

Staff Report

Date: January 28, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **130 Ebony Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-264**

DOCUMENTS REVIEWED

- Request for Determination of Applicability and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- Positive Determination of Applicability issued September 5, 2019 under the Bylaw only

RESOURCE AREAS ON/NEAR SITE

- Isolated Vegetated Wetland

RELEVANT PERFORMANCE STANDARDS

- While there are no performance standards for isolated vegetated wetlands (IVWs) under the Wetlands Protection Act or the Fairhaven Wetlands Bylaw, many IVWs are extremely important wildlife habitat, and typically provide all or most of the same habitat functions as Bordering Vegetated Wetlands. IVWs are likely to be significant to public or private water supply, to groundwater supply, to prevention of pollution, and to wildlife habitat. Plants and soils of isolated vegetated wetlands remove or detain sediments, nutrients, and toxic substances that occur in run-off and flood waters.

PROJECT SUMMARY

- The applicant is seeking to determine whether the area on the submitted plan is subject to the jurisdiction of the Wetlands Protection Act and Fairhaven Wetlands Bylaw.

COMMENTS

- The area comprises three lots between Ebony Street and Dogwood Street. The front lot on Ebony Street has an existing house.
- The Commission determined in 2019 that the southern of the two rear lots contains an isolated vegetated wetland that is comprised of a natural area that is not lawn (approx. 4000 square feet) and provides more habitat function typical of a wetland.
- The applicant is providing information from a different wetland scientist than the 2019 application seeking a determination that no area of the property falls under Conservation jurisdiction under either the Wetlands Protection Act or the Fairhaven Wetlands Bylaw.
- The memo submitted by the applicant's wetland scientist is of the opinion that, based on vegetation, soils, and hydrology, the area previously determined by the Commission to be a

jurisdictional isolated vegetated wetland is not a jurisdictional area under either the Wetlands Protection Act or Fairhaven Wetlands Bylaw.

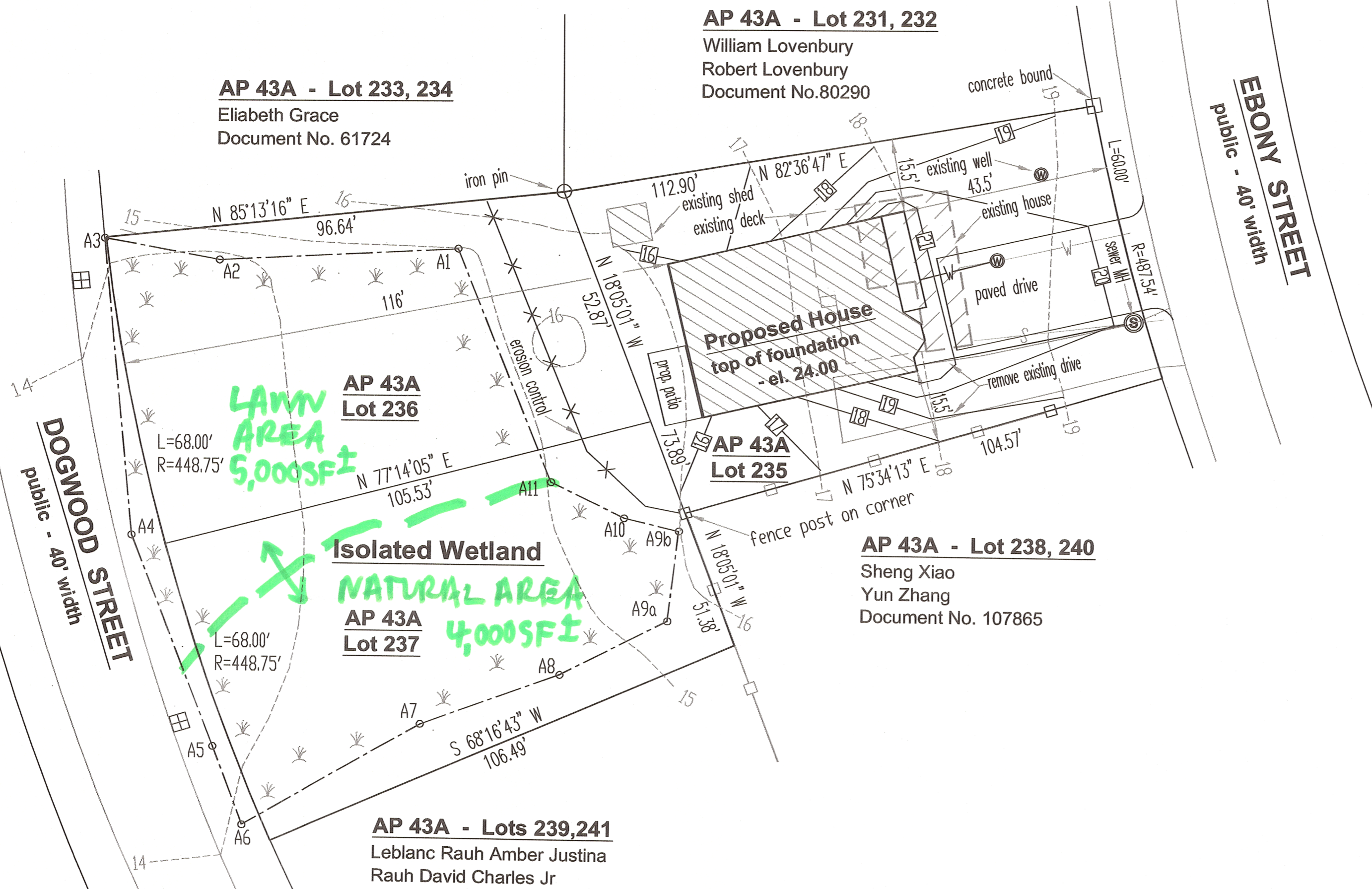
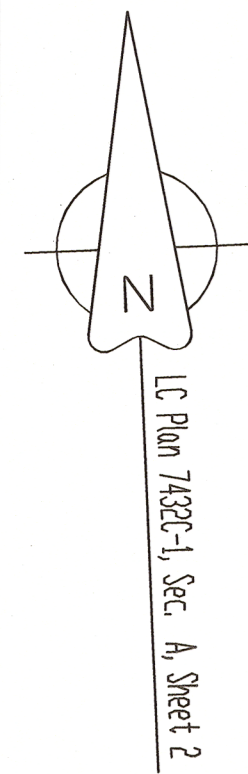
- The memo also addressed the Commission's winter conditions regulations, noting that while the wetland assessment was conducted in December, the conditions were not so adverse as to prevent proper assessment. The Commission will need to consider if they feel the information provided in the wetland report is sufficient to overcome the requirements of the winter conditions regulations.
- The area in question does not appear to meet the definition of Isolated Land Subject to Flooding. Therefore, it doesn't appear that the area is a jurisdictional resource area under the Wetlands Protection Act.
- The Commission will need to determine whether they feel the information the applicant has provided is enough to show that the area previously determined to be an isolated wetland is not a jurisdictional resource area under the Fairhaven Wetlands Bylaw.

RECOMMENDATION

- If the Commission determines the area in question is jurisdictional under the Fairhaven Wetlands Bylaw only, I recommend closing the public hearing for CON 023-264, 130 Ebony Street, and issuing a Negative 1 Determination and a Positive 6 Determination that states that Lot 237 falls under the jurisdiction of the Fairhaven Wetlands Bylaw as Isolated Vegetated Wetland.
- If the Commission determines the area in question is not jurisdictional under the Fairhaven Wetlands Bylaw, I recommend closing the public hearing for CON 023-264, 130 Ebony Street, and issuing a Negative 1 and Negative 6 Determination.

2019 Site Plan

Commission issued a Determination that Lot 237 is a jurisdictional Isolated Vegetated Wetland



AP 43A - Lot 233, 234
Eliabeth Grace
Document No. 61724

AP 43A - Lot 231, 232
William Lovenbury
Robert Lovenbury
Document No. 80290

**AP 43A
Lot 236**

**AP 43A
Lot 235**

Isolated Wetland
NATURAL AREA
4,000SF

AP 43A - Lot 238, 240
Sheng Xiao
Yun Zhang
Document No. 107865

AP 43A - Lots 239,241
Leblanc Rauh Amber Justina
Rauh David Charles Jr
Certificate No. 24650

LEGEND

- 20--- existing contour
- 22--- proposed contour
- UP#306/8 ⊕ existing utility pole
- existing fence
- ⋆ A7 ⋆ flagged wetland edge
- × × × proposed silt fence
- ⊠ existing catch basin
- W— existing water line
- W— proposed water line
- S— existing sewer
- S— proposed sewer

AP 43A, Lots 235, 236

Sharon A. Labonte
Doc. 110899

AP 43A, Lots 237

John & Sharon Hinds
Doc. 123408

Total Area - 19665 SF

Reference Plan: 7432C-1

NOTES:

- 1 - Zoned RR
- 2 - Minimum Building Setbacks:
Front - 30'
Side - 20'
Rear - 30'
- 3 - Maximum Building Height - 35'
- 4 - Overall Structure Height - 25'+/-
- 5 - Maximum Lot Coverage - 25%
Proposed Lot Coverage - 13.91%
house - 1700 SF
patio - 128 SF
driveway - 840 SF
shed - 68 SF
total coverage - 2736 SF
- 6 - Maximum Building Coverage = 15%
Proposed Building Coverage = 8.64%
- 7 - The property is not in a 100 Year Special Flood Hazard Zone, per FIRM No. 25005C0502F, Effective Date: July 7, 2009.
- 8 - The existing house is to be demolished.
- 9 - The proposed house is to be connected to the existing utilities.
- 10 - All disturbed areas shall be loamed and seeded as soon as practical, and maintained until grass is established.
- 11 - The erosion controls shall be silt fence, or as required by the Conservation Commission.
- 12 - There shall be no disturbance beyond the erosion controls.
- 13 - Benchmark - sewer MH at edge of drive, el. 20.00 (assumed).

AVT ASSOCIATES

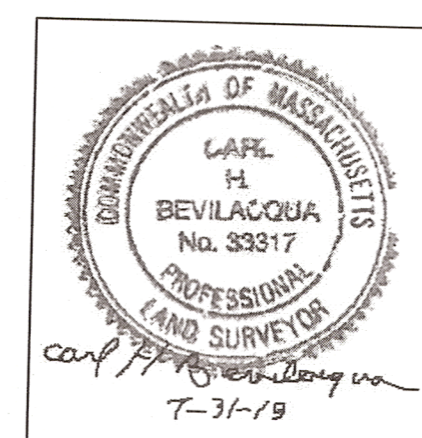
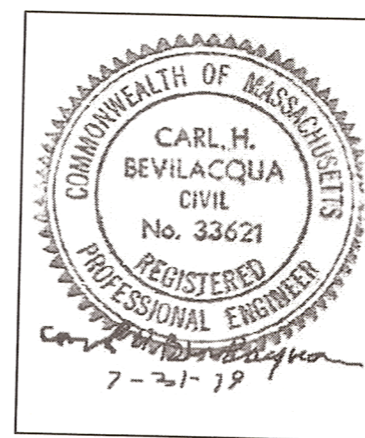
Civil Engineers & Surveyors
18 Algonquin Drive
Dartmouth, MA 02748-1203
avtsurveying.com
508-992-0015

Site Plan

Proposed House

John & Sharon Hinds
AP 43A, Lots 235,236,237
130 Ebony Street
Fairhaven, MA

Scale: 1' = 20'
Date: July 31, 2019



ECR

Environmental Consulting & Restoration, LLC



SITE EVALUATION MEMO

TO: John Hinds
FROM: Cameron Larson, Wetland Scientist
DATE: December 22, 2021
RE: 130 Ebony Street, Fairhaven

Per your request, Environmental Consulting & Restoration, LLC (ECR) performed a review of the existing conditions at the property located at 130 Ebony Street in Fairhaven (the site) on December 21, 2020. The purpose of the review was to identify wetland resource areas on and near the site, specifically to review a portion of the site that was previously identified as an Isolated Vegetated Wetland. The site is located to the west of Ebony Street and east of Dogwood Street. The site consists of a single-family home with a paved driveway, deck to the rear, fencing, maintained lawn, landscaped areas, etc. The weather on December 21st was sunny, clear, and cold (approximately 30 degrees) with light wind and dry site conditions.

The area of the site that was previously identified as an Isolated Vegetated Wetland is located to the rear of the home within the wooded southwestern portion of the site that abuts the maintained backyard lawn. Please note, the MA Wetlands Protection Act and its associated Regulations do not include isolated wetlands under its jurisdiction. This area is too small and shallow to be considered as an Isolated Land Subject to Flooding as defined in the MA Wetland Protection Regulations found at 310 CMR 10.57.

The Town of Fairhaven Wetlands Bylaw however does protect “any freshwater wetland”, which ECR interprets as including Isolated Vegetated Wetlands. Also note, the Town of Fairhaven Wetlands Bylaw and associated Regulations do not further define vegetated wetlands (bordering or isolated). Therefore, vegetated wetlands should be delineated in accordance with the definitions established in the MA Wetland Protection Regulations found at 310 CMR 10.55, which pertains to Bordering Vegetated Wetlands. Therefore, review of this area at the site followed the same criteria used to evaluate Bordering Vegetated Wetlands, more specifically the boundary of a vegetated wetland is the line within which 50% or more of the vegetational community consists of wetland indicator plants and saturated or inundated conditions exist. Saturated or inundated conditions are typically determined by the presence of hydric soils.

Using the criteria stated above, ECR reviewed the wooded area to the rear of the house by cataloging the existing vegetation and examining multiple soil samples throughout the area to determine the following.

- **Vegetation** - The area is dominated (more than 50%) by upland plant species that include Black Oak (*Quercus velutina*), American Holly (*Ilex opaca*), Privet (*Ligustrum vulgare*), Multiflora Rose (*Rosa multiflora*), Ivy (*Hedera helix*), Japanese Knotweed (*Polygonum spp.*), Wild Garlic (*Allium vineale*), Raspberry (*Rubus idaeus*), and Bittersweet (*Celastrus orbiculatus*). This area contains less than 50% of wetland plant species such as Red Maple (*Acer rubrum*), Tupelo (*Nyssa sylvatica*), Sweet Pepperbush (*Clethra alnifolia*), Golden Rod (*Solidago spp.*), Highbush Blueberry (*Vaccinium corymbosum*), and sparse amounts of Cinnamon Fern (*Osmunda cinnamomea*).

ECR

Environmental Consulting & Restoration, LLC



- Soils - The soils were mostly consistent throughout the wooded area and included an organic layer that generally varied between 4 and 6 inches deep followed by mineral layers with coloring between 10 YR 3/1-4/1 within the upper 12 inches of the soil. This color indicates leaching of minerals due to saturated conditions within the upper 12 inches of the soil profile and qualifies as a hydric soil.
- Hydrology - ECR did not observe any evidence of flow or ponding in the area. ECR did not observe any obvious depressions on the site that are typical of isolated wetland pockets.

Based on the observations made during the December 21st site review, it is ECR's professional opinion that the wooded area at the site does not meet the criteria of a vegetated wetland based on the lack of dominant wetland species. In order to meet the criteria of a vegetated wetland, there must be a presence of hydric soils and a dominance of wetland vegetation. ECR also confirms that the site does not contain any other wetland resource areas subject to jurisdiction by the Town of Fairhaven Conservation Commission.

In regards to the Town of Fairhaven Winter Conditions Regulations, the delineation was completed between November 15th and March 31st, however it is ECR's professional opinion that conditions were not so adverse as to render the delineation inaccurate or impossible to perform. This fall has been mild and wetter than normal, which has facilitated wetland delineation efforts. As the Fairhaven regulations state, deep snow conditions or frozen conditions can render it difficult or impossible to determine wetland boundaries; however, during the December 21st site review there was no snow cover nor was the ground frozen. ECR was able to adequately review the existing vegetation and soil conditions on the site. ECR does acknowledge there has been some dieback among perennial herbaceous plants, but the dead plants were still able to be observed and identified. Overall, the site conditions during the December 21st site review did not impair ECR's evaluation.

