

# Staff Report

Date: January 13, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **279 Mill Road – Request for Certificate of Compliance – DEP# 023-1251, Fairhaven CON 023-139**

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## DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- Order of Conditions issued July 18, 2017
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

## RESOURCE AREAS ON/NEAR SITE

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

## RELEVANT PERFORMANCE STANDARDS

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

6. Work on a stream crossing shall be presumed to meet the performance standard set forth in 310 CMR 10.54(4)(a) provided the work is performed in compliance with the Massachusetts Stream Crossing Standards by consisting of a span or embedded culvert in which, at a minimum, the bottom of a span structure or the upper surface of an embedded culvert is above the elevation of the top of the bank, and the structure spans the channel width by a minimum of 1.2 times the bankfull width. This presumption is rebuttable and may be overcome by the submittal of credible evidence from a competent source. Notwithstanding the requirement of 310 CMR 10.54(4)(a)5., the impact on bank caused by the installation of a stream crossing is exempt from the requirement to perform a habitat evaluation in accordance with the procedures contained in 310 CMR 10.60.

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

- 10.56 (4)

- (a) Work shall not impair the following:

1. The water carrying capacity within the defined channel, which is provided by said land in conjunction with the banks;
2. Ground and surface water quality;
3. The capacity of said land to provide breeding habitat, escape cover and food for fisheries; and

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

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

- **Riverfront Area: 10.58(4)**

- (d) No Significant Adverse Impact

1. Within 200 foot riverfront areas, the issuing authority may allow the alteration of up to 5000 square feet or 10% of the riverfront area within the lot, whichever is greater ..., provided that:
  - a. At a minimum, a 100' wide area of undisturbed vegetation is provided... preserved or extended to the max. extent feasible...
  - b. Stormwater is managed ...

- c. Proposed work does not impair the capacity of the riverfront area to provide important wildlife habitat functions. ...
  - d. ... incorporating erosion and sedimentation controls and other measures to attenuate nonpoint source pollution.
- **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

## PROJECT SUMMARY

- The Order of Conditions approved a 9.3 acre solar development project comprised of two solar arrays, perimeter fencing, photovoltaic solar panels, racking systems, inverters and transformers with accommodating concrete pads, above and below ground utilities, stormwater facilities, a gravel road to access the solar fields, two wetland crossings, one stream crossing, and a wetland replication area of 1,800 square feet.

## COMMENTS

- The applicant has submitted a request for a Certificate of Compliance for Complete Certification for the entire project.
- Based on a site visit and the submitted as-built plan, the solar arrays and stormwater facilities appear to have been constructed in substantial compliance with the approved plans and the issued Order of Conditions.

- The wetland replication area was planted September 2020 and was inspected for the first year of monitoring on December 8, 2021. In the December 9, 2021 monitoring report, the applicant is asserting that 75% wetland vegetative cover has been achieved and is asking the Conservation Commission to fully close out the open Order for the entire project, including the wetland replication.
- MACC recommends that a COC should not be issued for a project involving wetland replication until the two growing seasons requirement has been met.
- The Commission will need to discuss the necessity of a second year of monitoring, especially given the flooded nature of the replication area during the monitoring visit. The performance standards for BVW governing replication state in part: “at least 75% of the replacement are shall be reestablished with indigenous wetland plant species within two growing seasons”
- The applicant submitted the following information addressing the size difference in approved replication area and final replication area:
  - In regards to your comments on the size difference between what was approved and what the as-built shows, the difference appears to be 20sf. Due to the success of the replication area as outlined in the previously submitted monitoring report, we believe this discrepancy to be extremely minor and should be viewed as de minimus. Also, you asked for information in regards to the specific plantings that were installed in the replication area at the time of planting. Unfortunately, we have not been able to get a hold of the Wetland Scientist who supervised the construction of the area, and have no documentation of the specific planting plan that they followed. The applicant's lack of response from this previous wetland scientist is what led Goddard Consulting to be involved in continued monitoring of the area. As indicated, we took detailed notes in the monitoring report on the vegetation that is presently in the area, and we believe that it has met the goals of the replication area and will continue to function and thrive as a wetland resource area.
- While the approved stream/wetland crossings do not comply with Massachusetts Stream Crossing Standards, the applicant has submitted documentation showing that the PVC pipes under the crossings were lengthened and are in place and that the ends of the PVC pipes should be visible beyond the end of the riprap. During the site visit, the ends of the pipes were not visible because the riprap had shifted to completely cover them.
- The Commission will need to discuss whether the shift of the riprap allows the hydrologic connections to function properly, maintaining wetland connectivity and stream connectivity, and whether the connections are in compliance with the approved plans.

## RECOMMENDATION

- Until the Commission discussed the above information, I reserve making a recommendation.



November 10, 2021

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

**RE:    Request for Certificate of Compliance  
        Statement of Compliance  
        Mill Road Solar Project – 279 Mill Road - Fairhaven, MA  
        Assessors Map 38 – Lots 5 and 6 and Map 39 – Lot 32  
        ADE Job No. 2893.06  
        DEP File No. 21-1251**

Dear Commission Members:

On behalf of the applicants and representing parties, we respectfully submit this Statement of Compliance and request for a Certificate of Compliance for the above-referenced project.

We performed numerous site inspections throughout the project's construction and have completed an as-built survey of the project (2 copies are attached). In our opinion, the work governed by the Orders of Conditions issued by the Commission on 7/17/17 has been completed in substantial conformance to the approved plans and conditions attached thereto.

The current landowner is Peter and Melissa Deterra, 279 Mill Road, Fairhaven, MA 02719 but the Certificate of Compliance, when issued, should be issued to the project developer:

Fairhaven MA 1, LLC  
c/o Atlantic Design Engineers, Inc.  
P.O. Box 1051  
Sandwich, MA 02563

If you have any questions, please do not hesitate to call me at (508) 888-9282.

Sincerely,

**ATLANTIC DESIGN ENGINEERS, INC.**



Richard J. Tabaczynski, P.E.  
Vice President

P.O. Box 1051  
Sandwich, MA 02563  
(508) 888-9282 · FAX 888-5859  
email: [ade@atlanticcompanies.com](mailto:ade@atlanticcompanies.com)  
[www.atlanticcompanies.com](http://www.atlanticcompanies.com)

November 6, 2020

J.R.D. Incorporated  
Attn: Jordan Rezendes  
PO Box 351  
Assonet, MA 02702

RECEIVED

NOV 09 2020

J.R.D., INC.

RE: Wetland Replication Activities  
279 Mill Road Solar Project  
Fairhaven, MA 02719

Dear Mr. Rezendes,

Wetland replication activities were conducted on September 21<sup>st</sup> and 22<sup>nd</sup> of 2020, at 279 Mill Road, Fairhaven, MA to support components of the 279 Mill Road Solar Project (Solar Project). All site work was completed in accordance with the approved project plan entitled: "Wetland Replication Area Plan" prepared by Atlantic Designer Engineers, Inc. for Signal Energy DG, and approved by the Fairhaven Conservation Commission under a Notice of Intent (WPA Form 1) application (SE 023-1251) on July 17, 2017. All excavation and trucking activity associated with construction of the wetland replication area was completed by J.R.D. Incorporated (JRD) and oversight to ensure compliance with the approved project plan was provided by myself, Stephen Chmiel. Completion of the replication activities resulted in the removal of approximately 46 yards of debris and fill material, and excavation, grading and planting of the replication area required approximately 16-hours of labor to complete. A summary of the general activities included the following:

- Review of the staking and flagging representing the replication limits with JRD against project plans to ensure locations were accurate prior to the start of work;
- The installation of erosion control (compost filter sock) along the perimeter of the existing wetland to serve as a limit of work and protect adjacent areas as depicted on the approved Solar Project plan;
- The excavation of material within the identified wetland replication area. During initial excavation activities it was determined that site locations selected for replication activities were historically contiguous with the abutting wetland complex and were in fact filled wetlands, containing intact buried hydric soils with 8- to 16-inch organic topsoil horizons. As a result, excavation activities were limited to the removal historic fill and debris down to the native topsoil horizon to ensure natural transitions to the adjacent wetland areas;
- The live loading of excavated material into dump trucks for onsite stockpiling;
- The distribution and grading of approximately 10 yards of topsoil to account for native topsoil loss during fill/debris removal as well as compaction resulting from the historic placement of fill to ensure approximately 12-inches of topsoil was present within the replication area;
- The distribution of an erosion control seed mix via a hydroseed application within uplands along the 25- to 50-foot transitional area around the replication site;
- The installation of compost filter sock along the completed wetland replication area; and
- The installation of the requisite number and species of native trees, shrubs and herbaceous plants as noted on the approved Wetland Replication Area Plan.

In accordance with the Solar Project wetland replication plan requirements, supplemental monitoring of the replication area will occur during the 2021 and 2022 growing seasons. Monitoring reports documenting the vegetation establishment, species densities and any mitigation measures that may be necessary to achieve the 75 percent vegetation coverage will be provided as detailed in Condition 8 of the approved Wetland Replication Area Plan. Should you have any concerns relative to the information contained herein, please do not hesitate to contact me at (508) 397-4258 or StephenChmiel@gmail.com.

Respectfully,

Stephen Chmiel  
Attachment

**PHOTOGRAPHIC LOG**

**Client Name:** J.R.D. Incorporated

**Site Location:** 279 Mill Road Solar Project, Fairhaven, MA 02719

**Photo 1**      **Date:**  
9/21/20

**Direction Photo Taken:**  
South

**Description:**  
View of fill material along wetland edge prior to the start of wetland replication work.



**Photo 2**      **Date:**  
9/21/20

**Direction Photo Taken:**  
West

**Description:**  
View of removal of fill/debris within wetland replication area.



**PHOTOGRAPHIC LOG**

**Client Name:** J.R.D. Incorporated

**Site Location:** 279 Mill Road Solar Project, Fairhaven, MA 02719

**Photo 3**

**Date:**  
9/21/20

**Direction Photo Taken:**  
East

**Description:**  
View of final grading and topsoil distribution within wetland replication area.



**Photo 4**

**Date:**  
9/21/20

**Direction Photo Taken:**  
East

**Description:**  
View of final grading within wetland replication area prior to tree and shrub installation.





**PHOTOGRAPHIC LOG**

**Client Name:** J.R.D. Incorporated

**Site Location:** 279 Mill Road Solar Project, Fairhaven, MA 02719

**Photo 5**

**Date:**  
9/21/20

**Direction Photo Taken:**  
West

**Description:**  
View of erosion control installation along new wetland boundary limit.



**Photo 6**

**Date:**  
9/22/20

**Direction Photo Taken:**  
South

**Description:**  
View of plant placement prior to the installation of trees and shrubs.



**PHOTOGRAPHIC LOG**

**Client Name:** J.R.D. Incorporated

**Site Location:** 279 Mill Road Solar Project, Fairhaven, MA 02719

**Photo 7**

**Date:**  
9/22/20

**Direction Photo Taken:**  
East

**Description:**  
Additional view of plant placement prior to installation activities.



**Photo 7**

**Date:**  
9/22/20

**Direction Photo Taken:**  
West

**Description:**  
View of installed plants within wetland replication area.



December 9, 2021

Fairhaven Conservation Commission  
40 Center Street  
Fairhaven, MA 02719

**Re: Fall 2021, Wetland Replication Monitoring Report  
279 Mill Road, Fairhaven, MA (DEP File #023-1251)**

Goddard Consulting, LLC (Goddard) is pleased to submit this monitoring report on behalf of Signal Energy, for the wetland replication area required under DEP File #023-1251.

Documents Referenced:

- Order of Conditions DEP File #023-1251
- *Site Development Plans for 279 Mill Road Solar Project*, Atlantic Design Engineers, 4/5/17, REVISED 6/13/17
- *Wetland Replication Area Plan*, Atlantic Design Engineers, 9/10/20
- *Wetland Replication Activities*, Stephen Chmiel, 11/6/20
- *Solar Site Asbuilt*, Atlantic Design Engineers, 11/2/21

Background:

The project involved a wetland crossing with the filling of Bordering Vegetated Wetland (BVW) along a perennial stream and the construction of a wetland replication area adjacent to BVW approved under the Order of Conditions (OOC) (DEP File #023-1251). The goal of this replication construction was to create a flooded wetland resource area to match the existing conditions of the surrounding wetland system.

Wetland Replication Construction:

The wetland replication area was constructed on September 21<sup>st</sup> & 22<sup>nd</sup>, 2020 under the supervision of Stephen Chmiel. Goddard Consulting was not involved in the construction or design of the wetland replication area. The replication area was graded down to subsoil containing redoximorphic features, and 6" of organic rich topsoil from the wetland impact area and on-site leaf litter was added prior to planting. This work was documented in the *Wetland Replication Activities*, dated 11/6/2020.

Wetland Replication Area Inspection:

The wetland replication area was inspected by Goddard Consulting on December 8, 2021. The replication area overall satisfies the criteria for Bordering Vegetated Wetlands (BVW) as it was designed and intended.

Hydrology:

The surface hydrological connection to the adjacent wetland is functioning with surface ponding occurring within the area, similar to that of both the adjacent and impacted portions of the BVW system.

Soils:

Soils in the wetland replication area are a hydric and organic 10YR3/1 (see Figure 1).



Figure 1. Soils within the replication area (10YR3/1).

Vegetation

Due to the flooded nature of the replication area and surrounding wetland system, it is expected that the majority of the vegetative cover will be dominated by the herbaceous layer, including rushes, sedges, and the marsh seed box (*Ludwigia palustris*). Please note that in the following photographs the dominant subaqueous layer of vegetation is difficult to discern due to light reflection. This vegetation has been documented in shallower locations in which it is easier to photograph (see Figure 2).

Dominant vegetation within the replication area consists of Arrowwood (*Viburnum dentatum*), sweet pepperbush (*Clethra alnifolia*), soft rush (*Juncus effusus*), cattails (*Typha latifolia*), and marsh seedbox (*Ludwigia palustris*), (*Carex stricta*). Other non-dominant species noted in the area include sensitive fern (*Onoclea sensibilis*), steeplebush (*Spiraea tomentosa*), red maple (*Acer rubrum*), willow (*Salix spp.*), wetland goldenrod (*Solidago spp.*) and silky dogwood (*Cornus amomum*). Limited mortality (<25%) was noted of shrubs installed within the area. All

the species are wetland indicator species, with the shrub layer at approximately 40% coverage, and the herbaceous layer at approximately 60% coverage.



Figure 1. The wetland replication area facing east. The area is flooded, similar to that of the surrounding wetland system. Live shrubs and herbaceous vegetation including rushes and sedges can be seen in this image, with dominant subaqueous vegetation difficult to discern.



Figure 2. The wetland replication area facing northwest. Herbaceous vegetation such as marsh seed box can be faintly seen underwater in this image; and in areas lacking shrubs. This vegetation creates an herbaceous coverage of approximately 50% across the area.



Figure 3. Cattails, arrowwood, rushes, sedges, and marsh seed box dominate the southern portion of the replication area.



Figure 4. A small red maple hummock with surrounding soft rush and silky dogwood within the replication area. Similar hummocks occur throughout the adjacent BVW system.



Figure 5. A live northern arrowwood shrub.



Figure 6. A live steplebush and sweet pepperbush can be seen in this image in the eastern portion of the replication area.

**As Built:**

An as-built survey plan for the replication area has been submitted (see Atlantic Design Engineers' *Solar Site Asbuilt*, 11/2/21).

**Summary:**

The entire wetland replication area has a wetland vegetative coverage of 75%. As previously mentioned, the replication area was designed to mirror the conditions of the surrounding flooded wetland. In our professional opinion, the replication area has achieved its goal of 75% wetland vegetative coverage required for success and requires no further monitoring. We therefore respectfully request that the Fairhaven Conservation Commission close out the open Order of Conditions through the Issuance of a certificate of Compliance.

Please feel free to contact us if you have any questions.

