

# Staff Report

Date: March 3, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **130 Ebony Street – Request for Certificate of Compliance – No DEP#, Fairhaven CON 023-133**

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## DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations

## RESOURCE AREAS ON/NEAR SITE

- None due to recent determination that the property does not fall under the jurisdiction of either the Wetlands Protection Act or Fairhaven Wetlands Bylaw
- At the time the Order of Conditions was issued, the property was subject to a determination that a portion of the property was isolated vegetated wetland.

## PROJECT SUMMARY

- Demolish the current 700 sq. foot cottage and build a 1600 sq. foot ranch house on an 8-foot above ground foundation with a deck, associated driveway, grading, landscaping, utilities, etc.

## COMMENTS

- The certificate of compliance request includes a note that states that “the completed work does include a newly installed fence that follows along the property line that was not included on the approved plan. However, it is ECR’s professional opinion that the fence does not require approval from the Fairhaven Conservation Commission based on a recent determination...that the area that was previously regulated as an IVW is in fact not a regulatable wetland resource area and the site does not fall under the jurisdiction of the Town of Fairhaven Wetland Bylaw or the MA Wetland Protection Act.”
- The applicant also provided photographs of the completed structure.
- There is a condition that states: “Native wetland plantings shall be installed along the edge of the wetland to provide a living fence to prevent disturbance to the resource area. A planting plan shall be submitted and approved by the Commission or its Agent prior to any plantings being installed.”
  - This plan was never submitted nor were any plantings installed.
- There are also two perpetual conditions that refer to the Commission’s jurisdiction.

- Based on the more recent decision that the property does not fall under the Commission's jurisdiction, the Commission will need to determine whether to include these perpetual conditions on the certificate of compliance or not.

## **RECOMMENDATION**

- If the Commission does not have concerns about the required planting plan and associated plantings not being completed and the fence being installed beyond the scope of work, I recommend issuing a Certificate of Compliance for Complete Certification for 130 Ebony Street, CON 023-133.



Environmental Consulting & Restoration, LLC



February 25, 2022

Town of Fairhaven  
Conservation Commission  
Town Hall  
40 Center Street  
Fairhaven, MA 02719  
Attn: Whitney McClees, Conservation Agent

**RE: Request for a Certificate of Compliance, 130 Ebony Street, Fairhaven  
Fairhaven File #CON 023-133**

Dear Ms. McClees & Members of the Conservation Commission:

On behalf of the applicant John & Sharon Hinds (the applicant), Environmental Consulting & Restoration, LLC (ECR) is pleased to submit this Request for a Certificate of Compliance for the work completed at 130 Ebony Street in Fairhaven (the site). The proposed project was approved by the Fairhaven Conservation Commission who issued an Order of Conditions (OOC) on April 16, 2020 (Town of Fairhaven File #CON 023-133). Please note, the OOC was issued under the Town of Fairhaven Bylaw only, as it was determined the work did not fall under the jurisdiction of the MA Wetlands Protection Act. The approved project included the demolition of an existing cottage and the construction of a single-family home with associated appurtenances to include deck, driveway, grading, landscaping, utilities, etc. ECR completed a review of the site on December 21, 2021 and can confirm that all site work has been completed and the site is fully stabilized. The completed work appears to be in compliance with the approved site plan that was designed by AVT Associates. Please note, the completed work does include a newly installed fence that follows along the property line that was not included on the approved plan. However, it is ECR's professional opinion that the fence does not require approval from the Fairhaven Conservation Commission based on a recent determination that is further detailed below.

When the project was approved it was determined that the work was located within the 100-foot buffer zone to an Isolated Vegetated Wetland (IVW). Please note, it was determined that the work was within the jurisdiction of the Fairhaven Bylaw only and not the MA Wetlands Protection Act. Most recently however, the Fairhaven Conservation Commission has made the determination that the area that was previously regulated as an IVW is in fact not a regulatable wetland resource area and the site does not fall under the jurisdiction of the Town of Fairhaven Wetland Bylaw or the MA Wetland Protection Act. The determination was issued on February 22, 2022 and has been attached for reference.

In summary, the project was approved by an OOC, but most recently the Commission has determined the site, and therefore the completed site work and any future work does not fall within the Commission's jurisdiction. This request for a Certificate of Compliance is being made to close out the existing OOC and it is ECR's opinion that the applicant is entitled to the Certificate.

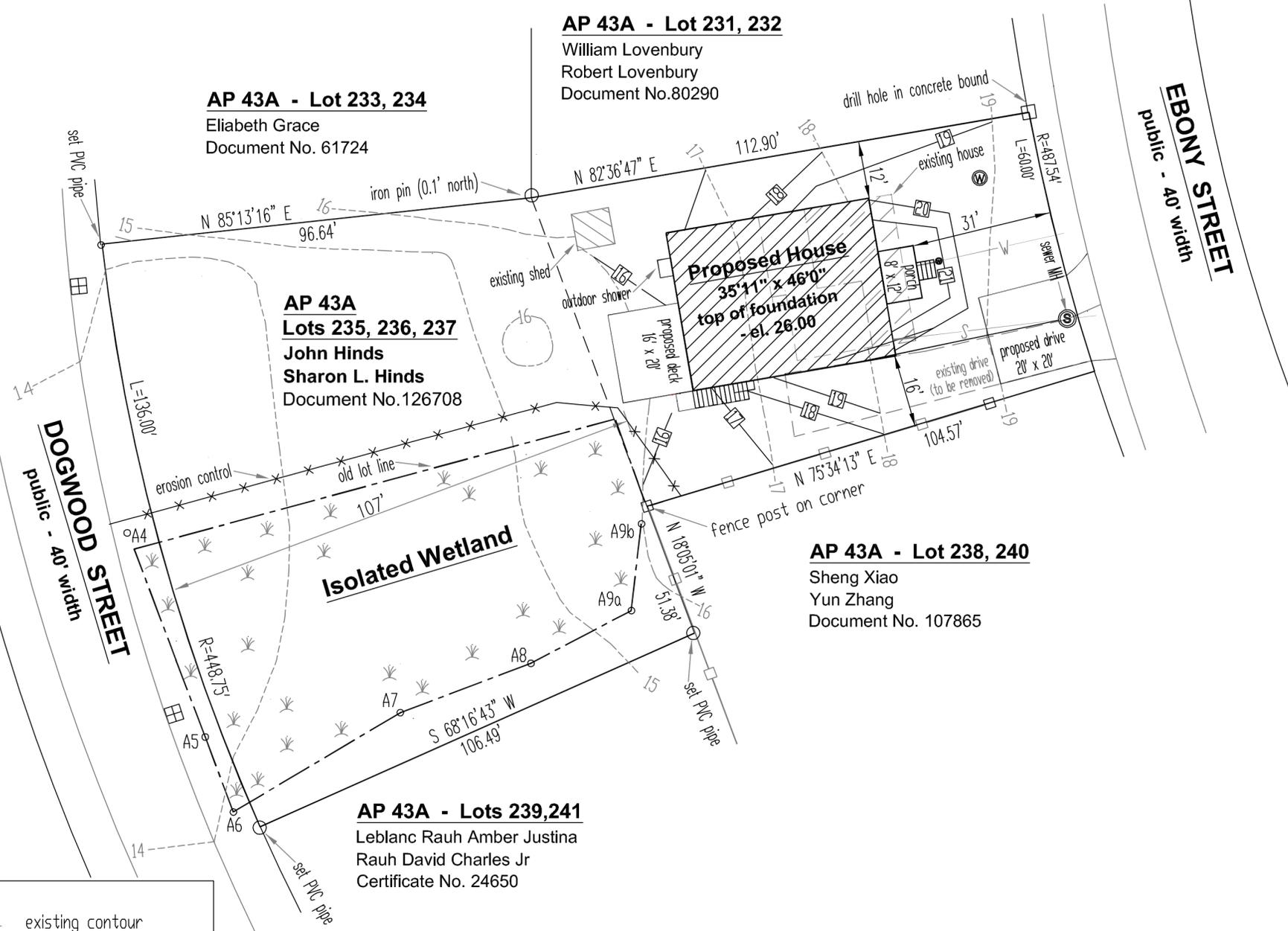
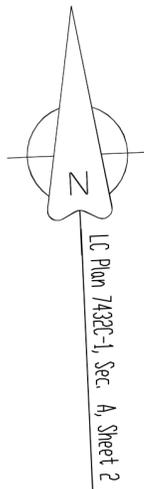
**130 Ebony Street, Fairhaven  
Site Photographs**



Photograph #1 – View from Ebony Street toward the front of the newly constructed single-family home. The site surrounding the home is fully stabilized.



Photograph #2 - View toward the rear of the newly constructed single-family home.



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

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

**AP 43A**  
**Lots 235, 236, 237**  
 John Hinds  
 Sharon L. Hinds  
 Document No.126708

**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
⋈	flagged wetland edge
---x---x---x---	proposed silt fence
⊞	existing catch basin
⊗	existing well (not in use)
—W—	existing water line
—W—	proposed water line
—S—	existing sewer
—S—	proposed sewer



**Scale: 1" = 20'**



**AP 43A**  
**Lots 235, 236, 237**  
 John Hinds  
 Sharon L. Hinds  
 Document No.126708  
**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 - 11.96%  
 house - 1755 SF  
 patio - 128 SF  
 driveway - 400 SF  
 shed - 68 SF  
 total coverage - 2351 SF
- 6 - Maximum Building Coverage = 15%  
 Proposed Building Coverage = 9.27%
- 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: November 25, 2019**  
**Revised: 4-8-2020**

# Staff Report

Date: March 10, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## DOCUMENTS REVIEWED

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

## RESOURCE AREAS ON/NEAR SITE

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

## RELEVANT PERFORMANCE STANDARDS

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

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

- **Land under Water Bodies and Waterways (under any Creek, River, Stream, Pond, or Lake)**  
10.56 (4)

- (a) Work shall not impair the following:
  1. The water carrying capacity within the defined channel, which is provided by said land in conjunction with the banks;
  2. Ground and surface water quality;
  3. The capacity of said land to provide breeding habitat, escape cover and food for fisheries; and
  4. The capacity of said land to provide important wildlife habitat functions. A project or projects on a single lot, for which Notice(s) of intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 5,000 square feet (whichever is less) of land in this resource area found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures established under 310 CMR 10.60.
  5. Work on a stream crossing shall be presumed to meet the performance standard set forth in 310 CMR 10.56(4)(a) provided the work is performed in compliance with the Massachusetts Stream Crossing Standards by consisting of a span or embedded culvert in which, at a minimum, the bottom of a span structure or the upper surface of an embedded culvert is above the elevation of the top of the bank, and the structure spans the channel width by a minimum of 1.2 times the bankfull width. This presumption is rebuttable and may be overcome by the submittal of credible evidence from a competent source. Notwithstanding the requirements of 310 CMR 10.56(4)(a)4., the impact on Land under Water Bodies and Waterways caused by the installation of a stream crossing is exempt from the requirement to perform a habitat evaluation in accordance with the procedures established under 310 CMR 10.60.

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

- (d) No Significant Adverse Impact

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

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

## PROJECT SUMMARY

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

## COMMENTS

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

- The wetland replication area was planted September 2020 and was inspected for the first year of monitoring on December 8, 2021. In the December 9, 2021 monitoring report, the applicant is asserting that 75% wetland vegetative cover has been achieved and is asking the Conservation Commission to fully close out the open Order for the entire project, including the wetland replication.
- MACC recommends that a COC should not be issued for a project involving wetland replication until the two growing seasons requirement has been met.
- The Commission will need to discuss the necessity of a second year of monitoring, especially given the flooded nature of the replication area during the monitoring visit. The performance standards for BVW governing replication state in part: “at least 75% of the replacement are shall be reestablished with indigenous wetland plant species within two growing seasons”
- The applicant submitted the following information addressing the size difference in approved replication area and final replication area:
  - In regards to your comments on the size difference between what was approved and what the as-built shows, the difference appears to be 20sf. Due to the success of the replication area as outlined in the previously submitted monitoring report, we believe this discrepancy to be extremely minor and should be viewed as de minimus. Also, you asked for information in regards to the specific plantings that were installed in the replication area at the time of planting. Unfortunately, we have not been able to get a hold of the Wetland Scientist who supervised the construction of the area, and have no documentation of the specific planting plan that they followed. The applicant's lack of response from this previous wetland scientist is what led Goddard Consulting to be involved in continued monitoring of the area. As indicated, we took detailed notes in the monitoring report on the vegetation that is presently in the area, and we believe that it has met the goals of the replication area and will continue to function and thrive as a wetland resource area.
- While the approved stream/wetland crossings do not comply with Massachusetts Stream Crossing Standards, the applicant has submitted documentation showing that the PVC pipes under the crossings were lengthened and are in place and that the ends of the PVC pipes should be visible beyond the end of the riprap. During the site visit, the ends of the pipes were not visible because the riprap had shifted to completely cover them.
- The applicant submitted additional information regarding the original planting plan for the restoration area dated September 10, 2020 as well as an inspection report for the rip-rap, most of which has failed.
- They have outlined four items to address the rip-rap failures. This work should occur before the Commission issues any Certificate of Compliance for the project.
- Because the Order of Conditions will not expire until 2024, there is ample time for the applicant to address these failures under the current Order of Conditions.

## RECOMMENDATION

- I recommend the Commission wait to consider the Certificate of Compliance request until at least the rip-rap failures have been repaired and possibly until after the second year of monitoring has been completed this fall.



Whitney McClees <wmcclees@fairhaven-ma.gov>

**279 Mill Road, Fairhaven**

**Tim McGuire** <tim@goddardconsultingllc.com> Fri, Mar 4, 2022 at 4:16 PM  
To: Whitney McClees <wmcclees@fairhaven-ma.gov>  
Cc: Josh Eidem <jeidem@atlanticcompanies.com>, Colby Webb <colby.webb@signalenergy.com>, Sivasubramanian Somasundaram <siva.somasundaram@signalenergy.com>, Kevin Butler <kevin.butler@signalenergy.com>, Brandon Doane <brandon.doane@signalenergy.com>, Nate Malo <nate.malo@signalenergy.com>

Good afternoon Whitney,

Attached please find a report from Atlantic in regards to the riprap failure. In addition, we were able to locate the report that was referenced in the replication construction. We note that this varies from the current conditions of the replication area, but maintain that the area still had 75% vegetative cover upon inspection. I am happy to take a look at the area with you in the Spring, and discuss any additional efforts to be taken if necessary.

We are scheduled before the Commission on Monday to discuss the project, will we be maintaining that meeting date? Please let us know.