Review of the MassGIS wetlands database reveals the following:

1. The site is not located within Estimated/Priority Habitat for Rare Species according to the Massachusetts Natural Heritage & Endangered Species Program (MaNHESP).
2. The site does not contain Certified Vernal Pools according to the MaNHESP.
3. The site does not contain a U.S.G.S. mapped stream.
4. The site does not contain areas mapped as Land Subject to Flooding (FEMA flood zones)
5. The site is not located within an Area of Critical Environmental Concern.

In summary, ECR would not classify the area to the rear of the home at this site as a vegetated wetland resource area protected under the MA Wetlands Protection Regulations or Town of Fairhaven Wetlands Bylaw. Upon review of this memo, please contact us at (617) 529 - 3792 or cameron@ecrwetlands.com with any questions or requests for additional information.



Photograph #1 – View west to the rear of the existing home. The northern portion of the backyard is maintained as lawn and the southern portion consists of an wooded upland area.



Photograph #2 – View through the wooded upland area to the rear of the home. Notice the Ivy (*Hedera helix*), an upland vine growing throughout the herbaceous layer and up the mature trees. A Holly (*Ilex opaca*) sapling can be seen in the background on the left and last season's growth of Japanese Knotweed can be seen on the right; both upland species.



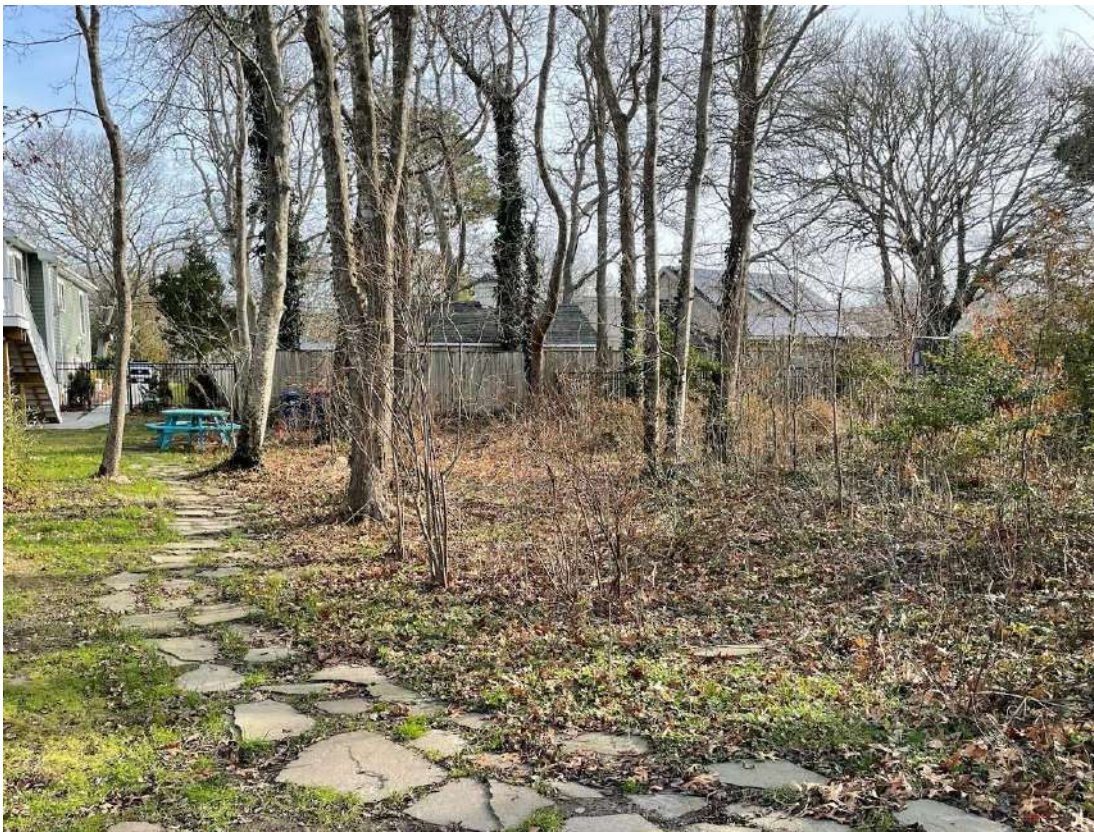
Photograph #3 – Another view of the existing vegetation within the wooded upland area. More upland Ivy and Holly can be seen as well as Black Oak trees (*Quercus velutina*), Raspberry (*Rubus idaeus*), Privet (*Ligustrum vulgare*), all upland species.



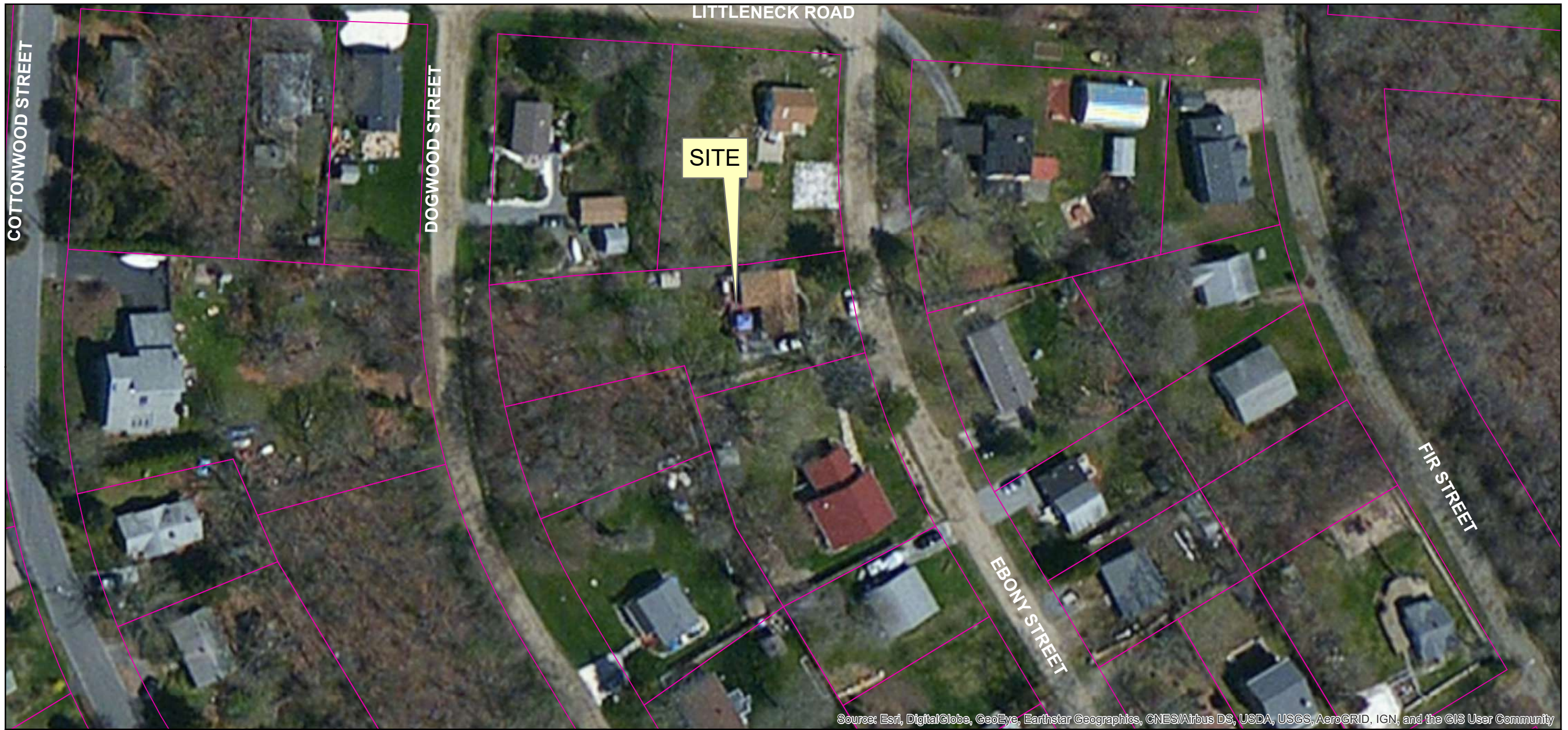
Photograph #4—View east through the wooded upland area. Notice the dominance of upland vegetation including Holly, Raspberry, Multiflora Rose (*Rosa multiflora*), Bittersweet (*Celastrus orbiculatus*), Privet, etc.



Photograph #5 – View of the soils observed within the wooded area. The soils throughout the area were consistent and similar to what's seen in this photograph. The soils meet the criteria for a hydric soil, but based on the lack of dominant wetland vegetation, this area does not qualify as a vegetated wetland.



Photograph #6 – View east across the backyard. The site does not include an obvious depression, rather the general topography trends slightly to the west away from the home and toward Dogwood Street.



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

RDA PLAN

130 Ebony Street
Fairhaven, MA

ENVIRONMENTAL CONSULTING & RESTORATION, LLC

Legend

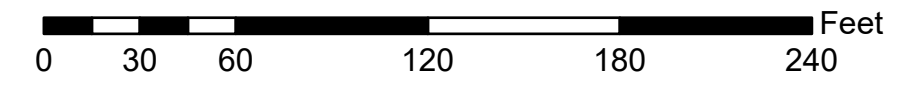
 Parcel Boundary

NOTES:

- 1.) Site Evaluation completed by ECR, LLC on 12/21/21.
- 2.) Parcel Boundary Source: MassGIS
- 3.) Aerial Imagery Source: ESRI
- 4.) This plan has been prepared for Conservation permitting only.

DATE:
Jan. 11, 2021

SCALE:
1 in = 60 ft



Staff Report

Date: February 2, 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**

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 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 provided response comments on February 1, ultimately recommending the Commission issue an Order of Resource Area Delineation (ORAD) pending some minor changes to the flag labels.
- The applicant revised the flag labels according to the peer reviewer’s recommendation.

RECOMMENDATION

- I recommend closing the public hearing for SE 023-1366, CON 023-251, Bridge Street, Map 36, Lot 15J, and issuing an Order of Resource Area Delineation under the Wetlands Protection Act and Fairhaven Wetlands Bylaw approving the following modified wetland resource area boundaries and associated flags shown on the Existing Conditions Plan for Self-Storage Facility, Assessors Map 36 – Lot 15J, Fairhaven, Massachusetts, prepared by SITEC, Inc. for Fairhaven Properties, LLC, as revised February 2, 2022:
 - Bordering Vegetated Wetlands A (A2) – Flags A1-A30;
 - Inland Bank (Top of Bank: Intermittent Stream) RB (RB2) as the Top of Bank line falls within the boundaries of the Bridge Street property (Map 36, Lot 15J) – between flags RB11 to RB14 and at flag RB2-8; and
 - The 100-foot buffer zone associated with both resource areas

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



Google Earth

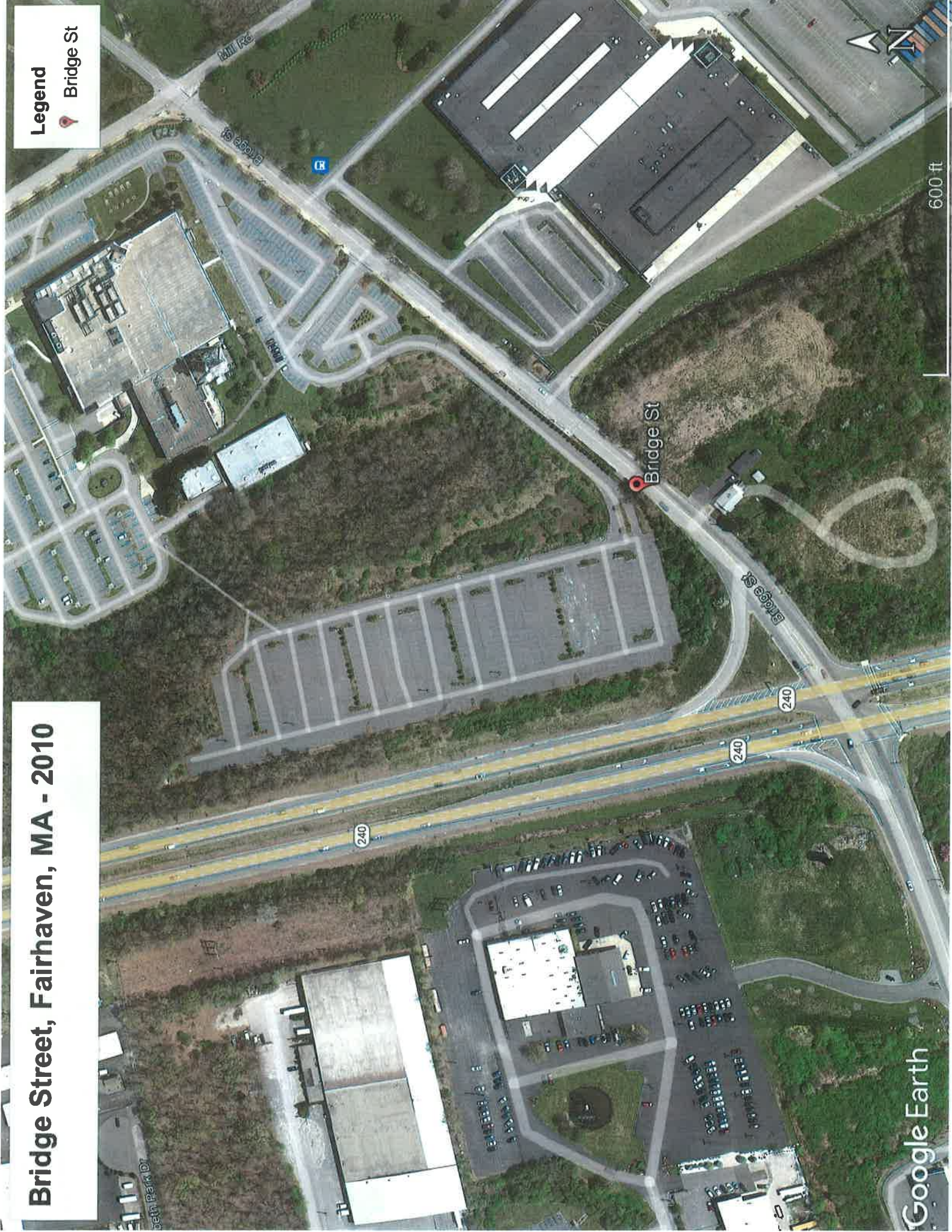
Image: MassGIS, Commonwealth of Massachusetts EOEA

600 ft



Bridge Street, Fairhaven, MA - 2010

Legend
Bridge St



LAM EcoLogical

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

February 1, 2022

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

RE: *Bridge Street, Fairhaven, MA (Map 36, Lot 15J)*
Wetland Delineation / ANRAD (DEP File #SE 032-1366)
Response to SITEC Inc.'s January 14, 2022 Revised ANRAD Plan Submittal and Memo

Dear Ms. McClees,

LAM EcoLogical (LAM) completed the review of SITEC, Inc.'s memo and revised Existing Conditions Plans dated January 14, 2022 for the Bridge Street (Map 36, Lot 15J), Fairhaven Abbreviated Notice of Resource Area Delineation (ANRAD).

The following are LAM's comments:

1. LAM agrees with the Inland Bank (Top of Bank) delineation as shown on the revised SITEC, Inc. plan dated January 14, 2022.
2. According to the July 11, 1997 Superseding Order of Conditions (SOC) issued to William Mullin for the expansion of the AT&T Corporation Parking Lot at 200 Mill Road (DEP File# 23-559), the MA Department of Environmental Protection found that the stream on site was Intermittent and not Perennial. Other more recent determinations have been made confirming that the stream is Intermittent. Based on previous determinations, RB 4 to RB 20 define the Top of Intermittent Stream Inland Bank. No further review of the stream definition from Inland Bank flags RB 4 to RB20 are required at this time.
3. As requested, a list of the Intermittent Stream determinations including the associated DEP file number(s), property name(s), property address(es) and OOC issuance date(s) were included on the revised January 14, 2022 ANRAD plan.