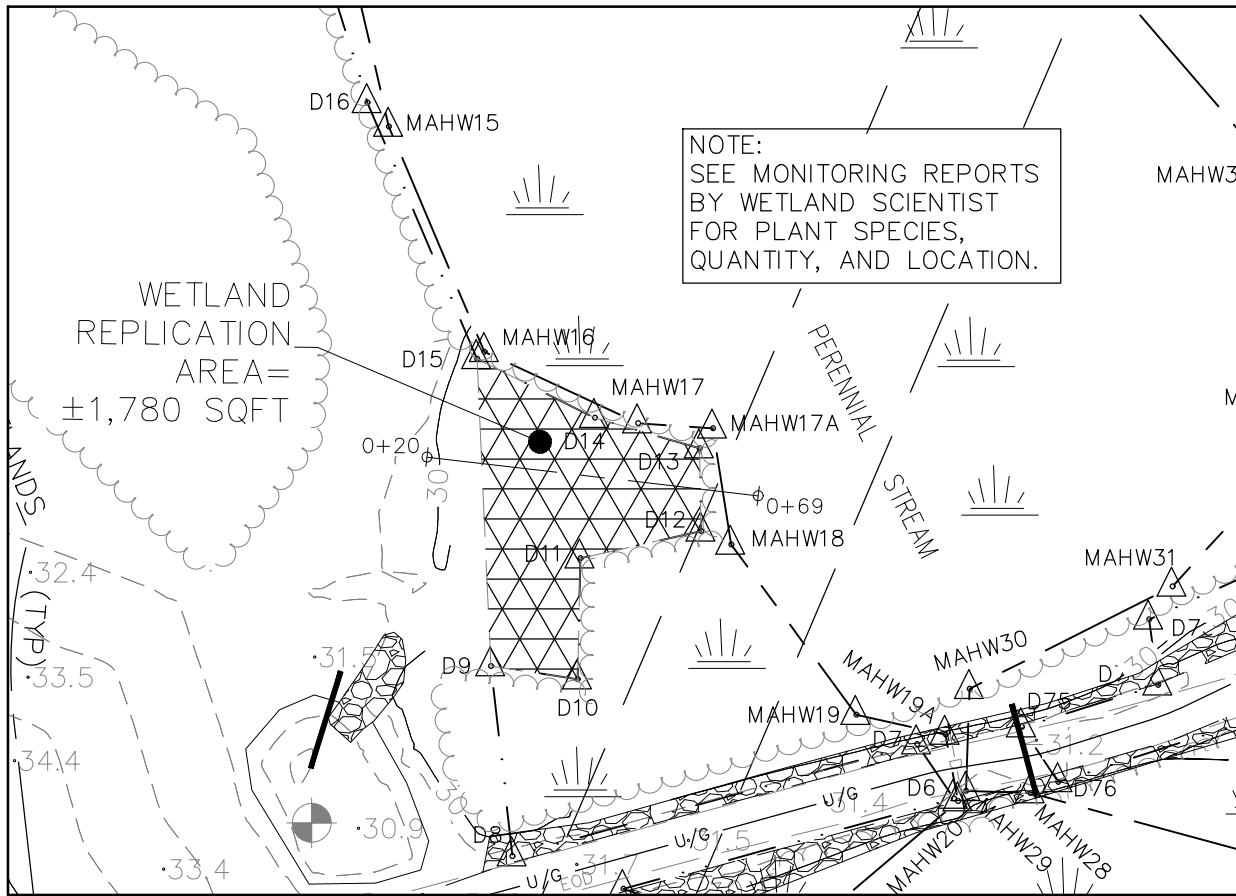
Very truly yours,

A handwritten signature in black ink, appearing to read "Scott Goddard". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Scott Goddard  
PWS & Principal

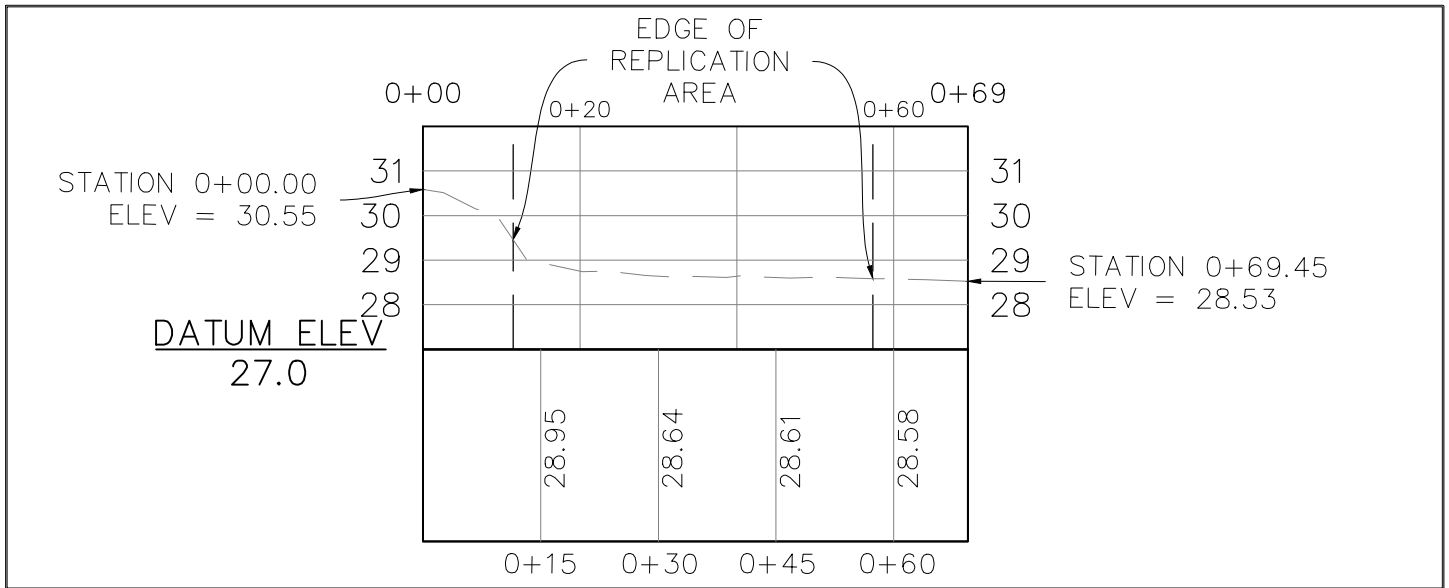
CC: Signal Energy, 2034 Hamilton Place Boulevard, Chattanooga, Tennessee, 37421





**WETLAND REPLICATION AREA PLAN**

APPROX. SCALE: 1"=40'



**WETLAND REPLICATION AREA CROSS SECTION**

APPROX. SCALE: 1"=30' (HORIZONTAL)  
1"=5' (VERTICAL)

**Atlantic**® DESIGN ENGINEERS, INC.  
P.O. Box 1051, Sandwich, MA 02563 (508) 888 - 9282

FILE : 2893.02-ASBUILT

PREPARED FOR  
SIGNAL ENERGY DG  
1095 MORRIS AVE. - SUITE 102  
UNION, NEW JERSEY 07083

WETLAND REPLICATION AREA AS-BUILT  
FOR  
279 MILL ROAD SOLAR PROJECT  
FAIRHAVEN, MASSACHUSETTS  
DECEMBER 7, 2021

JOB NUMBER  
2893.06

# Staff Report

Date: January 13, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **20 Yankee Lane – Request for Certificate of Compliance – DEP# SE 023-1269, Fairhaven CON 19-007**

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## DOCUMENTS REVIEWED

- Request for partial certificate of compliance and associated documents
- Amended Order of Conditions issued September 20, 2018
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

## RESOURCE AREAS ON/NEAR SITE

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

## RELEVANT PERFORMANCE STANDARDS

- No work approved on Inland Bank or Land Under Water Bodies and Waterways
- **Riverfront Area: 10.58(4)**
  - (d) No Significant Adverse Impact
    1. Within 200 foot riverfront areas, the issuing authority may allow the alteration of up to 5000 square feet or 10% of the riverfront area within the lot, whichever is greater ..., provided that:
      - a. At a minimum, a 100' wide area of undisturbed vegetation is provided... preserved or extended to the max. extent feasible....
      - b. Stormwater is managed ...
      - c. Proposed work does not impair the capacity of the riverfront area to provide important wildlife habitat functions. ...
      - d. ... incorporating erosion and sedimentation controls and other measures to attenuate nonpoint source pollution.
- **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

## PROJECT SUMMARY

- The Order of Conditions approved a 15.1 acre solar development project comprised of two solar arrays, perimeter fencing, photovoltaic solar panels, racking systems, inverters and transformers, with accommodating concrete pads, above and below ground utilities, stormwater facilities, a gravel road to access the solar fields, and a wetland/stream crossing.
- 4,500 square feet of wetland disturbance was approved with a 4,600 sq. ft. replication area.
- An amended order of conditions was issued to address changes to the gravel road location.

## COMMENTS

- The applicant has submitted a request for partial certificate of compliance for all aspects of the project except for the wetland replication. I have included the text of their email here:
  - "Signal Energy is requesting a partial certificate of compliance for our site located at 20 Yankee Lane. The partial certificate of compliance will cover the entire site except for the wetland replication area. Signal Energy, as per our contract with ConEd, is required to warranty the establishment of the wetland replication area for 1 year. This warranty covers the plantings in the wetland replication area and the replacement of said vegetation should they die within the 1-year time frame. Signal Energy would be able to invoice our customer for a portion of our retainage relative to the extent of the requested partial certificate of compliance. However, ConEd will still hold Signal Energy's remaining retainage until the end of the two growing seasons. Signal Energy will only be able to invoice for the remaining retainage at the end of the two years and the successful establishment of the wetland replication area."
- The wetland replication area was planted in early October 2021 and thus has not yet completed the required two years of monitoring for wetland replications.

- Based on a site visit and a comparison of the as-built plans to the approved plans, the solar array and stormwater facilities appear to have been constructed in substantial compliance with the Order of Conditions.
- The Commission will need to strongly consider whether you feel comfortable releasing almost the entire project when the wetland replication area has only recently been installed and what leverage that will leave the Commission to ensure proper compliance as the project is a leased solar project and the cloud on the property title by an Order of Conditions does not impact the lessee.
- The Commission seemed hesitant at the last meeting to issue a partial certificate of compliance when the wetland replication had so recently been installed, so the applicant's representative requested a continuance to the next meeting.
- MACC recommends that a COC should not be issued for a project involving wetland replication until the two growing seasons requirement has been met and recommends that a partial COC should not be issued where important work has not been completed.

### **RECOMMENDATION**

- Based on the discussion at the last meeting, it does not appear the Commission was willing to issue a partial certificate of compliance for everything but the wetland replication. As such, I recommend the Commission deny the request for a partial certificate of compliance until the two growing season requirement has been met.

November 29, 2021

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

Re: Wetland Replication Plan  
20 Yankee Lane, Fairhaven, MA 02719 (DEP File #SE023-1269)

Dear Conservation Commission:

Goddard Consulting LLC is pleased to submit this Wetland Replication Construction Monitoring Report for 20 Yankee Lane, Fairhaven, MA in accordance with the approved Wetland Replication Plan. The wetland replication area was planted in early October 2021.

The wetland replication area was planted in accordance with the approved Wetland Replication Plan with slight variation due to nursery availability. The Army Corp of Engineers guidelines for wetland replication area planting specifications were followed. See Table 1 below for the planting list.

**Table 1.** Planting list

Quantity	Common Name	Scientific Name
5	Red Maple	<i>Acer rubrum</i>
4	Swamp White oak	<i>Quercus bicolor</i>
79	High Bush Blueberry	<i>Vaccinium corymbosum</i>
85	Sweet Pepperbush	<i>Clethra alnifolia</i>
85	Northern Arrowwood	<i>Viburnum recognitum</i>
76	Black Chokeberry	<i>Photina melanocarpa</i>
50	Royal Fern	<i>Osmunda regalis</i>



Figure 1. The wetland replication getting ready to be planted looking north.



Figure 2. The wetland replication area looking east.



Figure 3. The completed wetland replication area looking north.



Figure 4. The soil within the replication area. The top 8" of topsoil are 10YR3/2. Wetland soils within the replication area consist of 10YR6/2 (C Horizon as shown above) with 50% redox.

**Continued Monitoring**

- a. **Seasonal monitoring reports** shall be prepared for the replication area by a qualified wetland scientist for a period of two additional years after replication completion. This monitoring program will consist of early summer and early fall inspections and will include photographs and details about the vitality of the replication area. Monitoring reports shall be submitted to the Commission by November 15th of each year. Monitoring reports shall describe, using narratives, plans, and color photographs, the physical characteristics of the replication area with respect to stability, survival of vegetation and plant mortality, aerial extent and distribution, species diversity and vertical stratification (i.e., herb, shrub, and tree layers). Invasive species will be documented if present within areas impacted by the project, monitored and removed.
- b. **At least 75% survival of installed native plants** shall be observed by the end of the second growing season. If the replication area does not meet the 75% survival requirement by the end of the second growing season after installation, the Applicant shall submit a remediation plan to the Commission for approval that will achieve, under the supervision of a Wetland Specialist, replication goals. This plan must include an analysis of why the areas have not been successful and how the applicant intends to resolve the problem.

The wetland replication area was constructed in accordance with the approved wetland replication plan. The area will continue to be monitored for two years to ensure plant survival and overall stability.

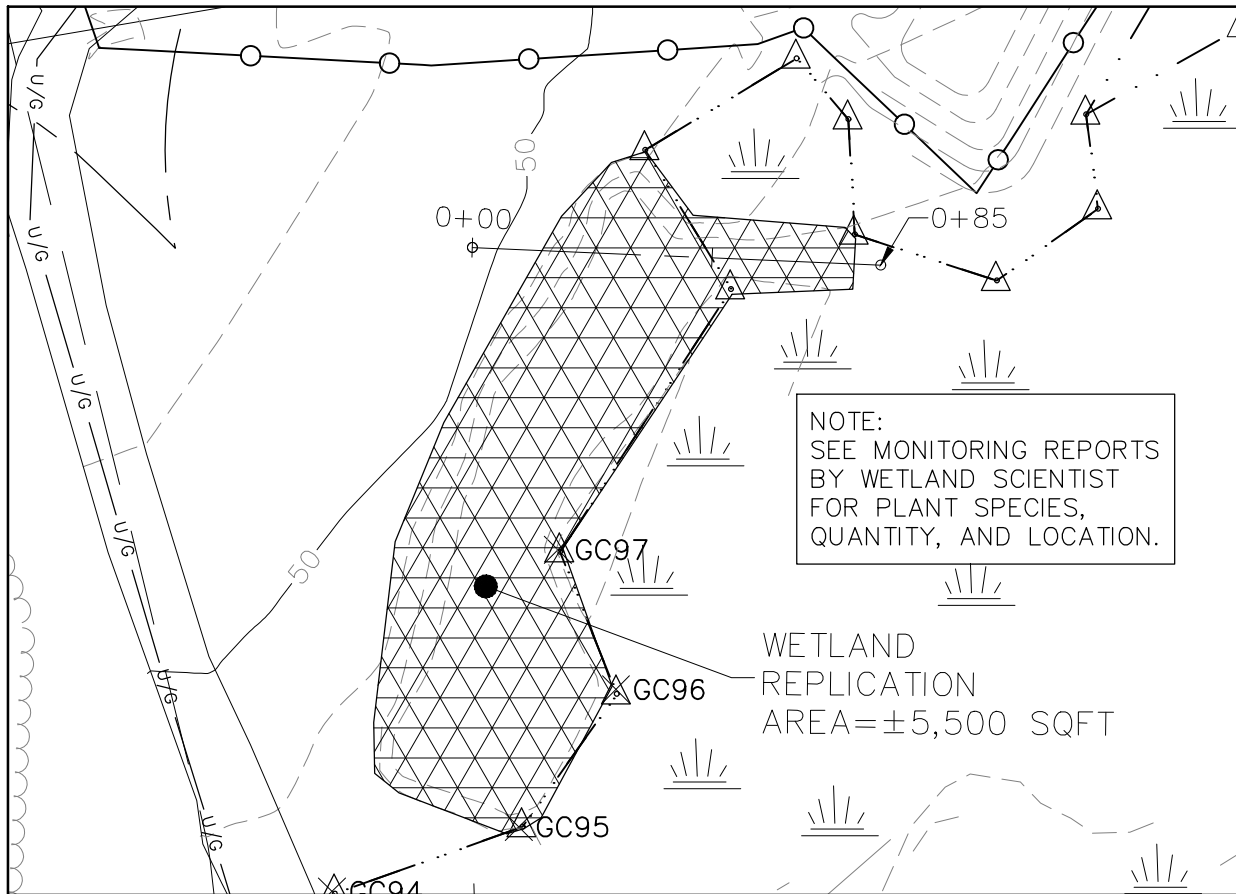
If there are any questions concerning this report, please do not hesitate to contact us.

