field visit. A vegetated swale runs parallel with the parking lot, along the bottom of slope, starting opposite the upland berm from flag A12, and ending just north of the stormwater basin forebay. Water was observed in the vegetated swale. Between the northern end of the stormwater basin and the southern end of the swale, the area is vegetated with sensitive fern and willow. Willows are located along the upper edge of the basin.

According to 310 CMR 10.02 (2) (c):

Notwithstanding the provisions of 310 CMR 10.02(1) and (2)(a) and (b), stormwater management systems designed, constructed, installed, operated, maintained, and/or improved as defined in 310 CMR 10.04 in accordance with the Stormwater Management Standards as provided in the Stormwater Management Policy (1996) or 310 CMR 10.05(6)(k) through (q) do not by themselves constitute Areas Subject to Protection under M.G.L. c. 131, § 40 or Buffer Zone provided that:

- 1. the system was designed, constructed, installed, and/or improved as defined in 310 CMR 10.04 on or after November 18, 1996; and*
- 2. if the system was constructed in an Area Subject to Protection under M.G.L. c. 131, § 40 or Buffer Zone, the system was designed, constructed, and installed in accordance with all applicable provisions in 310 CMR 10.00.*

The Applicant should provide the Conservation Commission with documentation of the date when the basin, forebay and swale were constructed as well as documentation that the basin, forebay and swale have been consistently maintained in order to confirm that these features are not jurisdictional wetlands regulated under the MA WPA Regulations and the Town of Fairhaven Wetland Bylaw and Regulations. Otherwise, the ORAD should identify the stormwater basin and swale as not being a part of the confirmed wetland delineation on site.

OTHER CRITICAL AREAS AND ENVIRONMENTAL RESOURCES

LAM mapped other critical areas and environmental resources on site or within the project area using current Massachusetts GIS Data. The following is a list of resource areas:

- There are no MNHESP Estimated Habitat, Priority Habitat or Certified Vernal Pools located on the property (Figure 5).
- The property is partly located with a Zone II Groundwater Recharge Area associated with a drinking water well (Figure 6).
- The Nasketucket River and bordering vegetated wetlands outlets to Little Bay which has potential shellfish resource areas and bathing beaches (Figure 6).
- There are no Areas of Critical Environmental Concern, Outstanding Resource Waters, Cold-water Fisheries or Anadromous/Catadromous Fisheries on the property (Figure 6).
- There are no FEMA 100-year Flood Zones located on the property (Figure 7)

Again, LAM EcoLogical appreciates the opportunity to submit this ANRAD / Delineation Peer Review and is available to meet with the Applicant on site to review LAM's results. Please contact me at 508-858-8678 if you have any questions regarding this review.

Regards,

A handwritten signature in black ink that reads "Lori A. Macdonald". The signature is written in a cursive, flowing style.

Lori A. Macdonald, MS, PWS, CWB
Principal Environmental Scientist



1 inch = 2,000 feet

FIGURE 1: USGS TOPOGRAPHICAL MAP
 from New Bedford North, MA Quadrangle, 7.5 Min. Series

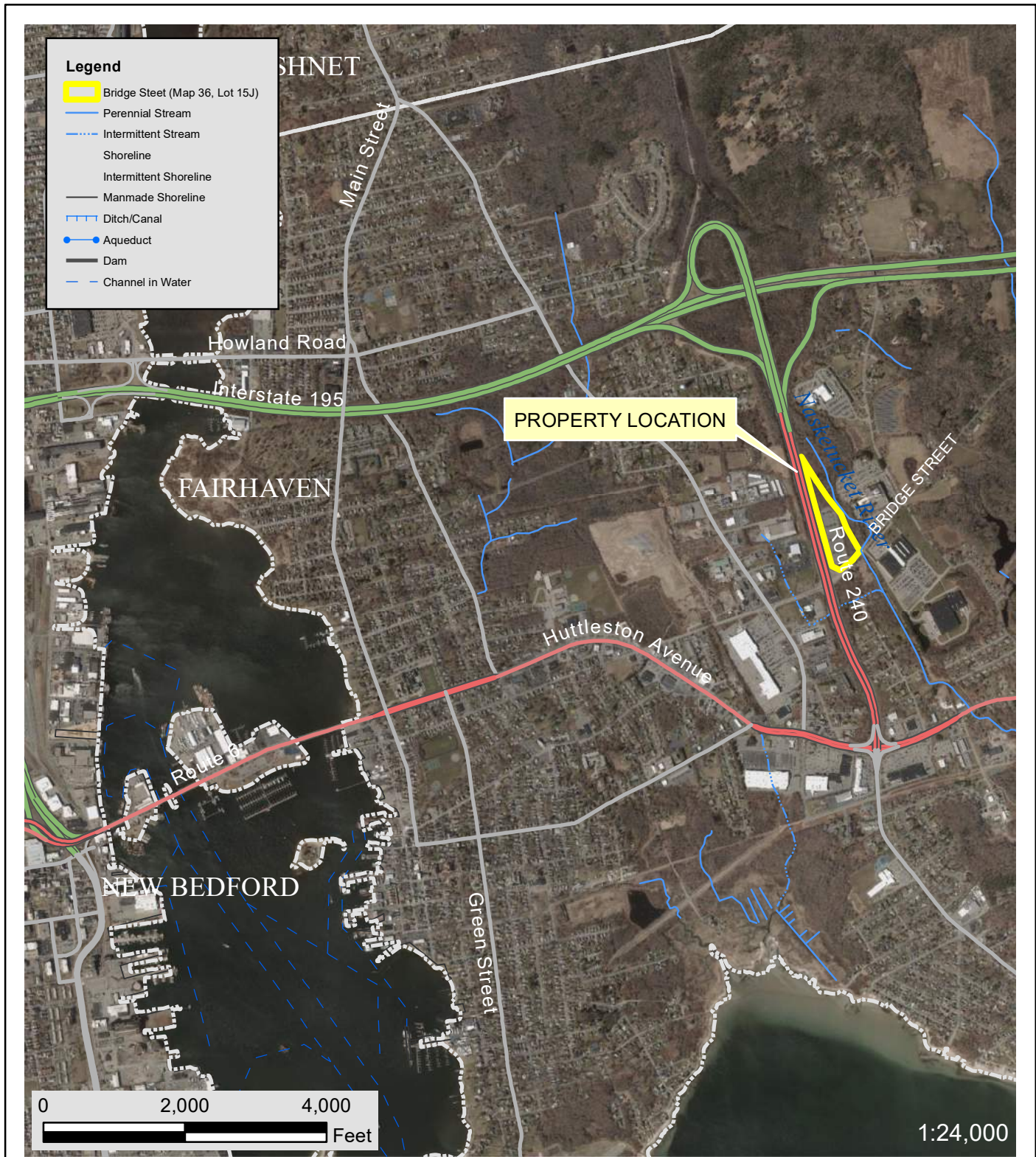
WETLAND DELINEATION / ANRAD PEER REVIEW

Bridge Street (Map 36, Lot 15)
 Fairhaven, MA 02719

Lat: 41.649385°N Long: -70.883315°W

LAM EcoLogical

238 Wareham Road, 2nd Fl
 PO Box 486
 Marion, MA 02738
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1 inch = 2,000 feet

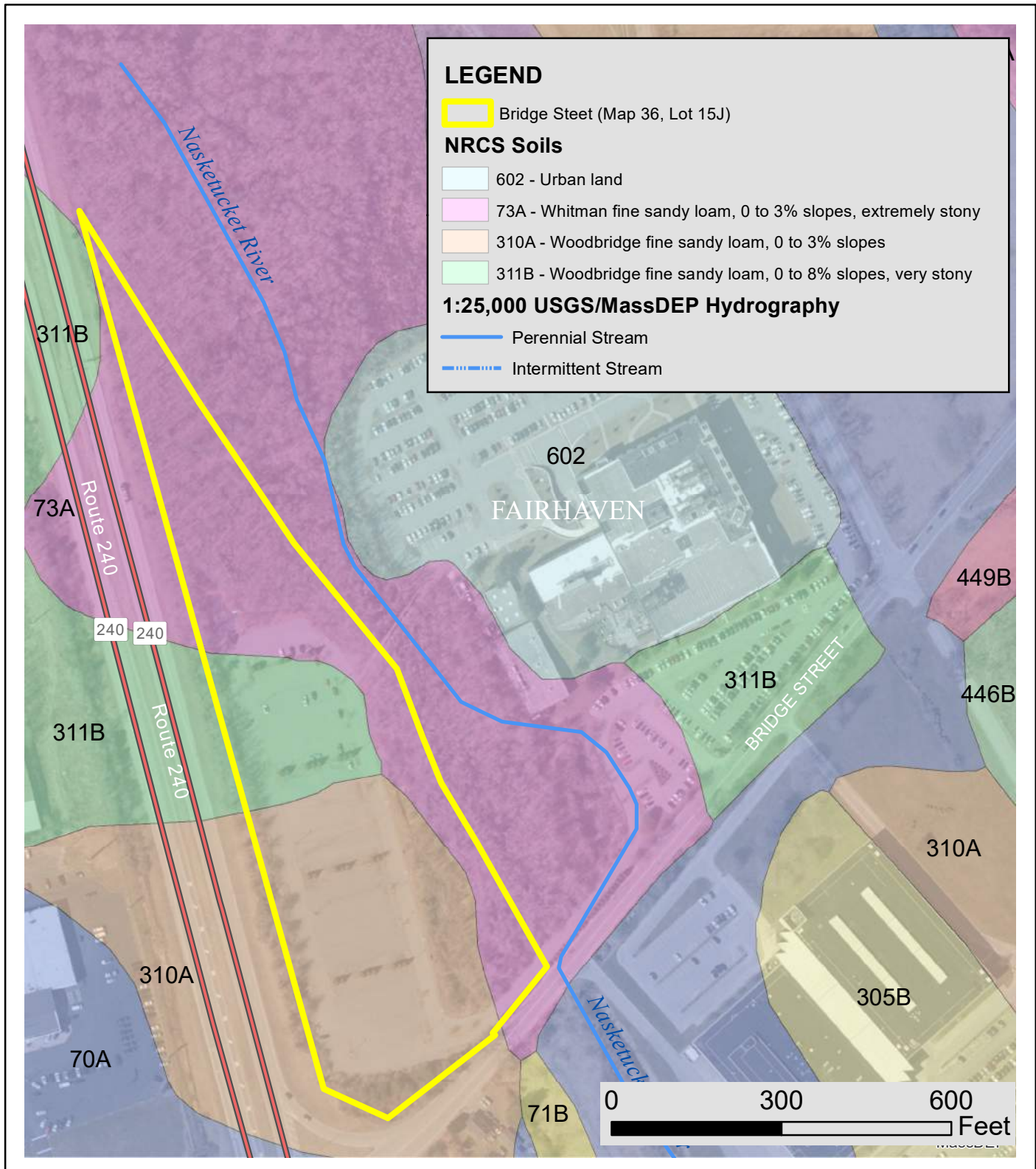
FIGURE 2: AERIAL MAP
WETLAND DELINEATION / ANRAD PEER REVIEW

Bridge Street (Map 36, Lot 15J)
 Fairhaven, MA 02719

Lat: 41.649385°N Long: -70.883315°W

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1 inch = 250 feet

**FIGURE 3: NRCS SOILS SURVEY
BRISTOL COUNTY**

WETLAND DELINEATION / ANRAD PEER REVIEW

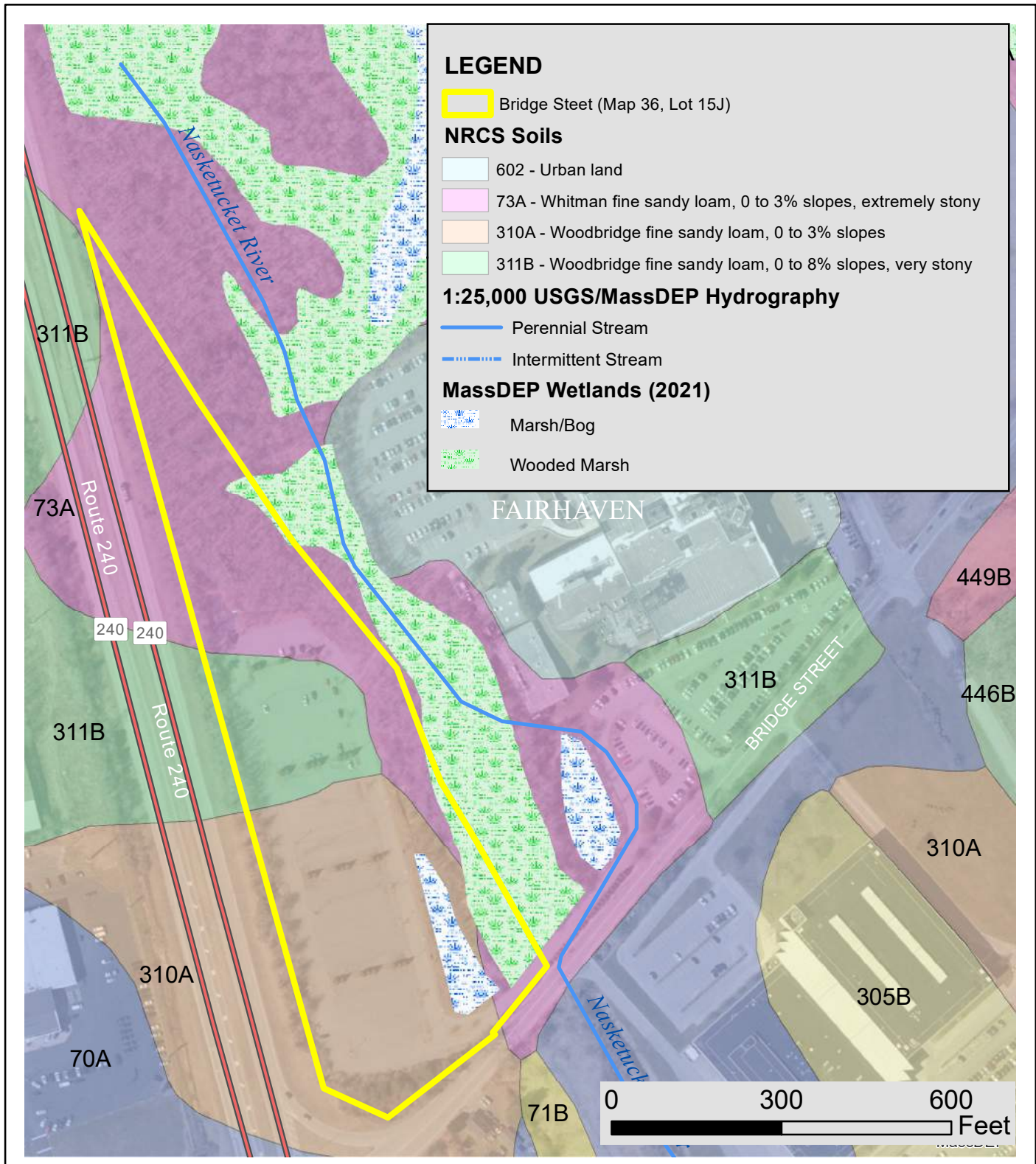
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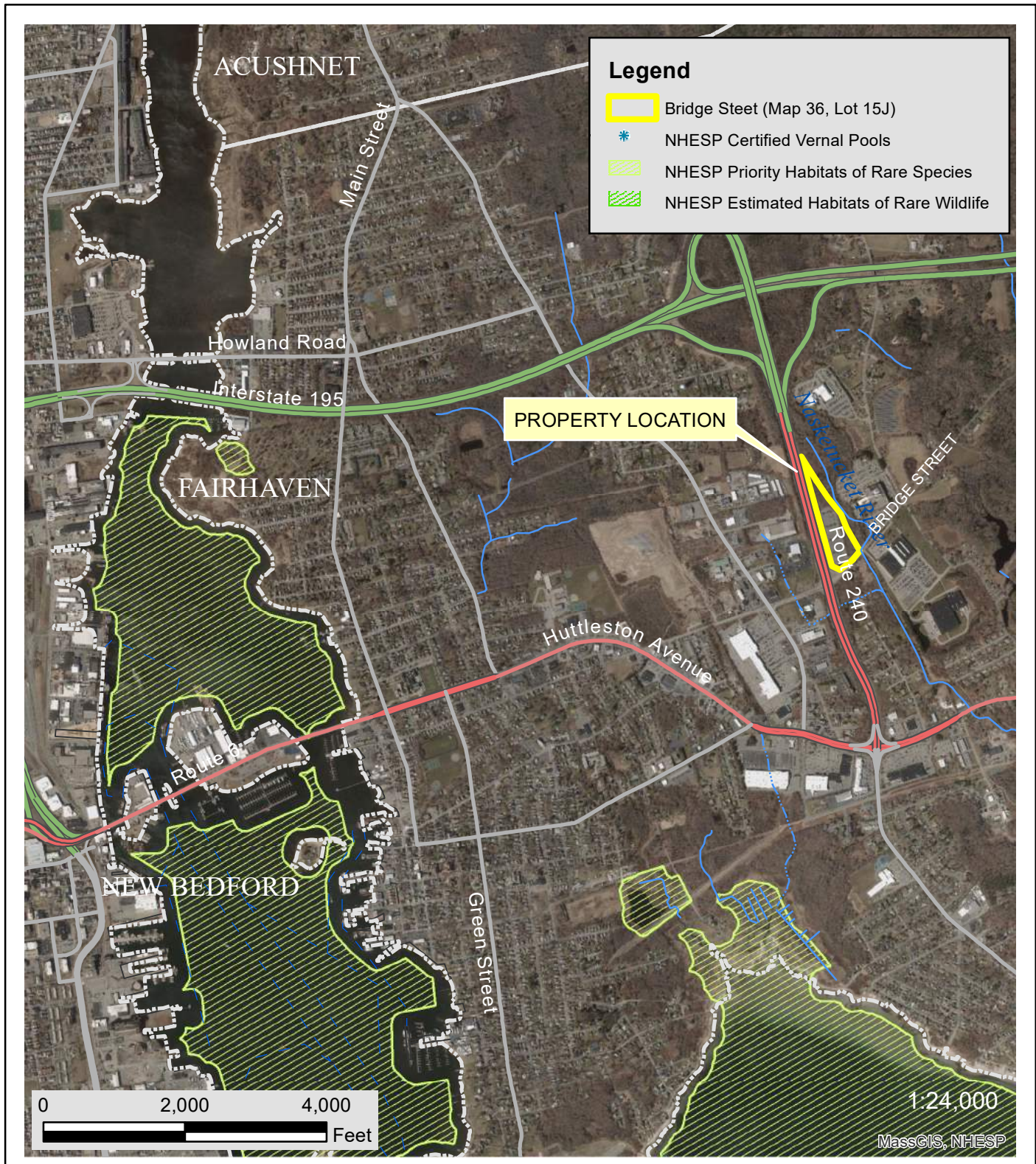
**FIGURE 4: MA DEP WETLANDS (2021)
WETLAND DELINEATION / ANRAD PEER REVIEW**