Have a good weekend,

--  
Tim McGuire  
Wildlife Biologist & Wetland Scientist  
\*\*\*\*\*  
Goddard Consulting, LLC  
291 Main Street, Suite 8  
Northborough, MA 01532  
\*\*\*\*\*  
[tim@goddardconsultingllc.com](mailto:tim@goddardconsultingllc.com)  
Office: (508) 393-3784  
Cell: (774) 265-2779

**2 attachments**

 **Replication Plan.pdf**  
681K

 **Inspection Report (2-21-22).pdf**  
5167K



***FIELD REPORT\_DRAFT***

TO: Signal Energy      DATE: 2-24-2022      JOB NO: 2893.06

PROJECT NAME: 297 Mill Road Solar Project

PRESENT AT SITE: Josh Eidem – Atlantic

LOCATION: 279 Mill Road Fairhaven, MA

WEATHER: Sunny      TEMP: 45°

**The following was noted during a site inspection (#2) on 2-21-22 (12:30 pm):**

**Overall:**

- Rip-Rap berm at Southern edge of road between solar arrays, East of wetland crossing “B,” appears to have failed, causing part of the roadway gravel to wash away
- Water flow at wetland crossing “B” appears to be unaffected, however silt fence was observed at pipe inlets and outlets
- Rip-Rap berm at Northern edge of road at wetland crossing “A”, West of main solar array, appears to have failed, causing roadway in that area to narrow, and basin to expand
- Water flow at wetland crossing “A” appears to be unaffected, however silt fence was observed at pipe inlets and outlets possibly obstructing water flow

**Recommendations/Comments:**

1. **We recommend repairing and replacing areas of failed rip-rap to the specifications originally laid out on wetland crossing details “A” & “B”**
2. **Extend rip-rap berm along road past the area of failure on roadway between the solar arrays**
3. **Once rip-rap repairs are complete, we recommend repairing roadways, including replacing gravel and compacting, adjacent to rip-rap failures to the specifications originally laid out on wetland crossing details “A” & “B”**
4. **To help improve the flow of water and potentially minimize the risk of future washouts, we recommend adjusting silt fence in areas where an inlet or outlet pipe is present**



Items Inspected	Location	Comments	Corrective Actions Needed
Figure 1: Rip-Rap and Roadway	East of Wetland Crossing "B"	Part of the roadway has washed away, likely due to the fact that the adjacent rip-rap berm is no longer intact	Once rip-rap berm is repaired, fill remaining areas of roadway per original crossing "B" detail
Figure 2: Rip-Rap and Roadway	East of Wetland Crossing "B"	Part of the roadway has washed away, likely due to the fact that the adjacent rip-rap berm is no longer intact	Once rip-rap berm is repaired, fill remaining areas of roadway per original crossing "B" detail
Figure 3: Rip-Rap	Southern Swale East of Wetland Crossing "B"	Rip-Rap berm is no longer intact, evidence of gravel from roadway at location of failure	Repair rip-rap berm per original crossing "B" detail
Figure 4: Rip-Rap	Southern Swale East of Wetland Crossing "B"	Rip-Rap berm is no longer intact, evidence of gravel from roadway at location of failure	Repair rip-rap berm per original crossing "B" detail
Figure 5: Roadway	Wetland Crossing "A" West of Main Solar Array	Small section of road on the northern edge has washed away, likely due to the adjacent rip-rap berm failure	Once rip-rap berm is repaired, fill remaining areas of roadway per original crossing "A" detail
Figure 6: Rip-Rap	Northern Berm at Wetland Crossing "A" West of Main Solar Array	Rip-Rap berm is mostly intact, some of the rip-rap is displaced, causing the road to narrow and the basin to expand	Repair rip-rap berm per original crossing "A" detail
Figure 7: Rip-Rap	Northern Berm at Wetland Crossing "A" West of Main Solar Array	Rip-Rap berm is mostly intact, some of the rip-rap is displaced, causing the road to narrow and the basin to expand	Repair rip-rap berm per original crossing "A" detail
Figure 8: Rip-Rap	Southern Berm at Wetland Crossing "A" West of Main Solar Array	Rip-Rap berm is intact and water is flowing freely from outlet structures	N/A



Figure 1: Rip-Rap and Roadway Failure East of Wetland Crossing “B”



Figure 2: Rip-Rap and Roadway Failure East of Wetland Crossing “B”

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Figure 3: Rip-Rap Failure East of Wetland Crossing “B” at Southern Swale



Figure 4: Rip-Rap Failure East of Wetland Crossing “B” at Southern Swale

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Figure 5: Wetland Crossing "A" West of Main Solar Array



Figure 6: Rip-Rap Failure at North End of Wetland Crossing "A"

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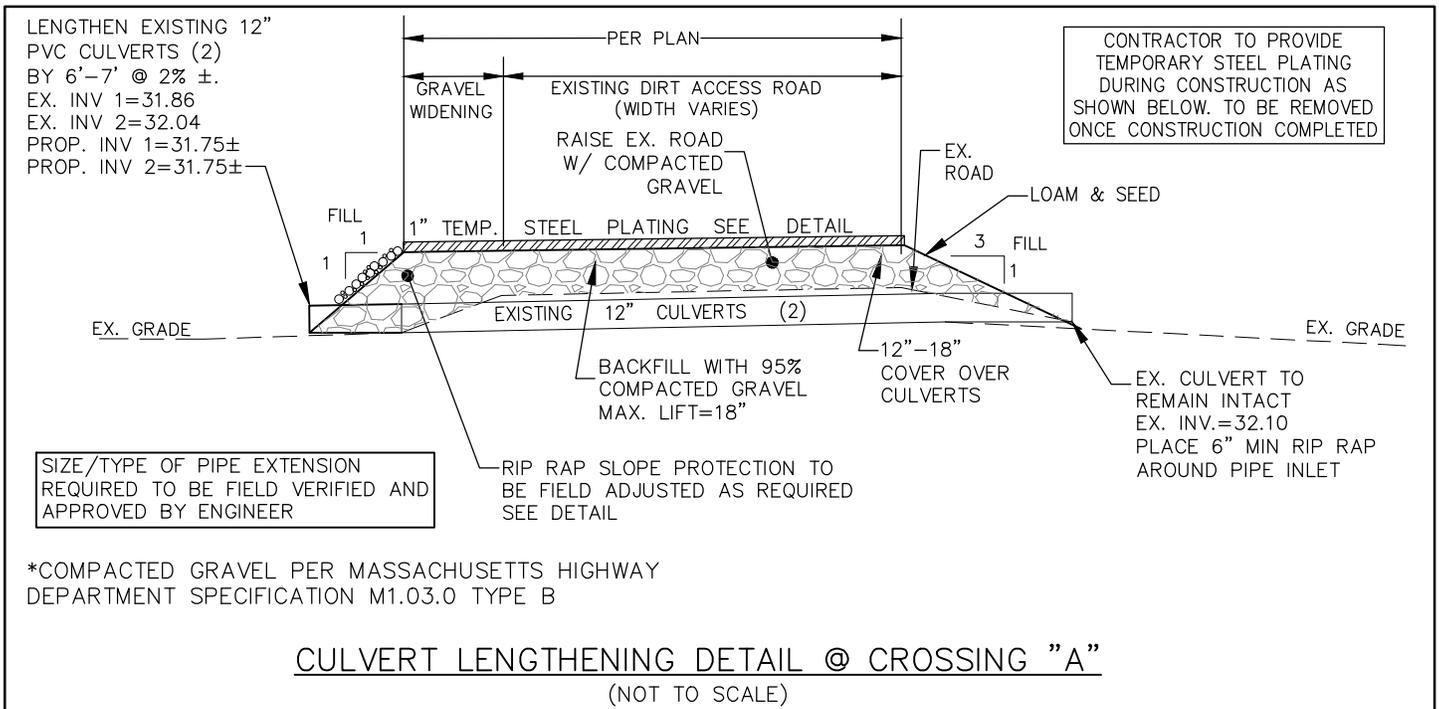
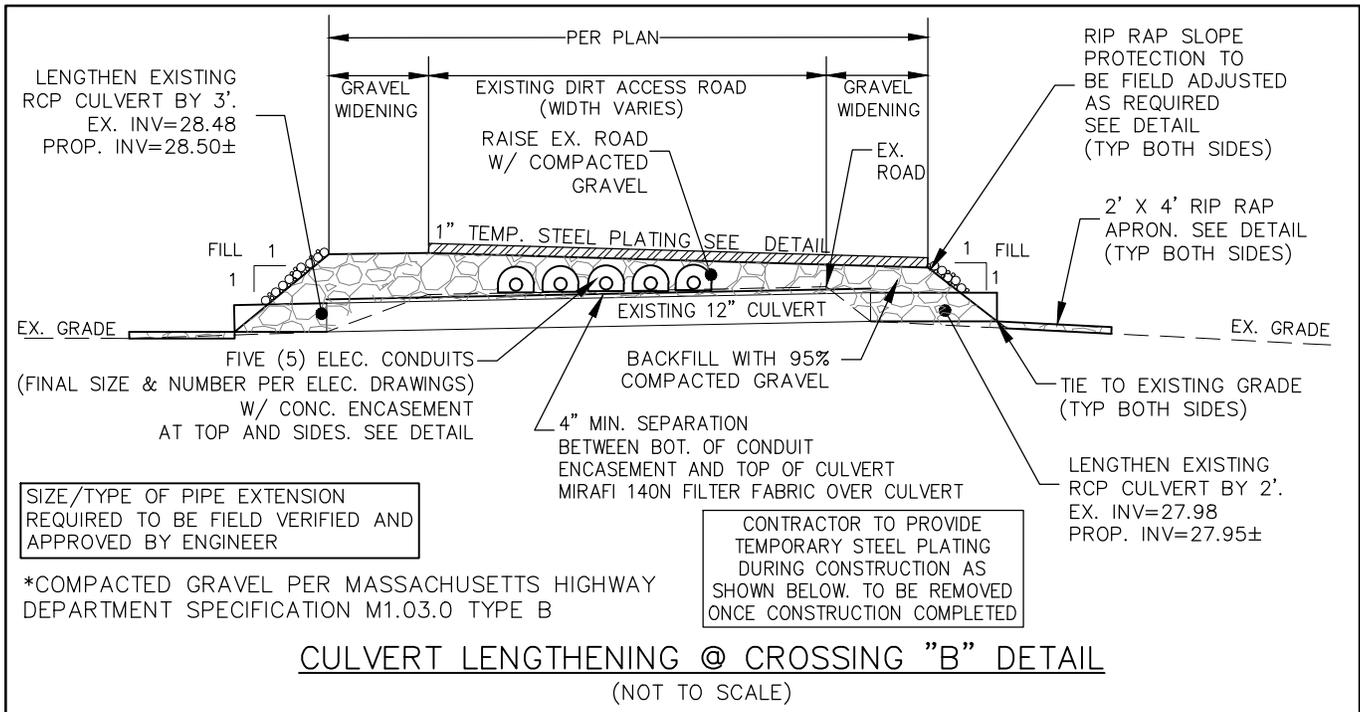


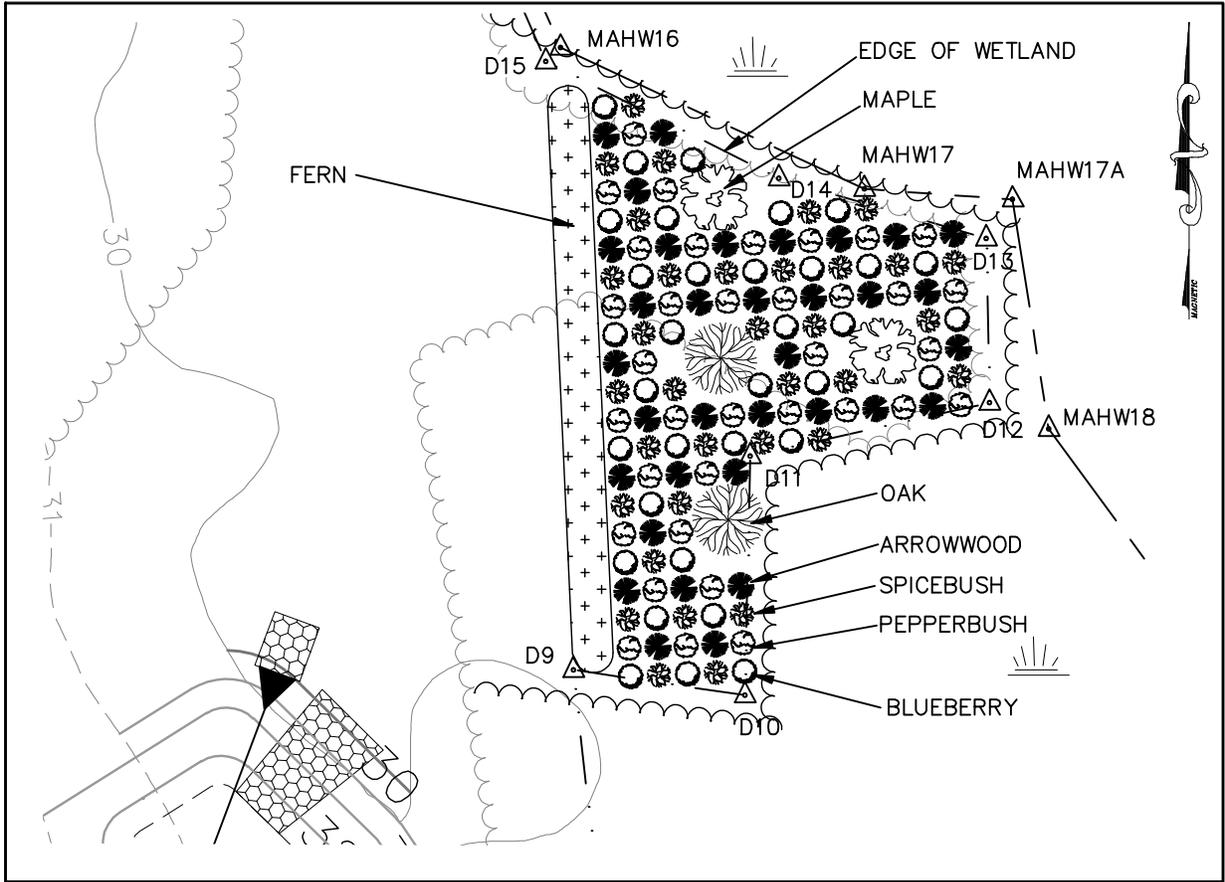
Figure 7: Rip-Rap Failure at North End of Wetland Crossing "A"



Figure 8: South End of Wetland Crossing "A"

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**WETLAND REPLICATION AREA PLAN**

APPROX. SCALE: 1"=20'

PLANT LIST				
	COMMON NAME	LATIN NAME	QNTY	SIZE
TREES	RED MAPLE	ACER RUBRUM	2	4'-6'
	SWAMP WHITE OAK	QUERCUS BICOLOR	2	4'-6'
SHRUBS	HIGH BUSH BLUEBERRY	VACCINUM CORYMBOSUM	35	SPRIG
	SWEET PEPPERBUSH	CLETHRA ALNIFOLIA	35	SPRIG
	COMMON SPICEBUSH	LINDERA BENZOIN	35	SPRIG
	NORTHERN ARROWWOOD	VIBURNUM DENTATUM	35	SPRIG
GROUND COVER	SENSITIVE FERN	ONOCLEA SENSIBILIS	20	#1 POTTED

NOTE: FINAL SPECIES, QUANTITIES, PLACEMENT AND LOCATION TO BE APPROVED BY QUALIFIED WETLAND SCIENTIST.

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

FILE: 2003.06-SKC-1

<b>PREPARED FOR</b> <b>SIGNAL ENERGY DG</b> 1095 MORRIS AVE. - SUITE 102 UNION, NEW JERSEY 07083	<b>CIVIL CONSTRUCTION SKETCH</b> FOR <b>279 MILL ROAD SOLAR PROJECT</b> FAIRHAVEN, MASSACHUSETTS SEPTEMBER 10, 2020	<b>SKC-1A</b>
		JOB NUMBER <b>2893.06</b>

## WETLAND REPLICATION NOTES

TO ENSURE PROPER VEGETATIVE ESTABLISHMENT WITHIN THE WETLAND REPLICATION AREA, IT IS RECOMMENDED THAT PRIOR TO THE START OF WORK, A QUALIFIED WETLAND SCIENTIST IS NOMINATED TO SUPERVISE CONSTRUCTION AND PERFORM THE POST-CONSTRUCTION MONITORING OUTLINED BELOW. ALL WETLAND REPLICATION WORK SHALL BE MONITORED AND COORDINATED WITH SIGNAL ENERGY DG AND THE NOMINATED WETLAND SCIENTIST.