Very truly yours,



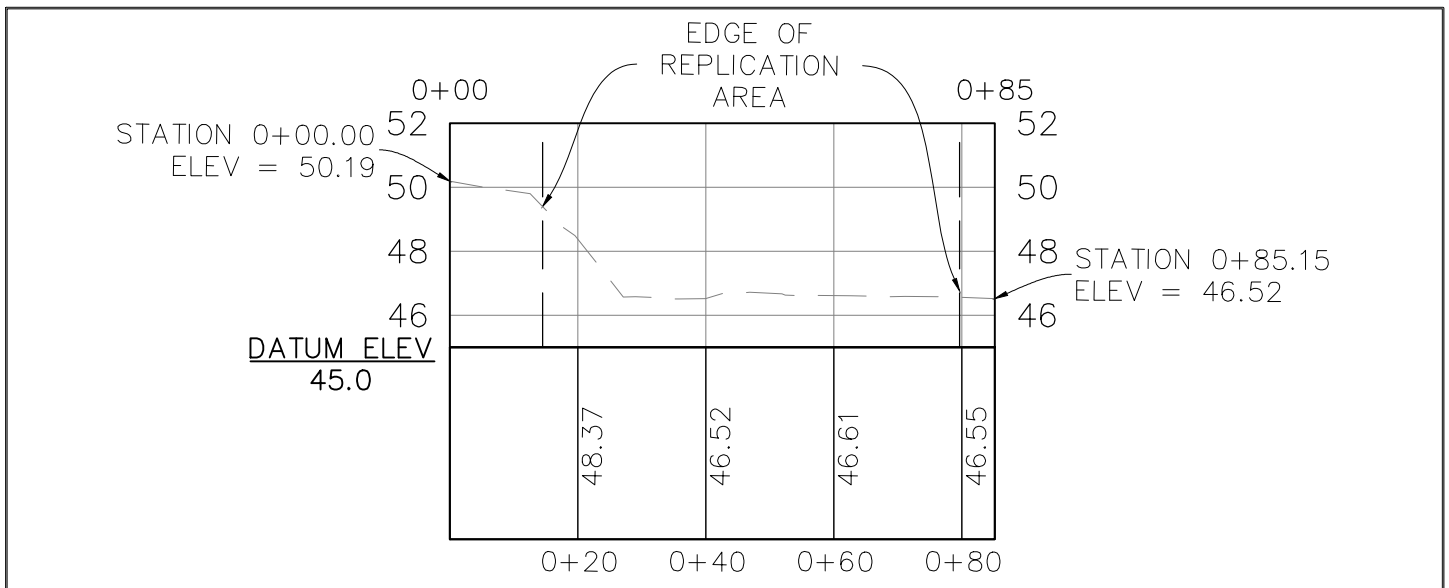
Tim McGuire  
Wildlife Biologist and Wetland Scientist





**WETLAND REPLICATION AREA PLAN**

APPROX. SCALE: 1"=40'



**WETLAND REPLICATION AREA CROSS SECTION**

APPROX. SCALE: 1"=30' (HORIZONTAL)  
1"=6' (VERTICAL)

**Atlantic**® DESIGN ENGINEERS, INC.  
P.O. Box 1051, Sandwich, MA 02563 (508) 888 - 9282

FILE : 2893.03-ASBUILT

PREPARED FOR  
SIGNAL ENERGY DG  
1095 MORRIS AVE. - SUITE 102  
UNION, NEW JERSEY 07083

WETLAND REPLICATION AREA AS-BUILT  
FOR  
20 YANKEE LANE SOLAR PROJECT  
FAIRHAVEN, MASSACHUSETTS  
DECEMBER 7, 2021

JOB NUMBER  
2893.07

# Staff Report

Date: January 19, 2022

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**

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## 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
- Revised site plan dated January 14, 2022
- Response memo dated January 14, 2022

## 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.
- The Commission asked the applicant to revise the plans and submit additional information and to have the peer reviewer look over that information. The applicant submitted these documents on January 14, 2022. The peer reviewer has not yet provided comments.

## **RECOMMENDATION**

- At this time, given that the peer reviewer has not provided comments on the applicant's submitted information as the Commission requested, I recommend asking the applicant to request a continuance to the February 14 meeting.

## MEMORANDUM

Date: January 14, 2022

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: ANRAD Filing  
DEP File #SE023-1366  
Fairhaven CON 023-251  
Bridge Street

CEC Project: 304-338



In response to the Agent's report dated December 7, 2021 and the peer review letter from LAM Ecological dated November 22, 2021, we have revised the Existing Conditions plan and prepared the following supplemental information as follows:

1. Inland Bank Delineation – After consultation with our wetland scientist Edward Avizinis, we have confirmed that his delineation of the intermittent stream bank is based on a field observation of the first observable break in slope and the flags labeled “RB” are representative of that delineation, completed in accordance with DEP Guidelines.
2. Due to the fact that numerous intermittent stream determinations have been made, approved, and in some cases are still valid, and these determinations include property immediately downgradient of the subject land, there are no identified perennial streams within 300 feet of the subject property. We have not made any determination of down gradient perennial streams beyond this 300 foot limit. The Applicant is reluctant to establish a perennial stream boundary where the 200 foot riverfront area will not impact the subject land.
3. The documented files listed in our previous submittal of supporting documents regarding the intermittent stream determinations have been noted on the revised plan.

4. The onsite detention basin was constructed approximately 20 years ago in accordance with an approved design plan. The attached 2001 photograph depicts the basin and the exiting parking facility. This basin accepts stormwater runoff at three catch basin outfalls and a concrete outlet control structure conveys the pond overflow into the Bridge Street storm drain system.

The 2010 photograph, attached, depicts the fully vegetated basin with an observable sediment pool in the center of the basin.

An inspection of the basin, outfalls and associated structures reveals that the system has functioned, as designed, and there is no evidence of sediment accumulation that would warrant cleaning at this time. Additionally, a walkover of the detention pond berm revealed that it was stable, no evidence of erosion, which would warrant any maintenance, and there were no signs of the system short-circuiting or otherwise releasing flow inconsistent with the original design intent.

Based on this evaluation, the detention basin has received proper maintenance given the limited sediment inflow and continues to function as a stormwater mitigation facility.

In addition to this information, the Existing Conditions plan was revised to reflect the recommended adjustments presented by LAM. This includes the removal of flags RB1 through RB3 as requested.

cc: Fairhaven Properties, LLC

Attachment: Revised Existing Conditions Plan

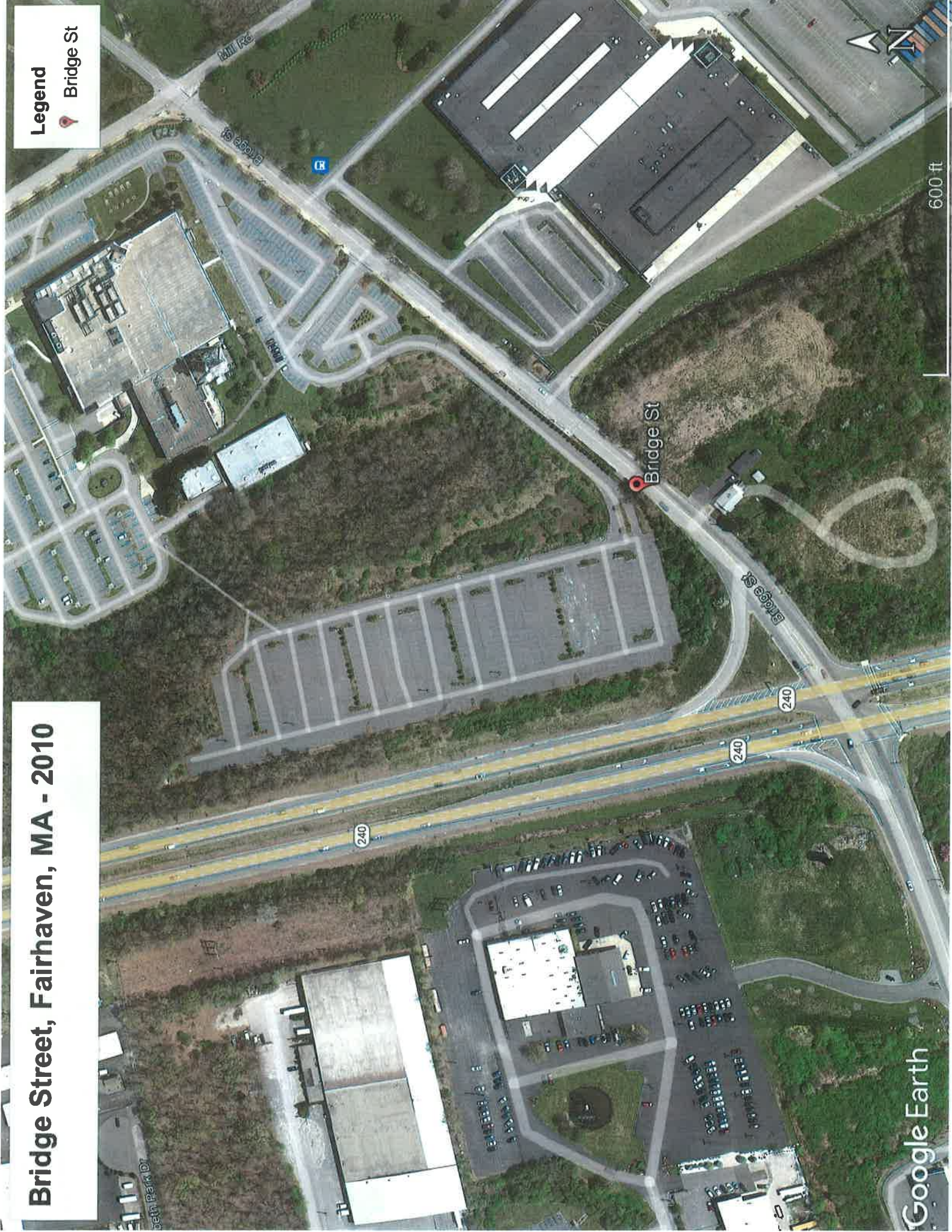
# Bridge Street, Fairhaven, MA - 2001

Legend  
📍 Bridge St



# Bridge Street, Fairhaven, MA - 2010

**Legend**  
Bridge St



Google Earth

600 ft

# Staff Report

Date: January 12, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Bella Vista Island – Request for Amended Order of Conditions – DEP# 023-1340, Fairhaven CON 023-195**

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## 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

- 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

- At the December 13, 2021, meeting, the Commission voted to impose a \$300/day fine from December 1 through December 12 (\$3,600) for the failure to begin work by December 1, 2021,



that all the necessary documentation for a request for amendment are submitted for the January 24, 2022 meeting, and to appear at that meeting. If the deadlines for submitting documentation are not met, fines will retroactively begin from the date they were paused. The Commission reserves the right to impose further fines as necessary, subject to Chapter 192-11.

- The requested amendments include:
  - Leave in place the fruit trees and other vegetation which have habitat value, rather than exposing erodible soil.
  - Remove lights, electrical fixture boxes, water spigots, and other surface features, but leave in place the subsurface elements since removing the subsurface elements would provide no environmental benefit and would expose a large area of soil to an erodible condition.
  - Allow work to take place within the growing season of 2022. Specifically, starting on March 30 and finishing by June 30, 2022.
- The Commission is not obligated to approve the request for amendment. The issued Order of Conditions was to rectify unpermitted activities and provide compliance with a previously issued Order (SE 023-1127) with regard to planting.
- Based on the discussions leading up to the issuance of this Order, the relocation of all items 80+ feet away from the salt marsh was intended to prevent further impact to the salt marsh and buffer zone resource areas by moving landscaping items and vegetation so as to discourage fertilization and activity directly adjacent to the salt marsh.
- The Commission's consultant offered the following comments on the applicant's request:
  - Given the lack of compliance, I think the Commission should focus on the fines, and collecting the fine, before cooperating with any request to change the project.
  - As for the merits of the request, I would be inclined to say no to both requests.
  - While the removal of the fruit trees and subsurface utilities will create "erodible" soil, the area is relatively flat and soil can be easily managed with good sediment controls.
  - The approved plans call for the entire buffer zone in the area to be stripped of grass and re-seeded, so there will be exposed soil throughout the area regardless.

## RECOMMENDATION

- Given the comments from the Commission's consultant and the lack of compliance with the Commission's originally set timeline, I recommend the Commission consider denying the request for amendment.
- Should the Commission wish to approve the request for amendment, I recommend requiring the fine be paid first.



December 10, 2021

Fairhaven Conservation Commission  
40 Center Street  
Fairhaven, MA

**RE: BELLA VISA ISLAND  
FILE #SE 023-1340, FCC # CON 023-195**

Dear Commission Members:

On behalf of Heiam Alsawalhi, we hereby request that the Order of Conditions referenced above be amended. The requested amendments include:

1. Leave in place the fruit trees and other vegetation which have habitat value, rather than exposing erodible soil.
2. Remove lights, electrical fixture boxes, water spigots and other surface features, but leaving in place the subsurface elements, since removing the subsurface elements would provide no environmental benefit and would expose a large area of soil to an erodible condition.
3. Allow the work to take place within the growing season of 2022. Specifically, starting on March 30 and being completed by June 30, 2022.
4. We understand that a \$300/day fine has been imposed starting December 1. We request that the daily fine be suspended from December 13 on.

If you have any questions, please feel free to contact me.

Sincerely,  
**PRIME ENGINEERING, INC.**

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

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

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**CIVIL ENGINEERING      ENVIRONMENTAL ASSESSMENT      LAND SURVEYING**

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

***www.primeengineering.org***

# Staff Report

Date: January 12, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **2 Oxford Street – Notice of Intent – DEP# 023-1345, Fairhaven CON 023-206**

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## DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- Comments submitted by Division of Marine Fisheries on March 3, 2021
- Comments submitted by Natural Heritage Endangered Species Program on March 31, 2021

## RESOURCE AREAS ON/NEAR SITE

- Land Under the Ocean
- Land Containing Shellfish
- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE
- Coastal Beach
- Coastal Bank
- Buffer Zone

## RELEVANT PERFORMANCE STANDARDS

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

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

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

- **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.
  - (5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.
- **Coastal Bank:** 10.30
  - (4) Any project on a coastal bank or within 100 feet landward of the top of a coastal bank...shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action.
  - (6) Any project on...a coastal bank [that is determined to be significant to storm damage prevention or flood control because it is a vertical buffer to storm waters] or within 100 feet landward of the top of such coastal bank shall have no adverse effects on the stability of the coastal bank.
- **Buffer Zone General Provisions:** 10.53(1) "For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work."

## PROJECT SUMMARY

- The applicant is proposing to construct a 70-foot fixed pier, 30-foot gangway, and a 115-foot floating dock with finger floating docks attached.

## COMMENTS

- The project is proposed directly adjacent to the proposed CAD cell for Phase V of the New Bedford Harbor Superfund Cleanup.
- The applicant notified the EPA and the EPA should reach out to the applicant directly with any concerns.

- The Harbormaster’s concerns relate to the proximity to the newest CAD cell.
- The Planning Director submitted the following comments:
  - It should come to the PB as part of Chapter 91 and the PB may very well decide to have a Public Hearing under that program. I am not sure how long this has been a B&B but it should have a Special Permit from the ZBA for that use.
  - A quick look at the plans tells me that the proposed pier is too long per Section 198-32.2.C(3)(b) which limits the length of piers including floats inside the Hurricane Barrier to no more than 150 feet in length.
  - The Oxford Street Right of Way should be public access but on the ground it looks as though it is part of the 2 Oxford Street property. Also, notice that the Town Commons was on the other side of the Oxford Street terminus. This also appears as if it is someone's yard when in fact it should probably be Town waterfront parkland open to the public (see attached Oxford Map 1791).
- Division of Marine Fisheries provided feedback and had no recommendations for sequencing, timing, or methods that would avoid or minimize impact to marine fisheries resources and habitat.
- Natural Heritage Endangered Species Program determined that the project as proposed will not adversely affect the actual resource area habitat of state-protected rare wildlife species. It is their opinion that the project meets the state-listed species performance standard for the issuance of an Order of Conditions.
- The fixed dock is proposed from an existing seawall. The total impact to Land Under the Ocean and Land Containing Shellfish is approximately 23 square feet. It appears the project will cause minimal impact to those resource areas.
- 4 pilings are proposed on the coastal beach. It doesn’t appear the work will create significant impacts on the coastal beach.
- There is also a pipe on the beach that should be verified as not being impacted by the dock system as well as the function of the pipe.
- The Harbormaster noted that the project is just outside the dredging radius for the superfund project and the property owners would have to pursue dredging themselves in order to shorten the length of the dock.
- The delay in discussing this project is due to waiting for submittal to ZBA for variances. The applicant has submitted to ZBA and was continued. Revised plans have been submitted to ZBA, but none have yet been submitted to the Commission.