Bridge Street (Map 36, Lot 15J)
Fairhaven, MA 02719

Lat: 41.649385°N Long: -70.883315°W

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**FIGURE 5: MA NHESP Estimated Habitat,
Priority Habitat & Certified Vernal Pools**
WETLAND DELINEATION / ANRAD PEER REVIEW

Bridge Street (Map 36, Lot 15J)
Fairhaven, MA 02719

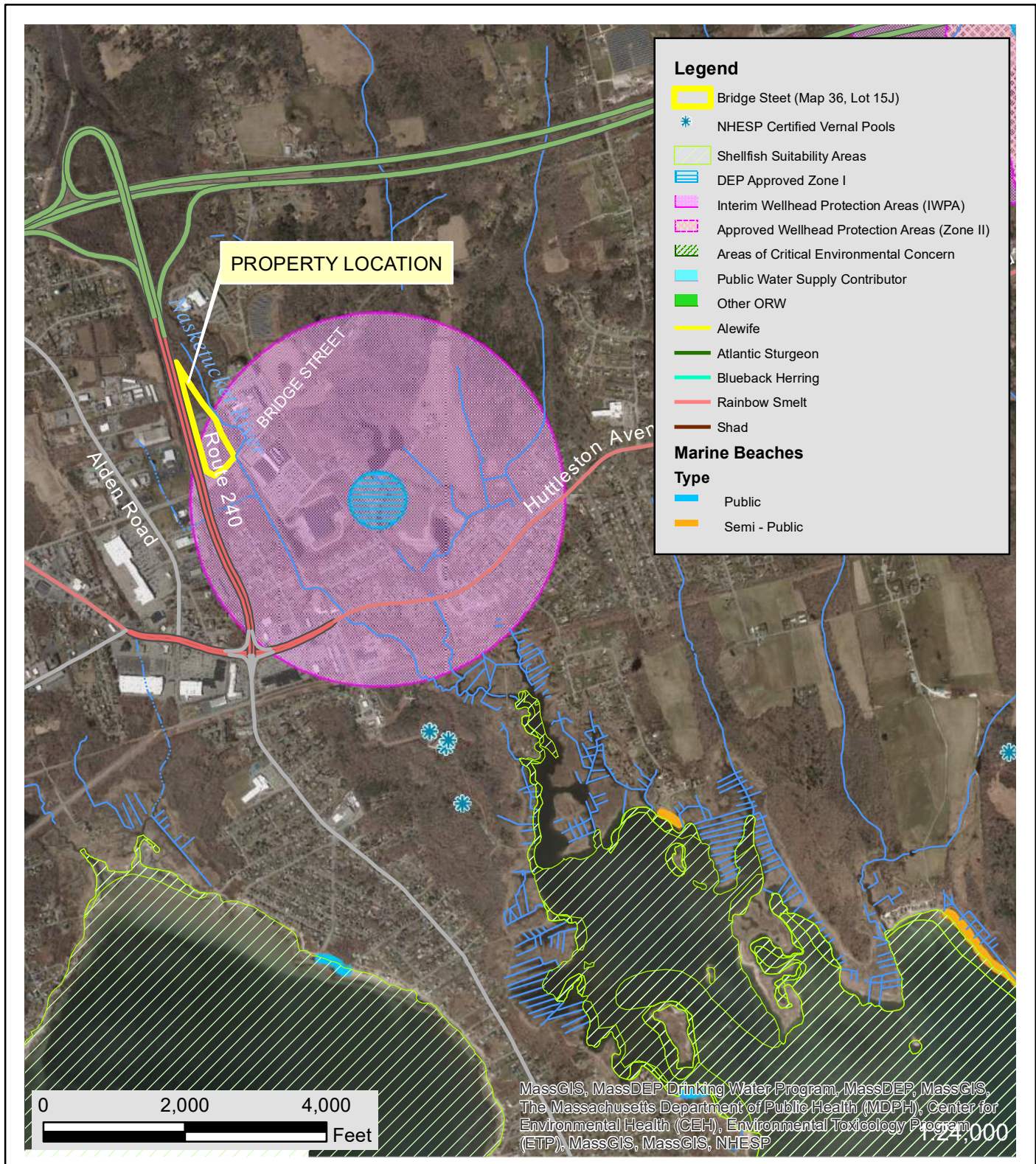
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1 inch = 2,000 feet



1 inch = 2,000 feet

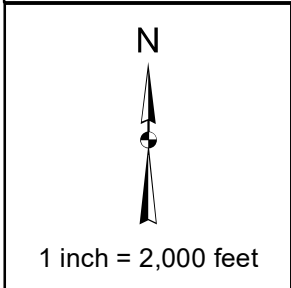
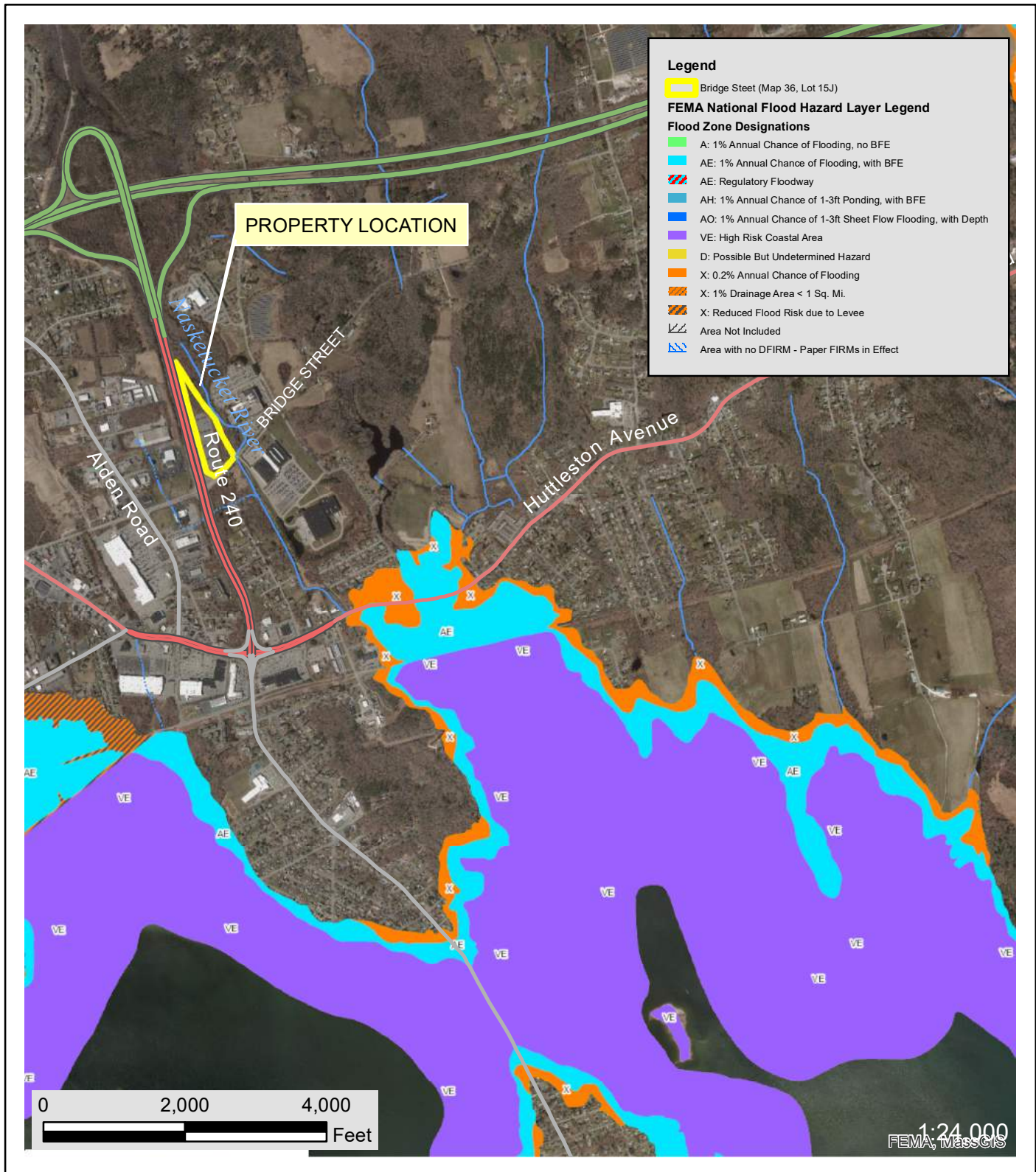
FIGURE 6: CRITICAL AREAS MAP
WETLAND DELINEATION / ANRAD PEER REVIEW

Bridge Street (Map 36, Lot 15J)
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Lat: 41.649385°N Long: -70.883315°W

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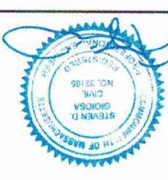


**FIGURE 7: NATIONAL FLOOD HAZARD LAYER
WETLAND DELINEATION / ANRAD PEER REVIEW**

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info@LAM-EcoLogical.com



No.	Date	Revision Description	Chkd. by	Appvd. by

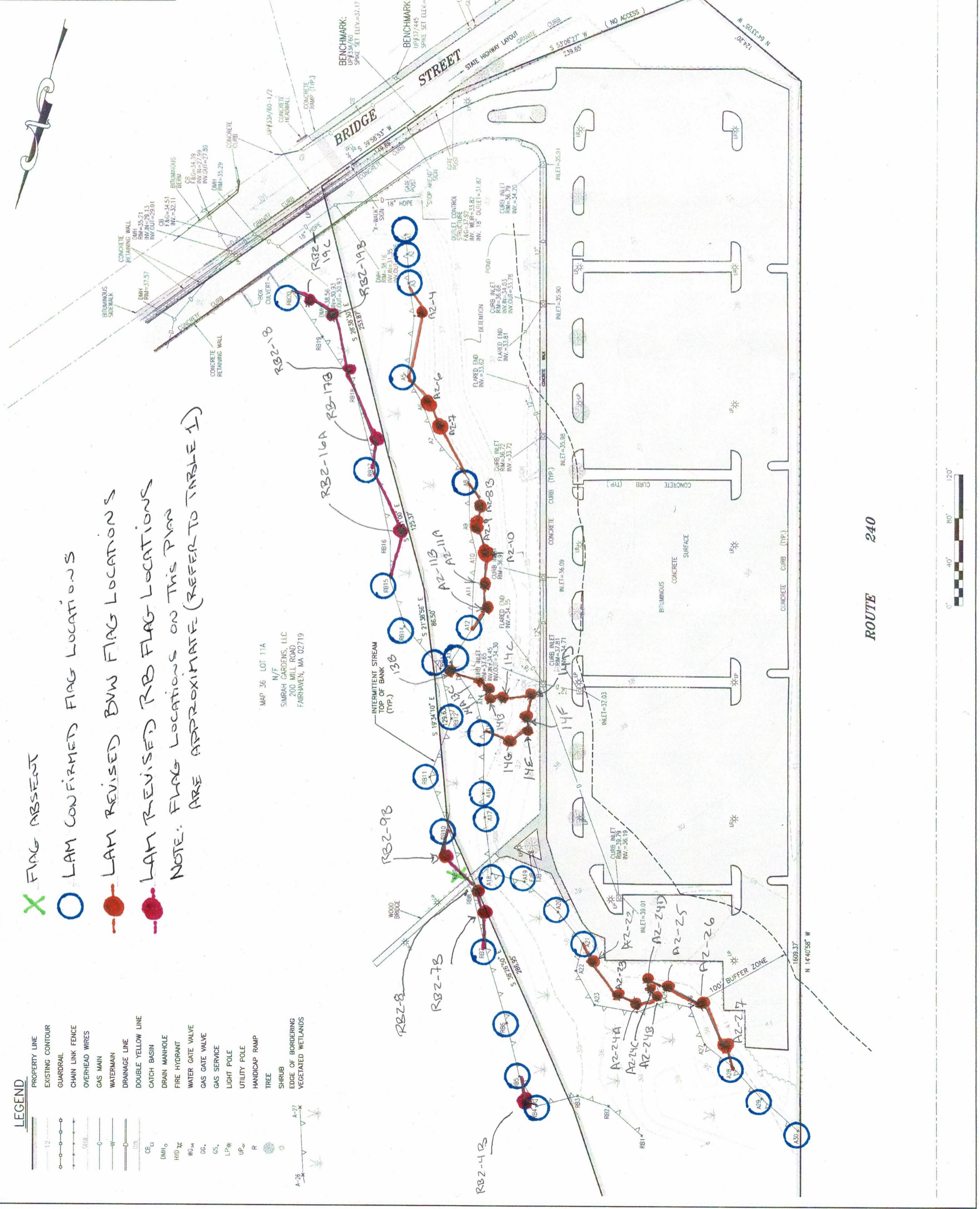
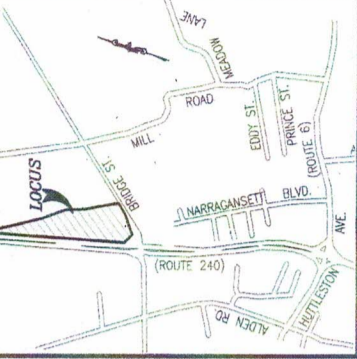
Scale: 1"=40'	Date: AUGUST 5, 2021	Drawn: DUF	Checked: SDG	Approved: SDG	Sheet 1 of 1	Drawing Number: EC-1
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Project: SELF-STORAGE FACILITY
 ASSESSORS MAP 36 - LOT 15
 FAIRHAVEN, MASSACHUSETTS

Client: FAIRHAVEN PROPERTIES, LLC

Company: SITTEC, Inc.
 448 Flanders Corner Road
 Danvers, MA 02747
 (508) 926-2125
 FAX (508) 926-7554
 WWW.SITTEC-ENGINEERING.COM