### TYPICAL CONSTRUCTION/REPLICATION PROTOCOL:

1. THE WETLAND BOUNDARIES (I.E., DOWNGRADIENT EDGES OF THE WETLAND REPLICATION AREA) AND THE LIMITS OF THE REPLICATION AREA WILL BE MARKED IN THE FIELD.
2. PRIOR TO THE START OF EARTH-MOVING ACTIVITIES IN THE REPLICATION AREA, AN EROSION CONTROL BARRIER OF PROPERLY INSTALLED SILTATION FENCE OR SEDIMENT LOG (I.E., THE BOTTOM FEW INCHES OF THE SILTATION FENCE INSTALLED IN A NARROW, TRENCH AND THE TRENCH FILLED WITH SOIL AROUND THE SILTATION FENCE) WILL BE INSTALLED ALONG THE WETLAND BOUNDARIES BETWEEN THE WETLAND AND THE WETLAND REPLICATION AREA. THE WETLAND REPLICATION AREA WILL THEN BE CLEARED AND GRUBBED.
3. THE EXCAVATION AND PLANTING WORK WILL BE CLOSELY SUPERVISED BY A QUALIFIED WETLAND SCIENTIST. THE PROPOSED FINAL GRADE FOR THE REPLICATION AREA SHOULD APPROXIMATE THE ELEVATION OF OR BE SLIGHTLY LOWER THAN THE ADJACENT WETLAND AREAS AS SHOWN ON THE SITE PLANS. THE REPLICATION AREA WILL BE EXCAVATED TO REMOVE EXISTING TOPSOIL AND ENOUGH SUBSOIL TO ALLOW FOR FINAL GRADING WITH AN APPROVED 12" OF SILT LOAM TOPSOIL. MINOR MODIFICATIONS TO THE PROPOSED GRADING MAY BE MADE IN THE FIELD BY THE WETLAND SCIENTIST IN RESPONSE TO OBSERVED SUBSURFACE HYDROLOGIC CONDITIONS. ALL EXCAVATED MATERIAL WILL BE STOCKPILED FOR RE-USE IF APPROPRIATE OR DISPOSED OF AWAY FROM ALL WETLAND RESOURCE AREAS.
4. THE TOPSOIL/SUBSOIL EXCAVATED WITHIN THE WETLAND DISTURBANCE AREAS BE STOCKPILED FOR RE-USE WITHIN THE WETLAND REPLICATION AREA. 12" OF AN ONSITE BORROW OF SILT LOAM, FREE OF REED CANARY GRASS BE PLACED WITHIN THE REPLICATION AREA. THE SUBSTRATE WILL BE ROUGHLY GRADED TO PROVIDE AN APPROPRIATE MICROTOPOGRAPHY AS DIRECTED BY THE QUALIFIED PROFESSIONAL NOMINATED TO OVERSEE THE REPLICATION EFFORT. ANY DISTURBED AREA ADJACENT TO THE REPLICATION AREA IS TO BE STABILIZED AS NECESSARY WITH AN EROSION CONTROL AND/OR NATIVE WILDFLOWER MIX TO PREVENT EROSION.
5. AN EROSION CONTROL BARRIER COMPRISING ONLY TOED-IN SILTATION FENCE OR SEDIMENT LOG, WILL BE PROPERLY INSTALLED BETWEEN THE COMPLETED REPLICATION AREA AND THE ADJACENT UPLAND AREAS.
6. PLANTING SHALL BE SUPERVISED BY A QUALIFIED WETLAND SCIENTIST AS REQUIRED TO ENSURE PROPER ESTABLISHMENT. PLANTING WILL BE DONE ONLY DURING THE BEGINNING (APRIL 15 THROUGH JUNE) OR END (SEPTEMBER 1 TO NOVEMBER 15) OF THE GROWING SEASON. PLANTING IN THE MID-GROWING SEASON IS ONLY ACCEPTABLE IF IRRIGATION IS PROVIDED. REPLICATION AREA TO BE PLANTED IN A THREE FOOT GRID PATTERN WITH SPRIGS OF WETLAND SPECIES SHOWN TO THRIVE IN THE ADJACENT WETLAND. EXISTING NATIVE TREES SHALL BE PRESERVED IF AT ALL POSSIBLE. THE PLANT SPECIES IDENTIFIED IN THE TABLE PROVIDED ARE REPRESENTATIVE SPECIES THAT SHALL BE APPROVED BY THE QUALIFIED WETLAND SCIENTIST AND SHALL BE SOURCED FROM NEW ENGLAND NURSERY STOCK. TREE SPECIES TO BE PLANTED AT 15'-20' INTERVALS AND UNDER-STORY SPECIES TO BE PLANTED AT THE INTERMEDIATE GRID POINTS. THE WOODY VEGETATION SHOULD NOT BE PLANTED IN ROWS. THE FERNS WILL BE PLANTED BETWEEN THE SHRUBS AND SAPLINGS. A 4" DEPTH OF CLEAN LEAF COMPOST IS TO BE USED FOR THE TREE AND SHRUB PLANTING. PLANT SPECIES SUBSTITUTIONS ARE ALLOWED UNDER THE DIRECTION OF THE QUALIFIED WETLAND SCIENTIST.
7. THE UPLAND DISTURBED AREAS IMMEDIATELY ADJACENT TO THE WETLAND REPLICATION AREA WILL BE SEEDED WITH A WETLAND SEED MIXTURE DESIGNED TO PROVIDE PERMANENT COVER. AFTER SEEDING, THE AREA WILL BE MULCHED WITH A THIN LAYER OF STRAW TO PROVIDE FOR TEMPORARY EROSION CONTROL. SEED MIX SHALL BE NEW ENGLAND CONSERVATION/WILDLIFE MIX BY NEW ENGLAND WETLAND PLANTS, INC. OR APPROVED EQUAL.
8. THE WETLAND REPLICATION AREA WILL BE MONITORED BY A QUALIFIED WETLAND SCIENTIST AS REQUIRED TO ENSURE PROPER VEGETATION ESTABLISHMENT. AT A MINIMUM, THE WETLAND REPLICATION AREAS WILL BE MONITORED FOR THE FIRST TWO GROWING SEASONS FOLLOWING CONSTRUCTION. MONITORING REPORTS WILL BE SUBMITTED TO THE OWNER (AND CONSERVATION COMMISSION AS REQUIRED) NO LATER THAN DECEMBER 15TH OF EACH YEAR. THE FIRST YEAR OF MONITORING WILL BE THE FIRST YEAR THAT THE SITE HAS BEEN THROUGH A FULL GROWING SEASON AFTER COMPLETION OF CONSTRUCTION AND PLANTING. A GROWING SEASON STARTS NO LATER THAN MAY 31ST. EACH MONITORING REPORT SHOULD INCLUDE PHOTOGRAPHS AND RECOMMENDATIONS SUCH AS REMEDIAL ACTIONS TO MAINTAIN PLANTS, ADDITIONAL PLANTINGS, ETC. THE INTENT OF THE REPLICATION AREA IS TO ACHIEVE 75% RE-ESTABLISHMENT WITHIN TWO YEARS. IN THE EVENT THAT ANY PLANTINGS WITHIN THE REPLICATION AREA ARE FOUND TO BE UNVIABLE OR DEAD, THEY WILL BE REPLACED WITH LIKE KIND AND SIZE AT THE EXPENSE OF THE APPLICANT. REPLACEMENT OF PLANTINGS WILL TAKE PLACE WHEN FOUND OR AS SOON AS SEASONAL WEATHER PERMITS. ANY SUCH REPLACEMENT WORK WILL BE INCLUDED IN THE MONITORING REPORTS FOR THAT PERIOD. MONITORING FOR INVASIVE SPECIES WILL ALSO BE CONDUCTED AND HANDPICKED BEFORE BECOMING WIDESPREAD AND ESTABLISHED. MAINTAIN THE REPLICATION AREA TWICE PER YEAR WITH HAND WEEDING. ADD LEAF MULCH AS NEEDED TO MAINTAIN DESIRED TREES AND SHRUBS.
9. AFTER THE WETLAND REPLICATION AREA HAS BECOME VEGETATIVELY STABILIZED, AND FOLLOWING APPROVAL OF THE QUALIFIED WETLAND SCIENTIST, THE SILTATION FENCE AND ALL WOODEN STAKES WILL BE REMOVED AND DISPOSED OF PROPERLY.



**Atlantic**® DESIGN ENGINEERS, INC.

P.O. Box 1051, Sandwich, MA 02563

(508) 888 - 9282

FILE: 2003.06-SKC-1

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

**CIVIL CONSTRUCTION SKETCH**  
FOR  
**279 MILL ROAD SOLAR PROJECT**  
FAIRHAVEN, MASSACHUSETTS  
SEPTEMBER 10, 2020

**SKC-1B**

JOB NUMBER  
**2893.06**

# Staff Report

Date: March 3, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Torrington Road, Map 29B, Lot 128 – Request for Extension – DEP# 023-1290, Fairhaven CON 19-036**

---

## DOCUMENTS REVIEWED

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

## PROJECT SUMMARY

- The applicant is requesting a three year extension on the Order of Conditions issued March 8, 2019.

## COMMENTS

- The Order of Conditions is due to expire June 13, 2023.
- The applicant did not provide a specific reasoning for the extension, but the property has been sold to a subsequent owner and the new owner is also requesting an Amended Order of Conditions for changes to the plan.

## RECOMMENDATION

- I recommend granting a three year extension for the work approved by the Order of Conditions for Torrington Road, Map 29B, Lot 128, SE 023-1290, CON 19-036, under both the Wetlands Protection Act and Fairhaven Wetlands Bylaw.

# ***SCHNEIDER, DAVIGNON & LEONE, INC.***

PROFESSIONAL CIVIL ENGINEERS & LAND SURVEYORS

MATTHEW C. LEONE, P.L.S.



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

March 2, 2022

Town of Fairhaven  
Conservation Commission  
40 Center Street  
Fairhaven, MA 02719  
Attn: Whitney McClees, Agent

Re: ***Request for Extension Permit - D.E.P. File No. SE 23-1290***

Applicant/Owner: Christopher R. & Laurie A. Stevens

Site Address: Torrington Road

Lot #128 on Assessors Map #29B

Dear Whitney:

Schneider, Davignon & Leone, Inc. acting as agent for Mr. & Mrs. Stevens hereby requests that the Fairhaven Conservation Commission issue an Extension Permit for the above referenced project.

The Order of Conditions was issued on 3-04-19 and recorded at the Bristol County Registry of Deeds on in Book 12736, Page 135.

The project consists of the construction of a single family dwelling together with associated site work within the 100 ft. buffer zone of a BVW and partially within a Flood Zone.

The Applicant respectfully requests that a 3-year Extension Permit be issued by the Commission.

Please find enclosed the following information for your review:

- \$75.00 Application Fee
- 11"x17" Original Site Plan
- Revised Site Plan

If you require additional information or have any questions, please call me at (508) 758-7866 (ext. 203).

Thank you for your attention in this matter.

Sincerely,  
*Schneider, Davignon & Leone, Inc.*

David M. Davignon, P.E.

cc: File 3437  
*Christopher & Laurie Stevens*

# Proposed Changes for 2022 Annual Town Meeting

## 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.~~

E. The Coastal Resilience Zone (CRZ)

~~D-F.~~ 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.

## **COASTAL FLOOD RISK AREA**

Any land which is subject to any inundation caused by coastal storms up to and including that predicted to be caused by the 1% annual storm for the Target Year, as defined by the best available coastal flooding model.

## **COASTAL RESILIENCE ZONE (CRZ)**

Shall include the following resource areas: (a) any Land Subject to Coastal Storm Flowage; (b) any Coastal Flood Risk Area; and (c) the buffer zone of any Other Coastal Wetland Resource located in whole or in part within (a) or (b). The CRZ may include within its

boundaries one or more of the following subareas: Velocity (V) Zone; Moderate Wave Action Area (MoWA); Highly Developed Area; and Special Transitional Area.

### **HIGHLY DEVELOPED AREA**

As defined in the DEP Regulations, and to be applied for the purposes of this Bylaw to any applicable subareas within the CRZ.

### **MODERATE WAVE ACTION AREA (MoWA)**

A subarea of LSCSF, with wave heights between 1.5 – 3 feet, as defined in the DEP Regulations or by FEMA. If the best available coastal flooding model projects a broader extent of the MoWA than that defined in the DEP Regulations, the Conservation Commission may adopt such modified projection by Local Regulation.

### **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.

### **SPECIAL TRANSITIONAL AREA**

Subareas within the CRZ that are located immediately landward of coastal beaches, coastal dunes, barrier beaches, coastal banks, or salt marshes, and extending in a direction perpendicular from the nearest adjoining land under water to the interior boundary of the CRZ.

### **TARGET YEAR**

The year specified by the Conservation Commission for projections of sea level rise and flood risk. If the Best Available Coastal Flooding model is based on a single target year, then the Conservation Commission shall adopt that year as the Target Year. If the model includes multiple target years, then the Conservation Commission shall adopt, by Local Regulation, the Target Year for the Best Available Coastal Flooding model.

## **§ 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.

# Staff Report

Date: March 3, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **5 Fisherman's Road – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-267**

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## DOCUMENTS REVIEWED

- Request for Determination of Applicability and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

## RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF)

## RELEVANT PERFORMANCE STANDARDS

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

## PROJECT SUMMARY

- The applicant filed for the following items:
  - Removal of trees and other various plants
  - Planting of grass seeds, shrubs, and other plants
  - Installation of a seashell driveway, stone/masonry walkway/pathways, and a fire pit
  - Relocation of large boulders on site
  - Removal of a plastic shed and replacement with a wood shed on sonotubes
  - Installation of a deck on 6 sonotubes

## COMMENTS

- Members of the Commission issued a cease and desist notice for removal of vegetation without a permit
- The applicant contacted the office and scheduled a site visit with the Agent
- The majority of the work that had been done involved the removal of small trees and shrubs that had been planted by the previous owner for landscaping purposes

- During the site visit, the applicant indicated they would also like to replace the shed and install a deck.
- The work undertaken before filing with the Commission stopped as soon as the cease and desist was issued and has not recommenced.
- The only resource area on or near the property is land subject to coastal storm flowage.
- The applicant is proposing to plant a number of grasses, flowers, and shrubs on the property.
- The vast majority of the work proposed by the applicant is landscaping work.
- The project does not appear as though it will have a significant impact on flood control or storm damage prevention.

## RECOMMENDATION

- I recommend issuing a Negative Determination for this filing.
  - *Possible motion:* Make a motion to close the public hearing for CON 023-267, 5 Fisherman's Road, and issue a Negative 2 and Negative 6 Determination under the Wetlands Protection Act and Fairhaven Wetlands Bylaw.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

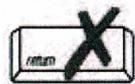
City/Town \_\_\_\_\_

**WPA Form 1- Request for Determination of Applicability**

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

**A. General Information**

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



1. Applicant:  
Caitlin Hychko ktp594@gmail.com

---

Name E-Mail Address  
5 Fisherman Rd.