4. According to the July 11, 1997 SOC (DEP File# 23-559), stormwater basins proposed on site were designed in accordance with Best Management Practices outlined under the MA Department of Environmental Protection's Stormwater Management Policy.
 - a. Condition 5 of the SOC states that "Any wetland plant growth in the proposed detention basins shall be allowed to propagate undisturbed. Any growth of shrubs or trees within the detention basins, or removal of any accumulated silt and/or debris may be done by machinery, with every effort to maintain any herbaceous wetland plant growth within said basin".
 - b. Condition 6 of the SOC states that "The inspection and maintenance schedule as shown in Figure 10 of the restated Notice of Intent shall be adhered to with exception of the detention basin mowing requirements. As required under special condition #5 above, every effort shall be made to maintain any growth of wetland plants within the proposed detention basins.

On January 27th of 2000, a Certificate of Compliance (COC) was issued for the project. No continuing stormwater management maintenance or monitoring conditions were listed in the COC.

Again, according to 310 CMR 10.02 (2) (c):

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

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

The stormwater system on site was designed, constructed and installed after November 18, 1996 in accordance with 310 CMR 10.04 of the MA Stormwater Management Standards. Therefore, the stormwater basins do not meet the definition of a wetland resource areas subject to protection under the MA Wetlands Protection Act Regulations (310 CMR 10.00).

5. LAM agrees with the Bordering Vegetated Wetland A (A2) flag locations as shown on the revised plan dated January 14, 2022. SITEC, Inc. should make the following label corrections on the plan starting after WF A2-14D:

A2-14E to remain A2-14E

Change A2-14E to A2-14F

Change A2-14F to A2-14G

LAM recommends that the Conservation Commission issue an Order of Resource Area Determination approving the following wetland resource areas and associated flags shown on the Existing Conditions Plan for Self-Storage Facility, Assessors Map 36 - Lot 15J, Fairhaven, Massachusetts, prepared by SITEC, Inc. for Fairhaven Properties, LLC, as revised January 14, 2022:

- Bordering Vegetated Wetlands A (A2) - Flags A1 to A30; and
- Inland Bank (Top of Bank: Intermittent Stream) RB (RB2) as the Top of Bank line falls within the boundaries of the Bridge Street property (Map 36, Lot 15 J) - between flags RB11 to RB14 and at flag RB2-8.

Again, LAM Ecological appreciates the opportunity to provide the Fairhaven Conservation Commission with this ANRAD Delineation Peer Review and is available to meet with the Applicant or Commission or attend the ANRAD Hearing if requested.

Please contact me at 508-858-8678 if you have any questions regarding this review.

Regards,



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

Staff Report

Date: February 2, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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.

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 is approximately 19 square feet. The total impact to Land Containing Shellfish is approximately 23 square feet. It appears the project will cause minimal impact to those resource areas.
- The applicant already submitted the required shellfish mitigation fee when the Notice of Intent was filed.
- The total impact to Coastal Beach is approximately 4 square feet (4 pilings). 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 was due to waiting for submittal to ZBA for variances and a special permit. The applicant has submitted to ZBA and was continued. Revised plans were submitted to ZBA and considered at the February 1 meeting. ZBA approval was received.
- The revisions included reducing the scope of the project to eliminate the additional finger floats off of the main 115-foot float.

RECOMMENDATION

- I recommend closing the public hearing and issuing an Order of Conditions for 2 Oxford Street, SE 023-1345, CON 023-206, under the Wetlands Protection Act and Fairhaven Wetlands Bylaw, with the following recommended conditions:

Approve plans dated January 26, 2022.

A. General Conditions

1. Section C, the general conditions under the Massachusetts Wetlands Protection Act, also apply to this Order under the Fairhaven Wetlands Bylaw.

2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
 3. REC-1
 4. ADD-1
 5. ADD-2
 6. The limit of work shall be the existing lawn and the area of the proposed work.
 7. WET-1
- B. Prior to Construction
8. The applicant shall confer with the Harbormaster/Shellfish Warden to determine any additional shellfish mitigation requirements. These must be completed to the Harbormaster's satisfaction prior to the start of work. The applicant will notify the Commission or its Agent of the Harbormaster's requirements and provide proof that they have been completed.
 9. Should other permits be required by the Army Corps of Engineers, Massachusetts Department of Environmental Protection, Planning Board, Zoning Board of Appeals, Board of Public Works, Board of Health, Building Department, and/or any other appropriate local, state, or federal agencies, proof of appropriate permits shall be submitted to the Conservation Commission prior to the start of the project. Any conditions outlined in those applicable permits shall also apply to this Order.
 10. REC-3
 11. PCC-3
 12. EMC-1
 13. Information verifying that the approved scope of work shall not impact the existing pipe in integrity or function shall be submitted to the Conservation Commission or its Agent prior to the site conference being held.
 14. PCC-2
- C. During Construction
15. REC-2: During the construction phase, the applicant shall be responsible for maintaining a copy of these Orders at the site. The applicant shall be responsible for compliance with the conditions of these Orders.
 16. FZ-1: All work shall comply with all local, state, and federal flood zone regulations, including, but not limited to, regulations regarding fill in the flood zone.
 17. Construction access shall be from the subject property only.
 18. All work done on the coastal beach shall not cause permanent damage to the coastal beach. Any damages to the resource area shall be rectified and restored to pre-construction conditions.
 19. At no time shall any construction materials, soils, fills, sediments, dredging or any other substances be stockpiled or stored within an area of statutory interest. The existing lawn may be permitted to be used as a staging area.
 20. All equipment used on site must be stored or parked in an area at least 50 feet from the coastal beach.
 21. STO-4
 22. STO-5
 23. MAC-1
 24. MAC-2
 25. MAC-3
 26. MAC-7

- 27. MAC-8
- 28. MAC-9
- 29. There shall be no disturbance of the site, including cutting of vegetation, outside of the approved scope of work.
- D. After Construction/In Perpetuity
 - 30. REV-1
 - 31. COC-3: Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been completed in compliance with this Order. As part of this request, an as-built plan shall be submitted documenting substantial compliance with this Order and the associated Plan-of-Record. The as-built plan shall include:
 - i. Location of all constructed portions of the project
 - ii. Cross-sections of all constructed portions of the project
 - iii. Confirmation that no permanent damage has occurred to the coastal beach beyond the scope of the approved work.

Perpetual Conditions

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

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

Staff Report

Date: February 2, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **89 Akin Street – Notice of Intent – DEP# 023-1374, Fairhaven CON 023-258**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- Riverfront Area Alternatives Analysis dated February 1, 2022
- Revised site plan dated February 1, 2022

RESOURCE AREAS ON/NEAR SITE

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

RELEVANT PERFORMANCE STANDARDS

- **Riverfront Area:** 10.58(5) Redevelopment
 - (a) At a minimum, proposed work shall result in an improvement over existing conditions
 - (b) Stormwater management is provided according to standards established by the Department
 - (c) Within 200 foot riverfront areas, proposed work shall not be located closer to the river than existing conditions or 100 feet, whichever is less
 - (d) Proposed work, including expansion of existing structures, shall be located outside the riverfront area or toward the riverfront area boundary and away from the river
 - (e) The area of proposed work shall not exceed the amount of degraded area, provided that the proposed work may alter up to 10% if the degraded area is less than 10% of the riverfront area
- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
- **Buffer Zone Wetlands Bylaw Regulations (Chapter 192 Regulations):**
 - 4.0 0 to 25 Foot Buffer Zone Resource Area

- 4.1 An applicant shall demonstrate that no alteration is proposed within the 0-25 foot buffer zone resource area.
- 5.0 25 to 50 Foot Buffer Zone Resource Area
 - 5.1 Any applicant proposing a project within the 25-50 foot buffer zone resource area shall indicate that there are no structures including, but not limited to, concrete, stone, or other impervious foundations and/or slabs for construction purposes that would significantly increase runoff.
 - 5.2 Alteration of the 25-50 foot buffer zone resource area is limited to grading, tree clearing, stormwater management system components, lawns, gardens, and other low-impact uses as determined by the Commission or otherwise approved by the Commission by the variance procedures set forth in Section 8.0 of this regulation. Footings for building structures, such as a deck, as opposed to slabs or foundations, shall be used when technically feasible.
- 6.0 50 to 100 Foot Buffer Zone Resource Area
 - 6.1 Alterations including structures are allowed in the 50-100 foot buffer zone resource area. The Commission may require additional mitigation offsets when the slope within the buffer zone is steeper than 10%. Additionally, mitigation offsets may be required by the Commission when the applicant proposes that more than 30% of the 50-100 foot buffer zone resource area is proposed to be impervious surface.

PROJECT SUMMARY

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

COMMENTS

- Work proposed to occur within the wetland resource area:
 - Removal of storage containers
 - Seeding of disturbed areas with a wildflowers and wetlands grasses mix
- Work proposed to occur within the 0-25 foot buffer zone:
 - Installation of erosion control
 - Removal of storage containers
 - Seeding of disturbed areas with a wildflowers and wetlands grasses mix
- Work proposed to occur within the 25-50 foot buffer zone:
 - Relocation of storage containers
- Work proposed to occur within the 50-100 foot buffer zone:
 - Small portion of the house
 - Deck attached to the house
 - Site grading
- Work proposed to occur within the 0-100 foot Riverfront Area
 - Installation of erosion control
 - Removal of storage containers
- Work proposed to occur within the 100-200 foot Riverfront Area
 - Relocation of storage containers
 - Site grading
 - Installation of utilities

- Approximately half of the house
 - Deck attached to the house
- Overall, the applicant is working within previously degraded riverfront area and is working to minimize impacts closer to resource areas.
- Two storage containers, a boat, and a trailer are currently being stored in the area of lawn that has been flagged as wetland. The applicant will be removing those items as well as debris that has been dumped at the edge of the lawn as part of this project.
- During the site visit on December 7, the members of the Commission present discussed the following:
 - What is the path into the woods currently used for? There was some concern over ATVs crossing the wetland and stream.
 - Add a line of shrub plantings at the BVW edge between the property lines so the area of lawn that is wetland will be clearly separated and not liable to continue getting mowed.
 - Seed the area of wetland to be disturbed by removing the storage containers with a wetland seed mix
- The applicant's representative submitted the following comments in response to the above questions/comments:
 - The woods path is within the Akin Street layout and not owned by the applicant, who says it's mostly walkers and hunters who use it.
 - The applicant would like to plant wildflower mix in the disturbed areas under the containers.
 - The applicant wants to know if they can use large stones or rail fence to demarcate the edge of wetlands rather than shrub plantings.
- A native wildflower seed mix is an acceptable alternative for the area of lawn that is currently wetland to help stabilize the area once it is disturbed by removing the containers.
- A post-and-rail fence will demarcate the edge of the wetland that is currently lawn. The Commission has utilized post-and-rail fences in the past to demarcate a resource area edge. A post-and-rail fence has the benefit of not running the risk of being removed by a future property owner who does not realize where the wetland is on the property.
- MassDEP issued a file number with the following comment:
 - Please be advised that the General Performance Standards for the Riverfront Area (310 CMR 10.58) require the preparation of an alternative analysis for a proposed project within the Riverfront Area. For lots created prior to August 1, 1996, the alternative analysis is limited to the lot under consideration.
- The applicant submitted an alternatives analysis proposing two alternatives:
 - 1) Considering the project as new construction with the house located at the 10-foot setback from the southerly property line entirely outside of the riverfront area. This house location would increase the cost of sewer installation and connection and relocate the driveway closer to the stream inside the riverfront area, placing vehicles closer to the resource areas.
 - 2) Considering the project as redevelopment of a previously developed area locates the new house no closer to the stream than the existing structure and locates the driveway entirely outside of the riverfront area. It also reduces the amount of impervious surface within the riverfront area and revegetates impacted areas of the inner 100-foot riparian area

- The applicant asserts alternative 2 better protects the resource areas on site by improving groundwater quality, storm damage prevention, and preservation and restoration of vegetative habitat within the riverfront area.
- Given there is currently a house on the property and the property has been maintained as lawn, I'm inclined to agree with the applicant's assessment of a redevelopment project. All of the work falls within existing disturbed area and the proposed structure is no closer to the stream than the existing structure. Shifting the house location would increase the cost and effectiveness of tying into sewer and would relocate the driveway closer to the resource area. The house and deck will be a fairly low-impact use compared to vehicle-associated runoff from the driveway.

RECOMMENDATION

- I recommend closing the public hearing for SE 023-1374, CON 023-258, 89 Akin Street, and issuing an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following conditions:

Approve plan dated February 1, 2022

A. General Conditions

1. Section C, the general conditions under the Massachusetts Wetlands Protection Act, also apply to this Order under the Fairhaven Wetlands Bylaw.
2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
3. REC-1
4. ADD-1
5. ADD-2
6. LOW-2, with the exception of the removal of storage containers and debris from the area of the bordering vegetated wetland that is lawn, seeding disturbed areas with native vegetation within the 0-25 foot buffer zone, and the installation of a post-and-rail fence/boulder line on the property on the upland side of the wetland line.
7. SIL-5
8. SIL-9
9. SIL-10
10. WET-1

B. Prior to Construction

11. Should other permits be required by the Army Corps of Engineers, Massachusetts Department of Environmental Protection, Planning Board, Zoning Board of Appeals, Board of Public Works, Board of Health, Building Department, and/or any other appropriate local, state, or federal agencies, proof of appropriate permits shall be submitted to the Conservation Commission prior to the start of the project. Any conditions outlined in those applicable permits shall also apply to this Order.
12. REC-3
13. PCC-3
14. EMC-1
15. The storage containers and other debris in the portion of the lawn that is bordering vegetated wetland shall be removed before erosion controls are installed and inspected by the Commission or its Agent when pre-construction site meeting is conducted. Immediately following the removal of the items and debris in the resource area, disturbed areas shall be seeded with a wetland seed mix. If the removal occurs outside

of the growing season, the disturbed area shall be seeded as soon as the next growing season begins and weather is sufficient for seeding.

16. Erosion controls shall be installed prior to the pre-construction site meeting for inspection during that meeting.
 17. PCC-2
- C. During Construction
18. REC-2
 19. At no time shall any construction materials, soils, fills, sediments, dredging or any other substances be stockpiled or stored beyond the erosion control line.
 20. All equipment used on site must be stored or parked in an area outside the 50-foot buffer zone to the bordering vegetated wetland.
 21. STO-5
 22. MAC-3
 23. No motorized/construction equipment is to enter the bordering vegetated wetland resource area at any time, with the exception of the removal of the storage containers from the bordering vegetated wetland.
 24. MAC-8
 25. MAC-9
 26. DEB-1
 27. DEB-5
 28. SIL-3
 29. SIL-4
 30. SIL-8
 31. WAS-2
 32. WAT-3
 33. EC-1
 34. EC-2
- D. After Construction/In Perpetuity
35. REV-1
 36. COC-1

Perpetual Conditions

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

37. There shall be no further disturbance to the site within the inner riparian area (0-100 feet from the stream), including removal of vegetation, in perpetuity. Maintaining the existing lawn in the inner riparian area up to the post-and-rail fence/boulders at the edge of the bordering vegetated wetland shall be permitted.
38. CHM-2 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
39. DER-4

**Riverfront Area Alternative Analysis for Proposed Residence on
Map 30B, Lot 54; 89 Akin St., Fairhaven, MA. – Feb. 1, 2022
D.E.P. File No. SE 023-1374**

A: General:

The lot under consideration as described by the current deed recorded in book 10774 page 258, consists of 14 abutting lots as shown on a plan entitled 'Washington Terrace' dated July 6, 1904, and recorded in plan book 2 page 41. Current zoning is residence A.