Agord No. 20-7565 EC.dwg
 File No. 304-338



ROUTE 240



**TABLE 1: LAM Bordering Vegetated Wetland and River Bank Flags
with Offset Bearings and Distances**

Measured From Flag No.	New Flag No.	Bearing	Distance (Feet)	NOTES
A-1	A2-1	NA	0.0	Agree with flag location.
A-2	A2-2	NA	0.0	Agree with flag location.
A-3	A2-3	NA	0.0	Agree with flag location.
A-4	A2-4	254°	5.1	
A-5	A2-5	NA	0.0	Agree with flag location.
A-6	A2-6	224°	3.0	
A-7	A2-7	163°	16.6	
A-8	A2-8A	NA	0.0	Agree with flag location.
A-9	A2-8B	184°	22.0	
A-9	A2-9	290°	7.7	
A-10	A2-10	224°	5.0	
A-11	A2-11A	255°	4.0	
A-12	A2-11B	194°	23.8	
A-12	A2-12	NA	0.0	Agree with flag location.
A-13	A2-13A	NA	0.0	Agree with flag location.
A-13	A2-13B	44°	8.6	
A-14	A2-13C	170°	16.2	
A-14	A2-14A	210°	6.2	
A-14	A2-14B	248°	14.3	
A-14	A2-14C	244°	20.9	
A-15	A2-14D	229°	55.5	
A-15	A2-14E	248°	49.8	
A-15	A2-14F	255°	40.8	
A-15	A2-14G	281°	30.0	
A-15	A2-15	NA	0.0	Agree with flag location.
A-16	A2-16	NA	0.0	Agree with flag location.
A-17	A2-17	NA	0.0	Agree with flag location.
A-18	A2-18	NA	0.0	Agree with flag location.
A-19	A2-19	NA	0.0	Agree with flag location.
A-20	A2-20	NA	0.0	Agree with flag location.
A-21	A2-21	NA	0.0	Agree with flag location.
A-22	A2-22	219°	16.9	
A-23	A2-23	228°	20.7	
A-24	A2-24A	104°	3.2	
A-24	A2-24B	210°	13.7	
A-24	A2-24C	192°	20.5	
A-25	A2-24D	103°	16.6	

A-25	A2-25	163°	7.0	
A-26	A2-26	223°	11.7	
A-27	A2-27	246°	18.8	
A-28	A2-28	NA	0.0	Agree with flag location.
A-29	A2-29	NA	0.0	Agree with flag location.
A-30	A2-30	NA	0.0	Agree with flag location.
RB-1	RB1 to RB3 Flags appears high. No flow observed. No obvious bank. Unable to confirm. Bank appears to turn in back towards the Stream at RB4.			
RB-2				
RB-3				
RB-4		NA	0.00	Tipped Tree - Flag off lin. Estimated approximate location of original RB-4 and determined to be correct.
RB-5	RB2-4B	356°	28.80	Approximately 22 feet (offset from approximately location of where RB-4 would have been)
RB-5	RB2-5	NA	0.00	Agree with flag location.
RB-6	RB2-6	NA	0.00	Agree with flag location.
RB-7	RB2-7A	NA	0.00	Agree with flag location.
RB-8	RB2-7B	334°	23.50	
RB-8	RB2-8	216°	5.50	
RB-9				Not found in the field.
RB-10	RB2-9B	352°	23.00	
RB-10	RB2-10	NA	0.00	Agree with flag location.
RB-11	RB2-11	NA	0.00	Agree with flag location.
RB-12	RB2-12	NA	0.00	Agree with flag location.
RB-13	RB2-13	NA	0.00	Agree with flag location.
RB-14	RB2-14	NA	0.00	Agree with flag location.
RB-15	RB2-15	NA	0.00	Agree with flag location.
RB-16	RB2-16A	226°	13.20	
RB-17	RB2-17A	NA	0.00	Agree with flag location.
RB-17	RB2-17B	153°	17.40	
RB-18	RB2-18	315°	12.00	
RB-19	RB2-19A	NA	0.00	Agree with flag location.
RB-19	RB2-19B	179°	25.70	
RB-20	RB2-19C	280°	17.00	
RB-20	RB2-20	NA	0.00	Agree with flag location.

MEMORANDUM

Date: November 10, 2021

To: Fairhaven Conservation Commission

From: SITEC, Inc. a Part of Civil & Environmental Consultants, Inc.
Steven D. Gioiosa, P.E. and Daniel N. Aguiar

Subject: Fairhaven Properties, LLC
DEP File #SE023-1366

Location: Bridge Street
Fairhaven, MA

CEC Project: 304-338



As a supplement to the ANRAD filing made for the above referenced project, we have compiled some supplemental information relative to the status of the adjacent stream as intermittent. The primary evidence pertaining to the intermittent stream status is the review of the USGS map for the subject area.

Attached to this memorandum is a copy of the USGS map for the project vicinity. We have mapped the associated watershed for the area upgradient of Bridge Street that provides contributing overland flow to this site. The area depicted covers approximately 125 acres (0.19 square miles). This area is significantly less than the 0.5 square mile limit stipulated in 310 CMR 10.58(2)1.c.i.

It is important to note that flow in this intermittent stream includes sump pump flow from the former AT&T building located on the corner of Mill Road and Bridge Street.

In addition to the limited watershed area, the subject property and adjacent parcels have been the focus of several conservation filings in the last few years and in each case, the subject stream was not designated as a perennial stream. These projects include the following:

- | | | |
|--|----------------|---------------|
| • DEP File SE023-1330 | 200 Mill Road | August 2020 |
| • DEP File SE023-1286 | 200 Mill Road | January 2019 |
| • DEP File SE023-1246 | Bridge Street | February 2017 |
| • DEP File SE023-1217 | 200 Mill Road | April 2015 |
| • Request for Determination of Applicability | Map 87 Lot 30A | December 2007 |

Town of Fairhaven – Conservation Commission
CEC Project 304-338
Page 2
November 10, 2021

Based on this information, it is clear that the watershed area and recent regulatory history confirms that the subject stream is properly designated as intermittent.

cc: Fairhaven Properties, LLC

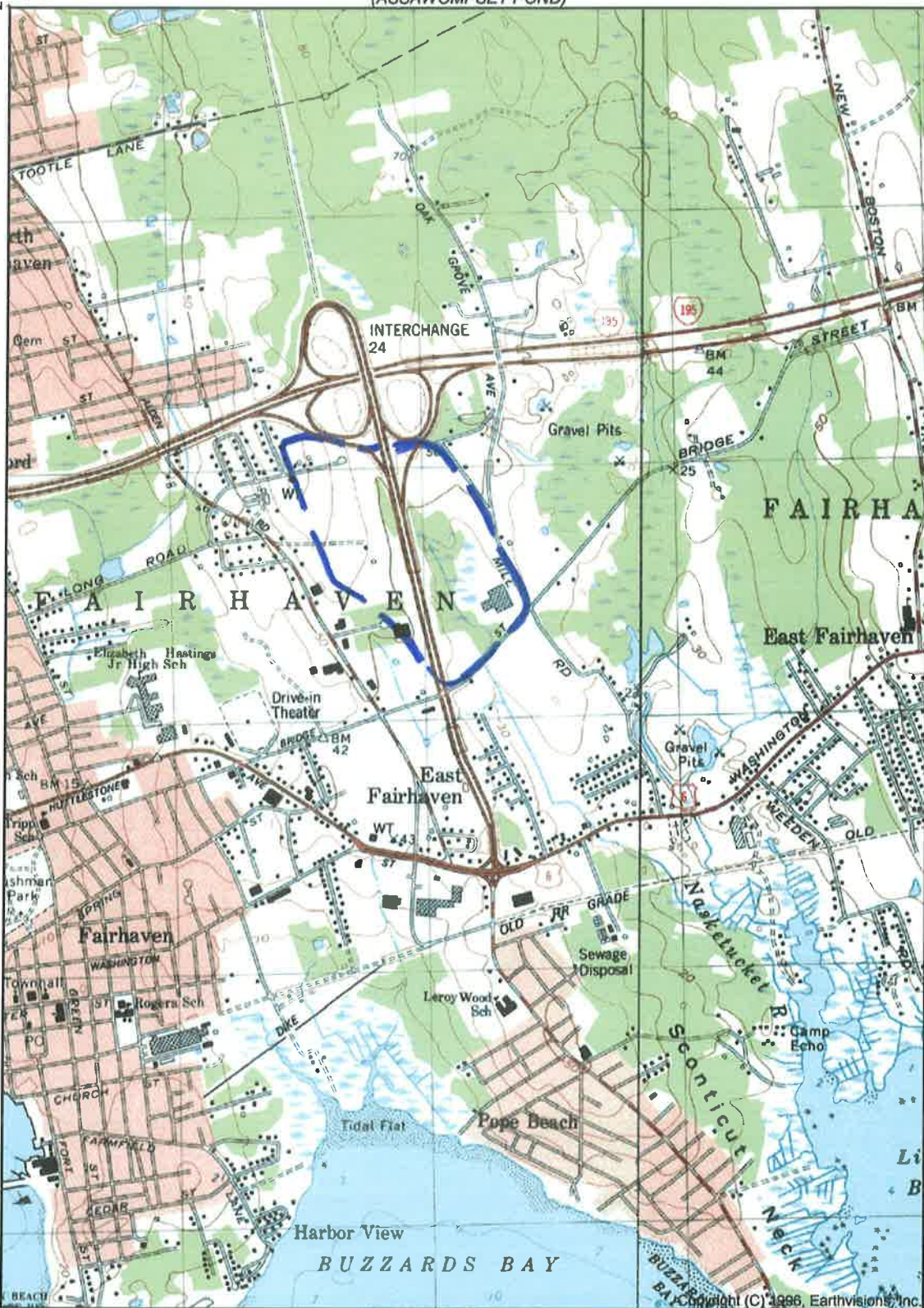
070° 54' 17.31" W
 041° 40' 18.50" N

(ASSAWOMPSET POND)

070° 51' 38.02" W
 041° 40' 18.50" N

(FALL RIVER)

(MARION)



041° 37' 30.93" N
 070° 54' 17.31" W

041° 37' 30.93" N
 070° 51' 38.02" W

(WESTPORT)

(SCITUCKET NECK)

Produced by MyTopo Terrain Navigator
 Topography based on USGS 1:24,000
 Maps

North American 1983 Datum (NAD83)
 UNKNOWN Projection

To place on the predicted North American
 1927 move the projection lines 12M N and
 43M E

Declination



(NEW BEDFORD SOUTH)

SCALE 1:24000



CONTOUR INTERVAL 10 FEET
 MEAN LOW WATER

NEW BEDFORD NORTH
 (MA), MA
 1979

Copyright (C) 1996, Earthvisions, Inc.
 Printed: Wed Nov 10, 2021

Staff Report

Date: November 30, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Cherrystone Road/Fir Street (Map 43B, Lots 313-315) – Request for Amended Order of Conditions – DEP# 023-1349, Fairhaven CON 023-213**

DOCUMENTS REVIEWED

- Request for Amended Order of Conditions and associated documents
- Order of Conditions issued May 28, 2021
- 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 construction of a single-family home with associated grading and utilities.

COMMENTS

- The site plan has been revised as follows:
 - Elimination of the septic system in favor of tying into the sewer
 - Reduction in amount of proposed fill
 - Relocation of proposed driveway
 - Increase in size of single-family home
 - Addition of a deck and porch to the single-family home
 - Reduction in number of mature trees to be removed
- Overall, the scope of the project has been reduced and will result in less of an impact on the resource area.

RECOMMENDATION

- I recommend issuing an Amended Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw for SE 023-1349, CON 023-213, Cherrystone Road/Fir Street, plans dated November 1, 2021, with the following recommended conditions:

Approve plan dated November 1, 2021

A. General Conditions

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

B. Prior to Construction

15. CAP-3
16. REC-3
17. DER-1
18. PCC-3
19. EMC-1
20. PCC-1
21. TRP-2
22. TRP-3

C. During Construction

23. REC-2
24. TRP-1
25. At no time shall any construction materials, soils, fills, sediments, dredging or any other substances be stockpiled or stored outside the alteration limit line.
26. MAC-3
27. MAC-8
28. MAC-9
29. DEB-1
30. DEB-5
31. BLD-3
32. BLD-4
33. SIL-3
34. SIL-4
35. SIL-8

- 36. LOW-3
- 37. Concrete truck washout shall occur within a designated area appropriately lined and isolated in an appropriate location, to be removed at the completion of construction.
- 38. WAT-3
- 39. EC-1
- 40. EC-2
- D. After Construction/In Perpetuity
 - 41. Prior to final site stabilization, a planting plan that compensates 2:1 for the removal of vegetation necessary for the project shall be submitted for review and approval by the Conservation Commission.
 - 42. REV-1
 - 43. COC-1
 - 44. COC-2

Perpetual Conditions

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

- 45. The driveway is to remain pervious and shall not be paved.
- 46. CHM-1 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



Whitney McClees <wmcclees@fairhaven-ma.gov>

(no subject)

John Kalife 

Wed, Nov 17, 2021 at 12:00 PM

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

Dear Fairhaven Conservation Commission,

I am hoping to be included on the agenda for the upcoming December 13 meeting to amend an order of conditions granted May 28, 2021 for [Cherrystone Road, SE 023-1349](#), CON 023-213. The following changes have been made to the project, resulting in an overall reduction in scope and impact:

- elimination of the proposed septic system and leaching field in light of approval to tie into the sewer
- increase in size and relocation of proposed house; originally approved as a 1680 square foot building, new proposed size is 2242 square feet
- reduction in amount of fill proposed
- fewer mature trees proposed to be eliminated

Thank you for your consideration.

- John Kalife



2 attachments**Cherrystone Road_OOC.pdf**

2097K

**OOO Cover Letter and Certificate of Understanding_revised.pdf**

630K

Staff Report

Date: December 8, 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**

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 on Attachment A showing track changes.

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

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, which will be reestablished by the dredging portion of this project.
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. 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.
7. No other work is approved by this Order.
8. 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
 - d. "Stockpiling Exhibit," 1 sheet depicting stockpiling and storage locations during the course of the project, prepared by Prime Engineering, Inc., dated November 19, 2021
9. 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.
10. 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.
11. 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."
 12. 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. 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.
3. This Order applies only to the scope of work depicted on the Plan-of-Record (Sheets 1-3) and attached Exhibits.
4. All work shall be done in accordance with the Plan-of-Record dated June 10, 2021 and accompanying Exhibits as approved by this Order. Any deviation must be approved by this Commission in writing prior to commencing work involved in this deviation.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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
11. Should any habitat conversion occur during the project, habitat mitigation shall be required at the direction of the Fairhaven Conservation Commission and the Division of Marine Fisheries. Habitat mitigation shall not apply to the dredging area as depicted on the approved plans.
 12. 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.
 13. 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.
 14. If after a minimum of two annual dredging events the applicant requests approval from MassDEP to discontinue annual dredging, a copy of any such request shall concurrently be submitted to the Fairhaven Conservation Commission.
 15. Pursuant to Chapter 192-11, any violation of these conditions is an automatic fine of \$300.00 per day until such time as the project has come back into compliance.

B. Prior to Construction

16. The applicant shall submit a 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.
17. 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.
18. Copies of the Chapter 91 license, Army Corps of Engineers permit, and 401 Water Quality permit shall be submitted to the Conservation Commission prior to the start of work.
19. 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.
20. 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.

21. 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.
22. 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.

C. During Construction

23. 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.
24. All groin and seawall work shall occur within a 3 hour window on either side of low tide.
25. 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.
26. 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.
27. Stockpiling and/or storage of construction materials, soils, fills, sediments, dredging or any other substances shall only be stockpiled in the approved areas shown on the "Stockpiling Exhibit" plan.
28. All equipment used on site must be stored or parked in the non-rock storage area, as depicted on the "Stockpiling Exhibit" plan.
29. STO-4: There shall be no discharge or spillage of petroleum product, hazardous material, or any other pollutant into any area of statutory interest.
30. If fueling or maintenance of any vehicles or equipment on site is necessary, it shall only be conducted in the non-rock storage area, as depicted on the "Stockpiling Exhibit" plan.
31. 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.
32. Motorized/construction equipment is prohibited from entering or crossing a vegetated wetland, salt marsh, or coastal dune.
33. MAC-8: All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
34. 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.
35. 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.

36. With the exception of the dredge area, 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.
37. 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.
38. 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.
39. 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

40. Upon completion of the work described herein, written notice shall be submitted to the Conservation Commission notifying them that work has been completed and an as-built plan is forthcoming within 180 days, as outlined in condition D41.
41. Within 180 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

Perpetual Conditions

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

42. No additional disturbance of this property to any jurisdictional areas is allowed without authorization from the Conservation Commission, including changes to existing developed areas and existing natural features as of the date of the issuance of this Order. If any activity beyond the scope of this Order occurs prior to the receipt of a Negative Determination or valid Order of Conditions, it shall be removed and restored to pre-construction conditions. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
43. 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.
44. 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.