---

Mailing Address MA 02719  
Fairhaven State Zip Code

---

City/Town State Zip Code  
508-287-9138

---

Phone Number Fax Number (if applicable)

2. Representative (if any):

---

Firm garyhychko@gmail.com  
Gary Hychko E-Mail Address

---

Contact Name E-Mail Address  
5 Fisherman Rd.

---

Mailing Address MA 02719  
Fairhaven State Zip Code

---

City/Town State Zip Code  
508-314-9374

---

Phone Number Fax Number (if applicable)

**B. Determinations**

1. I request the Fairhaven make the following determination(s). Check any that apply:

Conservation Commission

- a. whether the **area** depicted on plan(s) and/or map(s) referenced below is an area subject to jurisdiction of the Wetlands Protection Act.
- b. whether the **boundaries** of resource area(s) depicted on plan(s) and/or map(s) referenced below are accurately delineated.
- c. whether the **work** depicted on plan(s) referenced below is subject to the Wetlands Protection Act.
- d. whether the area and/or work depicted on plan(s) referenced below is subject to the jurisdiction of any **municipal wetlands ordinance** or **bylaw** of:  
the Wetlands Protection Act and Fairhaven Wetlands Bylaw

\_\_\_\_\_  
Name of Municipality

- e. whether the following **scope of alternatives** is adequate for work in the Riverfront Area as depicted on referenced plan(s).



# WPA Form 1- Request for Determination of Applicability

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

## C. Project Description

1. a. Project Location (use maps and plans to identify the location of the area subject to this request):

5 Fisherman Rd.	Fairhaven
Street Address	City/Town
Map 43A	Lot 119 & 120
Assessors Map/Plat Number	Parcel/Lot Number

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

The property is located west of Cottonwood St. and east of Balsam St. The area consist of a single

family residence with a rear deck that abuts a detached studio and a plastic shed that sites near a Reeds Ferry Shed. Fieldstones lined the rear property line. The walkway paths between the structures are grass. Driveway is grassy with some stone. Two large holly trees and other various trees were/are on the property.

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

5 Fisherman Rd. Site Plan - Hychko	2-28-2022
Title	Date
_____	_____
Title	Date
_____	_____
Title	Date
_____	_____

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

Removal of trees and other various plants. Planting of: grass seeds, shrubs and plants. Seashell driveway, stone/masonry walkway/pathways. A large fire pit area. Stones to be put back on perimeter of land and also around gardening areas. Removal of a plastic shed, to be replaced by a wood shed less than 110 sq. ft. in size that will have four sonotubes (1 on each corner). A proposed deck off the home with 6 sono tubes 12inches wide and 4 feet below grade, to be facing west towards Balsam St., future plans to be filed with Fairhaven, MA Building Department. Please see attached drawing for Work Description.

## 5 Fisherman Road - Planting Schedule and Site Description

We intend to plant vegetation that will attract butterflies, birds, and bees. This list is not exhaustive, please see below for a list of plants that we intend to plant:

- Catmint (Nepeta)
- Lavender
- Milkweed
- Sage
- Daisy
- Stonecrop
- Sunflower
- Yarrow
- Azalea
- Sea grass
- Hydrangea
- Rose bushes
- Bleeding heart
- Bee-balm

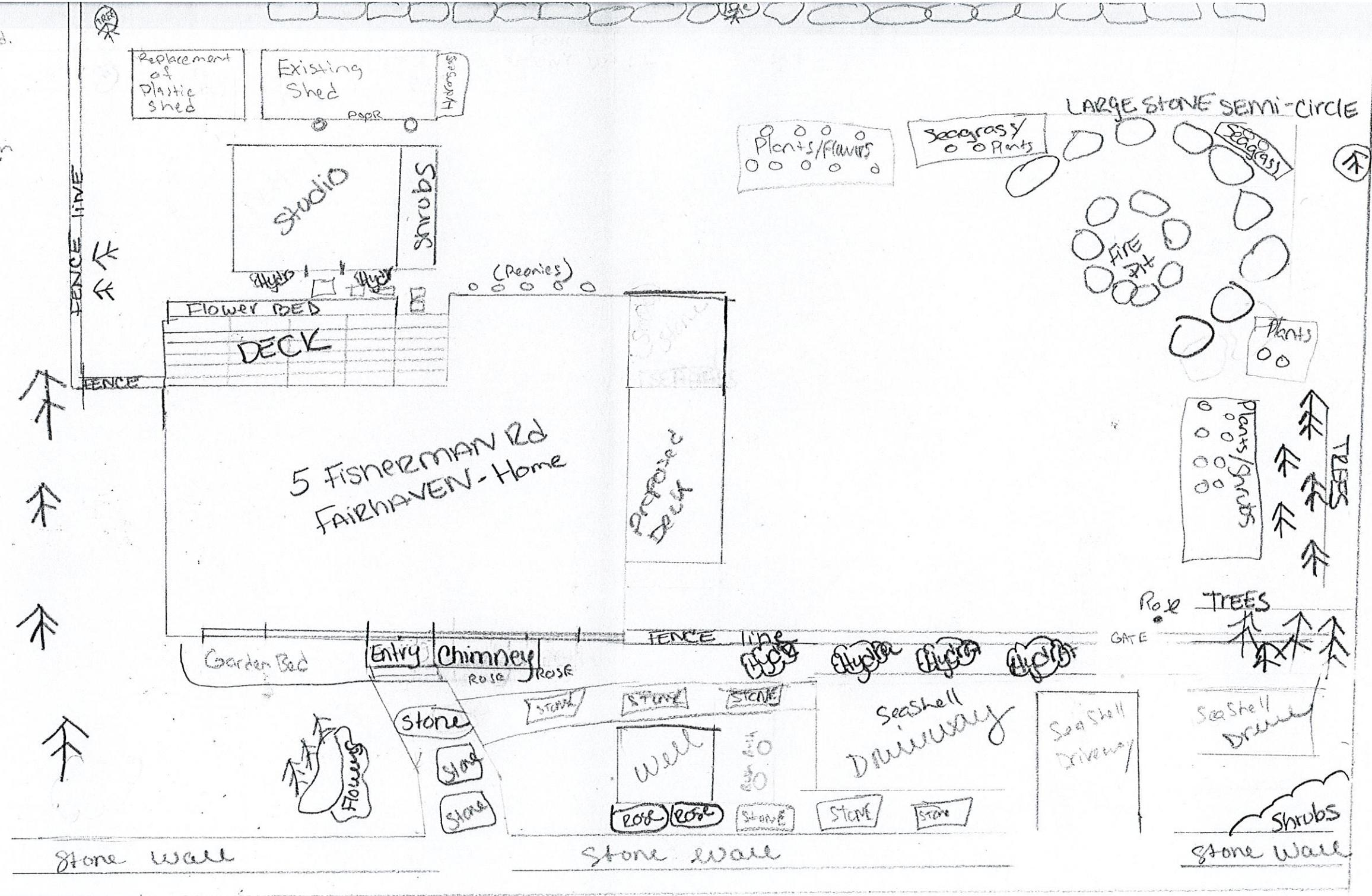
### Site Description:

- The trees shown on the map are existing;
- Two rose bushes in the front near the well have already been planted;
- There is a wild berry bush in the corner of the driveway that is to remain;
- There are two small bushes between the driveway and the well that are to remain;
- The planting areas on the sides of the fire pit are all going to be planted in the future with a mixture of the above noted plants;
- Peonies shown have already been planted;
- Various hydrangeas have been planted near the existing shed and near the studio door;
- Chris Messier, of Messier Renovations will be contracting the proposed deck which will roughly be 25' x 12', final drawings have not been drawn up, yet. It is estimated six (6) sono tubes will be necessary.

The remaining work can be accomplished by a small Bobcat machine and some raking.

2-28-2022  
5 Fishermen Rd.  
Site Plan  
- See Planting  
Schedule &  
Site Description

Cottonwood St.



Fishermen St.

# Staff Report

Date: March 3, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **475 Bridge Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-268**

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## DOCUMENTS REVIEWED

- Request for Determination of Applicability and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

## RESOURCE AREAS ON/NEAR SITE

- Riverfront Area
- Bordering Vegetated Wetland
- 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
- **Riverfront Area**: 10.58(6) Activities Grandfathered/Exempt from RFA Requirements
  - (b) certain minor activities defined in 310 CMR 10.02(2)(b)1.
- **Minor Exempt Activities**: 10.02(2)(b)2.
  - e. The conversion of lawn to uses accessory to residential structures such as decks, sheds, patios,...provided the activity, including material staging and stockpiling is located more than 50 feet from the mean annual high-water line within the Riverfront Area, Bank, or from Bordering Vegetated Wetland, whichever is farther, and erosion and sedimentation controls are implemented during construction.

## PROJECT SUMMARY

- The applicant is proposing a 1,414 square foot addition to the residence for an in-law apartment, 385 square feet of which is located within the riverfront area.

## COMMENTS

- The majority of work within the Riverfront Area is the deck (250 square feet). Decks are considered a minor exempt activity provided all activity is more than 50 from the mean annual high-water line within the Riverfront Area.
- The remainder of the work in the Riverfront Area is 135 square feet of the addition.
- The rest of the proposed addition falls entirely outside of Conservation jurisdiction.
- No work is proposed within 100 feet of the wetland.
- All of the work proposed within jurisdictional areas falls within existing lawn.

## RECOMMENDATION

- I recommend issuing a positive determination to not confirm the resource area boundaries and a negative determination for the proposed work.
  - *Possible motion:* Motion to close the public hearing for 475 Bridge Street, CON 023-268 and issue a Positive 2b, Negative 2, and Negative 6 Determination.

**Riverfront Area Alternative Analysis for Proposed Addition to Residence on  
Map 31, Lot 5B; 475 Bridge Street, Fairhaven, MA. – March 1, 2022**

A: General:

The lot under consideration as described by the current deed recorded in book 6420 page 16, consists of 4.65 acres on the easterly side of Bridge St. as shown on a plan titled 'Plan of Land in Fairhaven, Mass. For Edward Soares' dated Dec. 19, 1994, and recorded in plan book 132 page 108.

Current zoning is Rural Residence RR.

The parcel has approx.. 441 feet of frontage on Bridge Street and a depth of 450 to 460 feet. A stream crossing the northeast corner of the parcel flows in a southerly direction along the easterly property line, with a riverfront area extending 200 feet on both sides of the stream and a total riverfront area of 125,700 S.F. on the parcel. Wetlands bordering the stream extend 20 to 80 feet on the westerly side of the stream. No work is proposed within the buffer zone.

An existing one-family house built in 1997 was permitted under DEP file number SE 023-576. The detached garage was permitted under DEP file number 023-843 in May 2004. Additional improvements were permitted under RDA filings in 2011 and 2016. The existing house is 174 feet from the stream and the nearest portion of the addition will be 175 feet from the stream. The house is serviced by town water and has a septic system.

The project purpose is to construct an in-law apartment addition for the owner's parent. 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 an in-law apartment addition to the single-family residence on the lot. The footprint for the proposed addition is 1,414 S.F. The addition would contain one bedroom, while the existing 3-bedroom house will be renovated to remove one bedroom. This will allow the existing septic system's 3-bedroom design flow to remain in use and avoids site disturbance associated with a septic system upgrade.

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 up to 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 places the addition where shown on the site plan. Due to the location of existing rooms on the first floor of the house, the addition is stepped back 6 feet from the rear wall of the house, permitting an entrance to the addition where existing rooms do not need to be changed. A 6-foot wide deck and a 45-degree connector to the existing deck at the rear of the house will permit ease of access to the addition without having to descend stairs to grade and ascend stairs to the new deck. The intrusion into the riverfront area is 385 S.F. or 0.3% of total riverfront area on the lot.
2. Alternative No. 2 for this project would place the addition at 16 feet from the rear wall of the house, entirely out of the riverfront area and it would eliminate the connector between the proposed deck and the existing deck. This position would require extensive changes to the room layout in the existing house and it denies the occupant of the in-law apartment the ability to move from one deck to the other without using stairs.

Neither alternative reduces the vegetated area between the stream and the developed portion of the lot. Both alternatives would be constructed on existing lawn area, but the cost of alternative No. 2 is considerably more than alternative No. 1 due to additional interior renovations required in the existing house.

E: Conclusion:

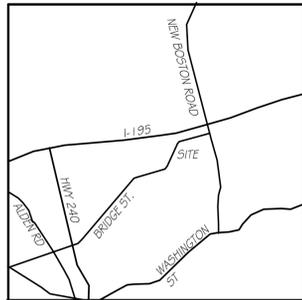
Based upon the above, we submit that Alternative No. 1 is the preferred method for this project due to being (a) more practicable by conforming to existing logistics, and (b) lower in cost. In addition, the proposed addition will be no closer to the stream than the existing house and the intrusion into the riverfront area is a small fraction of the total area. The interests of the Wetlands Act are also addressed, with the preservation of vegetative habitat within the riverfront area and minimization of site disturbance, with no work proposed within the buffer zone of bordering wetlands.



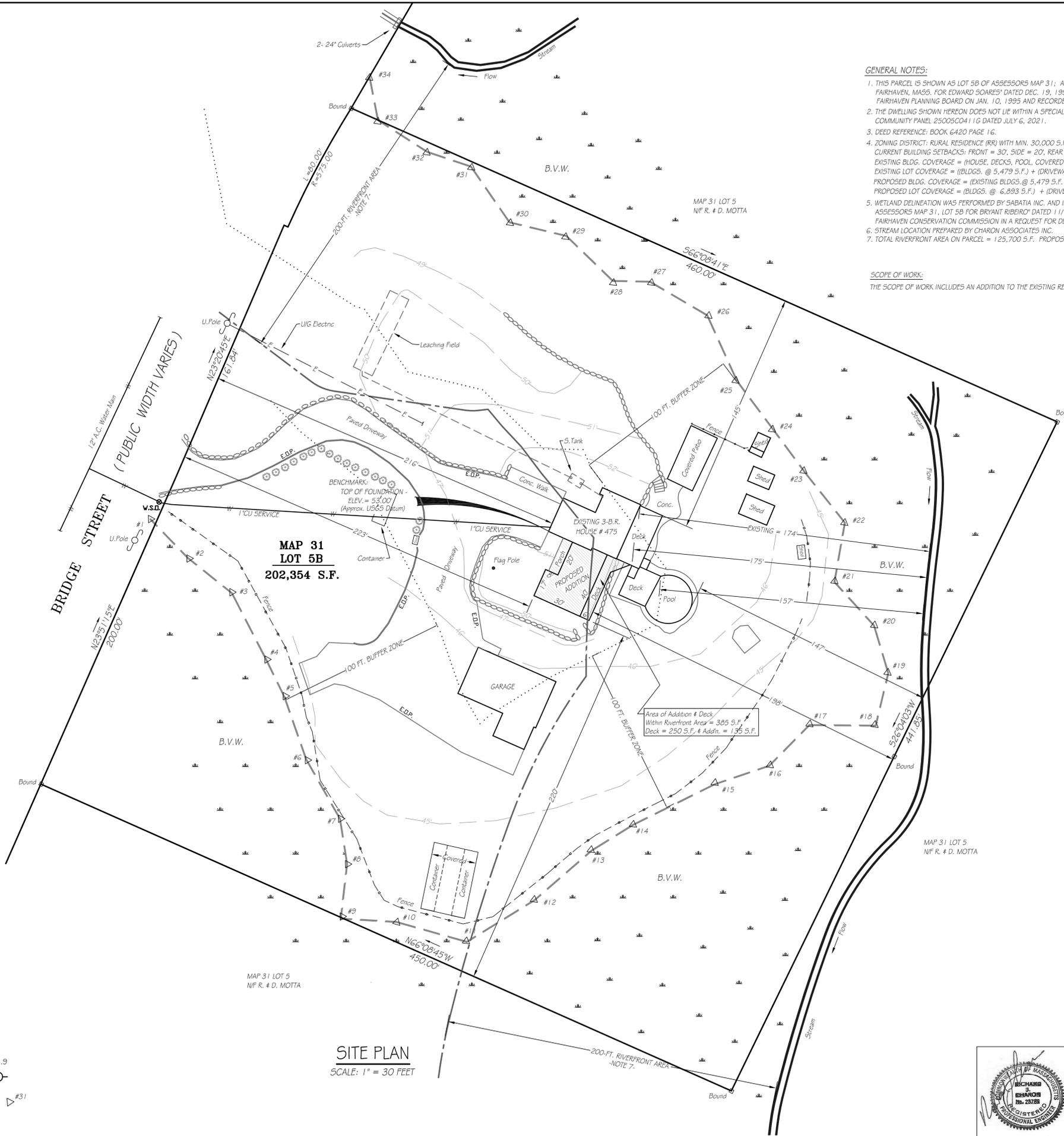
Submitted,

A handwritten signature in blue ink, appearing to read "Richard J. Charon", written over the printed name.