The parcel comprises a total area of 29,400 S.F., with 420 feet of frontage on Akin Street and a depth of 70 feet. A stream crossing approximately 280 feet from the southerly property line has a riverfront area extending 200 feet on both sides of the stream and a total riverfront area of 23,800 S.F. on the parcel. Wetlands bordering the stream extend 60 to 70 feet on the southerly side of the stream.

An existing two-family house built in 1928 stands vacant on the lot. The existing house is 164 feet from the stream and 94 feet from the bordering wetlands. The house is serviced by town water but is not connected to town sewerage. A cesspool on the property has been removed.

The project purpose is to raze the existing house and construct a new single-family house for the owner. Since the purpose consists of a single-family house on a lot created prior to August 1, 1996, the area under consideration is limited to the subject parcel.

The parcel does not lie within the 100-year floodplain nor within an estimated habitat area, but it does lie within the Nasketucket River basin overlay district.

B: Proposed Work:

The proposed project is to construct a single-family residence on the lot with connections to town water already at the site and a connection to sewer over an easement to the sewer on Stone St. The footprint for the proposed house and deck is 1,904 S.F.

C: Riverfront Area Provisions:

Work within the Riverfront Area shall be subject to an alternatives analysis as defined within 10.58(4)(c)1. & 2. For lots created prior to August 1, 1996, the area under consideration is limited to the subject lot, since there are no adjacent lots owned or formerly owned by the same owner. In accordance with 10.58(4)(d)1., alteration may be allowed up to 5,000 S.F. or 10% of the riverfront area on a lot recorded before October 6, 1997, provided that (a) a 100-ft. wide corridor of undisturbed vegetation remains, (b) wildlife habitat is not impaired, and (c) the proposed work will not impair groundwater or surface water quality by incorporating erosion and sedimentation controls to attenuate nonpoint source pollution.

D: Project Alternatives:

1. Alternative No. 1 for the project was to consider it as new construction where the proposed house is located at the minimum 10-foot setback from the southerly property line, leaving the opposite side of the house and deck just outside the riverfront area. This places one end of the house extremely close to the abutting property, providing no yard area on the south side of the house and all of the yard on the north side. The driveway and parking area would by necessity be located on the north side, closer to the stream instead of on the south side, outside of the riverfront area. The owner is proposing to move from his long-time residence in the city to a country location and does not want to give up yard area on the south side of the house. It is the owner's opinion that this location would be detrimental to the future value of his property. In addition, the location of the house would make a gravity sewer connection problematic unless a low pressure force main and grinder pump were installed at greater cost.

We therefore submit that this alternative is not practicable since it diminishes the value of the property and extracts an unreasonable cost from the future valuation because of the proposed residential use. In addition, it places motor vehicles closer to the stream and bordering wetlands, and it goes against the logistics of the proposed sewer connection.

2. Alternative No. 2 for the project was to consider the project as a re-development of a previously developed area for reuse. Per 310 CMR 10.58(5): "A previously developed riverfront area contains areas degraded prior to August 7, 1996 by impervious surfaces from existing structures or pavement, absence of topsoil, junkyards or abandoned dumping grounds."

The existing structure has a total impervious area of 1,280 S.F. within the riverfront area, a degraded area equal to 5.4% of the riverfront area on the

lot. With the proposed house located no closer to the stream than the existing structure, it would have 900 S.F. of impervious area located within the riverfront area, equal to 3.8%, a reduction of 380 S.F. of degraded area located within the riverfront area.

In addition to the reduction in degraded area,

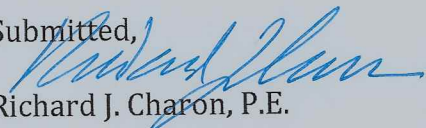
- (a) the new house will be connected to town sewer to provide an improvement in groundwater quality,
- (b) the containers and trailers currently within the lawn area identified as wetland will be moved to a distance of 100 feet from the stream and over 25 feet from the edge of wetlands, and
- (c) the lawn area identified as wetland will be demarcated by rail fencing or boulders, disturbed areas will be seeded and the entire wetland area will be permitted to return to a natural state, thereby contributing to the 100-ft. vegetative corridor along the stream.
- (d) The proposed grades for the lawn on the stream side of the house are gradual and will encourage infiltration and reduce erosion, contributing to storm damage prevention.

E: Conclusion:

Based upon the above, we submit that Alternative No. 2 is the preferred method for this project due to the associated long-term increase in value and enjoyment of the property. In addition, it adheres to accepted policy for redevelopment of previously degraded properties by permitting the new single-family house to enjoy the same setback from the stream as the existing house. The interests of the Wetlands Act are also addressed, with improvements to groundwater quality, storm damage prevention and preservation of vegetative habitat within the riverfront area.

The proposed plan also provides for removal of the storage containers from the area determined to be wetland, planting of disturbed areas under the containers, and placement of a rail fence or boulders to demarcate the edge of wetlands. In addition, siltation control is provided during construction of the new house and until exposed soils are stabilized.

Submitted,


Richard J. Charon, P.E.

Staff Report

Date: February 1, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- Revised site plan dated January 28, 2022
- Revised project narrative

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.

8.0 Variance Procedure

8.1 The Commission may grant a variance from this regulation upon a showing by the applicant that any proposed activity, or its natural and consequential impacts and effects, will not have any adverse effect upon any of the interests protected in Chapter 192 of the Code of the Town of Fairhaven (Wetlands). It shall be the responsibility of the applicant to provide the Commission, in writing, with any and all information, which the Commission may request, in order to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information, which has been requested, shall result in the denial of a request for a variance pursuant to the applicable subsection of this regulation.

8.3 Variance process: To request a variance, the applicant shall submit a variance request in writing at the time of the application for the Notice of Intent or Request for Determination of Applicability. The request shall explain why the variance is needed and shall 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.

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

PROJECT SUMMARY

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

COMMENTS

- The project needs to go to Zoning and has not yet been filed, as is required prior to submitting a Notice of Intent.
- The applicant submitted a buffer zone variance request, but it needs more detail to satisfy the Commission's buffer zone regulations.
- The Commission members present for the site visit had the following concerns:
 - More detail is needed in the 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's representative submitted a revised project narrative and a revised site plan. The buffer zone variance request has not been revised yet, though some of the details of the submitted revised narrative address some of the needed details in the buffer zone variance request. The buffer zone regulations state that the failure of the applicant to furnish any information, which has been requested, shall result in the denial of a request for a variance pursuant to the applicable subsection of this regulation.
- The buffer zone regulations require that any variance request must explain why the variance is needed and shall 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.*
- The revisions to the site plan include shifting the proposed additions outside the 25-foot buffer zone and the inclusion of roof recharge systems, one of which is within the 25-foot no disturb zone.
- The applicant has not addressed in the narrative the necessity of two driveways and garages.
- More plantings have been added between the proposed limit of work and wetland edge, but no information is included on the plan or in the narrative regarding what the disturbed areas will be seeded with.

RECOMMENDATION

- Until such time as the project has been filed with the Zoning Board of Appeals (or that process has been resolved) and a complete variance request is submitted, I cannot make a recommendation other than a continuance to a subsequent meeting.



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.*

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

The project proposed under this Notice of Intent (NOI) involves the renovation, and addition to, two existing buildings on the subject parcel. One building is a dwelling that has been unoccupied for a period of time and is in somewhat poor condition. The other building is a two-bay garage with a second floor and is in very poor condition. The existing house is within 22-feet of the delineated wetland, while the garage is within 15-feet. Due to the neglected nature of the site, much of what had previously been lawn area around the existing structures has become over grown. Much of this growth consists of invasive species such as Mult-Flora Rose, Bittersweet and Honeysuckle.

As shown on the site plan, the building addition is proposed within the 25-50-foot buffer zone. This addition is entirely within the previously disturbed portion of the site between the two existing buildings. Subsurface recharge of roof runoff is proposed to mitigate the additional impervious surface. It is proposed to remove the overgrowth on the site within the limit of work defined by the siltation control line on the site plan. This line is approximately 6-feet off the back of the garage and 12-feet off the back of the house. Supplemental plantings are proposed to enhance the remaining vegetation between the limit of work and the wetland resource.

The wooden framing, roofing and siding of the condemned garage is in very poor condition and much of it will have to be replaced. The concrete block foundation is in good condition. Some of the cores in this foundation will have to be filled with mortar and reinforced in order to accommodate the anchor bolts required by the current building code.

Staff Report

Date: February 4, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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.
- While the total area of the project is 2 acres, the area of benthic would be a maximum of 1672 square feet. This is a total for bottom aquaculture gear and anchors.
- The impact to existing land containing shellfish would increase the productivity of the area, which conforms to the Wetlands Protection Act regulations.
- The Harbormaster/Shellfish Warden noted that a shellfish mitigation fee is not necessary in this case because the project is for the propagation of shellfish.
- 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.
- The Division of Marine Fisheries had no additional comments beyond the comments provided in their Aquaculture Program letter dated November 24, 2021.
- Natural Heritage and Endangered Species Program has not yet provided comments.

RECOMMENDATION

- If Natural Heritage has not submitted comments by the 2/14 meeting, I recommend asking the applicant to request a continuance.
- If Natural Heritage comments have been submitted by the 2/14 meeting, I will see if they need to be incorporated into a motion to close the public hearing for SE 023-1376, CON 023-262, Nasketucket Bay, and issue an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following conditions:

A. General Conditions

1. Section C, the general conditions under the Massachusetts Wetlands Protection Act, also apply to this Order under the Fairhaven Wetlands Bylaw.
2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
3. REC-1
4. ADD-1
5. ADD-2
6. The limit of work is restricted to the 2-acre aquaculture site depicted on the approved plans and the described scope of work herein.

B. Prior to Construction

7. Before any work commences, the applicant is required to obtain a shellfish license from the Town of Fairhaven and a propagation permit and state commercial shellfish permit from the Division of Marine Fisheries. Any conditions outlined in those applicable permits shall also apply to this Order.
8. Copies of any permits or licenses issued by the Division of Marine Fisheries, U.S. Army Corps of Engineers, Massachusetts Environmental Policy Act (MEPA) Office, and/or MassDEP shall be provided to the Conservation Commission prior to the start of work. Any conditions outlined in those applicable permits shall also apply to this Order.
9. PCC-3
10. The Applicant shall provide the Commission with the name(s) and telephone numbers of the project manager(s) responsible on site for compliance with this Order. The commission shall be notified in the event that the project manager is changed.

C. During Construction

11. STO-4
12. MAC-1
13. MAC-2

D. After Construction/In Perpetuity

14. COC-1

Perpetual Conditions

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

15. All activities in connection with this Order must be conducted in accordance with all applicable local and state statutes and regulations governing shellfish and in accordance with the provisions of Title 322, Code of Massachusetts Regulations (CMF) 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.

16. A buoy marking one corner of the aquaculture area shall include the words:
Massachusetts Department of Environmental Protection [or MassDEP]
SE 023-1376
Fairhaven Conservation Commission [or FCC]
CON 023-262

These numbers shall be maintained in good, legible condition for the duration of time there is equipment in the water.

17. 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-pound breakaway link or ropes of appropriate breaking strength.
18. Lines deployed from May 1 – January 31 in any year shall be kept under tension or sheathed to avoid turtle entanglement.
19. 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).

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.

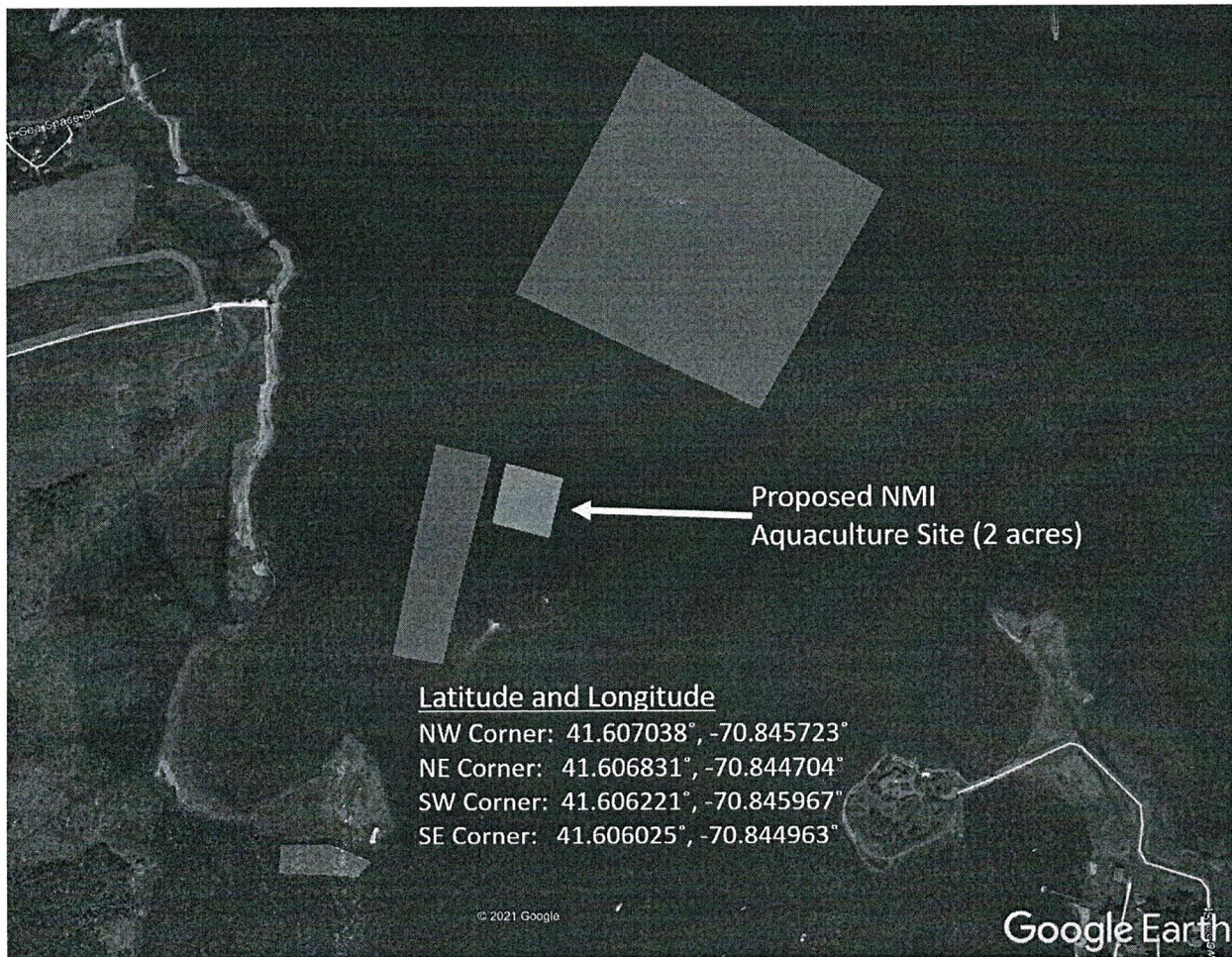
Within our lease coordinates:

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).