## **RECOMMENDATION**

- Given that revised plans have been submitted to ZBA, I recommend the Commission ask the applicant to request a continuance to a subsequent meeting so the revised plans can be submitted to the Commission for review.

# Staff Report

Date: January 18, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## DOCUMENTS REVIEWED

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

## RESOURCE AREAS ON/NEAR SITE

- 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.
  - There is some discussion between the applicant's attorney and the zoning enforcement officer regarding the necessity of filing with zoning.
- 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 buffer zone 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.
- The applicant has not yet submitted any additional information in response to the concerns discussed during the site visit, but would like to discuss the Commission's concerns during the meeting.

## **RECOMMENDATION**

- Until such time as the project has been filed with the Zoning Board of Appeals (or that process has been resolved) and the outlined concerns are addressed, I cannot make a recommendation other than a continuance to a subsequent meeting.



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: January 14, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Nasketucket Bay – Notice of Intent – DEP# 023-1376, Fairhaven CON 023-262**

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## DOCUMENTS REVIEWED

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

## RESOURCE AREAS ON/NEAR SITE

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

## RELEVANT PERFORMANCE STANDARDS

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

(f) changes in water quality, including, but not limited to, other than natural fluctuations in the levels of salinity, dissolved oxygen, nutrients, temperature or turbidity, or the addition of pollutants

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

(7)...projects approved by the Division of Marine Fisheries that are specifically intended to increase the productivity of land containing shellfish may be permitted. Aquaculture projects approved by the appropriate local and state authority may also be permitted.

- **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 a 2-acre aquaculture operation in order (1) to plant and grow shellfish both on and off the bottom, (2) to place shellfish in or under protective devices, and (3) to grow shellfish by means of racks, bags, or floats.

## COMMENTS

- The project is proposed to support an Associate Degree program in the field of aquaculture.
- The method is as follows:
  - Four parallel 5/8" floating lines anchored on each end
  - The first line will have cages attached
  - The second line will have single floating bags on one half of the line and bottom cages on the second half of the line
  - The third line will have lantern nets
  - The fourth line will be a combination of the above three variations.
- The impact to existing land containing shellfish would increase the productivity of the area, which conforms to the Wetlands Protection Act regulations.
- The design is consistent with other aquaculture projects the Commission has permitted as well as minimizes adverse effects on the land under ocean.
- The project does not appear likely to have significant or cumulative impacts on the wetland values protected by the Bylaw. The Harbormaster/Shellfish Warden has no concerns regarding the impact on recreation as the area is adjacent to three other active aquaculture sites, is underwater, and marked with buoys.
- MassDEP did not provide any comments.
- Division of Marine Fisheries and Natural Heritage Endangered Species Program have not yet provided comments. The public hearing should not be closed until both agencies have provided feedback.

## RECOMMENDATION

- I recommend asking the applicant to request a continuance to the February 14 meeting to allow time for DMF and NHESP comments to be submitted.

To: Fairhaven Conservation Commission

From: Captain David Bill, Northeast Maritime Institute Aquaculture Program Director

Re: Detailed Narrative Overview of 2- Acre Nasketucket Bay Aquaculture Site Northeast Maritime Institute.

Date: 12/8/21

**Narrative Overview**

I am writing on behalf of the Northeast Maritime Institute College of Maritime Science. We are currently in the development stages of an Associate Degree in the field of aquaculture and are working with a number of representatives from various government agencies, NGOs, and private companies to develop a degree that will have a positive impact on the aquaculture industry and help make our region and the United States more competitive in this area. We believe there are many jobs to be created and that those jobs will require a skilled workforce. We are eager to deliver this degree and to work with existing growers and the Town of Fairhaven to build upon Fairhaven's successes in the aquaculture industry.

Delivering this degree will require a shellfish aquaculture license from the Town of Fairhaven. To date the Fairhaven Board of Selectmen, on recommendation from the Shellfish Warden, have given contingent approval for a two-acre aquaculture site for Northeast Maritime Institute grant application for the purpose of growing shellfish. Beyond requiring evidence of municipal wetlands permit or determination of non-applicability, these grants are contingent upon approval of State and Federal agencies as well as the adherence put forth by the same. This area has been selected after careful analysis of habitat types and satisfies the DMF requirements for non-productivity. DMF has performed a biological survey and it has been confirmed on site that no aquatic vegetation or significant native shellfish exists. See supplemental information.

The final permit in this process that allows a person to farm shellfish in a specific area is a propagation permit from the DMF. To receive this permit, one of the requirements is "Evidence of Municipal Wetlands Permit or determination of non-applicability."

This propagation permit authorizes the licensees at all times of the year, in, upon, or from a specific portion of coastal waters, tidal flats, or land under coastal waters in the municipality: 1) to plant and grow shellfish both on and off the bottom; 2) to place shellfish in or under protective devices affixed directly to the tidal flats or land under coastal waters; 3) to harvest and take legal shellfish; 4) to plant cultch for the purpose of catching shellfish seed; and 5) to grow shellfish by means of racks, rafts, or floats.

Pending grant approval NMI's primary purpose for the proposed Fairhaven 2-acre aquaculture lease site will be for demonstration purposes for our restorative aquaculture associate degree work force training program in conjunction with a certificate program for public education and community outreach. Our secondary purpose is as a small commercial shellfish business which the academic program students will operate and gain aquaculture experience and skill. Our third purpose is to assist with restoration and propagation efforts for the Town of Fairhaven and closely working with the Harbormaster and the Marine Resources committee to improve water quality in Little Bay, support commercial and

recreational shellfish harvesters, as well as community benefit in terms of education and public outreach.

### **Site Location**

The proposed license site (see map attachment A) is located in the West Island North shellfish growing area (DMF BB 18). Water quality at and adjacent to this site is classified as "Approved" for shellfish harvesting. The shellfish densities surveyed by the DMF were not considered significant. No eelgrass was observed. No other significant marine resources, endangered species, or existing wild fisheries were noted at the time of the survey (see attachment D, November 24, 2021 DMF letter to Town of Fairhaven Select Board). Soundings taken on site and at mean low water ranging from 6 to 7 feet as noted in attachment E.

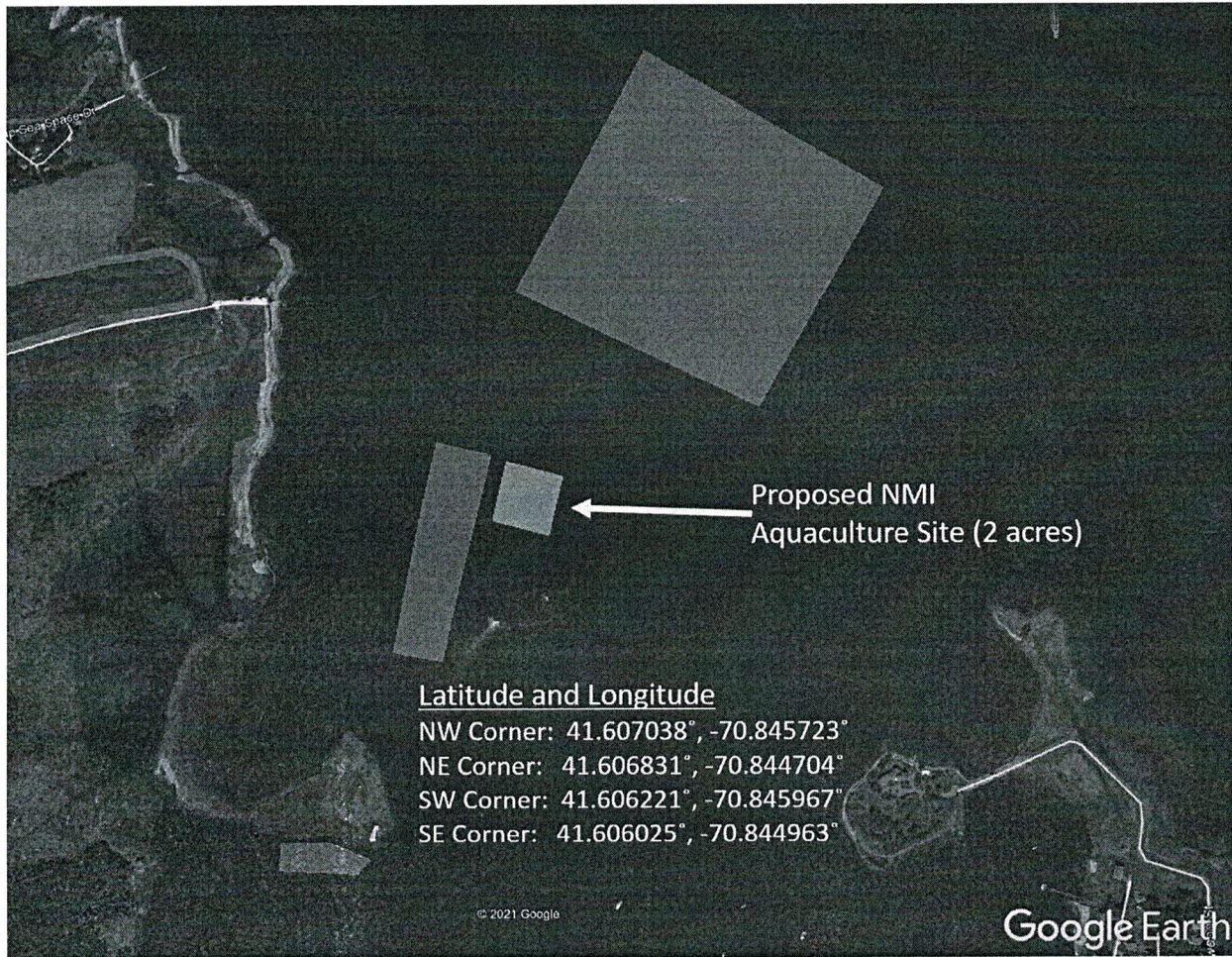
Within our lease coordinates:

NW Corner: 41.607038° -070.845723°

NE Corner: 41.606831° -070.844704°

SW Corner: 41.606221° -070.845967°

SE Corner: 41.606025° -070.844963°



### Grow Out Method

Approved shellfish seed will be purchased from approved hatcheries (A.R.C. Aquaculture Resources Corporation in Dennis, MA). The grow out of the seed will be conducted using conventional aquaculture techniques as follows:

We are planning to implement four parallel 5/8" floating lines anchored on each end (See detailed site layout attachment B). From April until the end of October, on the first line we will grow oysters and use approximately (10) floating "condo" cages (See aquaculture gear detail attachment C). The second line we will grow oysters in single floating bags on one half of the line and bottom cages on the second half of the line. On the third line we will use lantern nets and grow oysters in half of the nets and scallops in the second half of the nets. The fourth line will be variations of lines 1-3. From November until April we will implement sinking bags to prevent freeze up and ice damage to the shellfish (See Attachment E-Detail of Use).

From November until April we will experiment with growing kelp and utilize the four lines for this purpose. The harvested shellfish will either be donated to the Town of Fairhaven for restoration and propagation efforts or sold commercially to support the NMI academic program.

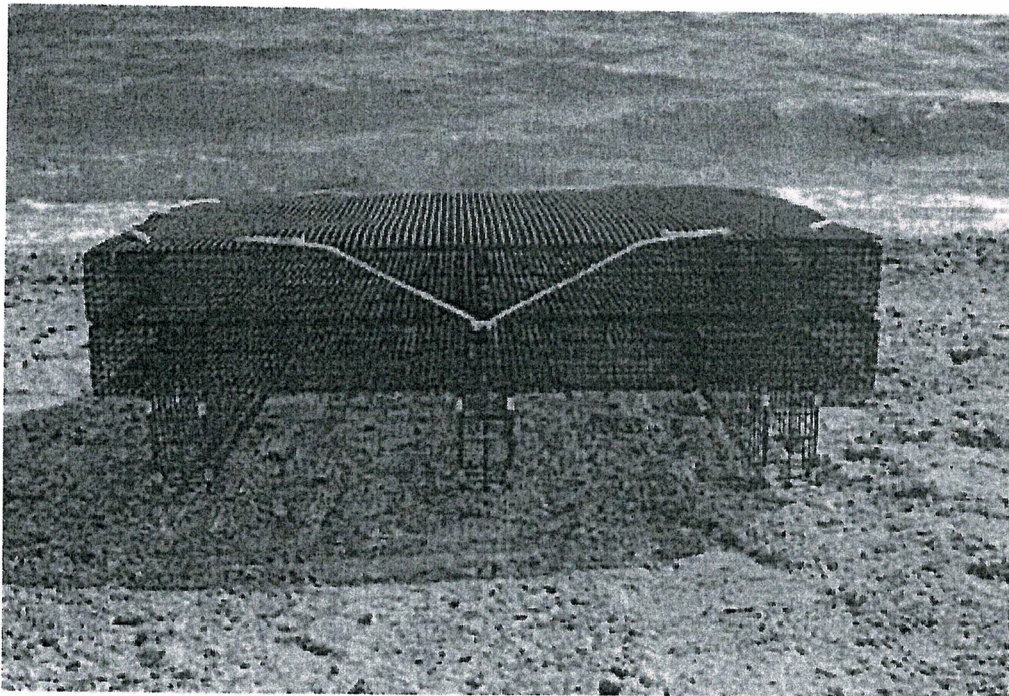
Year 1, 2022: NMI hopes to run a community aquaculture outreach certificate program June, July, August. The program would include supporting Town of Fairhaven aquaculture initiatives and

maintaining the town's upwellers, starting a propagation nursery site in the north Little Bay area of Nasketucket Bay, and growing out the first oyster seed in the NMI proposed site once the seed is delivered from A.R.C. All three activities would be included in the outreach program curriculum. The site(s) maintenance will occur daily with ongoing educational work within the program. A 21' Carolina skiff will be used to access the sites by water. The boat will be launched from the Town boat ramp at Hoppy's Landing and no private property will be used.

Year 2- Future: The education and outreach programs will be continued annually. Potentially the first cohort of NMI restorative aquaculture associate degree program students will commence September 2022 (pending Massachusetts Higher Board of Education approval). Community education and outreach will occur each summer. Fairhaven community service and outreach education programming will continue each summer.