Richard J. Charon, P.E.



LOCUS PLAN  
SCALE: 1" = 2000±

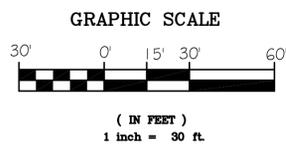


**GENERAL NOTES:**

- THIS PARCEL IS SHOWN AS LOT 5B OF ASSESSORS MAP 31; AND IS SHOWN ON AN A.N.R. PLAN TITLED "PLAN OF LAND IN FAIRHAVEN, MASS. FOR EDWARD SOARES" DATED DEC. 19, 1994 BY FITZGERALD ENGINEERING AND APPROVED BY THE FAIRHAVEN PLANNING BOARD ON JAN. 10, 1995 AND RECORDED IN PLAN BOOK 132 PAGE 108.
- THE DWELLING SHOWN HEREON DOES NOT LIE WITHIN A SPECIAL FLOOD HAZARD AREA AS DELINEATED ON F.E.M.A. COMMUNITY PANEL 25005C0411G DATED JULY 6, 2021.
- DEED REFERENCE: BOOK 6420 PAGE 16.
- ZONING DISTRICT: RURAL RESIDENCE (RR) WITH MIN. 30,000 S.F. AREA, 140' FRONTAGE  
CURRENT BUILDING SETBACKS: FRONT = 30', SIDE = 20', REAR = 30'; MAX. BLDG. COVERAGE = 15%; MAX. LOT COVERAGE = 25%  
EXISTING BLDG. COVERAGE = (HOUSE, DECKS, POOL, COVERED PATIO, SHEDS + GARAGE @ 5,479 S.F.) / 202,354 S.F. = 2.7%  
EXISTING LOT COVERAGE = (BLDGs. @ 5,479 S.F.) + (DRIVEWAY, WALKS + PATIOS @ 14,536 S.F.) / 202,354 S.F. = 9.9%  
PROPOSED BLDG. COVERAGE = (EXISTING BLDGS. @ 5,479 S.F. + ADDITION @ 1,414 S.F.) / 202,354 S.F. = 3.4%  
PROPOSED LOT COVERAGE = (BLDGs. @ 6,893 S.F.) + (DRIVEWAY, WALKS + PATIOS @ 14,536 S.F.) / 202,354 S.F. = 10.6%
- WETLAND DELINEATION WAS PERFORMED BY SABATIA INC. AND IS AS SHOWN ON A PLAN TITLED "PLAN OF LAND IN FAIRHAVEN, ASSESSORS MAP 31, LOT 5B FOR BRYANT RIBEIRO" DATED 11/11/11 BY DENIS SEGUIN, P.L.S. AND AS SUBMITTED TO THE FAIRHAVEN CONSERVATION COMMISSION IN A REQUEST FOR DETERMINATION OF APPLICABILITY ON DEC. 9, 2011.
- STREAM LOCATION PREPARED BY CHARON ASSOCIATES INC.
- TOTAL RIVERFRONT AREA ON PARCEL = 125,700 S.F. PROPOSED WORK WITHIN RIVERFRONT AREA = 385 S.F. = 0.3%

**SCOPE OF WORK:**

THE SCOPE OF WORK INCLUDES AN ADDITION TO THE EXISTING RESIDENCE WITH 385 S.F. LOCATED WITHIN THE RIVERFRONT AREA. (SEE NOTE 7).



SITE PLAN  
SCALE: 1" = 30 FEET

**PLAN OF SITE & ADDITION TO RESIDENCE**  
PREPARED FOR  
**BRYANT & ALICE C. RIBEIRO**  
475 BRIDGE STREET  
FAIRHAVEN, MASS.

**CAI** Charon Associates, Inc.  
Consulting Engineers  
323 Neck Road - Rochester, MA 02770  
Tel: 508-763-8362 Fax: 508-763-9582

**SCALE:** AS NOTED  
**DATE:** FEBRUARY 11, 2022  
REV. 1: FEB. 17, 2022  
REV. 2: MARCH 1, 2022

**DWG. NO.**  
L-1



# Staff Report

Date: March 10, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Torrington Road, Map 29B, Lot 128 – Request for Amended Order of Conditions DEP# 023-1290, Fairhaven CON 19-036**

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## DOCUMENTS REVIEWED

- Request for Amended Order of Conditions and associated documents
- Order of Conditions issued March 8, 2019
- Approved site plan dated January 30, 2019
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)

## RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage
- Bordering Vegetated Wetland
- Buffer Zone
- Salt Marsh, Coastal Beach, and Barrier Beach are more than 100 feet from project area

## RELEVANT PERFORMANCE STANDARDS

- No work is proposed within the Bordering Vegetated Wetland
- **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.”
- **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 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 received an Order of Conditions approving the construction of a single-family dwelling, garage, paved driveway, and associated grading and utilities.
- The applicant is requesting an amendment for the following changes:
  - Elimination of the garage in favor of a slightly longer driveway
  - Reduction of the area of the house
  - Reduction of the area of the deck/stairs
  - Overall reduction of impervious surfaces
  - Changes to grading associated with plan changes

## COMMENTS

- The proposed amendment reduces the overall scope of the project. With the elimination of the garage, the structure is further from the wetland on the east side of the property. The driveway has been extended to compensate for elimination of the garage and a stormwater stone leaching trench has been added along the portion of the driveway that has been extended.
- The house is 42 feet from the wetland at its closest point. The driveway on the property is 15 feet from the wetland at its closest point. The driveway easement has the driveway closer to the wetland than 15 feet, but the majority of the driveway on the adjacent property within the easement is existing.

- The property is previously cleared and disturbed and the boulders demarcating a permanent setback to the wetland were placed as part of a previous enforcement and resulting notice of intent and order of conditions. The buffer zone regulations allow work within previously disturbed area as part of a previous permit issued by the Commission provided the proposed work is no closer to the resource area than existing disturbance.
- The changes proposed by the amendment appear to reduce potential impact to the resource areas on site.

## RECOMMENDATION

- I recommend closing the public hearing and issuing an Amended Order of Conditions with the conditions outlined below.
  - *Possible motion:* Motion to close the public hearing for SE 023-1290, CON 19-036, Torrington Road, Map 29B, Lot 128, and issue an Amended Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the conditions outlined in the March 10, 2022 staff report and approving the plans dated March 2, 2022.

Approve plan dated March 2, 2022

### A. General Conditions

1. These conditions shall replace the special conditions attached to the original Order of Conditions.
2. Section C, the general conditions under the Massachusetts Wetlands Protection Act, also apply to this Order under the Fairhaven Wetlands Bylaw.
3. 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.
4. REC-1
5. ADD-1
6. ADD-2
7. LOW-2
8. SIL-5
9. SIL-9
10. SIL-10
11. WET-1

### B. Prior to Construction

12. 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.
13. REC-3
14. PCC-3
15. EMC-1
16. PCC-1

### C. During Construction

17. REC-2

18. At no time shall any construction materials, soils, fills, sediments, dredging or any other substances be stockpiled or stored outside the alteration limit line.
  19. STO-4
  20. STO-5
  21. MAC-3
  22. MAC-7
  23. MAC-8
  24. MAC-9
  25. DEB-1
  26. DEB-5
  27. SIL-3
  28. SIL-4
  29. SIL-8
  30. WAS-2
  31. WAT-3
  32. EC-1
  33. EC-2
- D. After Construction/In Perpetuity
34. REV-1
  35. COC-1

Perpetual Conditions

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

36. CHM-3
37. DER-4
38. At no point shall any work occur beyond the placed boulders on the property as depicted on the approved plans, unless expressly permitted by the Conservation Commission.

# ***SCHNEIDER, DAVIGNON & LEONE, INC.***

PROFESSIONAL CIVIL ENGINEERS & LAND SURVEYORS

MATTHEW C. LEONE, P.L.S.



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

March 2, 2022

Town of Fairhaven  
Conservation Commission  
40 Center Street  
Fairhaven, MA 02719  
Attn: Whitney McClees, Agent

***Re: DEP File No. SE 23-1290 – Request for an Amended Order of Conditions***

Applicant/Owner: Christopher R. & Laurie A. Stevens  
Site Address: Torrington Road  
Assessors Lot #128 on Map #29B

Dear Mr. Chairman & Commission Members,

Schneider, Davignon & Leone, Inc., acting as agent for Mr. & Mrs. Stevens hereby requests that a Public Hearing be convened for the purposes of Amending the Order of Conditions for DEP File No. SE 23-1290 - relative to the above referenced project.

The Applicants request an approval of a proposed change in the scope of work resulting in less site impacts.

The new property owners propose the following reductions:

- 43.5% reduction in the area of the house from 2,324 sq. ft. down to 1,312 sq. ft. (Note: the garage has been eliminated)
- 27.8% reduction in the area of the deck/stairs from 1,003 sq. ft. down to 724 sq. ft.
- 38.8% reduction in the total building footprint (house & decks) from 3,327 sq. ft. down to 2,036 sq. ft.
- 14.8% reduction in the impervious surfaces from 4,080 sq. ft. down to 3,474 sq. ft.

We look forward to presenting the project at the next Public Hearing.

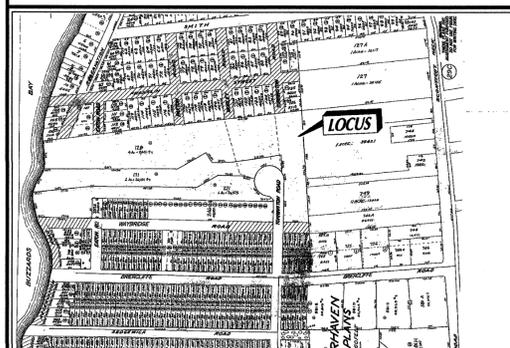
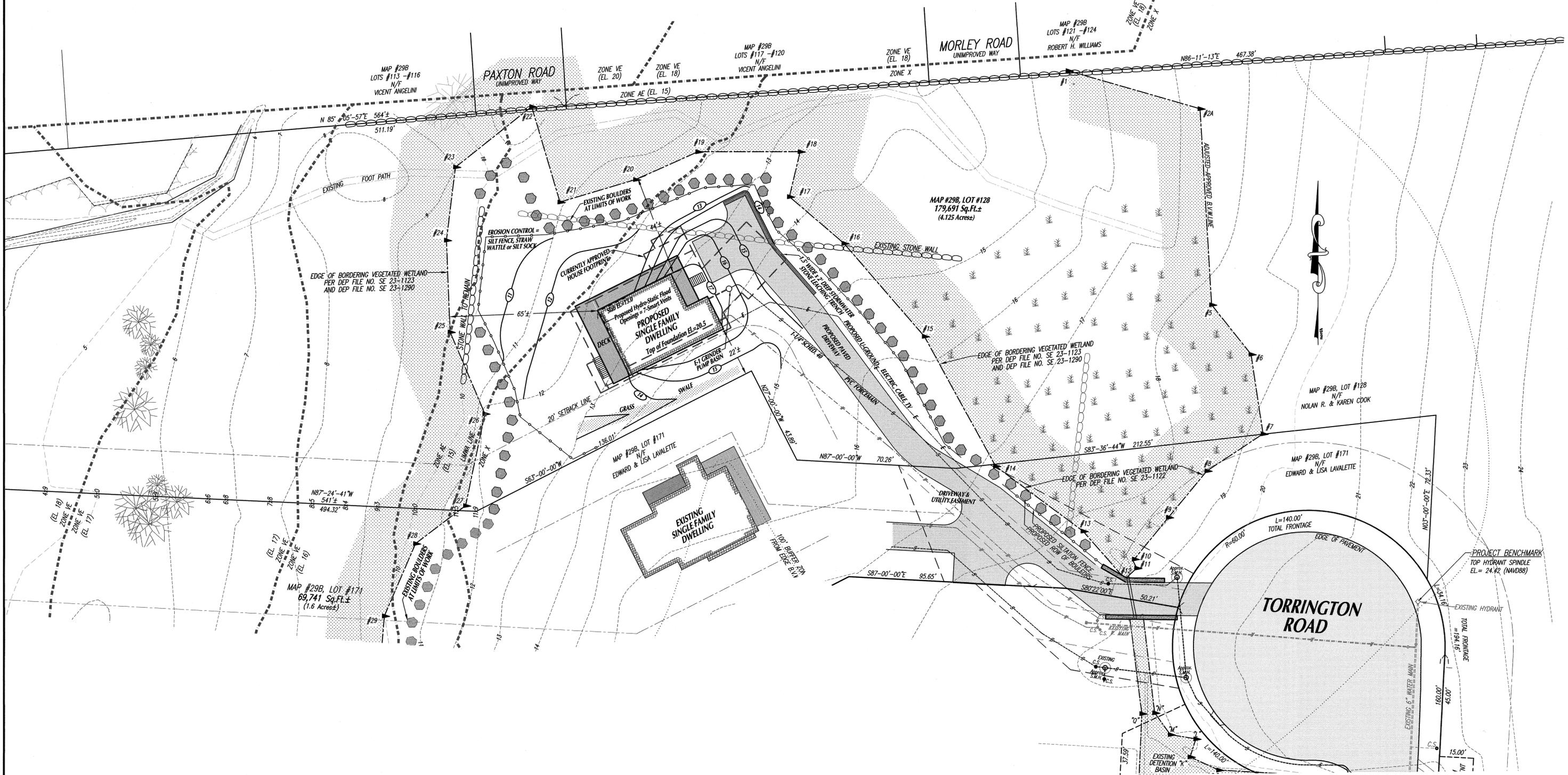
If you have any questions or need additional information, please call me at (508) 758-7866 (ext. 203).