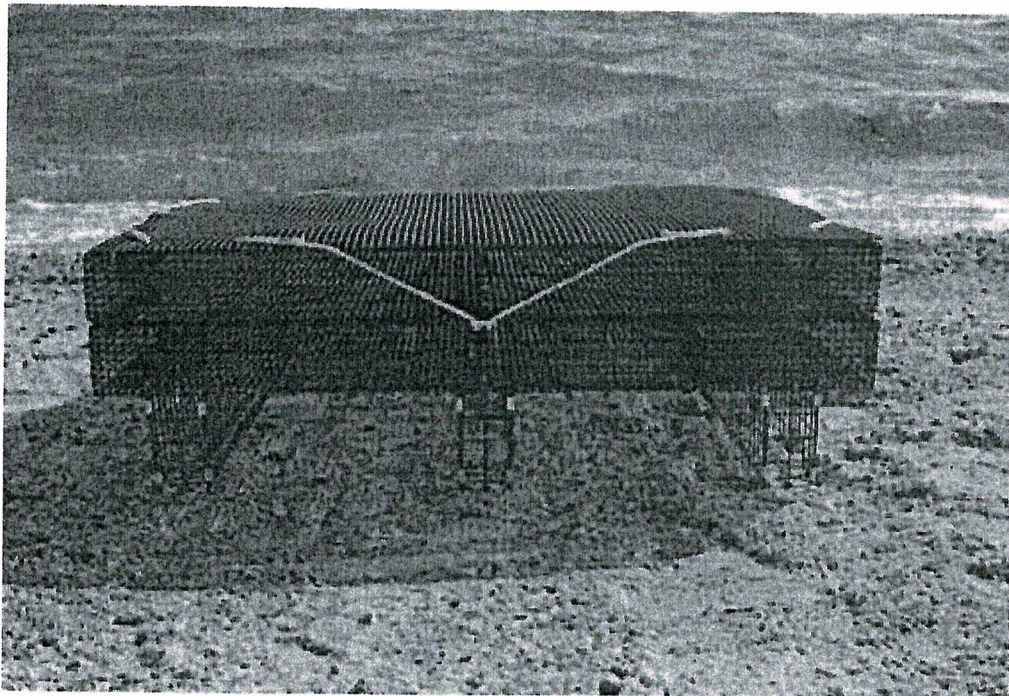
From November until April we will experiment with growing kelp and utilize the four lines for this purpose. The harvested shellfish will either be donated to the Town of Fairhaven for restoration and propagation efforts or sold commercially to support the NMI academic program.

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.

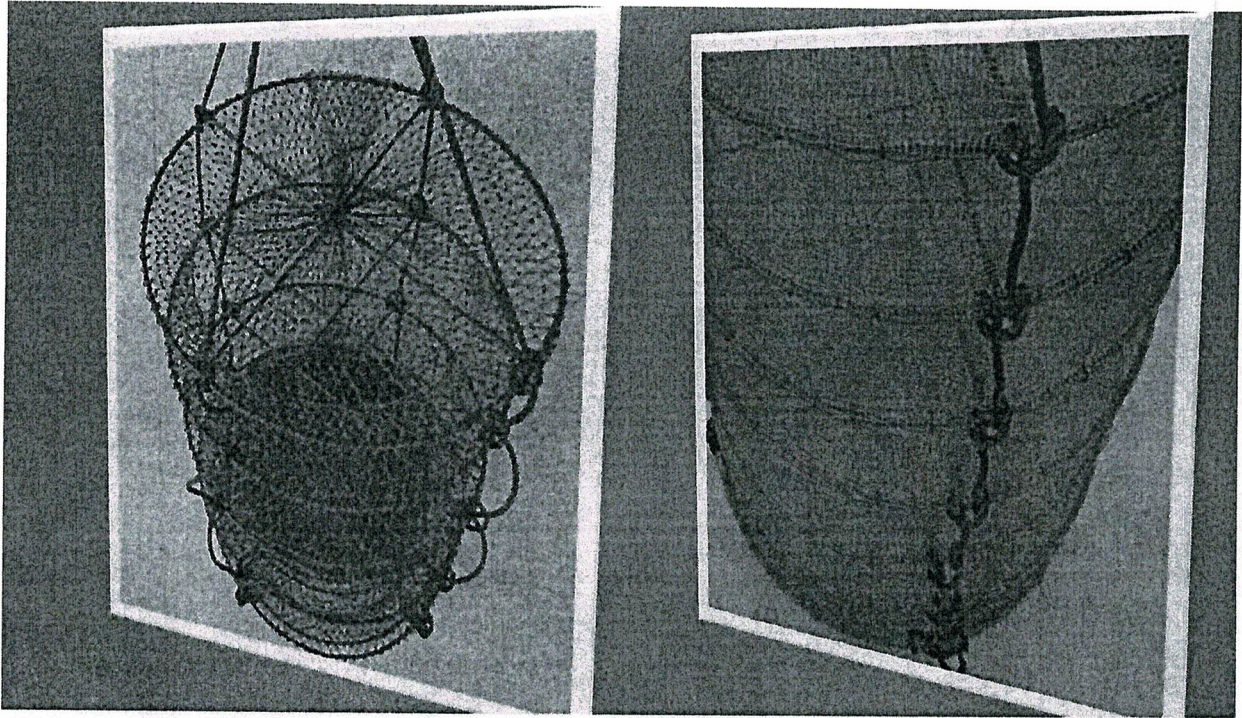
Aquaculture Gear *DETAIL (ATTACHMENT C)*



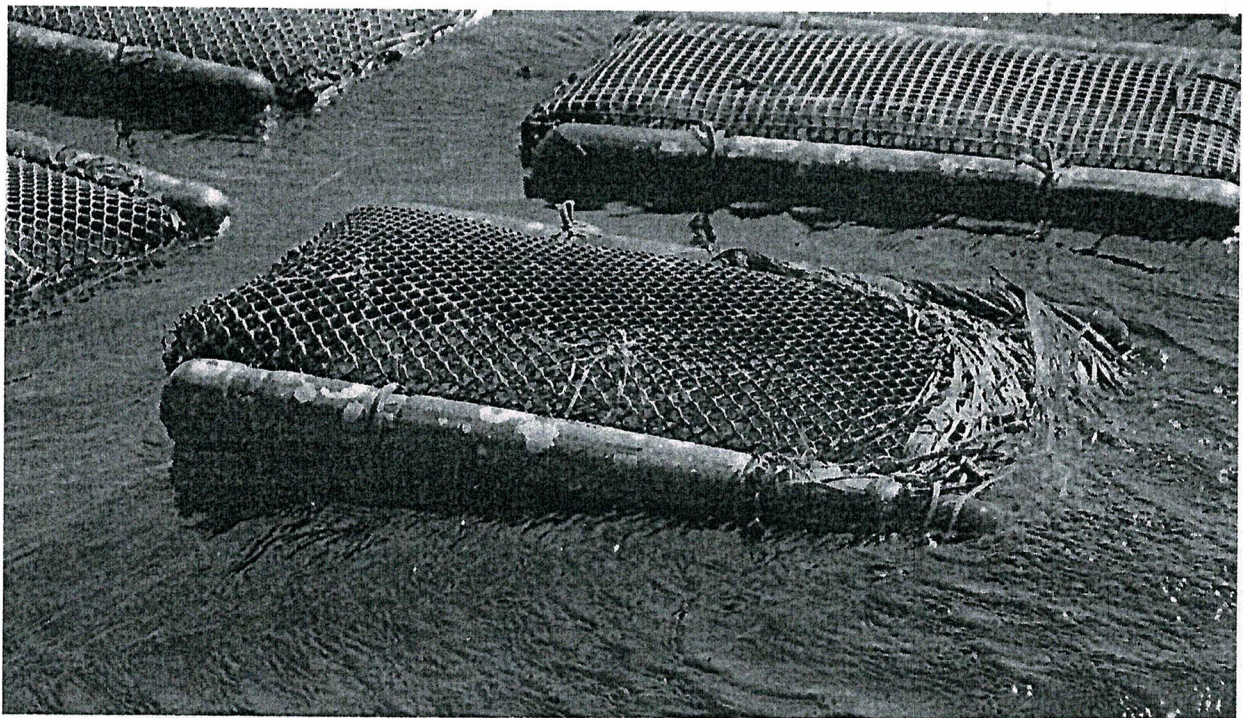
OYSTER BOTTOM CAGES



FLOATING CONDO OYSTER CAGES

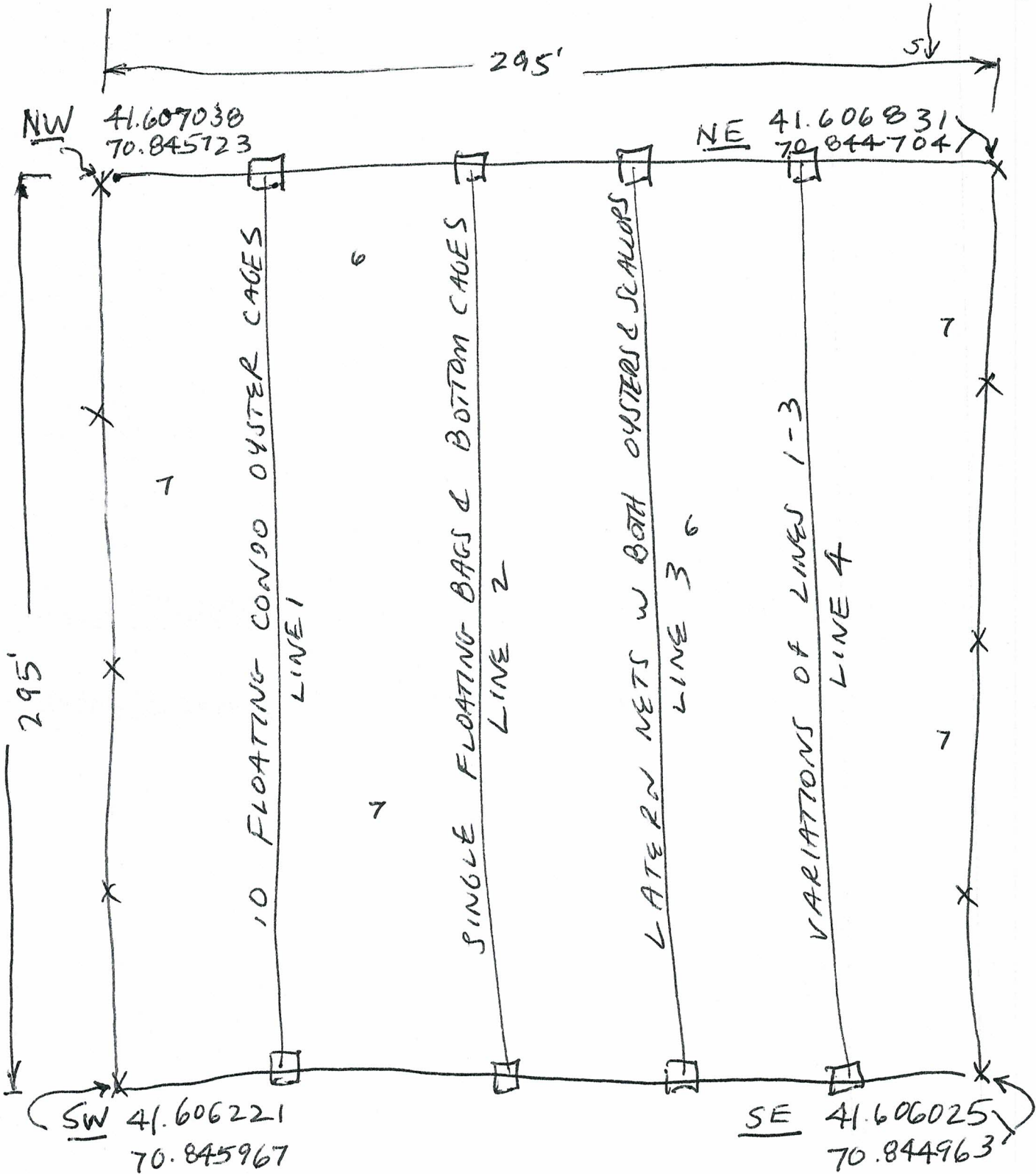


LANTERN NETS FOR OYSTERS & SCALLOPS

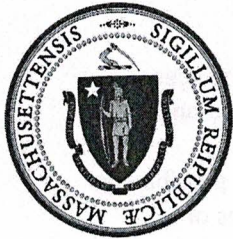


SINGLE OYSTER FLOATING BAGS
"SINKING" BAGS (WINTER USE) WOULD BE
BAGS WITHOUT FLOATS

ATTACHMENT E
DETAIL OF USE - PROPOSED NMI SITE



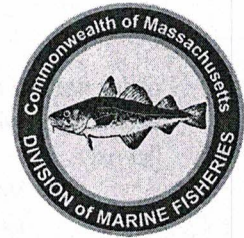
- x PERIMETER BUOYS ONLY, NO FLOATING LINES
- LINES 5/16 FLOATING-LINE (KEEP LINES IN WINTER)
- MOORINGS - 150# W/ 1/2" CHAIN
- SOUNDINGS IN FEET @ MLW



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



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/ft² and 0.01 bay scallops/ft². 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.

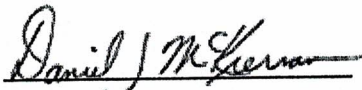
All activities in connection with this license must be conducted in accordance with all applicable state statutes and regulations governing shellfish and in accordance with provisions of Title 322, Code of Massachusetts Regulations (CMR) 7:00 Permits, 15:00 Management of Marine Aquaculture, 16:00 Shellfish 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; 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: February 3, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **128 Huttleston Ave – Notice of Intent – DEP# 023-1377, Fairhaven CON 023-263**

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

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.

PROJECT SUMMARY

- The applicant is proposing to redevelop the existing site into a car wash and auto detailing facility, including associated parking, access drives, vacuum stations, landscaping, stormwater measures, and utility infrastructure.

COMMENTS

- Currently, the disturbed areas extend to within 5 feet of the wetland edge, including impervious surfaces.
- The project proposes to increase the buffer to the wetland, revegetate portions of the 0-25 foot buffer zone, reduce impervious surfaces, install stormwater management, and locate all proposed structures in the 50-100 foot buffer zone.
- Work proposed in the 0-25 foot buffer zone:
 - Removal of brick patio, concrete foundation, gravel areas, utility pole, and overhead wiring
 - Small amount of regrading for slope stabilization along eastern side of property
 - 121-foot-by-2-foot infiltration trench along the northern edge of the property and a small portion of the infiltration trench along the southeast corner of the property
 - Installation of a portion of the vegetated filter strips
 - Planting of native shrubs, trees, and ground cover
- Work proposed in the 25-50 foot buffer zone:
 - Removal of concrete foundation and gravel areas

- Installation of a portion of the vegetated filter strips
- Installation of a portion of the infiltration trench in the southeastern corner of the property
- Small amount of grading
- Fenced in dumpster pad and dumpster
- Pea gravel diaphragm at upland edge of vegetated filter strip along north of the property
- New pavement for entrance and car wash access
- Three light poles
- Planting of native shrubs, trees, and ground cover
- Work proposed in the 50-100 foot buffer zone:
 - Removal of existing concrete foundation, pavement, gravel areas, four trees, utility pole, and overhead wiring
 - Installation of car wash building and detail bay building
 - Installation of pavement for parking, car servicing, and building access
 - Installation of utilities
 - Installation of vegetated filter strip in southeast corner of property
 - Installation of a portion of the infiltration trench in the southeastern corner of the property
 - Planting of landscaping/screening trees and shrubs
- Work proposed outside of the buffer zone:
 - Removal of existing pavement, concrete foundation, catch basin, fence, two trees, utility pole, and overhead wiring
 - Installation of car wash building
 - Installation of remainder of pavement for parking, car servicing, and building access
 - Installation of utilities
 - Installation of rain garden and other landscaping plants
- The applicant met with the Agent several times before submitting the Notice of Intent. No work is proposed within the wetlands. The proposed project increases the distance of disturbance in the buffer zone from the edge of the wetland. The proposed project is also revegetating previously disturbed areas of the 25-foot no disturb zone and installing stormwater management on a site that currently has limited stormwater management.
- The project does also need Planning Board review and approval and will have its first hearing with the Planning Board on March 8, at which point the Planning Board will provide comments and determine the necessity of peer review for stormwater.
- If the Planning Board does not elect to conduct peer review of stormwater, the Commission will need to consider whether peer review for compliance with state and local stormwater standards will be necessary.