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

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, which will be reestablished by the dredging portion of this project.
- 2-3. 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.
- 3-4. 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.
- 4-5. 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.

- ~~5. 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.~~
6. 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.
7. No other work is approved by this Order.
8. 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
 - ~~c.d. "Stockpiling Exhibit," 1 sheet depicting stockpiling and storage locations during the course of the project, prepared by Prime Engineering, Inc., dated November 19, 2021~~
9. 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.
10. 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.

11. 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."

12. The issuance of this Amended Order of Conditions allowed the Fairhaven Conservation Commission to make further clarifications to the special conditions attached to the Order.

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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.~~
- ~~3.2.~~ 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 Act and/or the Fairhaven Wetlands Bylaw.~~
- ~~5.3.~~ 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.~~
- ~~6.4.~~ All work shall be done in accordance with the Plan-of-Record ~~and Exhibits~~ dated June 10, 2021 ~~and accompanying Exhibits~~ as approved by this Order. Any deviation must be approved by this Commission in writing prior to commencing work involved in this deviation.

~~7-5.~~ 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.

~~8-6.~~ 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.

~~9-7.~~ 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.

~~10-8.~~ 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.

~~11-9.~~ Any in-water silt-producing work shall be staged to occur outside of the January 15 to May 31 time-of-year (TOY) restriction period of any year work is occurring to protect winter flounder during spawning and juvenile development life history phases.

~~12.~~ A qualified professional hired by the Commission at the Property Owner's expense shall oversee all phases of the project to ensure compliance with the issued Order.

~~10.~~ 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

~~13-11.~~ Should any habitat conversion occur during the project, habitat mitigation shall be required at the direction of the Fairhaven Conservation Commission and the Division of Marine Fisheries. Habitat mitigation shall not apply to the dredging area as depicted on the approved plans.

~~12.~~ 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.

~~13.~~ 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.

~~14.~~ If after a minimum of two annual dredging events the applicant requests approval from MassDEP to discontinue annual dredging, a copy of any such request shall concurrently be submitted to the Fairhaven Conservation Commission.

15. Pursuant to Chapter 192-11, any violation of these conditions is an automatic fine of \$300.00 per day until such time as the project has come back into compliance.

B. Prior to Construction

~~16.~~ The applicant shall submit a shellfish mitigation fee of \$31,440, made payable to the Town of Fairhaven, in accordance with the Commission's fee schedule prior to the start of work.

- ~~17. Prior to any work within Land Containing Shellfish, all shellfish within the area of work shall be relocated at the direction of the Fairhaven Harbormaster/Shellfish Warden.~~
16. 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.
17. 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.
18. Copies of the Chapter 91 license, Army Corps of Engineers permit, and 401 Water Quality permit shall be submitted to the Conservation Commission prior to the start of work.
- ~~18. 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.~~
19. 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.
- ~~Included shall also be the Commission's office phone number (508) 979-4023 for further information. Special orders of the conditions shall be weatherproofed and posted on all activity sites, including a posting on the job site sign. The necessary replacement and maintenance of these postings shall be the sole responsibility of the applicant.~~
20. 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.
21. 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.
22. 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.

~~23. The 6" x 6" wooden posts in the salt marsh along the property line near the entrance shall be removed before any other work commences.~~

C. During Construction

~~1-23.~~ 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.

~~2. All groin and seawall work shall occur within a 3 hour window on either side of low tide.~~

~~2. All groin and seawall work shall occur at low tide.~~

~~3. All dredging work and work along the causeway bridge shall occur from the road only. Should any work need to be done that is not accessible from the road, it shall be done by hand only. No equipment is permitted on the resource areas at any time.~~

~~25. 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.~~

~~4-26.~~ 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.

~~5. 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.~~

~~27. Stockpiling and/or storage of construction materials, soils, fills, sediments, dredging or any other substances shall only be stockpiled in the approved areas shown on the "Stockpiling Exhibit" plan.~~

~~28. STO 3: All equipment used on site must be stored or parked in an area outside the buffer zone. All equipment used on site must be stored or parked in the non-rock storage area, as depicted on the "Stockpiling Exhibit" plan.~~

~~6.~~

~~7-29.~~ STO-4: There shall be no discharge or spillage of petroleum product, hazardous material, or any other pollutant into any area of statutory interest.

~~8. STO 5: There shall be no fueling or maintenance of any vehicles or equipment in any area of statutory interest.~~

~~30. If fueling or maintenance of any vehicles or equipment on site is necessary, it shall only be conducted in the non-rock storage area, as depicted on the "Stockpiling Exhibit" plan.~~

~~9-31.~~ 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.

~~10. MAC 7: No motorized/construction equipment is to enter or cross a wetland resource area at any time, unless the location of entry or disturbance is clearly indicated on plans and within information contained within the Notice of Intent and approved with the issuance of this Order of Conditions.~~

~~32. Motorized/construction equipment is prohibited from entering or crossing a vegetated wetland, salt marsh, or coastal dune.~~

~~11-33.~~ MAC-8: All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.

~~12-34.~~ 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.

~~13-35.~~ 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.

~~14-36.~~ ~~SH-8:~~ ~~With the exception of the dredge area, 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.

~~15-37.~~ 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.

~~16-38.~~ 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.

~~17-39.~~ All dredged material shall be hauled offsite to be disposed of in an appropriate location over ~~200-100~~ 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

~~40.~~ Upon completion of the work described herein, written notice shall be submitted to the Conservation Commission notifying them that work has been completed and an as-built plan is forthcoming within 180 days, as outlined in condition D41.

~~1-41.~~ Within ~~60-180~~ 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

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- 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.

2.42. No additional disturbance of this property to any jurisdictional areas is allowed without authorization from the Conservation Commission, including changes to existing developed areas and existing natural features as of the date of the issuance of this Order. If any activity beyond the scope of this Order occurs prior to the receipt of a Negative Determination or valid Order of Conditions, it shall be removed and restored to pre-construction conditions. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.

~~3.— 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.~~

~~4.— 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.~~

5.43. 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.

~~6.— As required by Chapter 91 License No. 5746, the area underneath the causeway bridge shall be kept clear for the free passage of small craft and maintained at a depth of at least 1 foot below mean low water in perpetuity. Dredging to maintain the opening shall be done in accordance with all applicable Division of Marine Fisheries TOY restriction windows and from the road. No equipment is permitted on the resources areas for the purposes of dredging.~~

7.44. Each time a dredging operation is to occur, the Fairhaven Conservation Commission and the Fairhaven Harbormaster shall be notified, to allow for any additional conditions resulting from modifications in dredging operations in the life of this Order or these perpetual conditions. All dredged material shall be hauled offsite to be disposed of in an appropriate location over 200-100 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.

Staff Report

Date: December 8, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **10 Diamond Street – Notice of Intent – DEP# 023-1369, Fairhaven CON 023-255**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland (no work proposed within the wetland)
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE

RELEVANT PERFORMANCE STANDARDS

- **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.
 - 4.2 The Commission may, in its discretion, permit a MBZA in a location closer than 25 feet to the resource area if, and only if, the proposed activity occurs exclusively within a previously disturbed area and is located no closer to the resource area than existing structures, activities, or disturbances. However, it is encouraged to increase the width of the buffer zone where possible.
 - 5.0 25 to 50 Foot Buffer Zone Resource Area
 - 5.1 Any applicant proposing a project within the 25-50 foot buffer zone resource area shall indicate that there are no structures including, but not limited to, concrete, stone, or other impervious foundations and/or slabs for construction purposes that would significantly increase runoff.

- 5.2 Alteration of the 25-50 foot buffer zone resource area is limited to grading, tree clearing, stormwater management system components, lawns, gardens, and other low-impact uses as determined by the Commission or otherwise approved by the Commission by the variance procedures set forth in Section 8.0 of this regulation. Footings for building structures, such as a deck, as opposed to slabs or foundations, shall be used when technically feasible.
- 5.4 Previously disturbed areas: When there is a pre-existing disturbance (disturbed as part of a previously recorded Certificate of Compliance or Determination of Applicability or disturbed prior to the enactment of the Massachusetts Wetlands Protection Act (MGL Ch. 131 §40) and the Fairhaven Wetlands Bylaw (Chapter 192)), and the work proposed is entirely within this previously disturbed area, an applicant may propose impervious surfaces or other uses, such as pools, buildings, porches, and sheds within the 25-50 foot buffer zone resource area. The Commission shall evaluate the proposed uses based on the demonstration by the applicant that the functions, characteristics, and values of the resource area will not be adversely impacted.
- 6.0 50 to 100 Foot Buffer Zone Resource Area
- 6.1 Alterations including structures are allowed in the 50-100 foot buffer zone resource area. The Commission may require additional mitigation offsets when the slope within the buffer zone is steeper than 10%. Additionally, mitigation offsets may be required by the Commission when the applicant proposes that more than 30% of the 50-100 foot buffer zone resource area is proposed to be impervious surface.
- **LSCSF General Provisions:** 10.24(1) "If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests."

PROJECT SUMMARY

- The applicant is proposing to construct a 20'x15' garage, a 12'x32.6' mud utility room, and a 12'x31.5' expansion on the existing building as well as the reconstruction of the existing dwelling to conform to flood zone standards.

COMMENTS

- The project needs to go to Zoning and has not yet been filed, as is required prior to submitting a Notice of Intent.
- The applicant submitted a buffer zone variance request, but it needs more detail to satisfy the Commission's buffer zone regulations.
- The Commission members present for the site visit had the following concerns:
 - More detail is needed in the variance request. It does not address what the potential impacts to the wetland are and how they are mitigated. Additionally, it does not address the fact that structures are proposed within the 50-foot buffer zone. The members of the Commission on site were very concerned about the proposed increase of impervious surface within the 0-50 foot buffer zone.
 - More detail is needed about the vegetation that will be removed. Much of the site is vegetated and the Commission will want to see a detailed planting plan that addresses

the vegetation that is being removed in addition to the native plantings proposed as mitigation for work within the 25-foot no disturb zone. The members at the site visit were also concerned that 5 shrubs is very insufficient to compensate for what is being proposed.

- More detail is needed about how the condemned garage will be reconstructed.
- The members onsite wondered what the necessity for two garages is and if there is an opportunity to move the proposed new structures further from the resource area.

RECOMMENDATION

- Until such time as the project has been filed with the Zoning Board of Appeals and the outlined concerns are addressed, I cannot make a recommendation other than a continuance to the second meeting in January.

Project Narrative to Accompany
Notice of Intent
Prepared for Ruby & Jaime Medeiros
10 Diamond Street, Fairhaven, MA
Proposed Residential Renovation and Expansion

This project involves the renovation and expansion of the existing residence. This site is subject to coastal storm flowage as it is located in an A-14 Flood Zone as mapped by FEMA. The project parcel also contains bordering vegetated wetlands, as shown on the site plan.

The renovation aspect of the project includes bringing the existing dwelling into compliance with FEMA requirements as shown on the building section detail on the permit drawing. The existing developed portion of the parcel falls within 25-feet of the delineated wetland. Therefore, a portion of the proposed building expansion falls within 25-feet of the wetland. Additional plantings are proposed to address this condition.



TOWN OF FAIRHAVEN, MASSACHUSETTS

CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

Buffer Zone Regulations Variance Request

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

Location of Proposed Project: _____ Map _____ Parcel _____

Owner/Applicant Name: _____

Mailing Address: _____

Phone Number: _____ Email: _____

Contractor/Representative: _____ Phone Number: _____

Type of Application Submitted: NOI RDA

Project Description:

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

Staff Report

Date: December 9, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Winsegansett Avenue, Map 42A, Lots 232, 232A & 233 – Notice of Intent – DEP# 023-1370, Fairhaven CON 023-256**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- Wetland Resources Memo
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- Applying the Massachusetts Coastal Wetlands Regulations: A Practical Manual for Conservation Commissions to Protect the Storm Damage Prevention and Flood Control Functions of Coastal Resource Areas

RESOURCE AREAS ON/NEAR SITE

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

RELEVANT PERFORMANCE STANDARDS

- **LSCSF General Provisions:** 10.24(1) “If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests.”
- **Coastal 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.
- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
 - **Buffer Zone Wetlands Bylaw Regulations (Chapter 192 Regulations):**
 - 5.0 25 to 50 Foot Buffer Zone Resource Area
 - 5.1 Any applicant proposing a project within the 25-50 foot buffer zone resource area shall indicate that there are no structures including, but not limited to, concrete, stone, or other impervious foundations and/or slabs for construction purposes that for would significantly increase runoff.
 - 5.2 Alteration of the 25-50 foot buffer zone resource area is limited to grading, tree clearing, stormwater management system components, lawns, gardens, and other low-impact uses as determined by the Commission or otherwise approved by the Commission by the variance procedures set forth in Section 8.0 of this regulation. Footings for building structures, such as a deck, as opposed to slabs or foundations, shall be used when technically feasible.
 - 5.4 Previously disturbed areas: When there is a pre-existing disturbance (disturbed as part of a previously recorded Certificate of Compliance or Determination of Applicability or disturbed prior to the enactment of the Massachusetts Wetlands Protection Act (MGL Ch. 131 §40) and the Fairhaven Wetlands Bylaw (Chapter 192)), and the work proposed is entirely within this previously disturbed area, an applicant may propose impervious surfaces or other uses, such as pools, buildings, porches, and sheds within the 25-50 foot buffer zone resource area. The Commission shall evaluate the proposed uses based on the demonstration by the applicant that the functions, characteristics, and values of the resource area will not be adversely impacted.
 - 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 demolish the existing garage and construct a replacement 2-story structure with an associated septic system.

COMMENTS

- MassGIS Oliver maps a portion of the property as a barrier beach. Coastal Zone Management maps show the barrier beach ending short of the property. The applicant has submitted a coastal resources memo that begins to address the delineation of coastal resources on the property.
- The Coastal Manual reviews in detail how to delineate coastal resource areas, including coastal dunes and barrier beaches. It states that when a project may not impact a resource area, a detailed delineation may not be needed. However, when a precise delineation of the resource area is needed, the Coastal Manual provides very specific procedures for how to delineate the different resource areas, including checklists.
- The presence of salt marsh to the east of the property indicates that there may be a barrier beach system on the property, especially given the presence of a barrier beach in the vicinity of the property.
- Additionally, the Coastal Manual states that “when artificial fill (i.e., sediment, not construction debris or other materials) has been placed on coastal sites, the applicant and Commission must assess the *function* of that fill to help define the landform.”
- Even though the property has been used as a garden with an existing garage for many years, it is possible that there is a buried coastal dune on site.
- The Coastal Resources Memo submitted by the applicant does not include transects from the coastal beach landward with subsurface sediment samples obtained from along these transects, as outlined by the Coastal Manual in determining the location of a coastal dune.
- If the site is a coastal dune, the project as designed would not comply with the performance standards. Additionally, the Building Commissioner has some concerns that the project does not comply with floodplain regulations for building in a velocity flood zone.
- Both the Wetlands Protection Act and the Fairhaven Wetlands Bylaw stipulate that the burden of proof is on the applicant.
- In order for the Commission to determine whether or not it is necessary to apply the performance standards for Coastal Beach, Coastal Dune, or Barrier Beach, it is necessary to determine whether or not the area of proposed work is a resource area. The Commission should consider having the project peer reviewed by a coastal geologist to confirm all coastal resource areas boundaries on site to ensure the proper performance standards are being applied to the project.

RECOMMENDATION

- More information is needed with regard to the boundaries of the resource areas on site. The Commission could consider making a motion to have a third-party coastal geologist peer review the project to determine the extent of coastal resource area boundaries on the property as well as compliance with the Wetlands Protection Act and Fairhaven Wetlands Bylaw.



THE COMMONWEALTH OF MASSACHUSETTS

APPLYING THE MASSACHUSETTS COASTAL WETLANDS REGULATIONS:



**A Practical Manual for Conservation
Commissions to Protect the Storm
Damage Prevention and Flood Control
Functions of Coastal Resource Areas**



topography, general site observations may need to be augmented with subsurface sediment analysis and profiling of the landform (described below).¹⁵

On barrier beaches, it is important to note that if the area is not defined as a coastal beach, wetland area, or a glacial landform, the area is defined as a coastal dune, regardless of the vegetation type. Glacial landforms such as a moraines, drumlins, or kames, which are found within a barrier beach, are not considered part of the barrier beach for purposes of the WPA, but still may meet the definition for coastal bank or land subject to coastal storm flowage.