Sincerely,  
*Schneider, Davignon & Leone, Inc.*

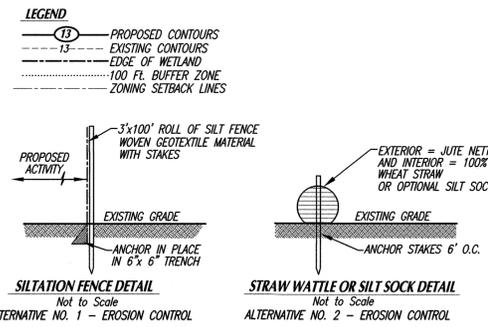
David M. Davignon, P.E.

cc: File 3437  
DEP – SE Regional Office  
Christopher & Laurie Stevens

Proposed Revised Site Plan



- GENERAL NOTES:**
- 1.) CONTRACTOR SHALL VERIFY ALL UTILITY LOCATIONS PRIOR TO CONSTRUCTION THROUGH "DIG SAFE" AND OTHER APPROPRIATE AGENCIES, AND REPORT ANY DISCREPANCIES TO THIS OFFICE.
  - 2.) PRIOR TO ANY CONSTRUCTION, CONTRACTOR SHALL INSTALL SILTATION MEASURES WHICH SHALL BE INSPECTED BY THE CONSERVATION COMMISSION AGENT BEFORE CONTINUATION OF WORK.
  - 3.) CONTRACTOR SHALL NOTIFY THIS OFFICE OF ANY AND ALL DISCREPANCIES FOUND BETWEEN THE SITE CONDITIONS AND THOSE SHOWN ON THIS PLAN PRIOR TO THE CONTINUATION OF WORK.
  - 4.) ANY AND ALL CHANGES FROM THE SITE DESIGN LAYOUT SHOWN MUST BE APPROVED BY THIS OFFICE, THE CONSERVATION COMMISSION AND OTHER APPROPRIATE LOCAL OFFICIALS.
  - 5.) ALL SEWER AND WATER TIE-IN CONSTRUCTION METHODS AND MATERIALS SHALL CONFORM TO THE TOWN OF FAIRHAVEN B.P.W. - SEWER DEPARTMENT REQUIREMENTS.
  - 6.) PRIOR TO BACKFILLING THE SEWER AND WATER TRENCHES, THE CONTRACTOR SHALL NOTIFY THE APPROPRIATE TOWN OF FAIRHAVEN B.P.W. - SEWER AND WATER DEPARTMENTS FOR INSPECTIONS.
  - 7.) ALL CONCRETE WASHOUT FROM CEMENT TRUCKS SHALL OCCUR WITHIN THE BUILDING FOOTPRINTS.



3/02/22  
C.R. Stevens

**SITE INFORMATION:**  
ASSESSORS MAP # 29B  
ASSESSORS LOTS # 128  
SITE ADDRESS: TORRINGTON ROAD  
ZONING DISTRICT: RURAL RESIDENCE  
CURRENT BUILDING SETBACKS:  
FRONT: 30' SIDE: 20'  
REAR: 30'  
FEMA FLOOD ZONE: X ELEV. N/A  
AND FLOOD ZONE: AE ELEV. 15.0  
FIRM COMMUNITY PANEL NO. 25005C 0501F  
APPLICANT/OWNER OF RECORD:  
CHRISTOPHER R. & LAURIE A. STEVENS  
53 COTE DRIVE  
EPPING, NH 03042  
DEED BOOK 13049, PAGE 330

**PLAN/PERMIT NOTES:**  
THE ORDER OF CONDITIONS WAS ORIGINALLY ISSUED ON 3-04-19 TO THE PREVIOUS PROPERTY OWNERS, NOLAN R. & KAREN COOK BASED UPON A SITE PLAN PREPARED BY N. DOUGLAS SCHNEIDER & ASSOCIATES, INC. DATED 4-19-21  
THE INSTALLATION OF THE COMMON DRIVEWAY ENTRANCE AND WATER AND SEWER SERVICE CONNECTION LINES WAS COMPLETED UNDER DEP FILE NO. SE 23-1123.

1	3-02-22	D.M.D.	CHANGE HOUSE FOOTPRINT, SITE LAYOUT, OWNER/APPLICANT NAME & DESIGN ENGINEER COMPANY NAME
Rev. #	DATE	BY	DESCRIPTION

**SITE PLAN**  
TO ACCOMPANY A REQUEST FOR AN AMENDED ORDER OF CONDITIONS FOR DEP FILE NO. SE 23-1290  
on **TORRINGTON ROAD** in **FAIRHAVEN, MA**  
PREPARED FOR  
**CHRISTOPHER R. & LAURIE A. STEVENS**

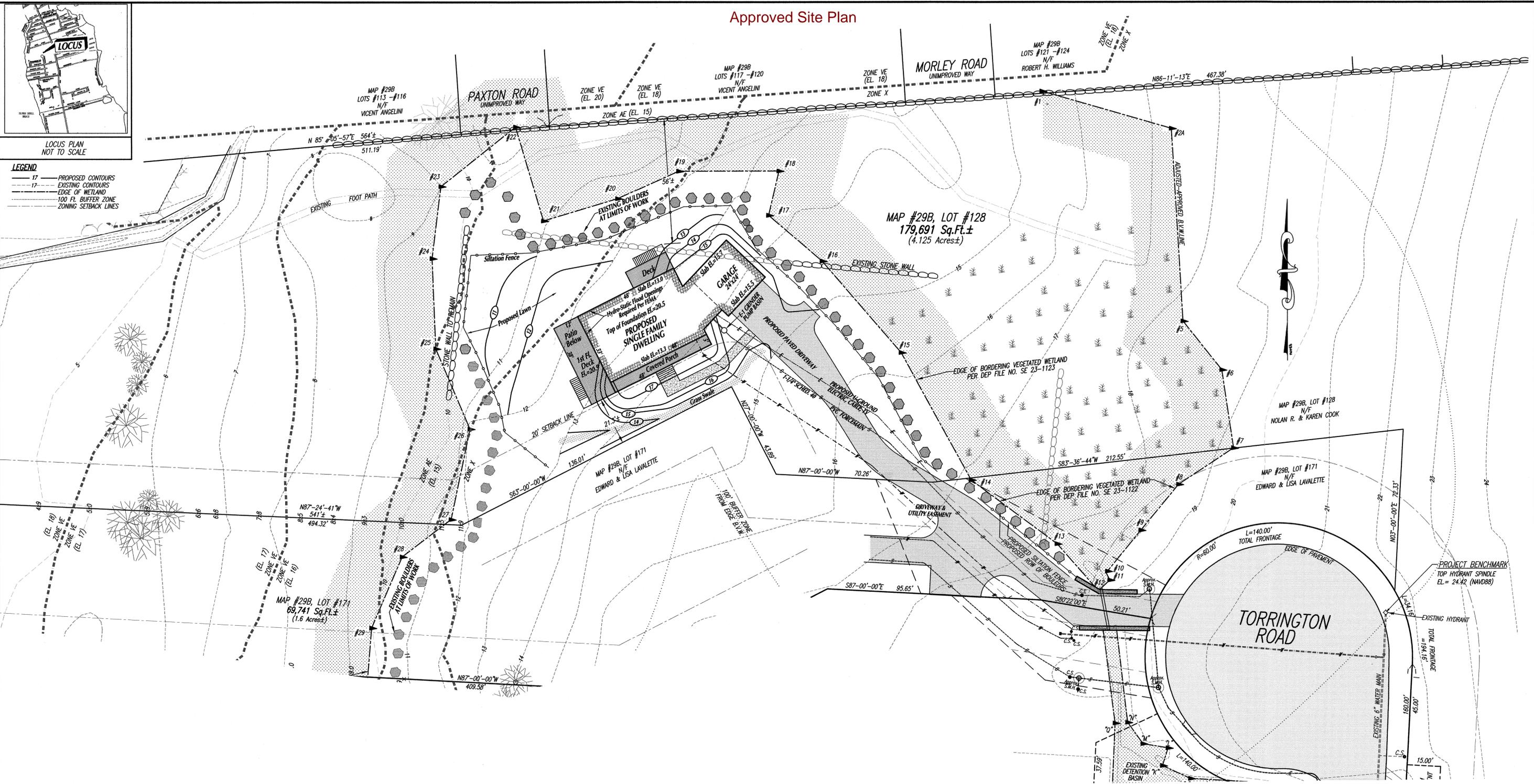
SCALE: 1"=20'  
DATE: APRIL 19, 2021

**SCHNEIDER, DAVIGNON & LEONE, INC.**  
PROFESSIONAL CIVIL ENGINEERS & LAND SURVEYORS  
1 COUNTY RD, P.O. BOX 480, MATTAPANSETT, MA 02739  
1-508-759-7866

(FORMERLY Job No. 2321)

Drawn By: D.M.D. Check By: D.M.D. Job No. 3437

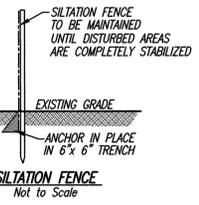
Approved Site Plan



**LEGEND**  
 - - - PROPOSED CONTOURS  
 - - - EXISTING CONTOURS  
 - - - EDGE OF WETLAND  
 - - - 100 FL. BUFFER ZONE  
 - - - ZONING SETBACK LINES

- GENERAL NOTES:**
- CONTRACTOR SHALL VERIFY ALL UTILITY LOCATIONS PRIOR TO CONSTRUCTION THROUGH "DIG SAFE" AND OTHER APPROPRIATE AGENCIES, AND REPORT ANY DISCREPANCIES TO THIS OFFICE.
  - PRIOR TO ANY CONSTRUCTION, CONTRACTOR SHALL INSTALL SILTATION MEASURES WHICH SHALL BE INSPECTED BY THE CONSERVATION COMMISSION AGENT BEFORE CONTINUATION OF WORK.
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  - ANY AND ALL CHANGES FROM THE SITE DESIGN LAYOUT SHOWN MUST BE APPROVED BY THIS OFFICE, THE CONSERVATION COMMISSION AND OTHER APPROPRIATE LOCAL OFFICIALS.
  - ALL SEWER AND WATER TIE-IN CONSTRUCTION METHODS AND MATERIALS SHALL CONFORM TO THE TOWN OF FAIRHAVEN B.P.W. - SEWER DEPARTMENT REQUIREMENTS.
  - PRIOR TO BACKFILLING THE SEWER AND WATER TRENCHES, THE CONTRACTOR SHALL NOTIFY THE APPROPRIATE TOWN OF FAIRHAVEN B.P.W. - SEWER AND WATER DEPARTMENTS FOR INSPECTIONS.
  - ALL CONCRETE WASHOUT FROM CEMENT TRUCKS SHALL OCCUR WITHIN THE BUILDING FOOTPRINTS.

**NOTES:**  
 THE PURPOSE OF THIS PLAN IS TO SUPERSEDE THE PREVIOUS 9-02-11 SITE PLAN OF RECORD PREPARED FOR NOLAN & KAREN COOK AND APPROVED UNDER DEP FILE NO. SE 23-1123 FOR THE DEVELOPMENT OF THE SUBJECT HOUSE SITE UNDER A NEW ORDER OF CONDITIONS. WORK COMPLETED TO DATE INCLUDES THE INSTALLATION OF THE COMMON DRIVEWAY ENTRANCE AND WATER AND SEWER SVC. CONNECTION LINES.



**SITE INFORMATION:**  
 ASSESSORS MAP # 29B  
 ASSESSORS LOTS # 128  
 SITE ADDRESS: TORRINGTON ROAD  
 ZONING DISTRICT: RURAL RESIDENCE  
 CURRENT BUILDING SETBACKS:  
 FRONT: 30'  
 REAR: 30' SIDE: 20'  
 FEMA FLOOD ZONE: X ELEV. N/A  
 FIRM COMMUNITY PANEL NO. 2500SC 0501E  
 OWNERS/APPLICANTS:  
 NOLAN R. & KAREN COOK  
 9 GREEN STREET  
 FAIRHAVEN, MA 02719  
 DEED BOOK 9919, PAGE 141

Rev. #	DATE	BY	DESCRIPTION
1			

**SITE PLAN**  
 SHOWING A PROPOSED HOUSE  
 ON TORRINGTON ROAD IN  
 FAIRHAVEN, MA.  
 PREPARED FOR  
**NOLAN R. & KAREN COOK**

SCALE: 1"=20' DATE: JANUARY 30, 2019

**N. Douglas Schneider & Associates, Inc.**  
 PROFESSIONAL CIVIL ENGINEERS & LAND SURVEYORS  
 1 COUNTY RD. P.O. BOX 482, HATTAPOSETTI, MA 02739  
 1-508-758-7866

Drawn By: D.M.D. Check By: N.D.S. Job No. 2321

# Staff Report

Date: March 11, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **148 Main Street – Notice of Intent – DEP# 023-1378, Fairhaven CON 023-266**

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## DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- Small Docks and Piers: A Guide to Permitting Small, Pile-Supported Docks and Piers

## RESOURCE AREAS ON/NEAR SITE

- Land Under Ocean
- Land Containing Shellfish
- Coastal Beach
- Coastal Bank
- Buffer Zone
- Land Subject to Coastal Storm Flowage

## RELEVANT PERFORMANCE STANDARDS

- **Land under the Ocean** 10.25  
(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 (*Ruppia 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

- **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 Bank: 10.30**

(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.”

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

3.0 Allowed Activities

3.1 Minor Buffer Zone Activities (MBZA) shall generally be allowed in the buffer zone, subject to the provisions of sections 4.0 through 6.0, and provided the following:

- 3.1.1 The activity will occur exclusively within a previously disturbed or clearly delineated buffer zone; and
- 3.1.2 The alteration is less than 1,000 square feet or 5% of the buffer zone on the lot, whichever is less; and
- 3.1.3 At a minimum, a 25-foot-wide area is preserved between the activity and the resource area boundary; and
- 3.1.4 The buffer does not contain estimated wildlife habitat...; and
- 3.1.5 Erosion and sedimentation controls, if required, are provided at the limit of work to protect the resource areas; and
- 3.1.6 [The activity] shall constitute activities within the buffer zone that would be eligible for a negative determination of applicability with conditions.

4.0 0 to 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.

- **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 4-foot wide by 97-foot long pile-supported timber pier with a 3-foot by 20-foot aluminum gangway, and a 12-foot by 24-foot float at the end of the gangway.
- There are 10 proposed pilings associated with the pier and 2 pilings associated with the float. There is also a concrete pad associated with the landward side of the pier.

## COMMENTS

- The proposed work does not fall within mapped priority or endangered species habitat.
- The proposed impacts to resource areas are as follows:
  - Land Under Ocean: 8 square feet
  - Land Containing Shellfish: 8 square feet
  - Coastal Beach: less than 2 square feet
  - Coastal Bank: 7 linear feet
  - Buffer Zone: 256 square feet
  - Land Subject to Coastal Storm Flowage (Zone AE): 800 square feet
- The project appears to have been designed in accordance with MassDEP’s small docks and piers guidance.
- The work on land will result in a reduction in impervious surface due to a smaller concrete pad.
- The work within the buffer zone falls within existing disturbed area and is well under the square footage threshold outlined under a Minor Buffer Zone Activity.
- They project does not appear as though it will have an impact on the stability of the coastal bank.
- The two pilings proposed in the coastal beach will be located closer to the existing stone wall and two existing pilings from an old pier will be removed. The placement of the new pilings are located between existing boulders and do not appear to have an adverse impact on the beach.
- The applicant has already submitted the required shellfish mitigation fee.
- Division of Marine Fisheries has not yet provided comments. The Commission should consider waiting until comments have been issued before closing the public hearing and issuing an Order of Conditions.