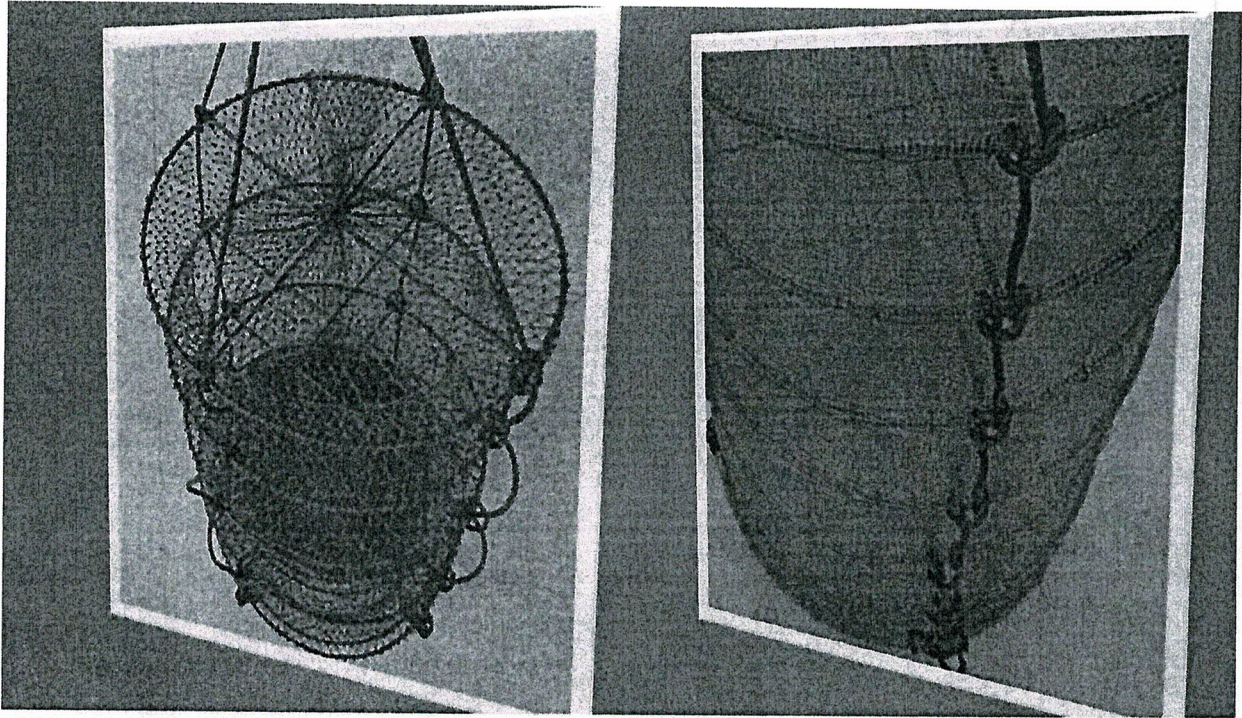
Aquaculture Gear *DETAIL (ATTACHMENT C)*



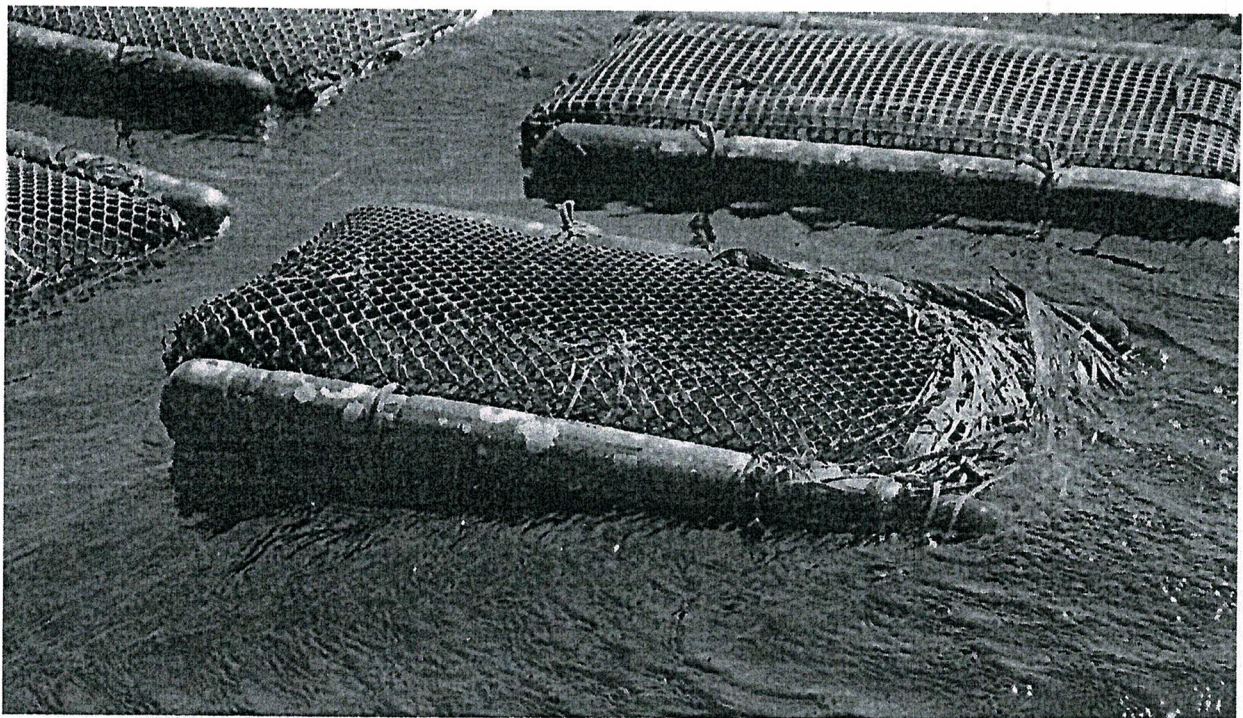
*OYSTER BOTTOM CAGES*



*FLOATING CONDO OYSTER CAGES*

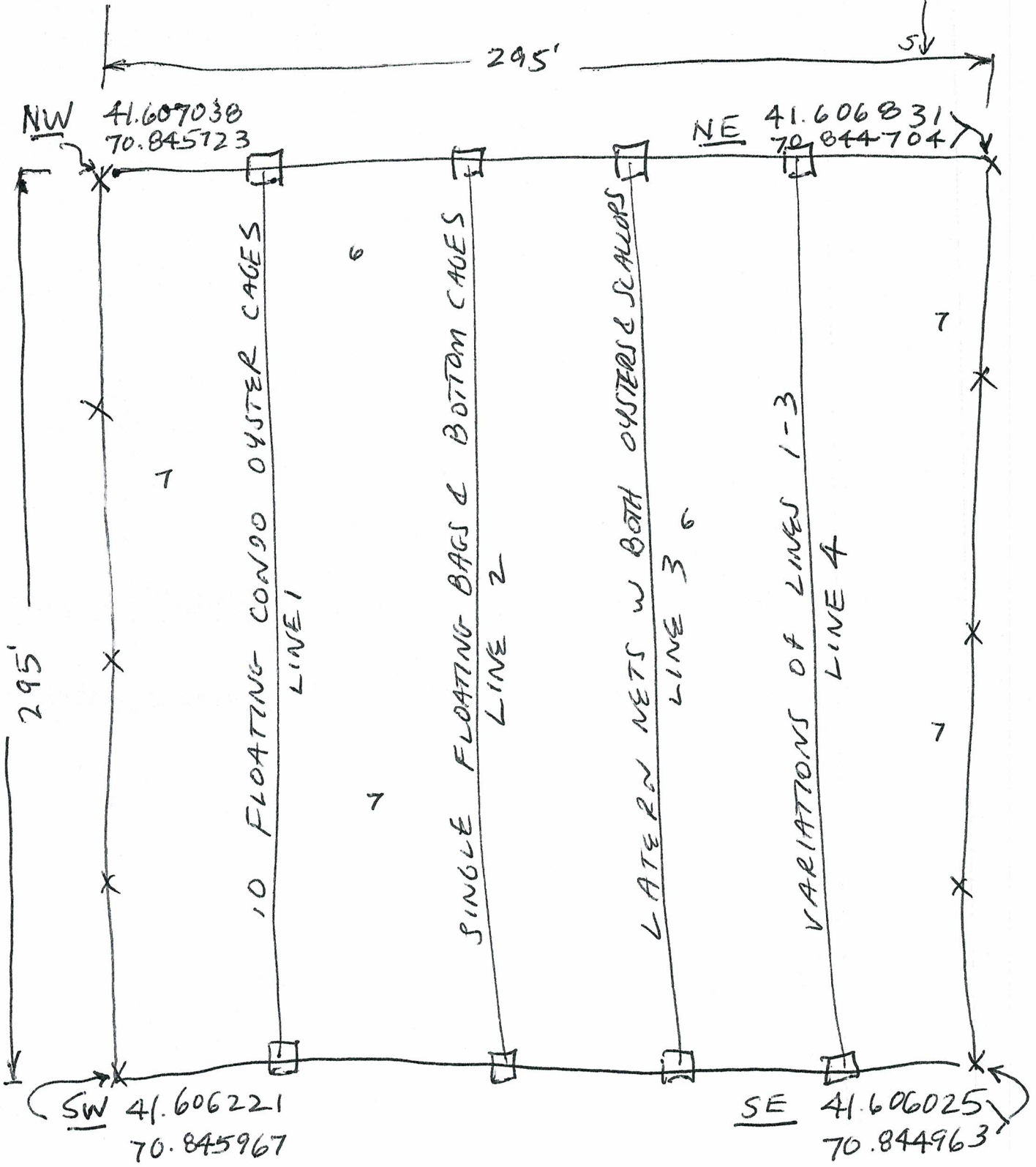
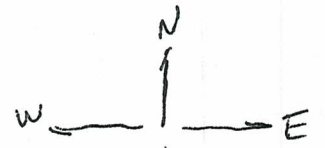


LANTERN NETS FOR OYSTERS & SCALLOPS



SINGLE OYSTER FLOATING BAGS  
"SINKING" BAGS (WINTER USE) WOULD BE  
BAGS WITHOUT FLOATS

ATTACHMENT E  
DETAIL OF USE - PROPOSED NMI SITE



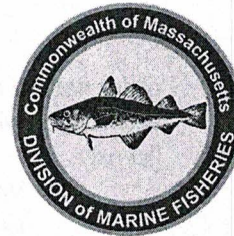
- X PERIMETER BUOYS ONLY, NO FLOATING LINES
- LINES 5/16 FLOATING-LINE (KEEP LINES IN WINTER)
- MOORINGS - 150# w/ 1/2" CHAIN
- SOUNDINGS IN FEET @ MLW



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

251 Causeway Street, Suite 400, Boston, MA 02114  
 p: (617) 626-1520 | f: (617) 626-1509  
[www.mass.gov/marinefisheries](http://www.mass.gov/marinefisheries)



CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lt. Governor

KATHLEEN A. THEOHARIDES  
Secretary

RONALD S. AMIDON  
Commissioner

DANIEL J. MCKIERNAN  
Director

November 24, 2021

Town of Fairhaven Select Board  
 Town Hall  
 40 Center St.  
 Fairhaven, MA 02719

Ladies and Gentlemen:

Under authority of Chapter 130, § 57 of the Massachusetts General Laws (MGL), an on-site inspection of an approximately two-acre aquaculture site proposed by Northeast Maritime Institute in the Town of Fairhaven, MA was conducted by personnel from the Division of Marine Fisheries (DMF) on October 21, 2021.

The proposed license site (grant) is located in the West Island North shellfish growing area (DMF designation BB:18.0). Water quality at and adjacent to this site is classified as "Approved" for shellfish harvesting in accordance with provisions of the National Shellfish Sanitation Program. The proposed grant is in a subtidal area characterized by substrate that is heterogeneous in nature, consisting of areas with soft sandy sediment and other areas with rock and cobble. High densities of *Codium* sp. macroalgae were observed throughout the site. The applicant proposes to deploy both bottom gear and floating gear to culture oysters (*C. virginica*), blue mussels (*M. edulis*), quahogs (*M. mercenaria*) and sugar kelp (*S. latissima*).

The site inspection included a shellfish survey. A total of ninety (90) square-foot quadrats were sampled along eight (8) transects across the site. A total of four (4) quahogs and one (1) bay scallop (*A. irradians*) were observed within the surveyed area for estimated average densities of 0.04 quahogs/ft<sup>2</sup> and 0.01 bay scallops/ft<sup>2</sup>. These shellfish densities are not considered significant by the Division of Marine Fisheries in assessing sites for private shellfish aquaculture licenses. No eelgrass (*Z. marina*) was observed on the proposed site. Macroalgae of the genus *Codium* sp. and substantial quantities of conch gastropods were observed throughout the site. No other significant marine resources, endangered species, or existing wild fisheries were noted at the time of the survey.

Buzzards Bay has been mapped as habitat for protected species including sea turtles and whales by NOAA Fisheries Greater Atlantic Regional Fisheries Office Protected Resources Division (<https://noaa.maps.arcgis.com/apps/webappviewer/index.html?id=1bc332edc5204e03b250ac11f9914a27>). DMF is concerned that placement of floating gear and vertical lines may pose an entanglement risk to marine mammals and turtles. It is our opinion that issuance of an aquaculture license for this site, including the conditions stated below, would not cause a substantial adverse impact on the shellfish or

other natural resources of Buzzards Bay. Consequently, the Board of Selectmen may issue the license in accordance with Chapter 130, § 57 of MGL provided the following three conditions are placed on the license:

- 1) Vertical lines attached to bottom gear shall be reduced in number to the extent possible, be kept under tension, and shall be attached with a 600 lbs. breakaway link or ropes of appropriate breaking strength.
- 2) Lines deployed from May 1 – January 31 shall be kept under tension or sheathed to avoid turtle entanglement.
- 3) Any entanglement of protected species, including whales and turtles, must be immediately reported to the Marine Mammal and Sea Turtle Stranding and Entanglement Hotline at 1-866-755-NOAA (6622).

**A copy of the license must be sent to this office at the time of issue by the selectmen.**

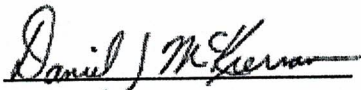
All activities in connection with this license must be conducted in accordance with all applicable state statutes and regulations governing shellfish and in accordance with provisions of Title 322, Code of Massachusetts Regulations (CMR) 7:00 Permits, 15:00 Management of Marine Aquaculture, 16:00 Shellfish Harvesting and Handling; and Department of Public Health, Food Protection Program regulations at Title 105, CMR 500.020 and 500.021. Marine Fisheries reserves the right to further condition this private aquaculture license at any time, under provisions of MGL Chapter 130, § 57 if deemed necessary to protect shellfish and other natural resources.

All holders of a local private shellfish aquaculture license from a municipality allowing exclusive use of an area to grow shellfish are also **required to obtain a propagation permit and a state commercial shellfish permit** under authority of Chapter 130, §§ 69 and 80 of MGL and 322 CMR: 7:00 and 15:00 from the Division of Marine Fisheries. The propagation permit authorizes the possession and growing of seed shellfish from an approved source and is required annually regardless of whether seed is purchased from a hatchery or is acquired from a natural set. The commercial permit allows harvesting, possession, and landing of shellfish for sale to wholesale dealers authorized to purchase shellfish.

The licensee should be aware that this license is subject to further regulation by the U.S. Army Corps of Engineers and may be subject to review by the Massachusetts Environmental Policy Act (MEPA) Office under the provisions of M.G.L. c.30, §§ 61- 62I and the Massachusetts Department of Environmental Protection (MassDEP) under the provisions of Chapter 91 (Waterways Acts) and/or Chapter 131, § 40 (Wetlands Act) and their regulations. It is mandatory the licensee contact the local Conservation Commission to determine the applicability of the Wetlands Act and the U.S. Army Corps of Engineers, Regulatory Branch at 696 Virginia Rd., Concord, MA. 01742 (TEL: 978-318-8338) concerning a Programmatic General Permit for Shellfish Aquaculture. The licensee should also contact the MEPA Office ([MEPA@mass.gov](mailto:MEPA@mass.gov); 617-626-1000) to determine the need for MEPA review if the project meets or exceeds one or more MEPA review thresholds identified at 301 CMR 11.03. If MEPA review is required, DMF's certification under M.G.L. c. 130, § 57 shall be deemed conditioned on the issuance of a Certificate from the Secretary of Energy and Environmental Affairs determining that an Environmental Impact Report (EIR) is not required or that a Single or Final EIR is adequate for this

project. This license certification shall be deemed final upon provision of such MEPA Certificate to DMF. Commencement of operations under this license prior to such determination by the Conservation Commission or before obtaining other required permits, approvals, and licenses from the MEPA Office, MassDEP, or the U.S. Army Corps of Engineers may result in legal or regulatory action against the licensee by one or more of these agencies. Permits issued by DMF to obtain and possess seed shellfish for aquaculture will not be issued until this license certification is final and do not absolve the licensee from the above-mentioned obligations.

Any questions or comments should be directed to Christian Petitpas, Aquaculture Specialist, at (508) 742-9766.



Daniel J. McKiernan  
Director

cc: G. Lundgren, C. Petitpas, J. Kennedy, DMF  
T. Cox, Shellfish Constable  
D. Bill, NMI grant manager  
Fairhaven Conservation Commission  
P. Czepiga, MEPA  
J. Hobill, DEP SERO  
U.S. Army Corps of Engineers

# Staff Report

Date: January 19, 2022

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**

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## 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.
- In response to the Commission’s request for peer review, Woods Hole Group submitted a scope of work. The applicant would like to discuss peer review with the Commission again.

## RECOMMENDATION

- Until the question of peer review is resolved, I cannot make a recommendation.