RECOMMENDATION

- Until the Planning Board has had an opportunity to weigh in with any requested plan changes and the question of stormwater peer review is answered, the only recommendation I can make is to request the applicant continue to a subsequent meeting.

1.0 INTRODUCTION

The purpose of this drainage study is to analyze the stormwater drainage conditions that will occur as a result of the proposed Automobile Car Wash redevelopment at 128 Huttleston Ave. The site consists of a previously developed ± 1.52 -acre lot where a hotel and gas station once stood. The hotel and gas station have been demolished and cleared of all structures except for concrete pads and pavement. A bordering vegetated wetland system is located along the Northern and Eastern lot lines. The subject lot is shown as Lot 240C and 243 on the Town of Fairhaven Assessors Map 25. USDA Soils mapping indicates (see report in Appendix) that a majority of the site is urban fill with a small portion of the north made up of Udorthents. A subsurface investigation (See Appendix) report shows that ground water is located at approximately 5 ft below existing grade.

2.0 PROPOSED CONDITIONS

Team Ventures Two LLC is proposing to redevelop the site to a proposed car wash with a reduction of impervious area to be 4,391 sq. ft. less than pre-existing conditions on the lot. All impervious surfaces (paved parking areas, drive aisles, sidewalks, roof, etc.), will be conveyed to either vegetated filter strips with infiltration trenches or to a check dam (located in a grassed swale) to a rain garden, all of which will provide treatment before entering the onsite and abutting wetlands. The car wash and associated wastewater will be treated through an internal reclaim system and will not drain to stormwater BMP's.

3.0 COMPLIANCE WITH MASSACHUSETTS DEP STORMWATER MANAGEMENT STANDARDS

Standard 1: No New Untreated Discharges

There are no new untreated impervious surfaces proposed. All impervious areas are being treated prior to discharge and therefore, it is our opinion that Standard 1 has been met.

Standard 2: Peak Rate Attenuation

The proposed site is a redevelopment project with an overall reduction in impervious area over existing. The following curve number analysis table (given that the Tc values for pre and post are both 6 minutes) indicates that there is an overall reduction in weighted curve number and therefore peak rate attenuation and volumes for all design storms for the post development site (2, 10, 25 and 100) will be less than pre-development. The curve numbers were taken from TR-55 Table 2-2 (TR-55, Urban Hydrology for Small Watersheds, USDA, June 1986). Pre and Post development watershed plans and calculations will not be included as part of this submittal as we have shown the proposed site reduces overall runoff by reducing the impervious surface as well as the weighted curve number.

	> 75% Grass cover, Good, HSG D (SF)	CN	Impervious (SF)	CN	Woods, good, HSG D (SF)	CN	Weighted CN (Calculated)
Pre	14,034	80	36,800	98	15,533	77	89
Post	20,655	80	32,409	98	13,303	77	88

Table 1. – Weighted CN value calculation – Pre- vs Post-Development

Standard 3: Groundwater Recharge

Groundwater recharge is being provided via two infiltration trenches and a single rain garden. Given the entire site is mapped as Urban Fill soils which are typically poor draining soils, the hydrologic soil group assigned will be a D type soil. The calculations in the appendices show that Standard 3 has been met.

Standard 4: Water Quality

Water quality is provided via a Forebay (check dam inside grassed swale) and Rain Garden on the Western side of the project and a vegetated filter strip and infiltration trench on the eastern and Northern sides of the project. Calculations in the appendix show the 80% minimum TSS removal rate is met. The rain garden in the western area is designed to meet the MASS DEP SW regulations as calculated below:

$$R_v = (F)(AIMP)$$

R_v = Required Recharge Volume

F = Target Depth Factor: 0.10 inch for D soils

AIMP = Proposed Impervious Area = 4,772 SF

$$R_v = (0.1/12)(4,772) = 39.8 \text{ cu ft}$$

This proposed rain garden will have a water quality volume of 932 cu ft which is greater than the required minimum of 39.8 cu ft. The western and northern pavement areas have been designed with BMP's to the maximum extent practicable per MASS DEP SW regulations. These BMP's provide TSS removal but only provide water quality volume to the maximum extent practicable. Therefore, it is our opinion that Standard 4 has been met.

Standard 5: Land Uses with Higher Pollutant Loads (LUHPPLs)

The proposed development is a LUHPPL and therefore Standard 5 is not applicable. This car wash is considered to be a higher potential pollutant load, however, all car wash wastewater is contained within the building in internal reclaim system and will not combine with stormwater. Based on this it is our opinion that this Standard is met.

Standard 6: Critical Areas

The project does not have any discharges within a Zone II, Interim Wellhead Protection Areas or near or to any Critical Areas as defined by the Massachusetts Stormwater Handbook. Therefore, it is our opinion that Standard 6 is not applicable.

Standard 7: Redevelopment Projects

The proposed site is a re-development project and has been designed to meet all applicable Stormwater standards to the maximum extent practicable and improves on the existing conditions.

Standard 8: Construction Period Pollution Prevention and Erosion and Sedimentation Control

A Construction Period Erosion and Sedimentation Control Plan is provided on the Site plans along with notes/instructions for the contractor and details/location of all erosion control measures.

Standard 9: Long Term Operation and Maintenance Plan

A Long Term Pollution Prevention and Stormwater Operation and Maintenance Plan is provided in the Appendix.

Standard 10: Prohibition of Illicit Discharges

To our knowledge, there are no existing illicit discharges to existing stormwater systems on the Site and measures to prevent illicit discharges from the proposed development to proposed stormwater systems on the Site will be included within the Long Term Pollution Prevention Plan. As required, an Illicit Discharge Compliance Statement has been included within the Long-Term Stormwater Operation and Maintenance Plan and will also be submitted prior to the discharge of any stormwater to the post-construction stormwater Best Management Practices (BMPs). This will also be included as part of the SWPPP which will be required for this project per NPDES regulations.

4.0 COMPLIANCE WITH FAIRHAVEN STORMWATER STANDARDS - 198-31.1

In addition to meeting MASS DEP Stormwater regulations the following supplemental information below is provided to address the town specific Stormwater standards.

A(1)(a) Flooding:

See the response above for Standard 2.

A(1)(b) Water Quality:

[1] The BMP's proposed on-site will provide 80% TSS removal (see calculations in Appendix)

[2] (c-e) Water quality calculations have been provided in the appendix showing that the western area meets the towns requirements for the first flush. See Long-term Maintenance plan in the appendix.

B(2)(a)[1](h-i):

Soil borings were performed and are included in the Appendix. Groundwater was encountered in the borings and a depth was provided in the report.

B(2)(a)[2] & B(2)(b)[1], B(2)(b)[2], C(1)(a), C(1)(b):

Refer to comments above for Standard 2.

Wash Ashore Car Wash
At
128 Huttleston Ave Fairhaven, MA 02634
Post-Construction
Long Term Stormwater Operation & Maintenance Plan
January 11, 2022

A. GENERAL NOTES

1. The contractor shall be responsible for the proper inspection and maintenance of all stormwater and erosion control facilities until the project construction has completed. The contractor shall clean all components of the stormwater management system and sweep all paved areas at the completion of construction, immediately prior to turning over operation and maintenance responsibility to the owner.
2. Upon completion of construction, the operation and maintenance of all components of the stormwater management system will be the responsibility of the owner:

Team Ventures Two LLC.
DBA Wash Ashore Car Wash
P.O. BOX 1805
Sagamore Beach, MA 02562

3. Disposal of accumulated sediment and hydrocarbons to be in accordance with applicable local, state, and federal guidelines and regulations.
4. There shall be no illicit discharge of any waste or wastewater into the stormwater management system. The maintenance of the facility shall be undertaken in such a manner as to prevent any discharge of waste or wastewater into stormwater management system. Any waste products generated during maintenance shall be properly disposed of off-site.

B. STORMWATER SYSTEM/BMPs

Vegetated Filter Strip/pea Gravel Diaphragm

Inspect semi-annually during the first year (and annually thereafter). inspect the pea gravel diaphragm for sediment buildup and the vegetation for signs of erosion, bare spots, and overall health. regular, frequent mowing of the grass is required and should be performed at least four times per year (quarterly). Remove sediment from the toe of slope

or pea gravel diaphragm and reseed bare spots, as necessary. Periodically, remove sediment that accumulates near the top of the strip to maintain the appropriate slope and prevent formation of a "berm" that could impede the distribution of runoff as sheet flow.

Grassed Swales w/ Check Dams

Inspect at a minimum of twice a year, or after major storm events (2" or greater). repair eroded spots immediately after inspection. Additional inspections should be scheduled during the first few months to ensure that the vegetation in the channels has established adequately. Accumulated sediment shall be removed at least once a year or before it exceeds 0.5' in depth, whichever occurs first. Sediment shall be disposed of in a suitable area and protected from erosion by either structural or vegetative means.

Rain Garden

Inspect after every major storm event (2" or greater) during construction and for the first few months after construction to ensure proper stabilization and function. Thereafter, inspect at least twice per year during wet weather to ensure the rain garden is draining properly and vegetation is thriving. check for erosion, invasive tree growth, clogging and trash and remove organic matter, weeds, trash, and debris, as necessary. Re-seed eroded or barren spots immediately after inspection. remove sediment as necessary during construction, while dry, and at least every five years after construction.



*Notice of Intent Application
Team Ventures Two, LLC
DBA Wash Ashore Car Wash
Fairhaven, MA 02719
January 21, 2022*

I. SITE DESCRIPTION

The proposed project locus is a previously developed ± 1.5 -acre lot located at 128 Huttleston Avenue in Fairhaven, Massachusetts consisting of Lots 240C and 243 on the Town of Fairhaven Assessor Map 25. The locus was previously the site of the Huttleston Motel and gas station, which were demolished in 2017. Abutting the site to the east is the former Fairhaven Drive-In site, to the north is the Elizabeth Hastings Middle School and to the west is the West Marine supply store. The locus falls entirely within the Business-B Zoning District and is not located in any special zoning overlay districts.

Goddard Consulting, LLC identified and flagged the boundary of the bordering vegetated wetlands on the site as well as the top of the bank of an intermittent stream in November 2021. The BVW/Top of Bank flags were field located by Atlantic in December of 2021 and are shown on the Site Plans. The majority of the 100' buffer zone to the BVW within the locus is presently cleared and disturbed with pavement, gravel/crushed stone areas, concrete pads/foundations and overgrown brush, all remnants of the prior demolished use on the site.

The portion of the site to be developed is flat and entirely disturbed under existing conditions. The site and surrounding areas do not fall within either an Estimated Habitat of Rare Wildlife or a Priority Habitat of Rare Species based upon a review of the Natural Heritage and Endangered Species Program Map as observed on the Massachusetts Geographic Information System. Also, the locus is not located within an Area of Critical Environmental Concern, Flood Zones, Zone II or other DEP designated Water Supply Protection Areas.

II. PROJECT DESCRIPTION

Team Ventures Two, LLC, DBA Wash Ashore Car Wash, proposes to construct a new car wash and automobile detailing facility on the site, including associated parking, access drives, vacuum stations, landscaping, stormwater measures and utility infrastructure.

In regard to potential impacts to the adjacent wetlands, the proposed redevelopment will result in an improvement over existing conditions:

- Under pre-existing conditions, the site development encroached to within 5 feet of the wetlands
- Under pre-existing conditions, the site had no stormwater management measures.
- Under pre-existing conditions, buildings and parking areas were located within the 0-25 foot buffer
- The proposed development locates all pavement/parking/access drives outside the 25-foot buffer to wetlands
- The proposed development reduces impervious surfaces in the buffer zones and in total on the site (see table below)



*Notice of Intent Application
Team Ventures Two, LLC
DBA Wash Ashore Car Wash
Fairhaven, MA 02719
January 21, 2022*

- The proposed development restores previously disturbed buffer zone areas in accordance with the Conservation Commission’s Buffer Zone Restoration Guidelines
- The proposed development proposes stormwater management measures according to the redevelopment standards established by the Department of Environmental Protection’s Stormwater Management Standards
- The proposed development locates all buildings/structures outside the 50’ buffer to wetlands

The following table is a summary of the existing and proposed impervious areas in the various buffer zones on the site:

<u>Buffer</u>	<u>Existing Impervious</u>	<u>Proposed Impervious</u>
0-25 ft.	1,939.5 (19.9%)	0 (0%)
25-50 ft.	8,597.5 (83.8%)	5,251.8 (51.2%)
50-100 ft.	12,815.3 (60.7%)	12,720.2 (60.3%)
0-100 ft.	23,352.3 (56.8%)	17,972.0 (43.7%)

Since the proposed project is on a previously developed site and will reduce impervious surfaces (36,800 SF – 55% pre-existing/32,409 SF – 48% proposed) the project is considered a “redevelopment” according to the DEP Stormwater Management Standards. A Stormwater Report has been completed which addresses the stormwater standards of the Town of Fairhaven and the Massachusetts Department of Environmental Protection.

Erosion control measures (sediment logs or approved equal) will be in place and maintained at the proposed limit of work throughout the construction, until vegetation has stabilized, to protect the adjacent BVW.

November 5, 2021

Atlantic Design Engineers
39 Pleasant St
Sagamore, MA 02561

Re: Wetland Border Report
128 Huttleston Ave, Fairhaven

Dear Atlantic Design:

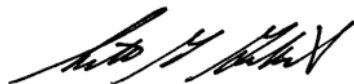
On November 3, 2021, the wetland resources were delineated on land located on or near the above listed site (refer to enclosed locus maps). The wetland border was flagged using the criteria in the most recent edition of MA Wetland Protection Act (WPA) and Regulations 310 CMR 10.00 et al and the local wetland bylaw. Hydric soil indicators, vegetation changes, hydrological indicators, and topography were all considered for delineation purposes.

One Bordering Vegetated Wetland/Bank of an intermittent stream channel was delineated in the field with series GC1-23 and GC26-30. This wetland is dominant in red maple, buckthorn, highbush blueberry, sweet pepperbush, phragmites, poison ivy and wetland ferns. The adjacent upland is dominant in oak, white pine, grey birch, honeysuckle, rose, Japanese knotweed and Canada mayflower. Department of Environmental Protection BVW field data forms were documented at wetland flag # GC-13 (see attached form).

According to the Mass GIS data layers for NHESP, this site is not located within Estimated and/or Priority Habitat of Rare Wildlife and has no mapped potential or certified vernal pools. The site is not located in an ACEC or a regulated FEMA flood zone.

The local wetland bylaw and the MA Wetlands Protection Act takes jurisdiction over BVW and the corresponding jurisdictional 100-foot Buffer Zone. Any work within the resource areas and/or 100-foot buffer zone requires a Request for Determination (RDA) or Notice of Intent (NOI) be filed with the Conservation Commission.

Very truly yours,
GODDARD CONSULTING, LLC



Scott Goddard,
Principal & PWS



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approximate
line



Staff Report

Date: February 3, 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**

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.
- The Commission requested that additional quotes were sought. Four additional individuals were contacted. Coastal Geologic Professional Services submitted a quote, included in the packet, which is less than the quote from Woods Hole Group. The Commission will need to determine next steps with regard to peer review and who they would like to proceed with.