## RECOMMENDATION

- If Division of Marine Fisheries has not issued comments by the March 21 meeting, I recommend asking the applicant if they would consider a continuance to the April 11 meeting.
- If Division of Marine Fisheries has issued comments by the March 21 meeting and has no concerns, I recommend closing the public hearing and issuing an Order of Conditions.
  - *Possible motion:* Motion to close the public hearing for SE 023-1378, CON 023-266, 148 Main Street, and issue an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the conditions outlined in the March 11, 2022 staff report and approving the plans dated February 16, 2022.

Approve plan dated February 16, 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 scope of work as shown on the approved plans.
  7. WET-1
  8. DRG-7: Dredging is neither proposed nor permitted under this filing.
- B. Prior to Construction
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. PCC-2
  14. Prior to any construction in Land Containing Shellfish, all shellfish shall be removed from the footprint of the proposed pier and relocated under the direction of the Fairhaven Shellfish Warden.
- C. During Construction
15. REC-2
  16. SDP-7: The use of chromated copper arsenate (CCA) treated wood and creosote treated timber is prohibited. Wood preservative must dry before the treated wood is used in construction.
  17. SDP-5: Construction may be accomplished from a barge or boat operating in at least two feet of water. The barge or boat shall not be permitted to ground out at low tides.
  18. All barge activity closest to shore shall occur within 2 hours before and after a normal high tidal cycle to avoid grounding of the barge.
  19. Construction access shall be from the subject property or the water only
  20. All materials that are stockpiled or stored on-site shall be stockpiled at least 50 feet away from the top of coastal bank, and at a location to prevent surface runoff from sediment entering wetland resource areas. At no time shall any debris or other material be buried or disposed of within the buffer zone, other than such fill as is allowed by this Order and as shown on the above-referenced plans.
  21. STO-3
  22. STO-4
  23. STO-5
  24. MAC-1
  25. MAC-2
  26. MAC-3
  27. MAC-8
  28. MAC-9

- 29. WAS-2
- D. After Construction/In Perpetuity
  - 30. REV-1
  - 31. COC-1

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. SDP-1: The seasonal ramp and float shall be stored in an upland area. Storage location shall be subject to any local, state, or federal flood zone regulations.
- 34. SDP-4: Future maintenance of the approved structure, in strict compliance with the plan of record and the conditions of this Order, is permissible.
- 35. SDP-2: Application of preservatives (i.e. paint or wood treatments) to floats shall be done on land and away from the water and wetlands. Application of preservatives to fixed elements, such as piles and decking, is limited to no more than once a year and only the minimum amount of preservative is permitted to be applied to limit runoff of excessive amounts into the underlying water. Application of preservatives to any elements of the pier is not permitted below mean high water.
- 36. DER-4

# **SCHNEIDER, DAVIGNON & LEONE, INC.**

PROFESSIONAL CIVIL ENGINEERS & LAND SURVEYORS

MATTHEW C. LEONE, P.L.S.



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

February 18, 2022

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

Attn: Whitney McClees, Agent

***Re: Notice of Intent Application***

Project Type: Proposed Residential Pier  
Applicant/Owner: Diane G. Tomassetti Revocable Trust and Ames Family Living Trust  
Site Address: 148 Main Street  
Assessors Lot #12A on Map #12

Dear Whitney,

Schneider, Davignon, & Leone, Inc., acting as agent for the Applicant - hereby submits the enclosed information for the purposes of scheduling a Public Hearing for the above described project.

Specifically, please find the following information:

- \$221.50 - Notice of Intent Application Fee
- \$100.00 – Additional Town NOI Fee
- \$100.00 – Shellfish Mitigation Fee
- \$75.00 – Legal Advertisement Fee
- Notice of Intent Application
- Chapter 91 Waterways License Plan

If you have any questions or need additional information, please call me at (508) 758-7866 (ext. 203).

Sincerely,

*Schneider, Davignon, & Leone, Inc.*

David M. Davignon, P.E.

cc: MDMF (via electronic transmission and hard copy)  
DEP-SE Regional Office (via electronic transmission and hard copy)  
Town of Fairhaven Harbormaster/Shellfish Warden Timothy Cox  
Diane Tomassetti  
File 3426

# ***SCHNEIDER, DAVIGNON & LEONE, INC.***

PROFESSIONAL CIVIL ENGINEERS & LAND SURVEYORS

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



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

February 17, 2022

***Re: Notice of Intent - Project Narrative***

Applicant/Owner: Diane G. Tomassetti Revocable Trust and Ames Family Living Trust  
Project Type: Proposed Construction of a Residential Pier Facility  
Site Address: 148 Main Street  
Lot #12A on Assessors Map #12

**Project Purpose:**

The purpose of the project is to construct a private Residential Pier Facility to access the waters of the Acushnet River and Buzzards Bay for recreational boating, fishing and swimming.

**Site Background:**

The site is approximately 40,176 sq. ft. in size and is bordered westerly by the Acushnet River, easterly by Main Street and northerly and southerly by developed residential properties. The entire site is developed with a single family dwelling, paved driveway and manicured lawn areas throughout (see attached site photos). The property previously had a similar pier facility – see attached 1971 aerial photo and USGS map.

**Wetland Resource Areas:**

The entire site falls with Land Subject to Coastal Storm Flowage, Flood Zone AE (El. 6). The site contains coastal resource areas; Coastal Bank (top of the sloped stone rip-rap seawall), Coastal Beach, Land Under Ocean and Land Containing Shellfish. The waterway area where the pier is proposed is not mapped by the Natural Heritage and Endangered Species Program and does not contain any eel grass per Mass-GIS Oliver. The NOI Application was sent to the MDMF, Fairhaven Harbormaster and Shellfish Officer for review and comments.

**Project Description:**

The Applicants propose to construct a 4' wide x 97' long pile supported timber pier with a 3' x 20' aluminum gangway and 12' x 24' float at its terminus. The pier supports will consist of 12" diameter pressure (p.t.) treated timber installed in pairs at 20' on center. The total number of pier support piles = 10. The pier will have a cantilevered seating bench on the north side near its seaward end. The deck elevation at its landward end will match the top of the existing concrete pad at elevation 6.0 and will transition up to elevation 8.0 at the first bent and remain at said elevation to its seaward end. The distance between the bottom of the stringer and existing grade at the base of the seawall will be approximately 5.3 ft. (>5 ft.) to allow Lateral Public Access. The float will be anchored in place by two 12" diameter p.t. timber pilings. All pilings will be driven to a minimum depth of 15 ft. (or to refusal) using a crane set on a barge. The barge shall operate in a minimum of 3 ft. of water at all times to prevent grounding of the barge. Once the split caps, x-bracing and stringers have been installed utilizing the barge, the deck boards and railing system will be installed incrementally from the landward end working incrementally seaward. The landward end of the pier will be supported by a 7'x14' poured concrete pad. Said pad will be located within the footprint of the existing concrete pad. The existing pad is approximately 256 sq. ft. and in a deteriorating condition. It will be reduced down to 70 sq. ft. with the excess area restored to lawn with screened loam and seed. All concrete debris will be removed using a mini-excavator and loaded into dump trucks for proper off-site disposal.

Prior to any work, all shellfish located in the vicinity of the work area shall be relocated under the supervision of the Fairhaven Shellfish Warden. Construction materials will be transported to the site both from land and via the barge. The existing lawn area shall be used for the onsite staging and storage of materials. The gangway and float would be installed upon completion of the fixed structure.

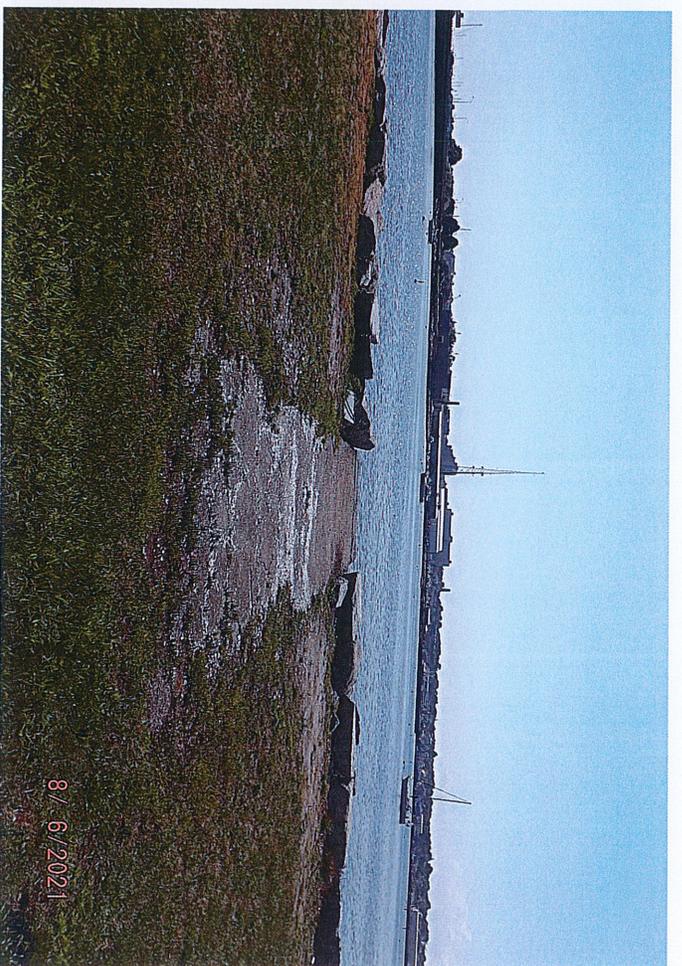
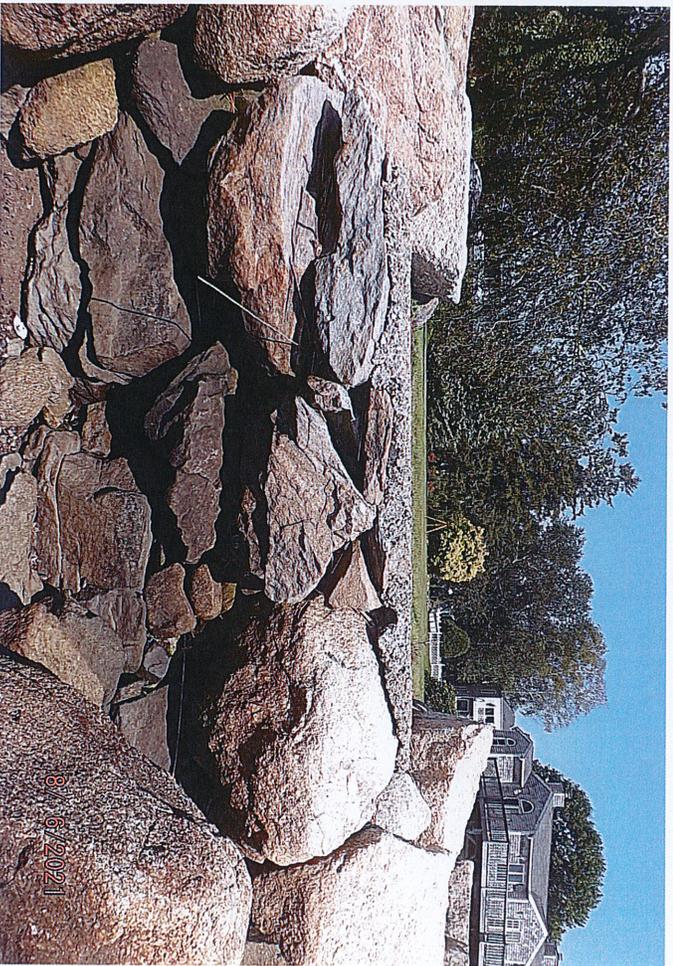
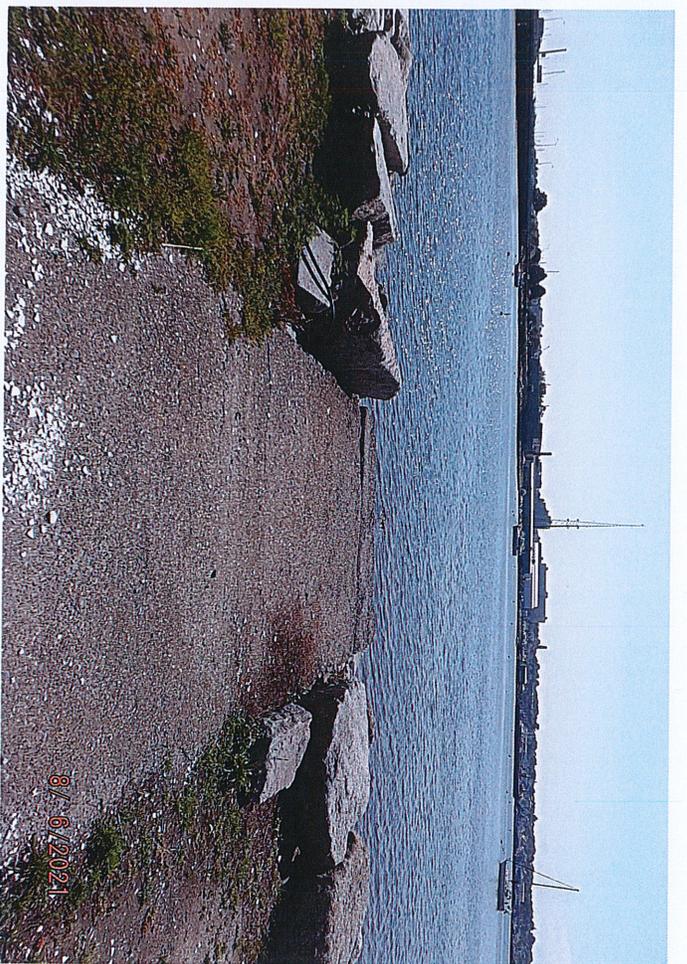
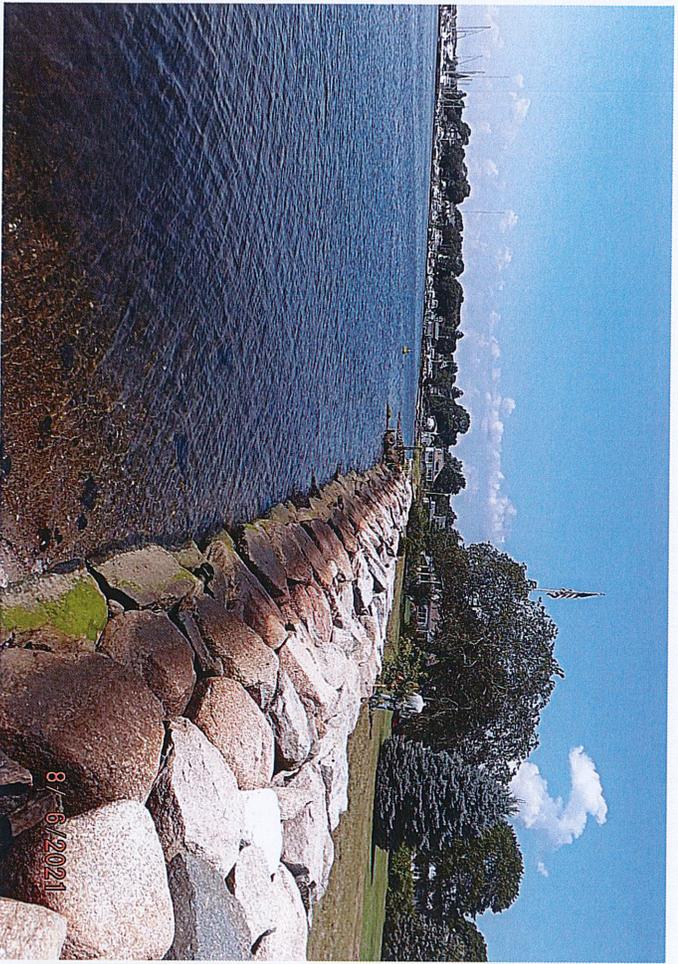
**SCHNEIDER, DAVIGNON & LEONE, INC.**  
PROFESSIONAL CIVIL ENGINEERS & LAND SURVEYORS

**The project as proposed will Mitigate and/or Minimize Impacts to the Wetland Resource Areas as follows;**

- The pier will not be located over or even near any salt marsh.
- The proposed piling spacing maximizes the distance between pile abutments for the use of timber stringers - thereby minimizing impacts to the Coastal Beach, Land Under Ocean and Land Containing Shellfish.
- The walkway railing system will be built with a cable type system (vs. wood type) to minimize shading impacts to the substrate.
- The float will be located within 7 ft. of water during a typical high tide cycle and 3..4 ft. of water during a typical low tidal cycle to minimize any potential bottom disturbance.
- The float will be seasonally stored on the upland lawn areas.
- All barge activity closest to shore will occur within 2 hours before and after a normal high tidal cycle to avoiding grounding of the barge.
- Prior to any construction within Land Containing Shellfish, all shellfish shall be removed from the footprint of the proposed pier and relocated under the direction of the Fairhaven Shellfish Warden.