Characterizing Sediments, Examining Profiles, and Defining the Landform

The landward extent of a dune may be difficult to determine due to: the variation in vegetation that is supported by a dune, surficial deposits that may not accurately represent the underlying landform, and alterations to surface topography that may have occurred over time (possibly masking the distinction of hill, mound, or ridge topography). Where the landward extent is unclear through general site observations and where verification is necessary, information on the underlying (subsurface) sediments and their profiles should be provided by the applicant to determine whether the sediments and landform meet the definitional requirements of a coastal dune (see Figures 1.3 and 1.4 on pages 1-20 and 1-21 or Figure 1.5 on pages 1-29 through 1-31 for examples of beach/dune profiles).

In order to help with these relatively complex resource delineations, the following methodology can be used:

- 1. Characterize the landform by defining the thickness and characteristics of the surface and subsurface sediment layers and the method of deposition (i.e., windblown, wave deposited, glacial, or artificially deposited).**

To accomplish this, the applicant will need to take multiple transects from the coastal beach landward across the site. Subsurface sediment samples should be obtained along these transects, such as with an auger, shovel, or corer, to help determine the characteristics and thickness of the surface and subsurface sediment layers. Depth of subsurface samples will depend on the height of the dune and the depth to underlying materials—an applicant may encounter glacial deposits fairly close to the surface thereby providing the necessary information; conversely, an applicant may not encounter glacial deposits at all, warranting sampling depths down to mean high water, or at a minimum, deep enough to confirm that subsurface sediments constitute more than a veneer (see page 1-27 and Figure 1.5 on pages

¹⁵In the matter of Michael P. Wyman, Docket No. 2003-007 Ruling on Motion to Dismiss and Stay, April 11, 2006, the Administrative Magistrate determined that the area in question was coastal dune based on test pit data that indicated the presence of well sorted fine to medium grain-sized sand indicative of windblown deposits and a United States Geological Survey Map that indicated the presence of dune deposits.

1-29 through 1-31 for more information on veneers of windblown sediment). Observing the sediment layers and the grain types, sizes, and features will help distinguish the sediment's method of deposition (i.e., whether they are windblown/wave deposited [dune sediments]; glacial in origin [bank or upland sediments]; or artificial fill).

Dune sediments, which are windblown or wave deposited, are typically rounded and well sorted. Dunes often have obvious layers that represent individual periods when the wind or waves picked up and deposited similar-sized sediments (see Photograph 1.11 for an example of layering).

It is helpful to look at the range of sediment sizes on the beach to put the subsurface sediments observed landward of the beach in perspective; you will find a similar range of sediment sizes and types in dune deposits. The larger the range of sediment sizes (fine sand to pebbles) and types (with variations in color) present in the beach, the more obvious the layers will appear in the subsurface dune sediments.

In contrast to dunes, many upland or coastal bank materials in Massachusetts were deposited by glacial processes and thus tend to be *relatively* unsorted and unstratified.¹⁶ Glacial materials contain many different sized particles, ranging from clay to large boulders, all of which tend to have moderately angular edges from being physically weathered and eroded. Artificial fill, which may consist of a mix of glacial and dune sediments, may act—and thus be defined—as a coastal dune or a coastal bank depending on how it functions (this will be described in more detail on pages 1-27 and 1-28).

It is important to remember that there may be windblown sand deposited on the face or scarp of a seaward-facing landform, so observations of the weathered surface are not always a good indicator of the entire landform (see Photograph 1.12); core samples provide a more accurate representation of the landform. When looking at subsurface sediments, it is not



Photograph 1.11. Vertical face of eroded dune showing layering of sediments.

¹⁶It is important to note that not all coastal banks are deposited by glacial processes, such as banks consisting of bedrock or pre-glacial sedimentary deposits, the latter of which *are* relatively sorted and stratified. Furthermore, even banks that consist of glacial deposits may be somewhat stratified, particularly if they are a result of sorting and layering from glacier meltwater.

unusual to see the development of a soil profile in coastal dunes, which is dependent on how long the site has been vegetated. It is important to focus on the source of the sediments, not the color or presence of organics, to delineate the resource area.



Photograph 1.12. Eroded scarp. The photograph also shows windblown-sand deposition in front of the scarp—a natural process of recovery after a storm. The only way to tell whether this is an eroded dune or bank is to look at the subsurface sediments behind/under the veneer of windblown sand to determine if they were wind or wave deposits (dune) or were glacial deposits (bank).

Once the applicant and Commission have characterized the sediments and defined their thickness along the transect lines, they can plot the information on a cross-shore profile to help give a visual representation of the deposits relative to the overall landform (see Figure 1.5 on pages 1-29 through 1-31). Looking at the overall topography and depths of sediments can help depict whether the landform (or the area in question on the landform) is a dune or bank/upland and can provide a more accurate determination of dune boundaries. Determining the sediment profile is also

important when distinguishing bank from dune sediments for the purposes of allowing a revetment on a coastal bank—see page 3-46 in “Coastal Banks” for more information.

2. Determine if the deposits meet the definition of coastal dune or coastal bank as defined in the Wetlands Protection Act Regulations at 310 CMR 10.28 and 10.30 respectively.

To be considered a coastal dune under the Regulations, the landform must meet the WPA definition for being located landward of a coastal beach, consisting of sediments that were deposited by wind action or storm overwash, and exhibiting hill, mound, or ridge topography (see Figures 1.3 and 1.4 on pages 1-20 and 1-21 for examples of topography meeting the definition of a hill, mound, or ridge).¹⁷ The information obtained from the core

¹⁷In the matter of John Allen and Barbara Cordi-Allen Docket Nos. 2000-83, 2000-087 Recommended Final Decision, July 6, 2006, adopted by Final Decision on August 23, 2006, the Magistrate concluded that the landform is a coastal dune because it exhibits a key characteristic that distinguishes coastal dunes from coastal banks: it can move landward and reform in response to wind and water action. A coastal bank does not reform itself. The Magistrate noted that the landform on site exhibits undulating mound topography and is comprised of dune-like sediments; a dune scarp is present; sand accumulates on the property and is transported landward; and the landform has the ability to be modified by wind and water and to move landward.

samples along the transect lines will help the applicant and Commission interpret whether the subject landform meets these definitional criteria.

As seen in Figure 1.5 on pages 1-29 through 1-31, viewing a subsurface/surface profile illustrates more clearly where dune sediments that overlie glacial material are *part of* the overall landform (making it a tapering edge of a dune) and where they are not part of the hill, mound, or ridge (making them a veneer of sand). When looking at a profile, it is also easier to see where low, flat, graded, or flattened areas that consist of wind or wave deposits are still part of the overall morphology of the dune, thereby still meeting the definitional requirements of a coastal dune.

3. Determine the functions and significance of the resource areas based on the criteria outlined in the Wetlands Protection Act.

When delineating the coastal dune, only one circumstance warrants an assessment of the *function* of the resource area to help define the landform: when artificial fill has been placed on the resource area. The following information describes the criteria used to assess the function of artificial fill.

Artificial Fill - The Regulations include in their definition of coastal dunes “sediment deposited by artificial means serving the purpose of storm damage prevention and flood control.” Therefore, when artificial fill (i.e., sediment; not construction debris or other materials) has been placed on coastal sites, the applicant and Commission must assess the *function* of that fill to help define the landform. Artificial fill can also be considered part of a coastal bank, serving the same purposes. The following factors indicate that the function of the artificial fill meets the regulatory definition of a coastal dune: 1) there is evidence of two-way exchange of sediment between the coastal beach and the landform, particularly during a coastal storm event (two-way exchange means the dune can erode and provide sediment to the beach, while the beach can act as a reservoir of sediment for the dune through wind or wave overwash); 2) the landform can conform and reshape to natural wind and water flow processes, particularly in a coastal storm event; and 3) the landform can migrate landward or laterally in response to wind, wave, or tides. If the artificial fill meets these requirements, it will likely be considered a regulatory coastal dune. Conversely, the landform may not be considered a regulatory dune if it is clearly landward of the 100-year floodplain and storm water cannot wash over the top of the landform and move sediments landward. Though the artificial deposits may have the appearance of a mound, hill, or ridge, and may provide sediment to the beach, the landform is functioning predominantly like a coastal bank and not

a coastal dune if it *cannot* shift and move landward and laterally, reform in response to wind and water action, or provide a *two-way* exchange of sediments.¹⁸

Dunes Not Composed of Artificial Fill - It is important to note that when a resource area is NOT composed of artificial fill, applicants and Commissions should not use the *function* of the landform to determine whether the resource area is a regulatory coastal dune. The delineation criteria—based on origin and type of sediments, the form of these sediments, and its location adjacent to the beach—will be the defining characteristics, regardless of the function. The function will come into play when reviewing performance standards that protect the existing functions of a dune for storm damage prevention and flood control.

¹⁸In the matter of Donald Kline, Docket Nos. 99-021, 99-022, 99-023, 99-024, 99-025, and 99-026, Final Decision, October 16, 2000, Final Decision denying Motion for Reconsideration, December 12, 2000, the Magistrate determined that fill placed on top of a natural dune system was a coastal bank and not a coastal dune (even though there was a thin veneer of windblown sand on top of the fill), because there was little evidence that the landform had the ability to move landward and reform itself, as would a dune.

more accurate determination of the landward toe of the primary dune. If the Commission determines that the applicant selected a peak that is not representative of the overall landform or that the applicant located the landward toe in an incorrect seaward location, the Commission should require that the applicant use the second derivative slope analysis to select another peak that does represent a large-scale landform change and/or is *landward* of any secondary peaks of the primary dune. Once the point has been verified through profile and field observations, the landward toe of the primary dune should be revised on the site plan as necessary.

Where complex topography does not produce a readable result (i.e., many small-scale changes produce many spikes in a profile making delineation difficult), the applicant should choose another more representative transect line that contains fewer small-scale changes in topography.

If the selected landward toe is not appropriate for other reasons, such as alteration to the landform since the LIDAR data were flown (e.g., through waves, wind, and overwash), the applicant and Commission should use their best professional judgment to delineate a more appropriate primary dune boundary. The judgment call should be based on the most current available topographic data and the methods described for other resource area delineations, such as information regarding the origin of the landform, observation of landform features, and dimensional characteristics.

Data Checklist²⁵

When a precise delineation of the coastal dune is needed, the following checklist should be used to 1) identify features on the plans and maps, 2) record information about site characteristics in the field, and 3) determine if additional information is needed to delineate the resource area. The person using this form is advised to work from the seaward edge up to the landward edge of the dune. In addition to site observations, information (such as subsurface sediment analysis) may be necessary to determine whether the landform feature is a coastal dune. If a delineation of the primary dune is needed, the applicant/Commission should follow the methodology described above on pages 1-32 through 1-38 and in detail in Appendix C.

²⁵This checklist can also be found in the Data Checklists for the Delineation of Resource Areas, a separate attachment that can easily be carried out to the field to record information about landform features and characteristics.

Check all that apply:

Indicators of the Seaward Boundary of a Coastal Dune	If yes:
<input type="checkbox"/> Can you discern a change in slope to a steeper, seaward-facing slope of a hill, mound, or ridge landform? <i>and</i> <input type="checkbox"/> Have you found the most recent high tide wrack line?	Look for the beach/dune boundary landward of the most recent high tide wrack line and where there is a change in slope.
<p><i>If there is not a distinct change in slope that appears to be a logical location for the beach/dune boundary, you should observe obvious characteristics of beaches and dunes (as listed below) and work your way to the middle to identify the seaward boundary of coastal dune. The characteristics of these resource areas are described in more detail in this section and in the coastal beaches section beginning on page 1-8.</i></p>	
<input type="checkbox"/> Are you standing on sediments that look like they have been primarily reworked by waves and tides? Do you see: <ul style="list-style-type: none"> <input type="checkbox"/> rill marks, <input type="checkbox"/> ridges and runnels, <input type="checkbox"/> swash marks, <input type="checkbox"/> beach cusps (horns and embayments), and/or <input type="checkbox"/> wrack lines from the most recent high tides? 	You are on a coastal beach.
<input type="checkbox"/> Are you standing on a relatively flat terrace landward of the swash zone formed by deposition of beach sediments by waves or tides, which is relatively devoid of vegetation (or only sparse vegetation is present)?	You are likely on a coastal berm or backbeach, which is part of the natural form of a coastal beach.
<input type="checkbox"/> Are you standing on sediments (such as cobble or gravel) that look like they have been primarily reworked by overwash? <i>and</i> <input type="checkbox"/> Can you discern a change in topography to a steeper, seaward-facing slope of a hill, mound, or ridge landform that lies landward of a coastal beach?	You are likely on a coastal dune.
<input type="checkbox"/> Are you standing on a hill, mound, or ridge of sediments (such as sand) landward of a coastal beach, which look like they have been primarily reworked by wind or overwash? Do you see: <ul style="list-style-type: none"> <input type="checkbox"/> windblown (dry) sand ripples, <input type="checkbox"/> windblown sand accumulation around wrack, pebbles, and shells, <input type="checkbox"/> finer-grained sand than the beach (on beaches and dunes that are primarily sand), <input type="checkbox"/> a fan-shaped deposit of sand, gravel, and/or cobble landward of the most recent high tide line (i.e., overwash fan), and/or <input type="checkbox"/> the presence of vegetation that traps and holds windblown sand? Dune vegetation may include: beachgrass (<i>Ammophila breviligulata</i>), beach pea (<i>Lathyrus japonicus</i>), poison ivy (<i>Toxicodendron radicans</i>), seaside goldenrod (<i>Solidago sempervirens</i>), and rugosa rose (<i>Rosa rugosa</i>), or other.	You are likely on a coastal dune.

Indicators of the Landward Boundary of a Coastal Dune	If yes:
<p><input type="checkbox"/> Are the subsurface sediments (given that an organic soil horizon may have formed or the weathered surface may disguise the underlying landform) those that have been deposited by wind or storm-wave overwash?</p> <p>Are the sediments:</p> <ul style="list-style-type: none"> <input type="checkbox"/> sorted and layered, representing periods of deposition by wind and waves, <input type="checkbox"/> rounded, and <input type="checkbox"/> of similar range in size (though generally finer grained) to those sediments on the beach? <i>and</i> <p><input type="checkbox"/> Are the windblown deposits part of a hill, mound, or ridge that is landward of a coastal beach? (A Commission should review profiles of the surficial and underlying sediments to characterize sediments and determine overall topography of the landform.) <i>and</i></p> <p><input type="checkbox"/> Does the vegetation consist of dune-type growth, such as beachgrass (<i>Ammophila breviligulata</i>), rugosa rose (<i>Rosa rugosa</i>), beach plum (<i>Prunus maritima</i>), bayberry (<i>Myrica pensylvanica</i>), or more complex and dense upland plants, shrub growth, and low forests?</p>	<p>The landform is a coastal dune (either a primary or secondary dune system).</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Are you standing at what appears to be a water body within dune ridges? <i>and</i> <input type="checkbox"/> Do you see wetland vegetation? 	<p>You are likely within a hollow of the dune, which may contain a bordering vegetated wetland, isolated wetland, or vernal pool (and does not necessarily demarcate the edge of coastal dune).</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Are you standing in a low flat spot landward of a dune that is composed of windblown or wave deposited sediments? 	<p>You are likely between a primary dune and a secondary dune or between two secondary dunes, either of which are coastal dune by definition. Look at subsurface sediments and profiles to determine landward extent of dune. (See Profile B in Figure 1.5 on page 1-30.)</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Are you within a barrier beach but not on a coastal beach, glacial landform, or vegetated wetland/waterbody? 	<p>You are on a coastal dune within the barrier beach (see the barrier beaches section beginning on page 1-42).</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Are the subsurface sediments glacial in origin (typically poorly sorted sediments)? 	<p>The landform is a coastal bank or an upland.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Are the subsurface sediments those that have been deposited by wind or storm-wave overwash? <i>and</i> <input type="checkbox"/> Do these windblown deposits overlie glacial material? <i>and</i> <input type="checkbox"/> Do these deposits appear to be part of the hill, mound, or ridge of the coastal dune? (A Commission should review profiles of the surficial and underlying sediments to characterize sediments and determine overall topography of the landform.) 	<p>This portion of the landform is the tapering edge of the coastal dune, which still meets the regulatory definition of coastal dune.</p> <p>(See Profiles B and C in Figure 1.5 on pages 1-30 and 1-31.)</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Are the subsurface sediments those that have been deposited by wind or storm-wave overwash? <i>and</i> <input type="checkbox"/> Do these windblown deposits overlie glacial material? <i>and</i> <input type="checkbox"/> Do these deposits follow the underlying topography of the glacial material with a relatively consistent thickness, and appear not to be part of the hill, mound, or ridge of the coastal dune? (A Commission should review profiles of the surficial and underlying sediments to characterize sediments and determine overall topography of the landform.) 	<p>These deposits constitute a veneer of sand <i>landward</i> of the landward edge of coastal dune (i.e., this area may not constitute a regulatory coastal dune).</p> <p>(See Profile A in Figure 1.5 on page 1-29.)</p>

Indicators of a Non-Regulatory Dune (based on the definition)	If yes:
<ul style="list-style-type: none"> <input type="checkbox"/> Are the subsurface sediments those that have been deposited by wind or storm-wave overwash? <i>and</i> <input type="checkbox"/> Do these windblown deposits overlie glacial material? <i>and</i> <input type="checkbox"/> Do these deposits appear to be part of the hill, mound, or ridge of the coastal dune? <i>but</i> <input type="checkbox"/> Do these deposits border (on the seaward side) something <i>other than</i> another dune or the coastal beach, such as glacial material? <i>and</i> <input type="checkbox"/> Are these deposits landward of the 100-year floodplain? 	<p>This landform is not a regulatory coastal dune because it does not border the ocean or border the coastal beach that borders the ocean. You are likely on a cliff-top dune that <i>does not</i> meet the regulatory definition of coastal dune.</p>
Indicators of a Regulatory/Non-Regulatory Dune (based on the function)	If yes:
<p>For cases of artificial fill:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Is there evidence of two-way exchange of sediment between the coastal beach and the landform? If not, would this occur during a large coastal storm event? <i>and</i> <input type="checkbox"/> Is the landform conforming and reshaping to natural wind and water flow processes or would it in a coastal storm event? <i>and</i> <input type="checkbox"/> Is the landform migrating landward or laterally in response to wind, wave, or tides? <p><i>or</i></p>	<p>The artificial fill meets the regulatory definition of coastal dune.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Is the landform eroding and providing sediment to the beach system in a manner consistent with a sediment-source type coastal bank? 	<p>The artificial fill may meet the regulatory definition of a coastal bank (see coastal banks section beginning on page 1-51).</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Are field observations consistent with surveys, maps, and other references? 	
<ul style="list-style-type: none"> <input type="checkbox"/> Other observations: 	

SCHNEIDER, DAVIGNON & LEONE, INC.