RECOMMENDATION

- If the Commission would like to move forward with the Woods Hole Group peer review, the applicant will need to submit the additional peer review fee of \$2,430.
- If the Commission would like to switch to a different peer reviewer, I recommend a motion to change peer reviewers from Woods Hole Group to Coastal Geologic Professional Services. If the motion passes, the applicant will need to submit the additional peer review fee of \$60.
- Until the peer review is completed, 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

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
TOTAL	\$4,930

Assuming a Notice to Proceed can be issued within 1 week, and the site visit can be conducted by January 28th, 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

COASTAL GEOLOGIC PROFESSIONAL SERVICES



Principal: Mark Borrelli, Ph.D

CoastalGPS@gmail.com

02 February 2022

Whitney McClees
Conservation Agent and Sustainability Coordinator
Town of Fairhaven
40 Center Street
Fairhaven, MA 02719
Re: Third party review of delineation of wetland resources, Winsegansett Ave, Fairhaven, MA

Dear Ms. McClees,

Coastal Geologic Professional Services (C-GPS) is submitting a proposal to: 1) review the Notice of Intent (NOI) application and additional materials for a proposed project on Winsegansett Ave in Fairhaven; 2) take part in a site visit led by the applicants in order to appropriately characterize the resources in question as per the Wetlands Protection regulations. During the site visit C-GPS will use delineation checklists for Coastal Beach, Coastal Dune, and Barrier Beach from *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*, otherwise known as the Coastal Manual; and 3) write a report of findings for the Conservation Commission based on Tasks 1 and 2.

Task 1: Review NOI application and additional materials provided by the Town. C-GPS will review all documents with a particular focus on the characterization of the coastal resources at the proposed project site. As the Principal of C-GPS, I have over of 20 years of experience studying coastal processes and landforms and worked as a Coastal Geologist in the Massachusetts Office of Coastal Zone Management in Boston from 2003-2005. During that time, I participated in dozens of coastal resource delineations through project review and site visits and provided official comments to coastal municipalities throughout the state.

Task 2: Participate in site visit. Using the checklists for resource delineation from the Coastal Manual C-GPS will visit the property on a mutually agreed upon date, to be determined, to evaluate and characterize the resources as per the state's wetlands regulations. We request that all information from this and previous data gathering efforts be provided including granulometric analyses such as composition, grain size statistics (e.g., mean, mode and median, sorting, and skewness), and any other information pertinent to site characterization.

Task 3: Write letter of findings. This will be a brief explanation of findings based on Tasks 1 and 2. A discussion of the delineation of resources based on the wetlands regulations and the Coastal Manual will be provided. In addition, recommendations, if needed, will also be enumerated.

Budget for above tasks.

Task	Description	Cost
Task 1	Review the Notice of Intent and associated information	\$820
Task 2	Conduct a site visit to view a test pit in the area of the proposed structure and assess the coastal resources in question	\$965
Task 3	Provide a letter of findings to the Conservation Commission	\$775
	TOTAL	\$2,560

C-GPS looks forward to the working with the Conservation Commission. Please feel free to contact me with any questions you may have at 508-808-9418 or coastalGPS@gmail.com.

Sincerely,

Mark Borrelli, PhD
Principal,
Coastal Geologic Professional Services

Staff Report

Date: February 3, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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)
- Revised restoration plan dated January 17, 2022
- Revised restoration plan dated February 2, 2022

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.
- The wetland scientist has provided a revised restoration plan. The revisions include the following:
 - Planting proposed trees in the middle of existing vehicle access paths to prevent vehicular access into the wetland
 - Extending the conservation seed mix in a straight line across the rear of the property from the widest point of the 25-foot no disturb zone, rather than planting a shrub border
- The restoration plan addresses the disturbance in the wetland resource area. The 25-foot conservation seed mix strip will provide filtration of runoff before it gets to the wetland resource area. Since the applicant did not remove any shrubs in the 25-foot no disturb zone, the seed mix in the 25-foot no disturb seems to address restoration to previous conditions.

RECOMMENDATION

- Unless the Commission has other additions to the restoration narrative they would like to see, I recommend approving the restoration plan dated February 2, 2022 with the following conditions:
 - 1) This restoration plan is approved for work across two properties. The approval of this plan does not supersede any property rights. Any activity on the property where the applicant is not the owner is subject to permission of the property owner.
 - 2) The approval of the restoration plan does not approve the wetland line.
 - 3) ACC-1: The Conservation Commission, its employees, and its agents shall have a right of entry to inspect or compliance with the provisions of this Order of Conditions.
 - 4) ADD-1: The Commission reserves the right to impose additional conditions on any or all portions of this project that could impact an area of statutory interest under the Fairhaven Wetlands Bylaw, subject to 192-6D.
 - 5) ADD-4b: All work shall be done in accordance with the restoration plan prepared by Ecosystem Solutions, Inc., dated February 2, 2022, as approved by this Commission. Any deviation must be approved by this Commission in writing prior to commencing work involved in this deviation.
 - 6) This Restoration Plan and associated Enforcement Order shall apply to any successor in interest or successor in control of the property subject to this order and to any contractor or other person performing work conditioned by this order.
 - 7) No work beyond what is outlined in the restoration plan shall be done on the property without seeking an Order of Conditions or Negative Determination of Applicability from the Conservation Commission.

- 8) The conservation seed mix border, as depicted on the approved restoration plan, shall be marked with temporary markings through at least the first growing season to allow conservation/wildlife seed mix to establish. If the conservation seed mix area needs longer to establish, the markings shall remain in place until such time as the area has stabilized and established.
- 9) PCC-2: A site conference shall be held at least forty-eight hours prior to the commencement of permitted activity for the purpose of reviewing and discussing the special orders of conditions. The specific timing and location of this conference shall be jointly determined by both commission and applicant liaison representatives. In attendance at this meeting shall be: the property owner, the applicant's representative of record; commission liaison representatives and any other commission representatives wishing to attend; the prime contractor; other contractors or subcontractors as determined by the applicant and/or prime contractor to potentially benefit from a more complete understanding of the special conditions for this project.
- 10) MAC-3: All mechanized vehicles under contract, subcontract or lease, participating in any manner, in any phase of activity within resource areas, shall carry on board absorbent materials to immediately respond to inadvertent discharge of petrochemicals.
- 11) MAC-8: All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
- 12) MAC-9: Spill kits shall be maintained on site at all times for the immediate response to any potential spill of anything that could cause harm to resource areas and water bodies.
- 13) Any non-native invasive plant species (e.g. *Phragmites*, purple loosestrife, buckthorns, etc...) shall be removed from the restoration area under the supervision of the wetland scientist in accordance with the approved restoration plan.
- 14) Vegetation shall be planted in such a way, in accordance with the approved restoration plan, so as to prevent vehicular access to the resource area.
- 15) The trees planted in locations to provide a natural barrier to vehicle access into the wetland shall be protected with orange construction fencing, or other equivalent protective fencing, to protect newly planted trees and allow them to properly establish. Fencing shall be established with at least three (3) feet of protection around the tree as a lateral measurement from all points of the base of the tree and maintained until such time as the Commission deems the restoration plan and enforcement order satisfied.
- 16) Should at least 75% of the surface area of the wetland restoration area fail to become established with greater than 50% wetland species within two years of the restoration attempt [in accordance with 310 CMR 10.55(4)(b)1-7], the Commission reserves the right to require additional measures necessary to achieve compliance.
- 17) If trees planted in locations to provide a natural barrier to vehicle access are damaged or do not establish within the monitoring period, they shall be replaced with the same type and in the same manner as originally installed.
- 18) The application of bark mulch, wood chips or mulch (which may introduce invasive species or upland species seed stock) is not permitted in restoration area(s) or area of statutory interest.
- 19) The wetland restoration area shall be planted with native species of wetland plants and seed stock, in accordance with the planting schedule provided in the plans and/or modified by this Order. Receipts verifying the purchase of plants must be submitted to the Commission.
- 20) PS-1: Cultivars of any new vegetation to be installed are not permitted.
- 21) A wetland specialist, approved by the Conservation Commission, shall be on-site during all phases of the restoration. The wetland scientist shall notify the Conservation Commission or its Agent when the fill has been removed with the date the bottom inspection is to occur.

- 22) REP-11: The applicant will monitor the soil horizons and depths, groundwater levels, plant community composition, and plant community structure along transects to be established through consultation with the Conservation Commission using USACE or MassDEP field data sheets. Monitoring shall occur in June and November for three complete growing seasons following completion of wetland restoration activities and it shall continue beyond that date if the wetland restoration area is not established in accordance with the performance standards as specified in the approved planting plan.
- 23) Monitoring reports shall include information and photographs showing the trees planted to prevent vehicular access to the wetland are thriving and their protection zones are maintained.
- 24) INV-1: Invasive species monitoring shall be conducted for three years after site stabilization to ensure no non-native or invasive species have been introduced to the site or are spreading on site.



Ecosystem Solutions, Inc.

100 Centerville Rd., Suite 4
Warwick, RI 02886

RI: 401-741-3263

MA: 508-997-0268

www.ecosystem-solutions.com

February 2, 2022

Project no. W21-1589

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

**RE: Restoration Plan
25 & 29 Mangham Way; Map 31A, Lots 300 & 300A
Fairhaven, Massachusetts**

Mr. Haworth:

Ecosystem Solutions, Inc. presents the following restoration plan for the above-referenced properties (Properties). A site investigation for wetland resource areas was conducted by a professional wetland scientist on April 5, 2021, and was performed in accordance with the Massachusetts Wetlands Protection Act (M.G.L. 131, §40) (Act), the Massachusetts Wetlands Regulations (310CMR 10.00), Department of Environmental Protection (DEP) Policy 95-1, the US Army Corps of Engineers (ACOE) 1987 Wetland Delineation Manual, and its 2009 Supplement for the Northeast Region. Policy 95-1 specifically outlines the current DEP criteria and methodology for defining BVW's in Massachusetts. Both the ACOE Manual and Policy 95-1 allow for the use of the environmental characteristics of hydrophytic vegetation, hydric soils and hydrology in order to identify wetland areas.

Background

A complaint was received by the Fairhaven Conservation Commission that unpermitted work was taking place in the wetland resource area on the Properties. An Enforcement Order (EO) was issued on 10/5/2021 to owners of both 25 Mangham Way and 29 Mangham Way. The EO stipulated that our client (Client), the Property owner of 29 Mangham Way, retain a wetland scientist to assess wetland resource areas on the Properties, and to provide a restoration plan to Conservation Commission by January 3, 2022. The Client approached us in October, with the first site inspection taking place on October 8, 2021. A full wetland delineation was performed on November 23, 2021.

It must be mentioned that the violation took place on two neighboring properties, 25 & 29 Mangham Way, which are owned by two separate individuals. Our client, the Property owner of 29 Mangham Way was the individual who conducted the wetland violation on both Properties. This was not done out of malice, but a lack of knowledge of wetland legislation, and a desire to utilize their property while cleaning unwanted refuse out of the wetland. While written permission was received to conduct the wetland delineation on the neighboring property of 25 Mangham Way, further written permission will be required to conduct restoration work at 25 Mangham Way.

Current Disturbance

Within the current area of disturbance (Disturbance), scrub vegetation has been removed and fill material has been placed within Bordering Vegetated Wetland (BVW) just south of the current lawn area, as well as a small area adjacent to the wetland within the 100' Buffer zone of the BVW. The area where this occurred was intended by the homeowner to be used as a gravel pad for storing a recreational trailer, and as a general outdoor recreation area. The area of disturbance is relatively small, consisting of a small path area leading to an oval shaped open area within the forested BVW. Gravel was placed on the path and most of the open area, and a table and chairs placed within the open area for small social gatherings. At one point a travel trailer was also present. As the purpose was not new construction or lawn, the nature of the clearing/fill activity was minimal. Tree clearing was minimal. As shown in the accompanying photos, there were/are numerous dead trees both standing and on the ground within the wetland. The photos also show the presence of invasive Multiflora rose (*Rosa multiflora*) and Japanese knotweed (*Polygonum cuspidatum*) within the wetland. The majority of Buffer zone had previously been disturbed, and had existed as maintained lawn. There are also areas within the BVW and Buffer where clearing of vegetation has occurred at various times in the past, pre-dating the current homeowner's ownership of 29 Mangham Way, as shown in aerial photos. These areas have already begun to revegetate with predominantly wetland species, we propose allowing the natural succession of wetland vegetation to continue.

Historic Disturbance

From a review of aerial photography, historic refuse deposited in and near the wetland, and of soil sampling on site, it is clear this area is historically degraded. Much of the glass and metal found onsite in/near the wetland suggests the area of the violation had previously been a "farm dump", and existed as such prior to 1983. During the homeowner's efforts to create the recreational area within the wetland, they had removed old refuse such as farming implements from the wetland. The path to the oval shaped clearing, and a majority of the portion of the clearing itself appear as disturbed in aerial photos dating to 1996. The Buffer zone north of the delineated wetland line also shows photographic evidence of being disturbed, with the lawn being expanded towards the wetland line in 2010, prior to the current homeowner having purchased the house. It appears that the majority of fill material deposited within the BVW was actually placed on top of earlier fill. Native wetland vegetation (as well as invasive vegetation) had successfully established itself in this historic fill.

Restoration Plan

Restoration of the site will be accomplished by removing deposited fill placed by the Client from within the area of disturbance, placing organic soil within the excavated area to restore elevation and hydrology. To reduce the impact of work within the wetland, only the fill material deposited onsite by the Client will be removed. Where wetland vegetation was successfully growing within the historically placed fill material, the removal of just recent fill material should be sufficient to allow restoration of wetland vegetation. Should it be deemed necessary upon the completion of a bottom inspection, additional fill material may be removed to ensure the success of the wetland plantings and seeding.

Plantings will consist of; 4 Red maple trees (*Acer rubrum*), 5 Sweet pepperbush (*Clethra alnifolia*), and 5 Highbush blueberry (*Vaccinium corymbosum*) within the area of disturbance, and the application of New England Wetmix (Wetmix) at the rate of 1lb per 2500 square feet. Trees will be planted in locations as to provide a natural barrier to vehicle access into the wetland. Shrubs will be planted at ±15' on center. Shrubs may be substituted with another native wetland species, with the commission's approval, depending on nursery availability. We believe that with the minimal nature of clearing which took place, the removal of the fill the Client has placed in the wetland, and the proposed plantings and Wetmix, along with the proposed invasive control plan will not only restore wetland function to this site, but improve it.

The Buffer Zone adjacent to the disturbed area had previously existed as grass/maintained lawn or as upland herbaceous species. We propose that the disturbed area on both Properties, as well as the remainder of the 25' no touch area at 29 Mangham Way, be stabilized by seeding the area between the wetland boundary and a line perpendicular to the east and west Property lines at the furthest extent of the 25' no touch line with New England Conservation/Wildlife mix, at the rate of 1 lb per 1750 square feet. Any disturbance outside the 25' no touch line is to be stabilized with grass seed of the Client's choice. The remainder of the Buffer zone shall continue to exist as previously maintained lawn. After consideration, the Client has decided to not plant shrubs along the northern extent of the conservation mix, in an effort reduce the complexity and cost at this time. Where other means of controlling vehicular access to the wetland resource area are part of this proposal, and the 25' no touch area is being re-established across the entire extent of the Client's Property and disturbed area, we feel this proposed change meets the requirements of 310 CMR 10.00 and the Town of Fairhaven Bylaw and Regulations.

Erosion control in the form of 8" straw wattle will be staked in along the edge of disturbance in the wetland and upland. 8" straw wattle will also be staked along the limit of disturbance. These will remain in place until the site has stabilized.

Table 1: Planting List

Red maple	<i>Acer rubrum</i>	4
Sweet pepperbush	<i>Clethra alnifolia</i>	5
Highbush blueberry	<i>Vaccinium corymbosom</i>	5
New England Wetmix	Various spp.	1lb/2500 sq ft

Invasive Control

Both the BVW and Buffer have large stands of invasive Japanese knotweed (*Polygonum cuspidatum*). Given it's propensity for rapidly spreading and becoming dominant in disturbed soils, we propose that Both the BVW and Buffer contained several invasive plant species before the alteration took place. This includes Japanese knotweed (*Polygonum cuspidatum*), Multiflora rose (*Rosa multiflora*), and Oriental bittersweet (*Celastrus orbiculatus*), which are all considered invasive in Massachusetts. As part of this restoration plan, we propose an invasive species restoration plan to control the Japanese knotweed and Multiflora rose on the Property, both in the wetland and upland areas. This will restore and improve wetland functionality and habitat values. We believe the Oriental

bittersweet on site is minimal enough to not pose a risk to meeting 75% coverage. The existing invasive plant species will be cut at ground level where practical, and then if necessary may have a wetland use approved systemic herbicide applied to the cut stem. Examples of herbicides approved for use in wetlands include glyphosate based compositions such as Rodeo or triclopyr based compositions such as Garlon. The herbicide may be applied directly to the invasive species in question, if this method minimizes impact to the BVW or buffer zones, and uses the least practicable amount of herbicide necessary to remove the invasive species. This application shall be done by a Massachusetts licensed herbicide applicator. Vegetative debris from the invasives control shall be removed as is practicable.