January 14, 2022

Job No. 22-0005

Whitney McClees  
Conservation Commission Agent  
40 Center Street  
Fairhaven, MA 02719

Sent via Email: [wmcclees@fairhaven-ma.gov](mailto:wmcclees@fairhaven-ma.gov)

## RE: Proposal for Third Party Review of Wetland Resources

Dear Ms. McClees,

Woods Hole Group is submitting the following proposal for review of a Notice of Intent (NOI) application for a proposed project at 0 Monondach Ave. in Fairhaven, MA. We understand that the Applicant is proposing a new building on the lot, and the Conservation Commission is looking for a consultant to provide a third party review of the wetland resource(s) on the property. Woods Hole Group proposes the following Scope of Work:

- **Task 1: Site Visit** – This Task involves a site visit to the subject property and surrounding area to evaluate the site conditions, including topography, vegetation, sediment characteristics, and signs of sediment transport and/or erosion. Data checklists for delineation of Coastal Beach, Coastal Dune, and Barrier Beach available in CZM’s “Applying the Massachusetts Coastal Wetlands Regulations (2017)” will be completed during the site visit. We will also conduct an assessment of the sub surface sediment characteristics at the site of the proposed building to evaluate whether the sediments are consistent with Coastal Beach and/or Coastal Dune resource areas. To this end, information will be gathered on sediment composition, grain size, and sorting characteristics. It is our understanding that the applicant (or the applicant’s representative) will be on site during the field survey, and equipment will be used by the applicant to dig a test pit for purposes of the sediment characterization. Samples will be collected for future grain size analyses, if required during later stages of the project.
- **Task 2: Review of NOI Application and Supporting Documentation** – This Task includes a review of the NOI application and supporting documentation. Specific information provided in the application on resource area delineation(s) will be identified for consistency with data gathered during the Task 1 site visit. It is assumed that the NOI application and supporting documentation will be provided by the Conservation Commission.



- **Task 3: Letter of Findings** – This Task includes preparation of a letter describing the findings of Tasks 1 and 2. The letter will use information gathered during Task 1, in combination with the wetland regulation definitions in 301 CMR 10.00, and guidance in CZM’s “Applying the Massachusetts Coastal Wetlands Regulations (2017)” to identify the wetland resource(s) present at the subject property. If warranted, recommendations for further investigations will be provided to the Commission so that a thorough review of the proposed project, it’s impacts, and compliance with the performance standards can be performed.

The fixed fee cost for the Scope of Work described above is as follows:

Task 1: Site Visit	\$2,150
Task 2: Review of NOI Application and Supporting Documentation	\$1,530
Task 3: Letter of Findings	\$1,250
<b>TOTAL</b>	<b>\$4,930</b>

Assuming a Notice to Proceed can be issued within 1 week, and the site visit can be conducted by January 28<sup>th</sup>, Woods Hole Group will be able to provide the Letter of Findings by February 7.

This proposal was assembled under the guidelines for a Fixed Price contract. Invoices for services rendered will be submitted monthly. Unless otherwise agreed to in writing, payment is due within 30 days following the date of our invoice. In the event of payments that are significantly or routinely late, WHG retains the right to stop work until payment issues are redressed. In case of refusal to address payment issues, WHG retains the right to use all appropriate legal measures to obtain rightful payment.

We look forward to the opportunity of working with the Conservation Commission on this project. Please feel free to contact me by phone (508) 495-6225 or email (lfields@woodsholegroup) if you have any questions.

Respectfully Submitted,

Leslie Fields, Sr. Coastal Geologist  
Coastal Sciences and Planning Team leader



**Acceptance and Authorization to Proceed:**

"I authorize Woods Hole Group, Inc. to proceed with the above scope of work and budget not to exceed \$4,930."

Whitney McCles for Fairhaven  
ConCom

**Client Name (Applicant's Representative)**

1/14/2022

**Date**

R.P. Hamlin

**Woods Hole Group Representative**

1/17/2022

**Date**

# Staff Report

Date: January 19, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## DOCUMENTS REVIEWED

- Previous permitting history for 25 & 29 Mangham Way
- Restoration plan dated December 15, 2021
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

## RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone

## COMMENTS

- A cease and desist was issued to the property owner of 29 Mangham Way for a pile of fill placed in the buffer zone, to be spread in a wetland resource area.
- A subsequent site visit revealed a large cleared area within a Bordering Vegetated Wetland. The cleared area appears to span both 25 and 29 Mangham Way. The property owner of 29 Mangham Way indicated he has been utilizing it for his camper.
- The property owner of 29 Mangham Way indicated there was a lot of debris in the resource area from the developer of the house.
- No additional fill can be placed in the resource area and the existing fill will need to be removed and the wetland possibly restored.
- No permits were ever filed for the clearing and fill in the wetland on either property.
- The wetland line from the Order of Conditions permitting the construction of the house appears to be fairly accurate, with the approximate edge of the wetland being at the edge of the yard.
- The restoration plan responds to the issued enforcement orders for both properties and outlines the following:
  - Disturbed area of buffer zone – 2,500 square feet
  - Disturbed area of wetlands – 2,400 square feet
  - Removal of fill from wetlands, excavation to original wetland grade, reintroduction of clean topsoil
  - Plantings in the wetland restoration area and seeding in both the wetland and buffer zone restoration areas
  - Removal/treatment of invasive species on site

- The overall restoration plan appears to address many of the concerns the Commission had in discussing the initial violation. The property owner of 29 Mangham Way will need to get permission from the property of 25 Mangham Way to conduct any restoration activities on that property.
- During the site visit, the Commission members present viewed the site, provided some feedback to the wetland scientist, and expressed some concern about the presence of ATV trails on the property.
- Subsequent to the site visit and discussions with his client, the wetland scientist would like to have a discussion with the Commission regarding further revisions to the scope of the restoration plan as described in the submitted narrative.

## **RECOMMENDATION**

- Until the Commission weighs in on the possible revision to the scope of restoration, I cannot make a recommendation.



## Ecosystem Solutions, Inc.

100 Centerville Rd., Suite 4  
Warwick, RI 02886

RI: 401-741-3263  
MA: 508-997-0268  
www.ecosystem-solutions.com

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January 19, 2022

Project no. W21-1589

Geoffrey A. Haworth, Chair  
Conservation Commission  
40 Center Street  
Fairhaven, MA 02719

**RE: Proposed Shrub Barrier to Wetland Access  
25 & 29 Mangham Way; Map 31A, Lots 300 & 300A  
Fairhaven, Massachusetts**

Mr. Haworth:

Ecosystem Solutions, on behalf of our client Robert Baccelli (Client), proposes the following amendment to the previously submitted restoration plan for the properties at 25 & 29 Mangham Way; Map 31A, Lots 300 & 300A (Properties).

In the interest of preventing future vehicle access to the Bordering Vegetated Wetland (BVW) via the Client's property at 29 Mangham Way; Map 31A, Lot 300A (Property), while maintaining the existing lawn area, we propose a shrub line be planted just north of the wetland line. Upon consideration following the site visit by the Conservation Commission on January 11<sup>th</sup>, the Client wishes to keep the lawn area they currently have within the 25' no touch area adjacent to the wetland boundary across the Properties. The current restoration plan will create an area of unmaintained conservation mixed vegetation which will be inconsistent with the appearance of the rest of the grass covered lawn area to the east of the disturbed/restoration area in the upland. Unfortunately, I was out of the office following the site visit due to illness, and the Client was unable to reach me to request the change sooner.

The disturbance in the Buffer Zone and BVW took place prior to April 26, when the Conservation Commission adopted their 25' no touch amendment to the Fairhaven Wetland Bylaw. Please see the dated photo below (the Client is currently looking for other pictures of a similar nature).

By preventing vehicular access to the wetland with a more robust physical barrier than previously proposed, and having an increased buffer area between the existing lawn and wetland boundary from Property line to Property line at 29 Mangham Way, we feel the wetland is in fact better protected than the previous proposed restoration. Should the Conservation Commission be willing to accept this change, we will resubmit the restoration plan to reflect these changes and provide further detail.

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Should you have any questions regarding this letter, or would like to conduct a site walk with me, please do not hesitate to call at (401) 741-3263 or by using the other contact information above.

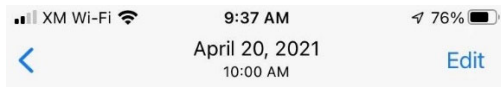
Sincerely,

**Ecosystem Solutions, Inc.**

Brandon B. Faneuf, M.S., Principal  
PWS, RPSS, CWB, CPESC

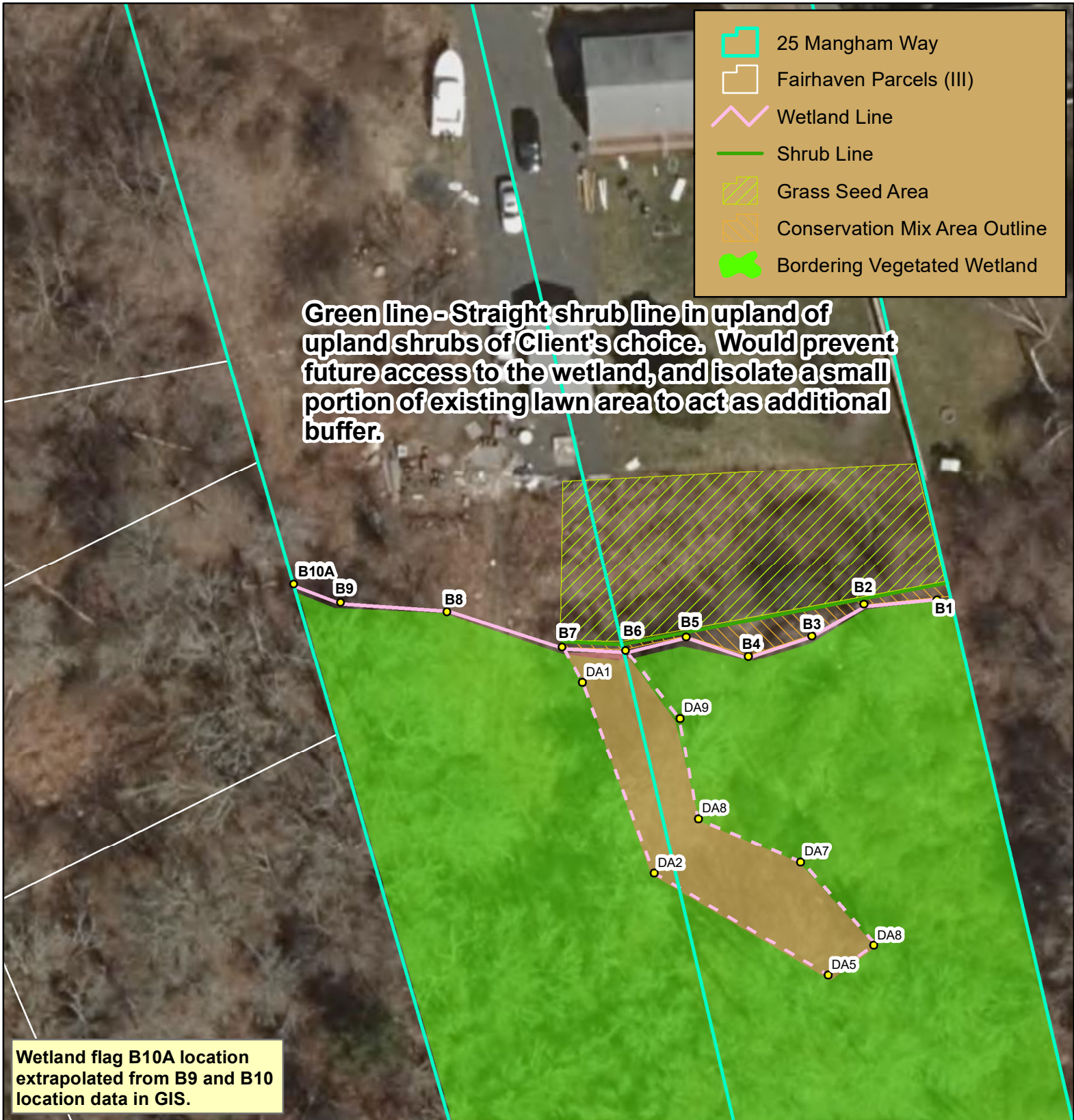
BF/hw

enclosures

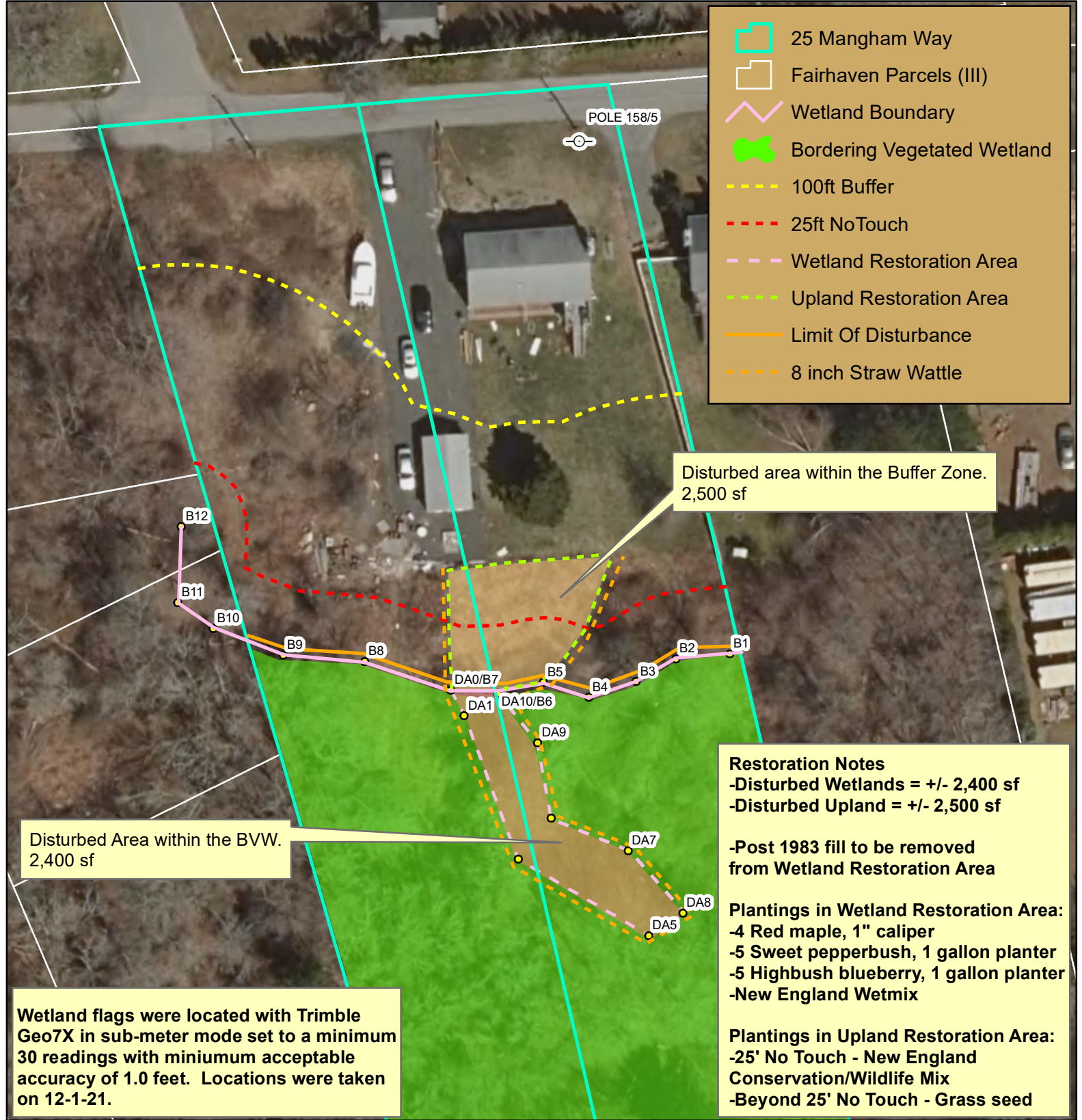


Picture of disturbed area from April 20, 2021.