PROFESSIONAL CIVIL ENGINEERS & LAND SURVEYORS

N. DOUGLAS SCHNEIDER, P.E., P.L.S.
MATTHEW C. LEONE, P.L.S.



DAVID M. DAVIGNON, P.E.
JAY MCKINNON, E.I.T.

November 16, 2021

Re: Notice of Intent Application

Applicant/Owner: The Kalife Residence Trust
Site Location: Winsegansett Avenue
Assessors Lots #232, #232A, and #233 on Map #42A

Project Purpose:

The purpose of the project is to demolish the existing garage to then construct a replacement 2-story structure in compliance with FEMA and Mass Building Code for construction within a Velocity Zone.

Site Background:

The lot is 6,520 sq. ft. in size and is bordered northerly by Winsegansett Avenue, westerly by Buzzards Bay, easterly by Monondach Avenue and southerly by a developed residential property. The northerly and easterly portions of the site are developed with a garage, crushed shell driveway and garden and lawn areas throughout. The site contains a Coastal Beach and falls completely within Land Subject to Coastal Storm Flowage, Flood Zone VE (El. 20).

Project Description:

Proposed Garage Reconstruction:

The Applicant proposes to demolish the existing 1-story FEMA non-compliant garage structure and to then replace it with a 20' x 30' 2-story structure. The garage will be constructed on an open concrete column foundation with break-away panels in compliance with FEMA and Mass Building Code for construction within a Velocity Zone. The proposed 2nd floor space of said structure will have its lowest structural member set at elevation 22.1 or 2 ft. + above the base flood elevation. The second floor space will contain a bathroom (sink & toilet) but will be limited by a deed restriction (see attached) to storage and/or a workshop as an Accessory Use to House No. 66 Winsegansett Avenue located across the street. The finish slab will be set at elevation 11.0 to prevent stormwater from entering the structure from the Winsegansett Avenue roadway.

Proposed Driveway Modification:

The Applicant proposes to remove, relocate and slightly enlarge the existing crushed shell driveway to provide access into the new garage location easterly. The surface will remain previous, either crushed shells or gravel.

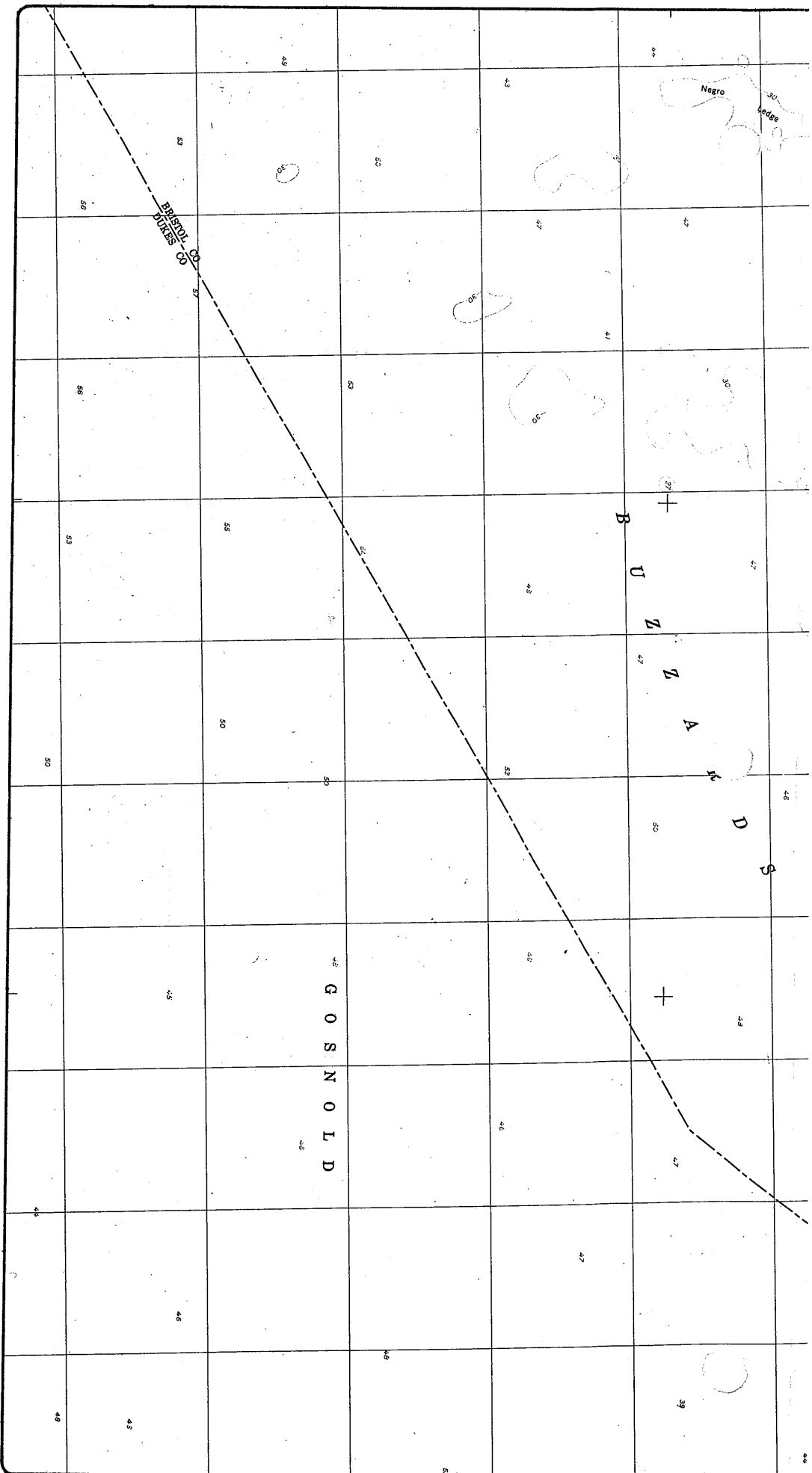
Proposed Utilities:

The house will be serviced by the existing municipal water service connection which is provided from the water main in Monondach Avenue and onto the lot to the water meter pit which is currently on the site. Overhead wires will be installed for electric, cable and telephone service lines from the existing utility pole located at the northeasterly lot corner.

Proposed Septic System:

The Applicant proposes to install a sewage disposal system consisting of a 1,500 gallon concrete septic tank, a concrete d-box and Cultec Contactor 100 chamber leaching area. The concept of said system which will be located on the easterly side of the garage, was approved by the Fairhaven Board of Health (BOH) with the condition that a Deed Restriction (DR) be placed on the property (see attached BOH minutes and draft DR).





Barrier Beach Inventory Project

Executive Office of Environmental Affairs
 Massachusetts Coastal Zone Management
 Richard F. Delaney, Director

Project Coordinator: Gary Clayton
 Geologic Advisor: Jeffrey Benoit
 Maps depict Barrier Beaches subject to
 Executive Order No. 181.

Barrier Beach Unit Code System

Fh-23

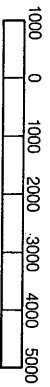
Town: Bristol

Barrier Beach Margins

The seaward and landward margins of all barrier beach units extend to mean low water and include contiguous marsh and/or tidal flats.

- no contiguous marsh and/or tidal flats are present
- contiguous marsh and/or tidal flats are part of the barrier beach unit

Scale in Feet 1:40,000



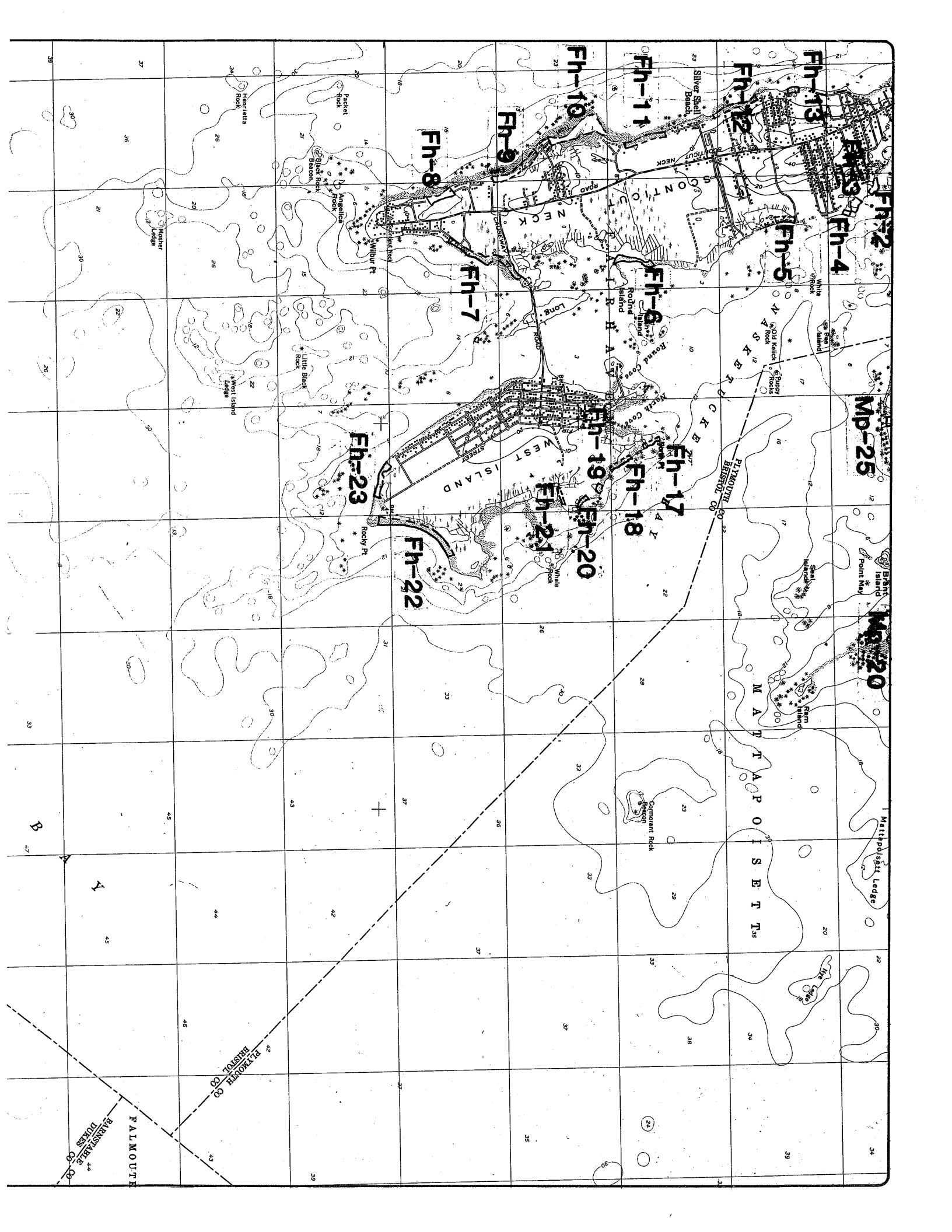
Quadrangle Location

Sciticut Quadrangle
 Massachusetts - Plymouth/Bristol Counties

The geological field research and mapping was compiled and produced under contract with The Provincetown Center for Coastal Studies

Principal Investigator: Lester B. Smith, Jr.
 Date of completion: April 1982
 Base maps are U.S. Geological Survey Quadrangles - 7.5 Minute Series (Topographic)
 Department of Public Works, Massachusetts

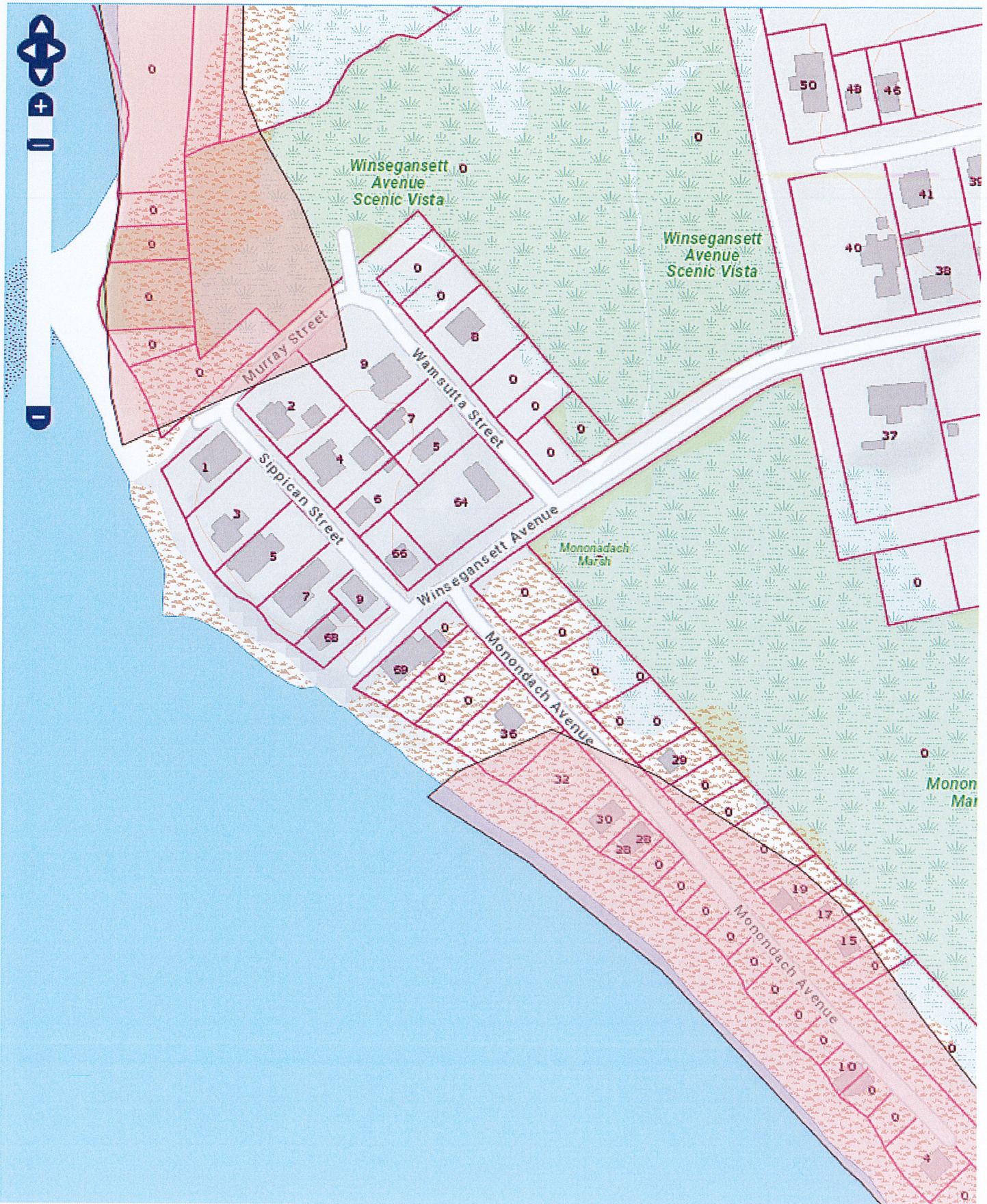






Search for a location

Zoom to a town



ECR

Environmental Consulting & Restoration, LLC



COASTAL RESOURCES MEMO

To: Dave Davignon, P.E.
From: Stan Humphries, Coastal Geologist *SMH*
Date: November 23, 2021
Re: 66 Winsegansett Ave., Fairhaven

Per the request of Alex Kalife, Environmental Consulting & Restoration, LLC (ECR) conducted research of available historic and existing conditions information and conducted two site evaluations of the property located across the street from 66 Winsegansett Ave. (the Site). The purpose of the study was to identify the coastal wetland resource areas on or near the site for the filing of a Notice of Intent (NOI). On November 24, 2020 there was an evaluation and on December 8, 2020 there was a meeting with the Conservation Agent and Sustainability Coordinator, Whitney McClees.