Phases of Restoration

1. The restoration area shall be clearly marked with wooden stakes prior to the start of the project, if not done so already. In addition, the boundary of the 25' "no touch" area immediately adjacent to the wetland boundary will be marked with temporary markings such as removable flags.
2. All work is to take place from the upland side and avoid possible impacts on wetland. This will necessitate the removal of the fallen tree currently obstructing access to the disturbed area to provide access for equipment. The stump of said tree is to remain.
3. Erosion control shall be installed in areas most susceptible to erosion. Erosion control fencing shall be inspected on a regular basis and maintained in good condition. All erosion control fencing shall remain in place until all exposed soils are vegetated and stable.
4. A pre construction meeting will be conducted by a ESI scientist prior to any excavation of fill material to ensure proper equipment and methods are used.
5. All post 1983 Fill brought in by the Client within the 2,400 sq ft restoration area shall be removed. This will be done to a depth necessary to both remove the material the Client spread within the disturbed area and support the growth of wetland vegetation, while minimizing further disturbance in the wetland. A bottom inspection performed by an ESI scientist shall be required.
6. Any organic topsoil brought from off the Property shall be inspected before deposition.
7. The appropriate organic soils shall be spread to the prescribed depth.
8. Plantings shall be conducted in accordance with the restoration plan. Appropriate substitutions may be allowed with the approval of the wetland consultant and/or the Conservation Commission. Any substitutions must ultimately be approved by the Commission. Planting trees, shrubs, and herbaceous ground cover shall be performed at the appropriate time of year to ensure successful germination and establishment.

-
- a. Plants shall be from healthy nursery stock and free from disease. If required during drought periods, the plants placed in the restoration area shall be watered as needed.
 - b. The applicant shall cut herbaceous vegetation immediately around planted shrubs and trees that may be shading them in an excessive manner, inhibiting their growth, or even endangering the plant's survival.
 - c. Plants shall be watered as necessary to assure survival.

9. A final inspection shall be performed by an ESI scientist, with a completion report to be submitted to the HCC.

Post restoration report

For three full years/growing seasons after restoration is complete, ESI or a qualified wetland scientist retained by the applicant shall perform twice annual inspections, submit a report to the FCC indicating the status of the restoration area. The inspections and reports shall be performed and submitted at the end of the spring and fall growing seasons. These reports will include colored photographs from established reference points, the plant species present at these reference points as well as their percent cover, and the rate of survival for the planted trees and shrubs. Performance standards used in 310 CMR 10.55(4)(b) shall be used for determining success of the restoration area.

Conclusion

Given the history of disturbance at this site, we feel this restoration plan offers the best way forward to restoring wetland function. We feel that the plan to remove fill and restore the vegetation serves the public interest and meets the goals of CMR 310, and hope to work with the Conservation Commission to resolve this situation.

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) 864-6035 or by using the other contact information above.

Sincerely,

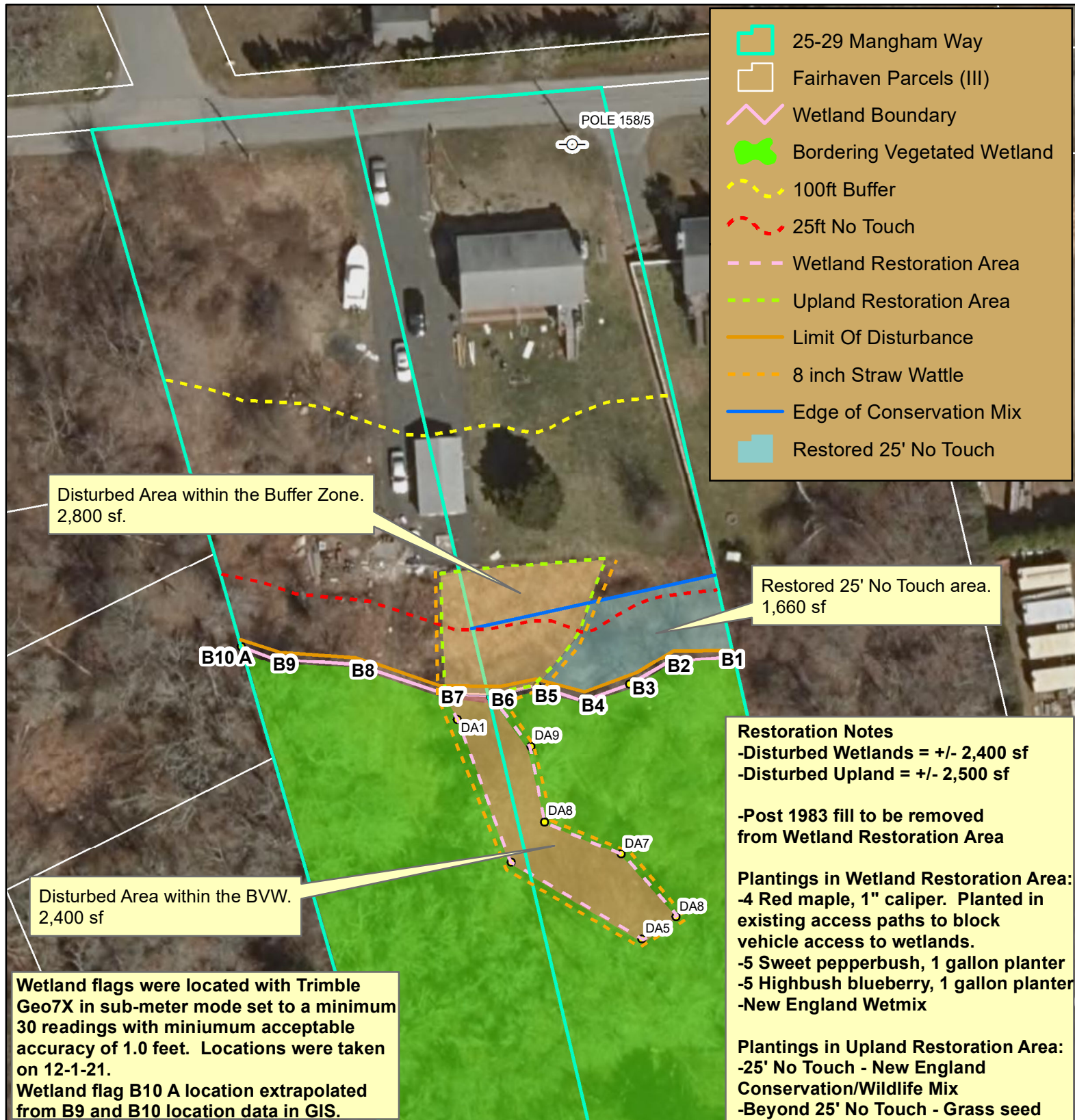
Ecosystem Solutions, Inc.


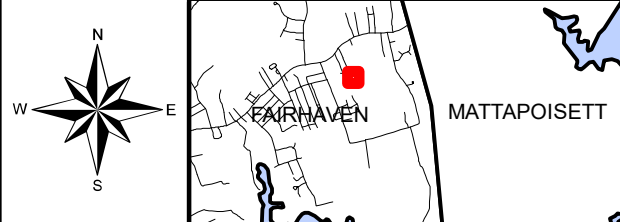


Brandon B. Faneuf, M.S., Principal
PWS, RPSS, CWB, CPESC

BF/bw

enclosures





 Ecosystem Solutions, Inc. 100 Centerville Rd., Suite 4 Warwick, RI 02886		FIGURE 1	
		Wetland Boundary & Disturbed Area Map 25-29 Mangham Way / Map 31A, Lots 300 & 300A Fairhaven, Massachusetts	
DATE: 2-2-2022		PROJECT #: W21-1589	
CREATED BY: BW		SCALE: 1 inch = 50 feet	
2019 Orthophoto			
			



Disturbed area in wetland with fill material and table with chairs.



Trailer in disturbed area.

25 & 29 Mangham Way / Map 31A, Lots 300,
300A
Fairhaven, Massachusetts

SITE PHOTOGRAPHS



Ecosystem Solutions, Inc.

100 Centerville Rd., Ste. 4 Warwick, Rhode Island 02886

Project no. W21-1589

Pictures 1-2



Historic refuse collected in the BVW, clearly predates 1983.



In situ historic refuse within the wetland, adjacent to disturbed area.

25 & 29 Mangham Way / Map 31A, Lots 300,
300A
Fairhaven, Massachusetts

SITE PHOTOGRAPHS



Ecosystem Solutions, Inc.
100 Centerville Rd., Ste. 4 Warwick, Rhode Island
02886

Project no. W21-1589

Pictures 3-5



Wetland with fallen dead tree (right) and standing snags/deadwood (left).



Fallen trunks in place in the wetland.


<p>25 & 29 Mangham Way / Map 31A, Lots 300, 300A Fairhaven, Massachusetts</p>	<p>SITE PHOTOGRAPHS</p>	
<p>ES Ecosystem Solutions, Inc. 100 Centerville Rd., Ste. 4 Warwick, Rhode Island 02886</p>	<p>Project no. W21-1589</p>	<p>Picture 6-8</p>



Aerial image from 1996, showing cleared and disturbed areas at 25 & 29 Mangham Way.



Aerial image from 2010, predating Client's ownership of the property, showing disturbed area along west property line and expanded lawn area along east property line.


<p>25 & 29 Mangham Way / Map 31A, Lots 300, 300A Fairhaven, Massachusetts</p>	<p>SITE PHOTOGRAPHS</p>	
 <p>Ecosystem Solutions, Inc. 100 Centerville Rd., Ste. 4 Warwick, Rhode Island 02886</p>	<p>Project no. W21-1589</p>	<p>Picture 9-10</p>



Previous vehicle access to disturbed area from upland, to be blocked with Red maple planting.



Previous ATV trail through wetland in southeast corner of disturbed/restoration area. Access to be blocked with Red maple planting.


<p>25 & 29 Mangham Way / Map 31A, Lots 300, 300A Fairhaven, Massachusetts</p>	<p>SITE PHOTOGRAPHS</p>	
<p> Ecosystem Solutions, Inc. 100 Centerville Rd., Ste. 4 Warwick, Rhode Island 02886</p>	<p>Project no. W21-1589</p>	<p>Picture 11-12</p>



Previous vehicle access to disturbed area from historic path on neighboring property at 25 Mangham Way, to be blocked with Red maple planting.



Previous ATV trail through wetland in southern portion of disturbed/restoration area. Access to be blocked with Red maple planting.

<p>25 & 29 Mangham Way / Map 31A, Lots 300, 300A Fairhaven, Massachusetts</p>	<p>SITE PHOTOGRAPHS</p>	
<p> Ecosystem Solutions, Inc. 100 Centerville Rd., Ste. 4 Warwick, Rhode Island 02886</p>	<p>Project no. W21-1589</p>	<p>Picture 13-14</p>

Staff Report

Date: February 3, 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**

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
- At the last meeting, the Commission required \$900 of the \$1200 fine be paid by January 26, 2022, and the remaining \$300 would be discussed at the 2/14 meeting. The required \$900 was paid by January 26.
- The activities that occurred in violation of 6 conditions of Order of Conditions that resulted in the fine included:
 - Posting of a cease and desist (Special Condition A22)
 - Continuing work after the cease and desist was posted
 - Regrading part of the property (General Condition 13, Special Conditions A7 and A18)
 - Use of equipment in the 100-foot buffer zone to salt marsh (Special Condition A13)
 - Placement of filter fabric underneath the crushed stone (General Condition 13 and Special Condition A7)
 - Spreading a large amount of unwashed, crushed rock directly adjacent to the salt marsh resource area (General Condition 13, Special Condition A7)
 - Removal of grass area adjacent to salt marsh and covering with stone (Special Condition A15)
- Special Condition A22 reads, “if a cease and desist needs to be issued at any point for non-compliance with these conditions, it is an automatic fine of \$300.00 per day under Chapter 192-11 until such time as the reason the cease and desist was issued is rectified.”
- Special Condition A15 reads, “There shall be no grubbing or removal of any vegetation to the point where the vegetation is unable to regrow.”
- The Commission could have elected to fine much more than the \$1,200 they did.
- No revisions to the restoration plan were submitted. The Enforcement Order was issued in October. Work was supposed to have begun by December 1, 2021.

RECOMMENDATION

- The restoration plan needs revision. The Commission should consider making a motion that a restoration plan with the appropriate detail and an accompanying narrative, including addressing the points outlined above and discussed in the January 24 meeting, is submitted no later than February 22 for consideration at the March 7 meeting.



Whitney McClees <wmcclees@fairhaven-ma.gov>

Fairhaven Conservation Commission

Caroline Hawthorne <[REDACTED]>
To: wmcclees@fairhaven-ma.gov

Mon, Jan 31, 2022 at 2:19 PM

Dear Ms McClees,

I am writing to inquire about joining the Fairhaven Conservation Commission as a non-voting consultant. I am interested in joining the Conservation Commission because I am committed to becoming more civically engaged in the community. I recently became a Town Meeting member and this seems like a great additional step towards that goal. With degrees in Life Sciences, Ecology and Environmental Education I have a baseline knowledge of the work the Conservation Commission does and how it impacts the natural systems like the watershed. As an environmental educator, this role will help me develop a deeper understanding of the laws and policies that protect the environment of Fairhaven which I can then communicate to the audiences I serve. I have been passionate about our natural environment my entire life and look forward to the opportunity to serve the Town of Fairhaven as a property owner, parent and citizen.

Thank you for your time,
Caroline R Hawthorne
[93 Pleasant St, Fairhaven, MA 02719](#)

Sent from my iPhone



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

Department Name:		Conservation/Sustainability																
Last Name (1)	First Name	Job Title	Date of Hire	Years of Service(2)	Union (3)	Grade	Step (4)	Hourly Wage (5)	Hrs./ week	Annual Wages(6)	Annual Salary (7)	Date of Step (8)	Cost of Step Inc. (9)	Longevity(10)	Sick Leave Bonus (11)	Sick Leave Buy-Back (12)	Stipend/ Other (18)	Total Compensation
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
Totals										\$38,879	\$79,783		\$999	\$0	\$800			\$120,461
<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
Totals										\$17,724	\$79,783		\$999	\$0	\$400			\$98,906
<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
Totals										\$3,732	\$79,783		\$1,089	\$0	\$400			\$85,004

Category	Account Number	FY23 Request	FY22 Budget	Notes	Cost	Different from FY2022?	Reason
Personal Service							
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.
Total Payroll	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
Minor Equipment							
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.
Total Minor Equipment		\$0.00	\$10,430.00				
Purchase of Services							
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
Total Purchase of Services		\$7,050.00	\$6,500.00				
Supplies							
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
Total Supplies		\$1,050.00	\$1,050.00				
Dues and Professional Gatherings							
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
Total Dues and Professional Gatherings	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.
Mileage and Travel							
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
Total Mileage and Travel	001-171-00-5712-00-0106	\$1,063.00	\$1,063.00		\$0.00	No	No changes
TOTAL		\$131,613.00	\$101,613.00		\$30,000.00	Yes	

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, harbors, and the lands bordering them. The aesthetic trust of the Commission shall be the preservation of a perception of the land which is most conducive to a natural aquatic system, a wildlife habitat, and a protective buffer between wetland resources and human development activities.

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.