<p>Ecosystem Solutions, Inc. 100 Centerville Road, Suite 4 Warwick, RI 02886</p>	<b>FIGURE 1</b>			
	<p>Proposed Barrier to Wetland Access and Proposed Lawn Area 25 Mangham Way / Map 31A, Lots 300 &amp; 300A Fairhaven, Massachusetts</p>			
	DATE:	1-19-2022	PROJECT #:	W21-1589
	CREATED BY:	BW	SCALE:	1 inch = 37.5 feet
2019 Aerial Orthophoto				



- 25 Mangham Way
- Fairhaven Parcels (III)
- Wetland Boundary
- Boring Vegetated Wetland
- 100ft Buffer
- 25ft NoTouch
- Wetland Restoration Area
- Upland Restoration Area
- Limit Of Disturbance
- 8 inch Straw Wattle

Disturbed area within the Buffer Zone.  
2,500 sf

Disturbed Area within the BVW.  
2,400 sf

**Restoration Notes**  
 -Disturbed Wetlands = +/- 2,400 sf  
 -Disturbed Upland = +/- 2,500 sf  
 -Post 1983 fill to be removed from Wetland Restoration Area  
**Plantings in Wetland Restoration Area:**  
 -4 Red maple, 1" caliper  
 -5 Sweet pepperbush, 1 gallon planter  
 -5 Highbush blueberry, 1 gallon planter  
 -New England Wetmix  
**Plantings in Upland Restoration Area:**  
 -25' No Touch - New England Conservation/Wildlife Mix  
 -Beyond 25' No Touch - Grass seed

Wetland flags were located with Trimble Geo7X in sub-meter mode set to a minimum 30 readings with minimum acceptable accuracy of 1.0 feet. Locations were taken on 12-1-21.

	Ecosystem Solutions, Inc. 100 Centerville Road, Suite 4 Warwick, RI 02893	<b>FIGURE 1</b>
		<b>Wetland Boundary &amp; Restoration Map</b> 25 Mangham Way / Map 31A, Lots 300 & 300A Fairhaven, Massachusetts
	DATE: 12-14-2021	PROJECT #: W21-1589
	CREATED BY: BF	SCALE: 1 inch = 50 feet
2019 Aerial Orthophoto		

# Staff Report

Date: January 19, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## 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)
- Revised restoration plan dated January 13, 2022 and narrative dated January 14, 2022

## 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.
    - *Completed*

- 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.
  - *Revised restoration dated January 13, 2022 submitted identifying the following activities:*
  - Set and maintain straw wattles
  - Install orange construction fence upgradient of erosion control barrier
  - Remove new stone edging as shown
  - Regrade perimeter to pre-alteration slope
  - Remove crushed stone, remove filter fabric
  - Based on 2019 aerial photograph, reset clean crushed stone to original limits of compact gravel surface
  - Loam and seed perimeter disturbed area or use sod to obtain stabilized surface as an alternative
  - Note: restoration work shall be completed using a bobcat sized equipment and/or hand tools. No activity or equipment will be allowed beyond the erosion control barrier.
- 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.
  - *Completed*
- The Commission required the following at the December 13, 2021 meeting:
  - Meet all of the outlined requirements in the enforcement order in the submission of a restoration plan no later than January 17, 2022
  - Submit payment of the \$1,200 fine issued pursuant to the Fairhaven Wetlands Bylaw (§192-11) no later than January 17, 2022
  - Either you or your representative is to appear before the Commission at their January 24, 2022 meeting
- The letter accompanying the revised restoration plan indicates that the engineer has communicated with a wetland scientist and the wetland scientist offered the following opinion:
  - The majority of the silt will not be flushed into the marsh but will settle in place as a result of rainwater flushing. The residual silt that makes its way into the marsh will not create a negative impact due to the minimal quality. The Town street drain outfalls that direct road runoff into the marsh have had a significantly higher impact on the marsh further eliminating any silt impacts on the marsh.
- The Commission should consider whether the restoration narrative should include the following information:
  - Depth of the stone to be replaced once filter fabric is removed
  - Removal of all newly placed boulders, not just the ones in the original gap

- Use of sod should not be permitted
- Utilizing a conservation seed mix for disturbed areas
- Provide a copy of the 2019 aerial photograph to be used to ensure everyone is on the same page
- A timeline of when work is to be completed
- The fine has not yet been paid.

## **RECOMMENDATION**

- Until the Commission comments on the above points and the fine has been paid, I reserve making a recommendation.

**MEMORANDUM**

Date: January 14, 2022

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: 3 North Street  
Map 15 – Lot 43

CEC Project: 304-088



As requested, we have reviewed the Enforcement Order and subsequent comment letter regarding the violations at the stone stockpile area on the subject property. The most recent letter dated December 15, 2021 lists three actions that must be taken relative to this issue. Those actions are as follows:

- 1) Meet all of the outlined requirements in the enforcement order in the submission of a restoration plan no later than January 17, 2022;
- 2) Submit payment of the \$1,200 fine issued pursuant to the Fairhaven Wetlands Bylaw (§192-11) no later than January 17, 2022; and
- 3) Either you or your representative is to appear before the Commission at their January 24, 2022 meeting.

The responses to these items are as follows:

1. Page 3 of the Order requires the installation of erosion/sedimentation controls on the upland side of the boulders. This has been completed.
2. Attached A, Item 1 requires a survey of the stockpile area be complete together with a determination of the stone depth. This survey and the stone depth evaluation was completed in October 2021 and the information was presented to the Commission upon completion. The stone depths were determined to be 2” to 4”.

3. Attachment A, Item 2 required the preparation of a restoration plan for the enforcement area. The restoration plan was required to include:
  - A. Return stockpile area to pre-construction conditions;
  - B. Regrade the area to pre-construction levels;
  - C. Removal of unwashed crushed stone and other materials not permitted by the Order (fabric, stones);
  - D. Restoration plan must be put together by a qualified wetland scientist and engineer. The restoration plan was completed under the direct supervision of Steven Gioiosa, P.E. with consultation with Christopher Capone, Wetland Scientist.

All of these items have been complied with.

4. Attachment A, Item 3 is a requirement to file a restoration plan, which has been completed and subsequently revised.
5. Attachment A, Item 4 an erosion control barrier has been installed as specified.
6. Attachment A, Items 6-8 are addressed by the Commission's rights under the applicable statute or by-law and the restoration plan meets the applicable performance standards.

In reviewing the specific issue of the stone dust and its potential impact on the marsh with Christopher Capone we received the following opinion from him.

Based on Mr. Capone's evaluation of the site and long term knowledge of the property, his opinion is the majority of silt will not be flushed into the marsh but will settle in place as a result of rainwater flushing. The residual silt that makes its way into the marsh will not create a negative impact due to the minimal quantity. It is also Mr. Capone's opinion that the Town street drain outfalls that direct road runoff into the marsh have had a significantly higher impact on the marsh further eliminating any silt impacts on the marsh.

Our revised plan is attached and we have added some supplemental erosion controls, noted the requirement to add an orange construction fence, and a note regarding construction equipment.

Mr. Miguel is aware of his obligation relative to the fine and we will plan on attending the upcoming meeting on January 24, 2022.

cc: Lee and Lizett Miguel

Attachment: Revised Plan





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

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**Letter of Consideration for the Non-Voting Position on the Conservation Committee**

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

Fri, Dec 31, 2021 at 3:46 PM

To the Conservation Commission,

My name is Chelsea Isherwood, I live at 3 Teal Circle and I am interested in taking on the role of a non-voting member for Conservation Commission. I have been a lifelong resident of Fairhaven and would love an opportunity to be of service to the town. In the past I have helped out on the sidelines with various town projects and campaigns when asked and provided the opportunity.

I am passionate about this town and preserving its historic beauty and natural resources. The Conservation Commission plays an important role in that. I have read and am familiar with some of Fairhaven's bylaws and would be excited to learn more. For the past year I have listened in on all the Conservation Commission meetings as well as Conservation Commission classes my mother Karen Isherwood took through the MCAA, and have grown a passion to learn more. The world is ever changing, and the opportunity to be on a commission, even in a non-voting position would be an honor to help navigate the delicate path of preserving and supporting projects.

I hope you will please consider me for the role of non-voting member. I would be honored to work with you.

Sincerely,

Chelsea Isherwood

Sent from my Verizon, Samsung Galaxy smartphone  
Get [Outlook for Android](#)



TOWN OF FAIRHAVEN, MASSACHUSETTS

## CONSERVATION AND SUSTAINABILITY DEPARTMENT

Town Hall · 40 Center Street · Fairhaven, MA 02719

Telephone: (508) 979-4023, ext. 128 · Fax: (508) 979-4079

Ms. Wendy Graves  
Interim Town Administrator

RE: Budget Transmittal Letter

I look forward to further developing the Conservation and Sustainability Department over the coming year, supported by the Conservation Commission, Sustainability Committee, Town Administration and other Departments.

I have provided a review by line item, explaining the recommendations I have requested.

**Regular Pay:** In this budget, I am proposing an increase of \$43,421.34 from FY22 due to step increases and the addition of a full-time Administrative Assistant. A full-time Administrative Assistant would improve public service in the following ways: facilitate the issuance of Conservation permits in a timely manner, introduce faster response time in verifying the completeness of Conservation permit applications, introduce more efficient response time to records requests, and provide the opportunity for better educational outreach to the public. Additionally, with the Conservation Agent/Sustainability Coordinator able to delegate administrative duties, the Department will better be able to apply for additional and manage current grants in alignment with the Board of Selectmen's FY21 Policy Goal #4A, supervise ongoing Conservation projects, research and implement FEMA's Community Rating System in alignment with Mitigation Action #2 of the Hazard Mitigation Plan, and pursue certifying the Town through the LEED for Cities and Communities Program (formerly STAR Community Rating System) in alignment with Master Plan Sustainability Goal #4-2. Additionally, initiatives spearheaded by the Department, such as the Green Communities Grant and the installation of solar at the schools, will save the town approximately \$90,000 annually, more than double the cost of an administrative assistant. These initiatives were completed at no cost to the Town due to the Department securing over \$300,000 in grants. The cost of a full-time assistant could also be offset by the wetlands fees brought in by Wetlands Protection Act filings. This revenue is specifically to support functions directly related to the Conservation Commission. Between January and December 2021, the Conservation Commission brought in a total of \$23,905.50 in filing fees, of which \$8,505.50 is specifically designated for the wetlands fund. Additionally, the Conservation/Sustainability Department is the only department with a staff of one and adding additional personnel to the daily operations of the department would facilitate improved public service.

**Advertising:** No changes.

**Training (Education and Outreach):** No changes

**Telephone:** Addition of \$550.00 due to relocating payment of department cell phone to the department budget. Documentation from the Fire Chief notes the annual bill will be \$505.

**Postage:** No changes.

**Contracted Services:** No changes

**Office Supplies:** No changes.

**Field Supplies:** No changes.

**Books/Subscriptions:** No changes.

**Uniforms:** No changes.

**Dues and Professional Gatherings:** This budget proposes an increase of \$278.00 from FY22.

MACC Dues	\$299.00
MACC Agent Membership	\$60.00
MACC Non-Voting Consultant Membership (\$60*1 person)	\$60.00
MACC Annual Conference Registration (\$125*4 people)	\$500.00
MACC Fall Conference Registration (\$125*4 people)	\$500.00
MSMCP Membership/Dues	\$20.00
PowerOptions Membership Dues	\$550.00

The increase in this category reflects a slight increase in MACC annual dues for FY22 and a small increase associated with MACC conference registration to allow at least four people to attend the Annual Conference and at least 4 to attend the Fall Conference.

**Mileage and Travel:** No changes.

**Other changes:**

In December 2018, the Town of Fairhaven was designated as a Green Community and awarded a grant of \$174,535. All projects funded by that grant were completed in early 2021, in alignment with the Board of Selectmen's FY21 Policy Goal #8G. The Town received a Green Communities Competitive Grant in July 2022 for \$184,956 to fund three energy efficiency projects at Fairhaven High School. All three of which are moving towards completion in FY22.

In 2022, I hope to replace two older town vehicles with electric vehicles. The Town received a Massachusetts Electric Vehicle Incentive Program (EVIP) Fleets grant for \$12,500 in November 2019 to support the installation of electric vehicle (EV) charging station equipment and lease two electric vehicles and an EVIP Workplace Charging grant for \$1,746.06 in April 2020 to support the installation of public-facing EV charging station equipment. The 2020 Fall Special Town Meeting authorized matching funds to execute these grants. Supply chain delays associated with the pandemic have delayed the completion of these grants, though they are on track to be completed in FY22. The charging stations are due to be installed in February 2022.

I would like to collaborate with the Information Technology Department to implement Town-wide GIS web-mapping to provide residents with a resource to see Conservation, Assessors, Flood Zone, and Recreation information in one cohesive location, specific to the Town, in alignment with the Board of Selectmen's Policy Goals #3, #7, #8D, #8,F and 9L. This goal will be significantly supported by the integrating of Conservation permitting into the online permitting software. I also hope to improve educational outreach to increase the understanding of the Wetlands Protection Act, Fairhaven's Wetlands Bylaw, and other associated policies under the jurisdiction of the Conservation Commission.

Additionally, I would like to collaborate with the Sustainability Committee and the Media Department to garner town-wide participation in Northwest Earth Institute and Project Drawdown's Drawdown EcoChallenge. This challenge is a 21-day engagement program focused on carbon reduction using solutions to global warming that already exist. These collaborations address the Board of Selectmen's Policy Goals #2, #3, and #7.

Finally, I aim to continue managing and applying for sustainability-focused grants and pursuing actions outlined in the Town's 2040 Master Plan, Open Space and Recreation Plan, Hazard Mitigation Plan, and Municipal Vulnerability Preparedness Planning report.

Sincerely,  
Whitney McClees  
Conservation Agent and Sustainability Coordinator

Category	Account Number	FY23 Request	FY22 Budget	Notes	Cost	Different from FY2022?	Reason
<b>Personal Service</b>							
Conservation Agent and Sustainability Coordinator		\$81,182.00	\$80,859.00	calculated from payroll sheet	\$323.00	Yes	Step increase
Administrative Assistant		\$39,279.00	\$0.00	calculated from payroll sheet	\$39,279.00	Yes	A full-time Administrative Assistant would improve public service in the following ways: facilitate the issuance of Conservation permits in a timely manner, introduce faster response time in verifying the completeness of Conservation permit applications, introduce more efficient response time to records requests, and provide the opportunity for better educational outreach to the public. Additionally, with the Conservation Agent/Sustainability Coordinator able to delegate administrative duties, the Department will better be able to apply for additional and manage current grants in alignment with the Board of Selectmen's FY21 Policy Goal #4A, supervise ongoing Conservation projects, research and implement FEMA's Community Rating System in alignment with Mitigation Action #2 of the Hazard Mitigation Plan, and pursue certifying the Town through the LEED for Cities and Communities Program (formerly STAR Community Rating System) in alignment with Master Plan Sustainability Goal #4-2. Additionally, initiatives spearheaded by the Department, such as the Green Communities Grant and the installation of solar at the schools, will save the town approximately \$90,000 annually, more than double the cost of an administrative assistant.
<b>Total Payroll</b>	001-171-00-5111-00-0106	\$120,461.00	\$80,859.00		\$39,602.00	Yes	Step increases, COLA, addition of full-time administrative assistant
<b>Minor Equipment</b>							
New Equipment (Online Permitting Software)	001-171-00-5850-00-0106	\$0.00	\$10,430.00		-\$10,430.00	Yes	Item not needed in FY23 as it was a one-time purchase.
<b>Total Minor Equipment</b>		\$0.00	\$10,430.00				
<b>Purchase of Services</b>							
Advertising	001-171-00-5303-00-0106	\$2,000.00	\$2,000.00		\$0.00	No	No changes
Training	001-171-00-5316-00-0106	\$1,000.00	\$1,000.00		\$0.00	No	No changes
Telephone	001-171-00-5341-00-0106	\$550.00	\$0.00		\$550.00	Yes	Relocating payment of department cell phone to department budget, documentation from the Fire Chief notes yearly estimate to be \$505.
Reserve Account (Postage)	001-171-00-5342-00-0106	\$1,000.00	\$1,000.00		\$0.00	No	No changes
Contracted Services	001-171-00-5390-00-0106	\$2,500.00	\$2,500.00		\$0.00	No	No changes
<b>Total Purchase of Services</b>		\$7,050.00	\$6,500.00				
<b>Supplies</b>							
Office Supplies	001-171-00-5420-00-0106	\$520.00	\$520.00		\$0.00	No	No changes
Field Supplies	001-171-00-5432-00-0106	\$250.00	\$250.00		\$0.00	No	No changes
Books/Subscriptions	001-171-00-5520-00-0106	\$150.00	\$150.00		\$0.00	No	No changes
Uniforms	001-171-00-5582-00-0106	\$130.00	\$130.00		\$0.00	No	No changes
<b>Total Supplies</b>		\$1,050.00	\$1,050.00				
<b>Dues and Professional Gatherings</b>							
MACC Dues		\$299.00	\$293.00		\$6.00	No	No changes
MACC Agent Membership		\$60.00	\$60.00		\$0.00	No	No changes
MACC Non-Voting Consultant Membership		\$60.00	\$60.00		\$0.00	No	No changes
MACC Annual Conference Registration (\$125*4 people)		\$500.00	\$500.00		\$0.00	No	No changes
MACC Fall Conference Registration (\$125*4 people)		\$500.00	\$0.00		\$500.00	Yes	Split between Fall Conference and Annual Conference
MACC Courses		\$0.00	\$228.00		-\$228.00	No	Accounted for in Training line item
MSMCP Annual Dues		\$20.00	\$20.00		\$0.00	No	No changes
PowerOptions Annual Membership Dues		\$550.00	\$550.00		\$0.00	No	No changes; required to maintain our status in the program
<b>Total Dues and Professional Gatherings</b>	001-171-00-5731-00-0106	\$1,989.00	\$1,711.00		\$278.00	Yes	Inclusion of slightly more conference funding to allow 8 people to attend either MACC Fall Conference or MACC Annual Conference in the spring.
<b>Mileage and Travel</b>							
Public Transit		\$0.00	\$0.00		\$0.00	No	No changes, anticipate that public transit will continue to be avoided due to the pandemic
Mileage		\$1,063.00	\$1,063.00		\$0.00	No	No changes
<b>Total Mileage and Travel</b>	001-171-00-5712-00-0106	\$1,063.00	\$1,063.00		\$0.00	No	No changes
<b>TOTAL</b>		\$131,613.00	\$101,613.00		\$30,000.00	Yes	