The Site is located on the southeast corner of Winsegansett Ave. and Monondach Ave. and is bordered by a single-family home to the south and a vacant lot to the east. There is a salt marsh across Monondach Ave. to the north and Buzzards Bay on the south side of the adjacent home to the south. The Site consists of an altered lot (6,520 s.f.) that includes a crushed shell drive, a garage, masonry/stone walls and a garden. There is also an existing watermain and a sanitary sewer force main located in the gravel road. The topography slopes down from Winsegansett Ave. (el. 10) towards the southeast corner (el. 8). There is no vegetation on the Site.

The geology on the Site within this vicinity of Sconticut Neck appears to consist of glacial till associated with a drumlin deposit (see Figure 1 from USGS). The soils are mapped as Paxton fine sandy loam, 8 to 15 percent slopes, very stony which are associated with "hills, ground moraines, drumlins" (Figure 2 from NRCS). Four test pits on the Site bear this soil type out and these soils are not associated with dune deposits. Surface sediments in the vicinity of the Site were examined since the state DEP has mapped the area to be a Barrier Beach system (Figure 3). MCZM has mapped a Barrier Beach further to the southeast of the Site, which is not included on it. With use of this figure, three ECR sampling sites are noted to the east and west of the Site. While dune sediments are present to the far east (#1), adjacent sites to the east (#2) and west (#3) were found to be glacial which do not support the DEP classification. Other relevant information for the Site includes the following: FEMA has mapped the area as a Zone VE (el. 20); and, MCZM shoreline change data documents a long-term erosion rate of only -0.6 feet per year (1844 – 2013) for the nearby beach.

As a result of ECR's wetland resource area evaluation at the site, ECR is able to confirm that the site contains the following resource areas and areas of Conservation Commission jurisdiction:

- Land Subject to Coastal Storm Flowage; and,
- 100-foot Buffer Zone to Coastal Beach.

Also review of the MassGIS wetlands database reveals the following:

1. The Site is not located within Estimated/Priority Habitat for Rare Species according to the Massachusetts Natural Heritage & Endangered Species Program (NHESP);
2. The Site does not contain Certified Vernal Pools according to the NHESP;
3. The Site is not located within an Area of Critical Environmental Concern; and.
4. The Site does not contain historic filled tidelands.

Upon review of this Coastal Resources Memo, please contact me at (617) 543 –1654 or stan@ecrholmes.com with any questions or requests for additional information.



Figure 1. USGS Surficial Geologic Map with glacial till shown in white.



Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
61A	Pawcatuck and Ipswich peats, 0 to 2 percent slopes, very frequently flooded	1.8	26.0%
306C	Paxton fine sandy loam, 8 to 15 percent slopes, very stony	3.4	47.6%
608	Water, ocean	1.5	21.1%
609	Beaches, Boulders	0.4	5.4%
Totals for Area of Interest		7.1	100.0%

Figure 2. NRCS soils map showing the Site soils are glacial in origin.



Figure 3. DEP Wetlands and MCZM Barrier Beach designations with ECR sample sites #1-2 that refute these designations.



Figure 3a. The landward limit of the Coastal Dune is approximated with the use of aerial imagery and site observations. Sediment samples were taken from a foot below the surface and compared to confirm the presence of glacial material at sites #2 and #3 (see Figure 3b). Windblown sand accumulation was sampled at site #1.



Figure 3b. Samples from sites #3 (left) and #2 (right) were compared showing the silty loam with angular gravel and small cobbles (i.e., glacial) similar in both. These soils are classified as the Paxton fine sandy loam, as mapped by the NCRS and reported in the ECR Memo. These also represent the soils logged by Schneider, Davignon and Leone, Inc.

Staff Report

Date: December 8, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 & 2 Marsh Island – Notice of Intent – DEP# 023-____, Fairhaven CON 023-257**

DOCUMENTS REVIEWED

- Notice of Intent (ecological restoration limited project) and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- NHESP letter dated November 30, 2021

RESOURCE AREAS ON/NEAR SITE

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

PERFORMANCE STANDARDS

- **Ecological Restoration Limited Projects:** 10.53(4)
 - (a) Notwithstanding the requirements of any other provision of [the performance standards for resource areas], the Issuing Authority may issue an Order of Conditions permitting an...Ecological Restoration Limited Project and impose such conditions as will contribute to the interests [of the Act], provided that:
 1. ...the project is an Ecological Restoration Project...;
 2. If the project will impact an area located within estimated habitat [for rare and endangered species], the applicant has obtained a preliminary written determination from the [Natural Heritage Endangered Species Program]...;
 3. The applicant demonstrates that the project will be carried out in accordance with any time of year restrictions or other conditions recommended by the Division of Marine Fisheries for coastal waters and the Division of Fisheries and Wildlife
 - (b) ...an Ecological Restoration Limited Project...may result in the temporary or permanent loss of Resource Areas and/or the conversion of one Resource Area to another when such loss is necessary to the achievement of the project's ecological restoration goals

(d) In determining whether to approve a project as an Ecological Restoration Limited Project, the issuing authority shall consider the following:

1. the condition of existing and historic coastal Resource Areas proposed for restoration including evidence of the extent and severity of the impairment(s) that reduce the capacity of said Resource Areas to protect and sustain the other interests identified in [the Act];
2. the magnitude and significance of the Ecological Restoration Project on existing Resource Areas that may be modified, converted, and/or lost and the interests for which said Resource Areas are presumed significant

PROJECT SUMMARY

- The applicant is proposing to restore a historically filled salt marsh

COMMENTS

- Ecological restoration limited projects permitted by a order of conditions may result in the temporary or permanent loss of resource areas and/or the conversion of one resource area to another when such loss and/or conversion is necessary to the achievement of the project's ecological restoration goals.
- Based on the submitted documentation, the project meets all of the eligibility criteria for a restoration order of conditions, as outlined in 310 CMR 10.13.
- This is the culmination of a project that began approximately ten years ago. The Commission permitted an earlier design for the project in 2010, but that work was never started and the design subsequently changed.
- The salt marsh was systematically filled from the late 1930s until the early 1950s by the placement of dredged material from New Bedford Harbor. Fortunately, because the fill that was placed was primarily sandy in nature, there are no PCBs present on site that need to be remediated.
- The proposed project will restore approximately 10.77 acres of salt marsh and tidal creeks by removing fill to establish salt marsh elevations, reconstruction a tidal creek system, and planting with native marsh species.
- The design also incorporates resilience to climate change and sea level rise, allowing this salt marsh to persist for potentially up to 50 years.
- This increase in salt marsh acreage will be a substantial gain for the New Bedford Harbor/Acushnet River area where extensive areas of coastal marsh have been filled and/or contaminated and will result in improved hydrology and water quality, fish and wildlife habitat, and provide opportunities for the public to access the shoreline and restored marsh for passive recreational activities.
- This design employs a phased construction approach with the northern half of the site being constructed first due to the radio tower infrastructure present on the southern half of the site. The first phase of the project is planned to be completed by 2023 with the second phase to be implemented as soon as an agreement is reached with the radio station. If an agreement is reached before the project goes out to bid, both phases would be constructed simultaneously. This Notice of Intent encompasses both phases in the hopes that they can be constructed simultaneously.

- There are rare species present on the property and a portion of the site is mapped habitat for rare and endangered species. The habitat management plan has been approved by the Natural Heritage & Endangered Species Program and the letter from NHESP indicates that the project as proposed will not adversely affect resource area habitat of state-protected rare wildlife species.
- The project results in the following impacts to existing resource areas on site:
 - Coastal Bank: 117 linear feet of permanent disturbance to Coastal Bank, associated with the excavation of the tidal channel and the construction of the access road to the site
 - Freshwater Wetland (Marsh): 6,168 square feet of freshwater wetland conversion (excavation) to salt marsh
 - Coastal Wetland (Salt Marsh): 35,033 square feet of impact to degraded salt marsh dominated by *Phragmites*, with 10.77 acres of salt marsh restoration
 - Coastal Beach: 834 square feet of permanent impact and 5,205 square feet of temporary impact associated with construction of the new tidal channel connection between the salt marsh restoration area and the Acushnet River
 - Land Subject to Coastal Storm Flowage (LSCSF): restoring altered tidal wetlands will involve excavating 13 acres of LSCSF and the construction of the elevated berm will result in filling approximately 1.26 acres of LSCSF.
 - Riverfront Area: portions of the restoration project, including the construction of the northern berm and the removal of fill, will alter 3.21 acres of disturbed Riverfront Area. Proposed conditions represent a substantial improvement to the resource area
 - Buffer Zone: a total of 3.19 acres of buffer zone associated with the existing salt marsh, coastal beach, and BVW will be converted to salt marsh. Approximately 3 acres of the buffer zone will be temporarily impacted by construction activities and will be part of the new buffer zone associated with the restored wetlands
- Currently, MassDEP has not yet issued a file number for this project. Until one is issued, the public hearing cannot be closed.

RECOMMENDATION

- If MassDEP has not issued a file number by the December 13 meeting, I recommend continuing the hearing to the next meeting.
- If MassDEP has issued a file number by the December 13 meeting, I recommend closing the public hearing for SE 023-____, CON 023-257, 1 & 2 Marsh Island, and issuing an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following recommended conditions:

Approve plans dated November 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. SIL-5
 10. SIL-9
 11. SIL-10
 12. WET-2
 13. This Order of Conditions is valid for five years since the work involves an extensive salt marsh restoration project outlined in two phases with three years of post-construction monitoring.
- B. Prior to Construction
14. CAP-3
 15. REC-3
 16. DER-1
 17. PCC-3
 18. EMC-1
 19. PCC-1
- C. During Construction
20. All construction sequencing and access, habitat management, time of year restrictions, construction notes, and post-construction monitoring outlined on the approved plans and within the "Permit Narrative" of the NOI submittal shall be followed.
 21. Disposal of excavated material shall follow all applicable local, state, and federal regulations.
 22. REC-2
 23. STO-4
 24. STO-5
 25. MAC-3
 26. MAC-8
 27. MAC-9
 28. DEB-1
 29. DEB-5
 30. SIL-3
 31. SIL-4
 32. SIL-8
 33. EC-1
 34. EC-2
- D. After Construction/In Perpetuity
35. Copies of post-construction monitoring reports shall be submitted to the Conservation Commission for the duration of monitoring.
 36. COC-3



MASSWILDLIFE

DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581

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

MASS.GOV/MASSWILDLIFE

November 30, 2021

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

Fairhaven Conservation Commission
Town Hall
40 Center Street
Fairhaven MA 02719

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

Dear Commissioners & Applicant:

The applicant listed above has submitted a Notice of Intent with site plans (dated October 25, 2021) to the Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division"), in compliance with the rare wildlife species section of the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.37).

MA WETLANDS PROTECTION ACT (WPA)

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

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

MA ENDANGERED SPECIES ACT (MESA)

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

1. The Applicant shall work to minimize and avoid impacts to rare plants and rare bird species and their habitats consistent with protective measures laid out in the Habitat Management

MASSWILDLIFE

Plan (dated October 25, 2021) during restoration and invasive plant management efforts. The Division is available for further consultation, as needed.

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

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

Any changes to the proposed activities or any additional work beyond that described in the approved management plan may require a filing with the Division pursuant to MESA. This approval is valid for five (5) years from the date of issuance. If you have any questions about this letter, please contact Rebekah Zimmerer, Endangered Species Review Biologist at 508-389-6354 or rebekah.zimmerer@mass.gov.

Sincerely,



Everose Schlüter, Ph.D.
Assistant Director

cc: MA DEP Southeast Region

Staff Report

Date: December 9, 2021
To: Conservation Commission
From: Whitney McClees, Conservation Agent
Subject: **89 Akin Street – Notice of Intent – DEP# 023-____, Fairhaven CON 023-258**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

RESOURCE AREAS ON/NEAR SITE

- Riverfront Area
- Bordering Vegetated Wetland (no work proposed within BVW)
- Buffer Zone

RELEVANT PERFORMANCE STANDARDS

- **Riverfront Area:** 10.58(5) Redevelopment
 - (a) At a minimum, proposed work shall result in an improvement over existing conditions
 - (b) Stormwater management is provided according to standards established by the Department
 - (c) Within 200 foot riverfront areas, proposed work shall not be located closer to the river than existing conditions or 100 feet, whichever is less
 - (d) Proposed work, including expansion of existing structures, shall be located outside the riverfront area or toward the riverfront area boundary and away from the river
 - (e) The area of proposed work shall not exceed the amount of degraded area, provided that the proposed work may alter up to 10% if the degraded area is less than 10% of the riverfront area
- **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.

PROJECT SUMMARY

- The applicant is proposing to redevelop the existing site, including the removal of the existing house, construction of a new residence with town sewer and water connections, and associated site grading.

COMMENTS

- Work proposed to occur within the 0-25 foot buffer zone:
 - Installation of erosion control
- Work proposed to occur within the 25-50 foot buffer zone:
 - Relocation of storage containers
- Work proposed to occur within the 50-100 foot buffer zone:
 - Small portion of the house
 - Deck attached to the house
 - Site grading
- Work proposed to occur within the 0-100 foot Riverfront Area
 - Installation of erosion control
 - Removal of storage containers
- Work proposed to occur within the 100-200 foot Riverfront Area
 - Relocation of storage containers
 - Site grading
 - Installation of utilities
 - Approximately half of the house
 - Deck attached to the house
- Overall, the applicant is working within previously degraded riverfront area and is working to minimize impacts closer to resource areas.
- Two storage containers, a boat, and a trailer are currently being stored in the area of lawn that has been flagged as wetland. The applicant will be removing those items as well as debris that has been dumped at the edge of the lawn as part of this project.

- During the site visit on December 7, the members of the Commission present discussed the following:
 - What is the path into the woods currently used for? There was some concern over ATVs crossing the wetland and stream.
 - Add a line of shrub plantings at the BVW edge between the property lines so the area of lawn that is wetland will be clearly separated and not liable to continue getting mowed.
 - Seed the area of wetland to be disturbed by removing the storage containers with a wetland seed mix
- The applicant's representative submitted the following comments in response to the above questions/comments:
 - The woods path is within the Akin Street layout and not owned by the applicant, who says it's mostly walkers and hunters who use it.
 - The applicant would like to plant wildflower mix in the disturbed areas under the containers.
 - The applicant wants to know if they can use large stones or rail fence to demarcate the edge of wetlands rather than shrub plantings.
- A native wildflower seed mix would be an acceptable alternative for the area of lawn that is currently wetland to help stabilize the area once it is disturbed by removing the containers.
- A post-and-rail fence would also demarcate the edge of the wetland that is currently lawn. The Commission has utilized post-and-rail fences in the past to demarcate a resource area edge. A post-and-rail fence has the benefit of not running the risk of being removed by a future property owner who does not realize where the wetland is on the property.
- Additionally, an alternatives analysis is required for Riverfront Area projects and one has not yet been submitted.
- MassDEP has not yet issued a file number for this filing, so the public hearing cannot be closed until they've done so.

RECOMMENDATION

- I recommend a continuance to a future meeting until an alternatives analysis has been submitted and a file number has been issued by MassDEP.

Staff Report

Date: December 9, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **10 Littleneck Road – Notice of Intent – DEP# 023-____, Fairhaven CON 023-259**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE

RELEVANT PERFORMANCE STANDARDS

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

PROJECT SUMMARY

- The applicant is proposing to elevate the existing house and re-set onto a newly constructed flood zone-compliant foundation as well as construct a small expansion and deck.