<b>Department Name:</b>		Conservation/Sustainability																
<b>Last Name (1)</b>	<b>First Name</b>	<b>Job Title</b>	<b>Date of Hire</b>	<b>Years of Service(2)</b>	<b>Union (3)</b>	<b>Grade</b>	<b>Step (4)</b>	<b>Hourly Wage (5)</b>	<b>Hrs./ week</b>	<b>Annual Wages(6)</b>	<b>Annual Salary (7)</b>	<b>Date of Step (8)</b>	<b>Cost of Step Inc. (9)</b>	<b>Longevity(10)</b>	<b>Sick Leave Bonus (11)</b>	<b>Sick Leave Buy-Back (12)</b>	<b>Stipend/ Other (18)</b>	<b>Total Compensation</b>
McClees	Whitney	Conservation Agent/Sustainability Coordinator	1/2/2019	3	NU	17	4	\$38.21	40.0		\$79,783	1/2/2023	\$999	\$0	\$400			\$81,182
Vacant		Full Time Administrative Assistant			C	C	1	\$21.28	35.0	\$38,879					\$400			\$39,279
<b>Totals</b>										<b>\$38,879</b>	<b>\$79,783</b>		<b>\$999</b>	<b>\$0</b>	<b>\$800</b>			<b>\$120,461</b>
<i>If full time Administrative Assistant position is not funded, Department is requesting a part-time administrative assistant, details below</i>																		
McClees	Whitney	Conservation Agent/Sustainability Coordinator	1/2/2019	3	NU	17	4	\$38.21	40.0		\$79,783	1/2/2023	\$999	\$0	\$400			\$81,182
Vacant		Part Time Administrative Assistant			NU	7	1	\$17.87	19.0	\$17,724								\$17,724
<b>Totals</b>										<b>\$17,724</b>	<b>\$79,783</b>		<b>\$999</b>	<b>\$0</b>	<b>\$400</b>			<b>\$98,906</b>
<i>If Administrative Assistant position is not funded at all, Department will still need funds for a recording secretary, level service information from FY22 below.</i>																		
McClees	Whitney	Conservation Agent/Sustainability Coordinator	1/2/2019	3	NU	17	4	\$38.21	40.0		\$79,783	1/2/2023	\$999	\$0	\$400			\$81,182
Camara	Kelly	Recording Secretary	7/26/2021	0	NU	7	1	\$17.87	4.0	\$3,732		7/26/2022	\$90					\$3,822
<b>Totals</b>										<b>\$3,732</b>	<b>\$79,783</b>		<b>\$1,089</b>	<b>\$0</b>	<b>\$400</b>			<b>\$85,004</b>



WETLANDS  
CHAPTER 192  
FROM THE  
CODE  
OF THE  
TOWN  
OF  
FAIRHAVEN

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## Chapter 192

### WETLANDS

192.1.	Purpose.	192.8.	Definitions.
192.2.	Regulated activities.	192.9.	Security.
192.3.	Exceptions.	192.10.	Enforcement
192.4.	Permit application and requests for determination.	192.11.	Violations and penalties
192.5.	Notice and hearings	192.12.	Burden of Proof
192.6.	Permits; determinations and conditions.	192.13.	Relation to Wetland Protection Act
192.7.	Regulations.	192.14.	Severability

[HISTORY: Adopted by the Annual Town Meeting of the Town of Fairhaven 5-10-1988 by Art. 58 (Ch. XXIX of the 1934 Bylaws). Amendments noted where applicable.]

#### GENERAL REFERENCES

Conservation Commission – See Ch. 8

Subdivision of land – See Ch. 322

#### § 192-1. Purpose.

The purpose of this chapter is to protect the wetlands, related water resources and adjoining land areas in the Town of Fairhaven by controlling activities deemed by the Fairhaven Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution control, fisheries, land containing shellfish, wildlife habitat, recreation, aesthetics, ~~and~~ agriculture values, and the ability of resource areas to mitigate impacts from climate change (collectively, the "wetland values protected by this chapter").

#### § 192-2. Regulated activities.

[Amended 5-1-2010 STM by Art. 13]

Except as permitted by the Fairhaven Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon or alter the following resource areas:

- A. Any freshwater or coastal wetland, marsh, wet meadow, bog, or swamp; or within 100 feet of these resource areas.
- B. Any bank, beach, creek, dune, lake, river, pond, stream, estuary, or ocean; or within 100 feet of these resource areas.
- C. Any land under lakes, rivers, ponds, streams, estuaries or the ocean.

D. Lands subject to flooding or inundation by groundwater or surface water, lands subject to tidal action, coastal storm flowage, or flooding; or within 100 feet of these resource areas.

D.E. Land in the Nasketucket River Basin Overlay District.

### **§ 192-3. Exceptions.**

- A. The permit and application required by this chapter shall not be required for maintaining, repairing or replacing an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone or other telecommunication services, provided that the structure or facility is not substantially changed or enlarged.
- B. The permit and application required by this chapter shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that:
  - 1) The work is to be performed by or has been ordered to be performed by an agency of the Commonwealth of Massachusetts or a political subdivision thereof.
  - 2) Advance notice, oral or written, has been given to the Commission or its agent prior to commencement of work or within 24 hours after commencement.
  - 2)3) For any work proposed to the north of the eastern terminus of the hurricane barrier, and within one hundred (100) feet of a wetland resource are protected under the Massachusetts Wetlands Protection Act and corresponding regulations and this Bylaw and corresponding regulations, notice shall also be provided to the United States Environmental Protection Agency (EPA), which is implementing the cleanup of the New Bedford Harbor Superfund Site.
  - 3)4) The Commission or its agent certifies the work as an emergency project.
  - 4)5) The work is performed only for the time and place so certified for the limited purposes necessary to abate the emergency.
  - 5)6) Within 21 days of commencement of an emergency project a permit application shall be filed with the Conservation Commission for review as provided by this chapter.
- C. Upon failure to meet these requirements and any other requirements imposed by the Commission pursuant to this chapter, the Commission may, after notice and a public hearing, revoke or modify an emergency project certification and order restoration and mitigation measures.

### **§ 192-4. Permit application and requests for determination.**

- A. Written application shall be filed with the Conservation Commission to perform regulated activities regulated as defined in § 192-2. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this chapter.
- B. In its discretion the Commission may accept the notice of intent and plans filed under MGL c. 31, § 40 (the Wetlands Protection Act) as the application and plans under this chapter. Any person desiring to know whether or not the proposed activity of an area is subject to this chapter may request a determination for the Commission in writing. Such a

request for determination shall contain data and plans specified by the regulations of the Commission.

- C. At the time of an application or request, the applicant shall pay a filing fee specified in the regulation of the Commission, said fee to be in addition to any fee required by MGL c. 131, § 40 (the Wetlands Protection Act). The Commission may establish filing fees in amounts reasonably designed to recover the cost to the Town of processing such application, including the cost to the Town of professional services for design review, site inspection and testing and related services. The Commission may waive the filing fee for an application or request filed by a government agency and shall waive all fees, costs and expenses for a request for determination filed by a person who is not the owner or a person acting on behalf of the owner.

### **§ 192-5. Notice and hearings.**

- A. At the same time any person files an application or request for determination with the Conservation Commission, he/she shall give written notice thereof, by certificate of mailing, certified mail, or hand delivery to all abutters according to the most recent records of the Assessors, including those across a traveled way, a body of water or a Town line. The notice to abutters shall enclose a copy of the application or request, with plans, or shall state where copies may be examined by abutters. When a person requesting a determination is other than the owner or a person acting on behalf of the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner(s) as well as the person making the request. For any work proposed to the north of the eastern terminus of the hurricane barrier, and within one hundred feet (100) feet of a wetland resource area protected under the Massachusetts Wetlands Protection Act and corresponding regulations and this Bylaw and corresponding regulations, notice shall also be provided to the United States Environmental Protection Agency (EPA), which is implementing the cleanup of the New Bedford Harbor Superfund Site. This notice to EPA shall enclose a copy of the application or request, with plans.
- B. The Commission shall conduct a public hearing on any application or request for determination, with written notice given, at the expense of the applicant, in a newspaper of general circulation in the Town at least five working days prior to the hearing.
- C. The Commission shall commence the public hearing within 21 days from receipt of a completed application or request for determination and shall issue its permit, denial or determination in writing within 21 days of the close of said public hearing. In its discretion, the Commission may combine this hearing under this chapter with a hearing conducted under MGL c. 131, § 40 (the Wetlands Protection Act).
- D. The Commission shall have the authority to continue any hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant deemed necessary by the Commission in its discretion or comments and recommendations of other Town boards and officials. If the applicant objects to a continuance or postponement, the hearing shall be closed, and the Commission shall take action on the information then available to it.

## **§ 192-6. Permits; determinations and conditions.**

- A. If, after a public hearing, the Conservation Commission determines that the activities which are the subject of the application are not likely to have a significant or cumulative effect upon the wetlands values protected by this chapter, the Commission shall, within 21 days of the close of the hearing, issue a permit for the activities requested. Such permit shall be without conditions. If, after a public hearing, the Conservation Commission determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon any or all of the wetlands values protected by this chapter, the Commission shall, within 21 days of the close of the hearing, issue a permit for the activities requested, in which case the Commission shall impose conditions which it deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions, or deny a permit.
- B. The Commission may deny a permit for the following reasons:
  - 1) Failure to meet the requirement of this chapter.
  - 2) Failure to submit necessary information and/or plans requested by the Commission.
  - 3) Failure to meet the design specifications, performance standards and other requirements in regulations of the Commission.
  - 4) Failure to avoid or prevent unacceptable significant or cumulative effects upon any or all of the wetland values protected by this chapter.
- C. A permit shall expire three years from the date of issue. Any permit may be renewed once for an additional period, up to three years, provided that a written request for renewal is received by the Commission prior to expiration and that the Commission may grant such extension as it finds necessary to allow completion of the permitted work.
- D. 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.
- E. In its discretion, the Commission may combine the permit or other action on an application issued under this chapter with the order of conditions issued under the Wetlands Protection Act.

## **§ 192-7. Regulations.**

After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to achieve the purposes of this chapter. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this chapter.

## **§ 192-8. Definitions.**

The following definitions shall apply in the interpretation and implementation of this chapter:

### **AESTHETICS**

Includes, without limitation, the relevant qualities to be protected under the bylaw which are due to those natural and natively scenic impressions of all resource areas protected under this Bylaw, including but not limited to our shores, ponds, lakes, streams, rivers, and the lands bordering them.

## **ALTER**

Includes, without limitation, the following activities when undertaken to, upon, within or effecting resource areas protected by this chapter:

- A. Removal, excavation or dredging of soil, sand, loam, peat, gravel or aggregate materials of any kind.
- B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics.
- C. Drainage or other disturbance of water level or water table.
- D. Dumping, discharging or filling with any material which may degrade water quality.
- E. Placing of fill or removal of material which would alter elevation.
- F. Driving of piles, erection, alteration or repair of buildings or structures of any kind.
- G. Placing of obstructions or objects in water.
- H. Destruction of plant life, including cutting of trees.
- I. Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water.
- J. Any activities, changes or work which may cause or tend to contribute to pollution or any body of water or groundwater.

## **CUMULATIVE EFFECT**

An effect that is significant when considered in combination with other activities that have occurred, that are occurring simultaneously, or that are reasonably foreseeable, whether such other activities are contemplated as a separate phase of the same project, or arise from unrelated but reasonably foreseeable future projects. Future effects of sea level rise, coastal or inland flooding, or other future climate change effects are included among cumulative effects.

## **PERSON**

Any individual, group of individuals, association, partnership, corporation company, business organization, trust, estate, the Commonwealth of Massachusetts or political subdivision thereof to the extent subject to Town bylaws, administrative agency, public or quasi-public corporation or body, the Town of Fairhaven and any other legal entity, its legal representatives, agents or assigns.

## **§ 192-9. Security.**

As part of a permit issued under this chapter, in addition to any security required by any other Town or state board, agency or official, the Conservation Commission may require that the

performance and observance of any conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

- A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility in an amount sufficient in the opinion of the Commission.
- B. By a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Fairhaven requiring the permit conditions to be performed before any interest may be conveyed other than a mortgage interest.

### **§ 192-10. Enforcement.**

- A. The Conservation Commission, its agents, officers and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this chapter and make or cause to be made such examinations, surveys or samplings as the Commission deems necessary.
- B. The Commission shall have authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions.
- C. Upon request of the Commission, the ~~Board of Selectmen~~Selectboard and Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.
- D. Town boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

### **§ 192-11. Violations and penalties.**

- A. Any person who violates any provision of this chapter, regulations thereunder or permits issued thereunder shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw regulations or permit violated shall constitute a separate offense.
- B. In the alternative to criminal prosecution, the Commission may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D.

### **§ 192-12. Burden of proof.**

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the wetland values protected by this chapter.

### **§ 192-13. Relation to Wetland Protection Act.**

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of MGL c. 131, § 40 (the Wetlands Protection Act) and regulations thereunder.

**§ 192-14. Severability.**

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof nor shall it invalidate any permit or determination which previously has been issued.



TOWN OF FAIRHAVEN, MASSACHUSETTS

# CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

## 2022 MEETING SCHEDULE

**6:30pm Public Hearings, every three weeks on Mondays\***

\*Unless otherwise noted

Additional Public Hearing dates may be scheduled if necessary

**Town Hall, 40 Center Street, Fairhaven, MA 02719**

**FILING DEADLINES ARE 12 NOON, THREE WEEKS PRIOR TO THE MEETING DATE\***

<u>Meeting Date</u>	<u>Application Submission Deadline (12 noon)</u>	<u>Legal Ad date</u>	<u>Revised Application Material Submission Deadline</u>
	Three weeks prior to the meeting*		Monday, two weeks prior to the meeting
January 3	December 9*	December 16	December 20
January 24	January 3	January 13	January 10
February 14	January 24	February 3	January 31
March 7	February 14	February 24	February 22
March 21*	February 28	March 10	March 7
April 11	March 21	March 31	March 28
May 2	April 11	April 21	April 19
May 23	May 2	May 12	May 9
June 13	May 23	June 2	May 31

*The meeting schedule for the second half of 2022 will be determined as it gets closer.*