COMMENTS

- This property previously came before the Commission as a Request for Determination when the addition and deck were going to be limited to sonotubes only.
- Further changes to the project resulted in needing to raise the house to comply with FEMA flood zone regulations, necessitating a Notice of Intent.
- Some fill will be needed to bring the existing grade level for the foundation. Flood vents will be used to comply with FEMA requirements.
- This is not a velocity flood zone.
- The footprint of the previously approved addition and deck is not changing, just the foundation underneath the house.
- There is a temporary house location noted on the plans where the house will be stored during construction of the foundation.
- Utilities will be rerun once the house is reset on the foundation.
- No vegetation is proposed to be removed.
- The project does need a variance from Zoning, which is in the process of being filed.
- MassDEP has not yet issued a file number for this project, so the public hearing cannot be closed until they’ve done so.

RECOMMENDATION

- If the project does not have a file number by the December 13 meeting, I recommend a continuance because a public hearing cannot be closed until such time as MassDEP issues a file number.
- If the project has a file number by the December 13 meeting, I recommend closing the public hearing for 10 Littleneck Road, SE 023-____, CON 023-259, and issuing an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following conditions:

Approve plan dated November 16, 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 shall be the depicted scope of work on the plans. No vegetation is permitted to be removed.
10. FZ-1
11. FZ-2
12. Driveway is to remain crushed shells.

B. Prior to Construction

13. CAP-3
14. REC-3
15. DER-1
16. PCC-3
17. EMC-1
18. TRP-3
19. PCC-1

C. During Construction

20. REC-2
21. TRP-1
22. MAC-3
23. MAC-8
24. MAC-9
25. DEB-1
26. DEB-5
27. BLD-3
28. BLD-4
29. SIL-8
30. WAS-2
31. WAT-3
32. EC-1

- 33. EC-2
- D. After Construction/In Perpetuity
 - 34. REV-1
 - 35. COC-1
 - 36. COC-2

Perpetual Conditions

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

- 37. CHM-1 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
- 38. DER-4

Staff Report

Date: December 9, 2021
To: Conservation Commission
From: Whitney McClees, Conservation Agent
Subject: **47 Mangham Way – Possible Violation/Enforcement**

DOCUMENTS REVIEWED

- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone

RELEVANT PERFORMANCE STANDARDS

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

- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”

COMMENTS/RECOMMENDATIONS

- I received a report of filling of wetland and diverting water onto neighboring properties at 47 Mangham Way.
- Diversion of water was previously addressed in an Enforcement Order by the Commission and the graywater that was being discharged off property was remedied. If groundwater or stormwater runoff is being diverted off the subject property onto adjacent properties, that is not within the jurisdiction of the Conservation Commission.
- No filing that I can find has ever been submitted to the Commission for 47 Mangham Way.
- Based on a site visit and based on old wetland lines for properties in the area, it does appear that there are wetlands on the property. However, based on historic aerials, it appears this property has been clear since approximately 1961, prior to the Wetlands Protection Act.
- While there may be fill in the wetland, if it was placed there prior to the Wetlands Protection Act, it is not something the Commission can issue enforcement on. If any fill has been placed since the advent of the Wetlands Protection Act, the Commission might be able to require that fill to be removed, but more research would need to be done to determine if there is anything potentially enforceable under the WPA or Bylaw.
- However, because there are wetlands on either side of the property and very likely on the property, any future work on the property will require review and approval by the Conservation Commission.

September 19, 2019



February 27, 2018



October 10, 2016



April 2, 2012



2000



May 1996



1971



1961



Staff Report

Date: December 9, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **North Street, Map 15, Lot 43 – Violation/Enforcement – DEP# 023-1341, Fairhaven CON 023-194**

DOCUMENTS REVIEWED

- Orders of Conditions issued April 28, 2021
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

RESOURCE AREAS ON/NEAR SITE

- Salt Marsh
- Coastal Beach
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE

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].

SUMMARY/COMMENTS

- A cease and desist was issued the morning of October 6 by the Chair of the Commission for spreading a significant amount of crushed rock directly next to the salt marsh on top of filter fabric. The Chair instructed the applicant to stop work until such time as he and the Agent returned to the property later that day.
- Upon returning to the site at 1pm the same day, the Chair and the Agent noted that further work had been done since issuing the cease and desist that morning. Crushed rock had been spread over the entire area and it appeared that the grade of the stockpile area had been altered.

- We walked the site with the applicant and the tree company he had hired per the Order of Conditions to discuss and mark which branches could be trimmed for the purposes of installing the fence.
- At the conclusion of the site visit, we discussed how the work done in the stockpile area could potentially significantly damage the marsh due to the fact that the crushed rock is unwashed and was spread to the very edge of the salt marsh with no buffer or erosion control.
- The applicant's engineer was asked to survey the stockpile area to determine how the grades had changed and how much rock had been spread and appear at the October 18 meeting to address the Commission.
- The Chair also followed up his cease and desist with the following email to both the applicant and the applicant's engineer:
 - Per our conversation the Cease and Desist will remain for this property and be discussed at the Oct 18th meeting. Please be present at this meeting.

In the meantime no further work is to be performed on the area commonly referred to as the "parking area" know in the plan as the "stock pile area" or elsewhere on this property except what is described below.

The pruning of the trees that we marked together may be done provided it is done below the marking flags we placed together and toward the west. The dead branch hanging in the tree we observed may be cut and removed. No trees are to be removed at this time nor is any other work authorized by this email in this area.

The small area at the end of North Street to the north where the tree was recently removed may be seeded with a Conservation Seed Mix only. No fill, grading, fertilizer or any other form of work in this area is authorized by this email.

If there is any question please do not hesitate to contact me so we can clarify. Please do not perform any unauthorized work. Any clarification will be done in writing to avoid any confusion or misunderstandings.

- The work done on the stockpile area will need to be addressed.
- The Order of Conditions under the Wetlands Protection Act includes a condition that states "failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order."
- The Fairhaven Wetlands Bylaw (192-6D) includes a section that states "any permit issued under this chapter may be revoked or modified by the Commission after public notice and notice to the holder of the permit and a public hearing thereon, upon a finding of the existence of circumstances which would justify the denial of or imposition of conditions on a permit."
- An Enforcement Order was issued on October 25, 2021 for the following:
 - A survey of the stockpile area to determine what grade changes occurred as well as the depth of the unwashed crushed stone.
 - A restoration plan to return the stockpile area to pre-construction conditions that includes regrading, removing the unwashed crushed rock and any other materials not permitted by the Order of Conditions, and appropriate erosion and sedimentation controls. This restoration plan is to be put together by both a qualified professional wetland scientist who has expertise with salt marsh ecology and compliance with 310 CMR 10.32 and an engineer who can address the changes in grade and elevation and

submitted to the Conservation Commission for their review on or before November 8, 2021.

- Due to the significant amount of unwashed, crushed stone that has been placed directly next to the salt marsh, it is imperative that the restoration plan be submitted no later than November 8, 2021 and restoration work start no later than December 1, 2021.
- Erosion and sedimentation control shall be placed on the immediate upland side of the boulders to prevent further damage to the salt marsh from the quality of unwashed crushed rock. The placement of this erosion and sedimentation control is to be installed by a qualified professional only and shall not cause further damage to the salt marsh.
- The survey of the area and depth of stone has been completed.
- The beginnings of a restoration plan has been submitted, but there has been no indication that a qualified professional wetland scientist with expertise in salt marsh ecology has been involved in the restoration plan.
- Erosion and sedimentation control has been placed on the immediate upland site of the boulders.
- Further detail is needed to ensure no damage to the salt marsh will occur during the execution of the restoration plan. There is no detail as to how items will be removed and how a uniform slope will be created. Machinery was involved in committing the violation. Likely, machinery will be needed to rectify it.

RECOMMENDATION

- The restoration plan needs revision before the Commission should consider approving it, especially in light that it does not appear that a professional wetland scientist has been involved.



TOWN OF FAIRHAVEN, MASSACHUSETTS

CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

Attachment A

DEP File #: None
Fairhaven File #: EO 023-018
Property Owner: Lee Miguel
Property: North Street Marsh, Map 15, Lot 43

Condition Numbers Violated

General Conditions:

7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
13. The work shall conform to the plans and special conditions referenced in this order.

Special Conditions:

- A. 7. ADD-4b: All work shall be done in accordance with the final plans dated March 15, 2021 as approved by this Commission. Any deviation must be approved by this Commission in writing prior to commencing work involved in this deviation.
- A. 10. STO-4: There shall be no discharge or spillage of petroleum product, hazardous material, or any other pollutant into any area of statutory interest.
- A. 13. No equipment whatsoever is permitted in the salt marsh or in the 100-foot buffer zone at any time during any phase of the project.
- A. 18. No grade changes are permitted anywhere on the property associated with any of the approved work.

A restoration plan shall be filed with the issuing authority on or before November 8, 2021 for the following:

1. A survey of the stockpile area to determine what grade changes occurred as well as the depth of the unwashed crushed stone.
2. A restoration plan to return the stockpile area to pre-construction conditions that includes regrading, removing the unwashed crushed rock and any other materials not permitted by the Order of Conditions, and appropriate erosion and sedimentation controls. This restoration plan is to be put together by both a qualified professional wetland scientist who has expertise with salt marsh ecology and compliance with 310 CMR 10.32 and an engineer who can address the changes in grade and elevation and submitted to the Conservation Commission for their review on or before November 8, 2021.

3. Due to the significant amount of unwashed, crushed stone that has been placed directly next to the salt marsh, it is imperative that the restoration plan be submitted no later than November 8, 2021 and restoration work start no later than December 1, 2021.
4. Erosion and sedimentation control shall be placed on the immediate upland side of the boulders to prevent further damage to the salt marsh from the quality of unwashed crushed rock. The placement of this erosion and sedimentation control is to be installed by a qualified professional only and shall not cause further damage to the salt marsh.
5. The Conservation Commission, its employees, and its agents shall have a right of entry to inspect or compliance with the provisions of this Enforcement Order
6. The Commission reserves the right to impose additional conditions on any or all portions of this project that could impact an area of statutory interest under the Act and/or the Fairhaven Wetlands Bylaw.
7. The restoration plan shall be in compliance with the Performance Standards for Salt Marsh (310 CMR 10.32(3)). Specifically, work 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 on productivity.
8. Non-compliance with this Order may result in fines of up to \$300 per day the violation is ongoing, pursuant to Chapter 192-11 of the Code of the Town of Fairhaven.

MEMORANDUM

Date: November 10, 2021

To: Conservation Commission
Town of Fairhaven

From: SITEC, Inc. a Part of Civil & Environmental Consultants, Inc.
Steven D. Gioiosa, P.E. and Daniel N. Aguiar

Subject: Lee & Lizett Miguel
Enforcement Order 023-018

Location: North Street
Map 15, Lot 43

CEC Project: 304-088



In response to the enforcement order issued for the above referenced property, we hereby offer the following information for the Commission's consideration.

1. An as-built survey of the stockpile area was completed and this information is depicted on the plan filed with the Commission in October (Plan Revision Dated October 18, 2021). As noted during the public meeting, the stone depth varies from 2"-6".
2. The attached restoration plan outlines the proposed measures recommended to restore the area disturbed to compliance with the Order of Conditions. This restoration includes the following:
 - A. Install and maintain straw wattles until all restoration work is completed and the area stabilized;
 - B. Remove crushed stone to facilitate the removal of the filter fabric;
 - C. Create a uniform edge grade to a stable slope and add topsoil as needed to establish vegetated cover where depicted on the plan;
 - D. Please washed crushed stone in the areas depicted; and
 - E. Seed the perimeter filter strip and maintain the area until full stabilization has occurred.

It should be noted that the owner/applicant ordered and paid for washed crushed stone (see attached sales receipt).

3. Due to the fact that we are out of the growing season, we are proposing to complete the restoration project in the Spring 2022. Removal of the stone at this time will create an unstable earth embankment adjacent to the marsh.
4. Erosion control barrier is currently in place.
5. Right of entry to the project area by Commission members and this agent is acknowledged.

Scheduling of the restoration will be set based on the Commission's recommendations.

cc: Lee & Lizett Miguel

Attachment: Site Plan
Pico Stone Receipt



IMPORTS & SUPPLY

104 RIVER ROAD, NEW BEDFORD MA. 02745
OFFICE: 774 425 4967

BILL TO: MR. LEE MIGUEL
5089160273

QTY	UNIT	Item Description	PRICE	EXT PRICE TAX
60	YARD	WASHED CRUSHED 1 1/2" BLUE STONE	\$30.00	\$1,800.00 T
3		DELIVERY	\$50.00	\$150.00

Subtotal: \$1,950.00
 Local Sales Tax 6.25 % Tax: + \$112.50
RECEIPT TOTAL: \$2,062.50



20% RESTOCKING FEE ON ALL RETURNS
 NO RETURN ON VENEER, CEMENT PRODUCTS, SEALERS/ADDITIVES, BULK MATERIAL, TOOLS, COBBLESTONE, CERTAIN HARDSCAPE, FABRICATION & SPECIAL
 ORDERS.PAVERS/HARDSCAPE ARE SOLD IN FULL LAYERS/FULL PALLET ONLY.CERTAIN COLORS ARE SOLD IN FULL PALLETS ONLY.WE ONLY ACCEPT
 RETURNS ON CERTAIN COLORS & MUST BE IN EITHER FULL LAYERS OR FULL PALLETS.
 MUST HAVE RECEIPT AT TIME OF RETURN. WE HAVE THE RIGHT TO REFUSE ANY RETURN*

MEMORANDUM

Date: November 29, 2021

To: Conservation Commission
Town of Fairhaven

From: SITEC, Inc. a Part of Civil & Environmental Consultants, Inc.
Steven D. Gioiosa, P.E. and Daniel N. Aguiar

Subject: Enforcement Order #023-018
Lee Miguel

Location: North Street
Map 15 – Lot 43

CEC Project: 304-088



As requested, we have revised the stockpile area restoration plan to bring the topography and limits of work to the pre-disturbance condition. In order to arrive at a limit of stockpile area, we reviewed the 2019 aerial photograph of the area. Based on this review, we were able to determine the pre-disturbance limits of the gravel parking/storage area. The revised plan reflects this limit of gravel.

We have also listed a restoration outline which includes the removal of the stone edging not previously located along the marsh line for this area. The existing crushed stone will be removed, the filter fabric will be removed and disposed of offsite, the area regarded to pre-disturbance level, and stabilization of the site with grassed buffer and setting washing stone as shown.

Due to the season, we recommend that this restoration work be initiated in early Spring 2022. This will avoid problems with stabilization of the area for erosion control.

cc: Lee & Elizett Miguel

Staff Report

Date: December 8, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Bella Vista Island – Possible Violation/Enforcement – DEP# 023-1340, Fairhaven CON 023-195**

DOCUMENTS REVIEWED

- Order of Conditions issued May 28, 2021
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

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

- The project purpose is to resolve numerous issues associated with an Order issued under DEP File No. SE 023-1127 including extensive landscaping activities which were never completed and landscaping activities which were never permitted. The Order issued under 023-1127 involved extensive native plantings throughout the existing lawn area south and west of the house and creation of two rain gardens, none of which was completed. The entire area, which formerly contained two Isolated Vegetated Wetlands (IVW), was converted to manicured lawn and planting beds were installed along the Salt Marsh boundary along with irrigation and subsurface electricity and lighting. The scope of work depicted on the Plan-of-Record referenced below is a negotiated resolution between the Property Owner and the Commission which requires removal of unpermitted landscaping features and restoration of the Buffer Zone. The previously required rain gardens and plantings in the lawn area are no longer required.

COMMENTS

- The Order of Conditions required work on the restoration to start no later August 31, 2021 and be completed by December 1, 2021. No work has started. The Order also states that “if the

project is not initiated by August 31, 2021, the Commission may issue a new Enforcement Order with fines of up to \$300.00 per day.”

- The Commission previously approved a submitted revised timeline for completing the work, with the stipulation that if work had not begun by December 1, 2021, \$300.00/day fines would begin.
- The Commission’s peer reviewer indicated that work had not started by December 1, so daily fines should begin.
- The applicant’s representative indicated that the landscaping company hired to do the work had some concerns with removing and relocating the fruit trees and would like the applicant’s representative to submit a request for amendment to the Commission to allow the fruit trees to remain where they are.

RECOMMENDATION

- I reserve making a recommendation until after discussion with the Commission and the Commission’s peer reviewer for the project.