**Summary of Attachments are as follows:**

- 100 ft. Abutters List
- DEP Abutter Notification Form
- Site Photos
- 1971 Aerial Photo
- Figure 1: U.S.G.S. New Bedford Quadrangle
- Figure 2: Estimated Habitat Map
- Figure 3: Assessors Map #12
- Figure 4: F.I.R.M. Panel No. 25005C0393G
- Figure 5: Google Earth Photo
- Proof of "Certified Mailing" to Natural Heritage and Endangered Species Program
- Proof of "Certified Mailing" to Mass. Division of Marine Fisheries
- Proof of "Certified Mailing" to Harbormaster
- Proof of "Certified Mailing" to Shellfish Officer





**GOOGLE EARTH AERIAL**

***SCHNEIDER, DAVIGNON & LEONE, INC.***

PROFESSIONAL CIVIL ENGINEERS & LAND SURVEYORS  
1 COUNTY RD, P.O. BOX 480, MATTAPOISETT, MA 02739  
1-508-758-7866



*Notice of Intent Application*  
*Applicant: Diane G. Tomassetti Revocable Trust*  
*Town of: Fairhaven*  
*Site Address: 148 Main Street*  
*Locus= Assessors Lot #12A on Map #12*

**FIGURE 5**

"I CERTIFY THAT THIS PLAN  
CONFORMS WITH THE RULES  
AND REGULATIONS OF THE  
REGISTERS OF DEEDS".

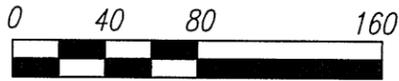
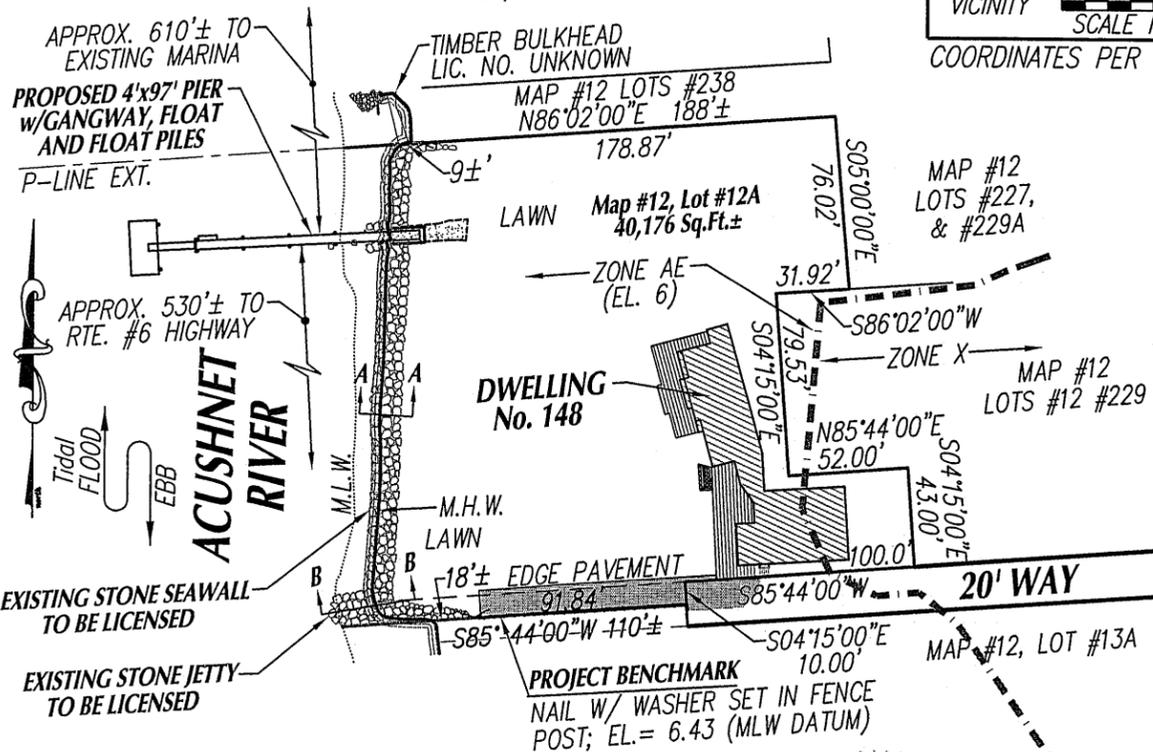
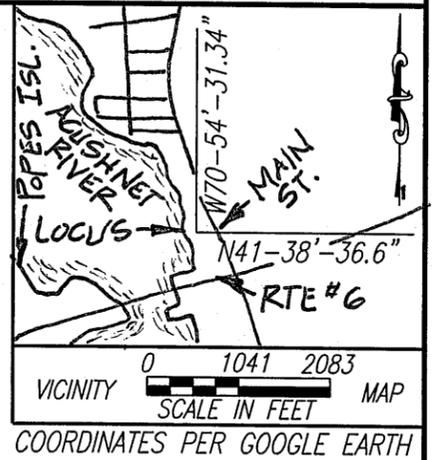
*David M. Davignon*  
PREPARER

**GENERAL NOTES:**

- 1.) ALL ELEVATIONS REFER TO N.A.V.D. 1988 DATUM WHICH WAS THEN ADJUSTED TO MAKE MEAN LOW WATER WATER = ELEVATION 0.0.
- 2.) SOUNDINGS REFER TO DEPTHS BELOW THE PLANE OF MEAN LOW WATER (ELEVATION 0.0).
- 3.) HISTORIC HIGH WATER IS UNKNOWN.
- 4.) FLOOD ZONE LINES ARE AS DELINEATED ON F.I.R.M. COMMUNITY PANEL NUMBER 25005C0393G.

MAP #12, LOT #13A - OWNER:  
ANNE MORTON SMITH  
140 MAIN STREET  
FAIRHAVEN, MA 02719

MAP #12, LOT #238 - OWNER:  
STEPHEN M. SHURTLEFF  
7 WINSLOW COURT  
FAIRHAVEN, MA 02719



SCALE: 1"=80'  
**LOCUS PLAN**

PLANS ACCOMPANYING PETITION OF  
**DIANE G. TOMASSETTI REVOCABLE TRUST**  
and **AMES FAMILY LIVING TRUST**

TO CONSTRUCT AND MAINTAIN A PILE SUPPORTED  
TIMBER PIER w/GANGWAY, FLOAT & FLOAT PILES  
& TO LICENSE AND MAINTAIN A STONE SEAWALL  
AND JETTY IN THE WATERS OF THE

**ACUSHNET RIVER**  
at 148 MAIN STREET in  
**TOWN OF FAIRHAVEN**

COUNTY OF BRISTOL, MA.  
FEBRUARY 16, 2022 SCALE AS NOTED

**SCHNEIDER, DAVIGNON & LEONE, INC.**

PROFESSIONAL CIVIL ENGINEERS & LAND SURVEYORS  
1 COUNTY RD, P.O. Box 480, MATTAPOISETT, MA 02739  
1-508-758-7866



*David M. Davignon* 2-17-22

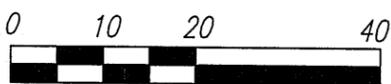
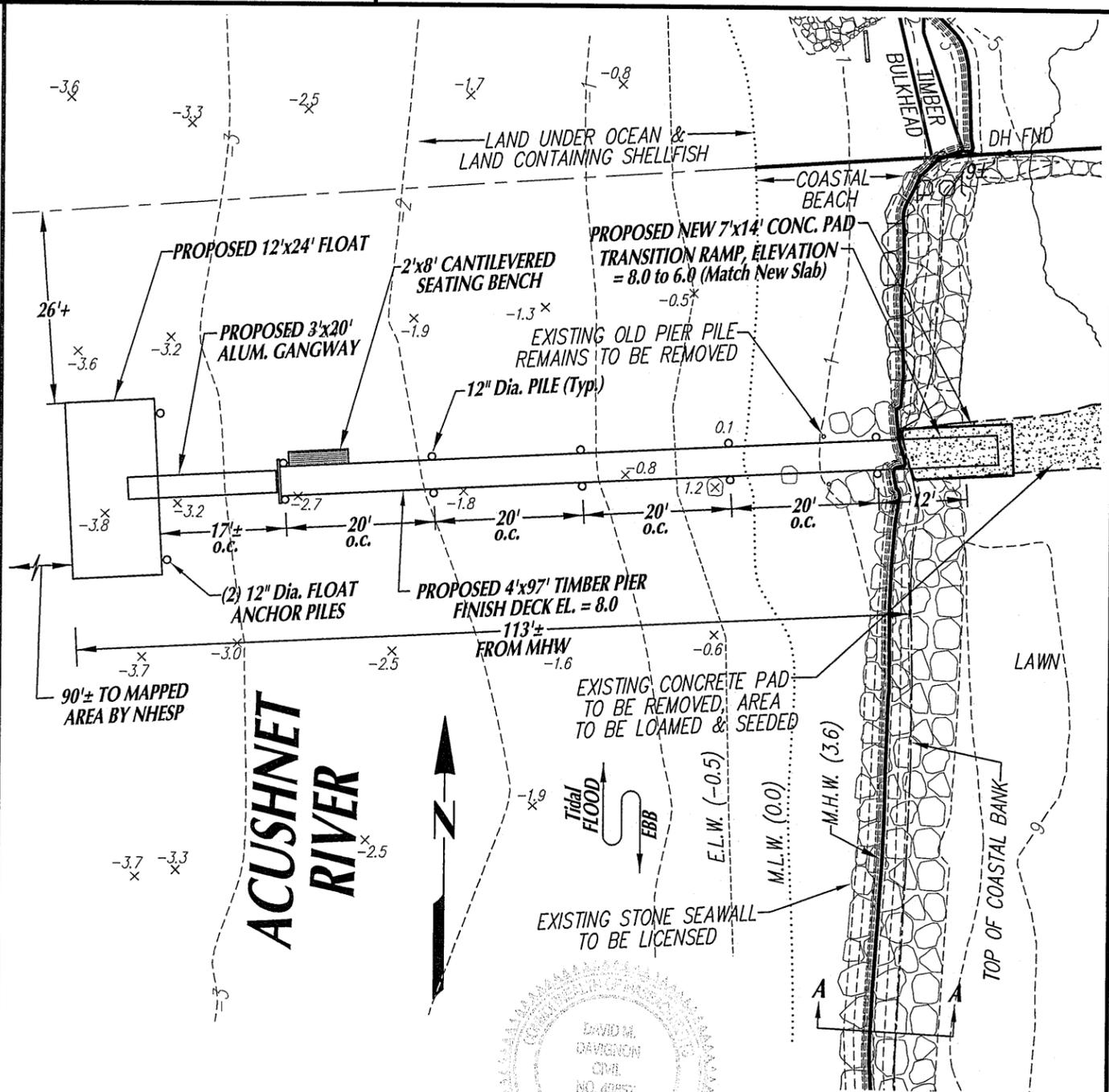
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**SHEET 1 OF 4 SHEETS**

Drawn By: D.M.D. Checked By: D.M.D. Job No. 3426

"I CERTIFY THAT THIS PLAN  
CONFORMS WITH THE RULES  
AND REGULATIONS OF THE  
REGISTERS OF DEEDS".

*David M. Davignon*  
PREPARER



SCALE: 1"=20'  
PLAN VIEW

**DIANE G. TOMASSETTI REVOCABLE TRUST  
and AMES FAMILY LIVING TRUST**  
**ACUSHNET RIVER**  
at 148 MAIN STREET in  
TOWN OF FAIRHAVEN

FEBRUARY 16, 2022 SCALE AS NOTED

**SCHNEIDER, DAVIGNON & LEONE, INC.**

PROFESSIONAL CIVIL ENGINEERS & LAND SURVEYORS  
1 COUNTY RD, P.O. BOX 480, MATTAPOISETT, MA 02739  
1-508-758-7866



*David M. Davignon* 2-17-22

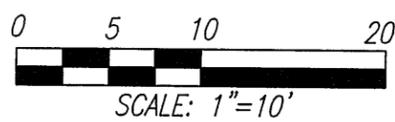
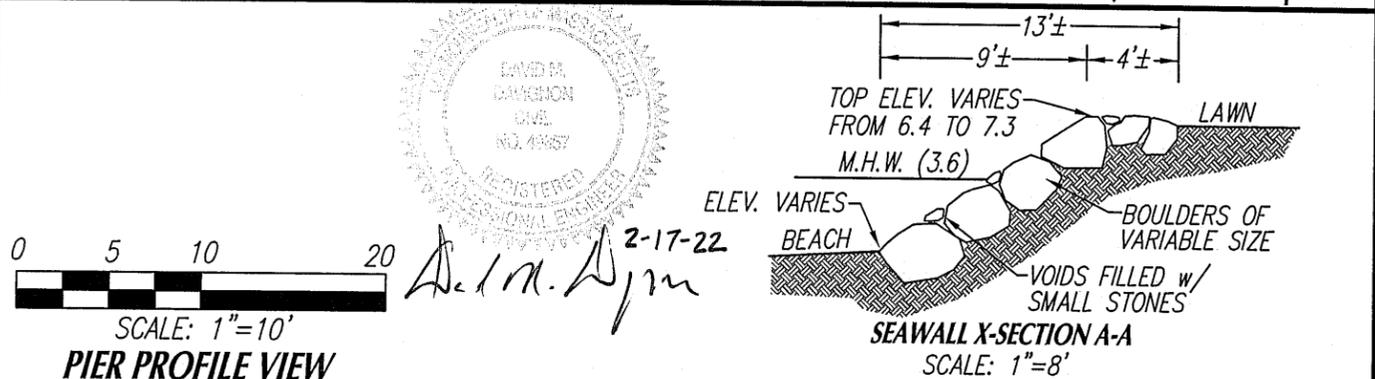
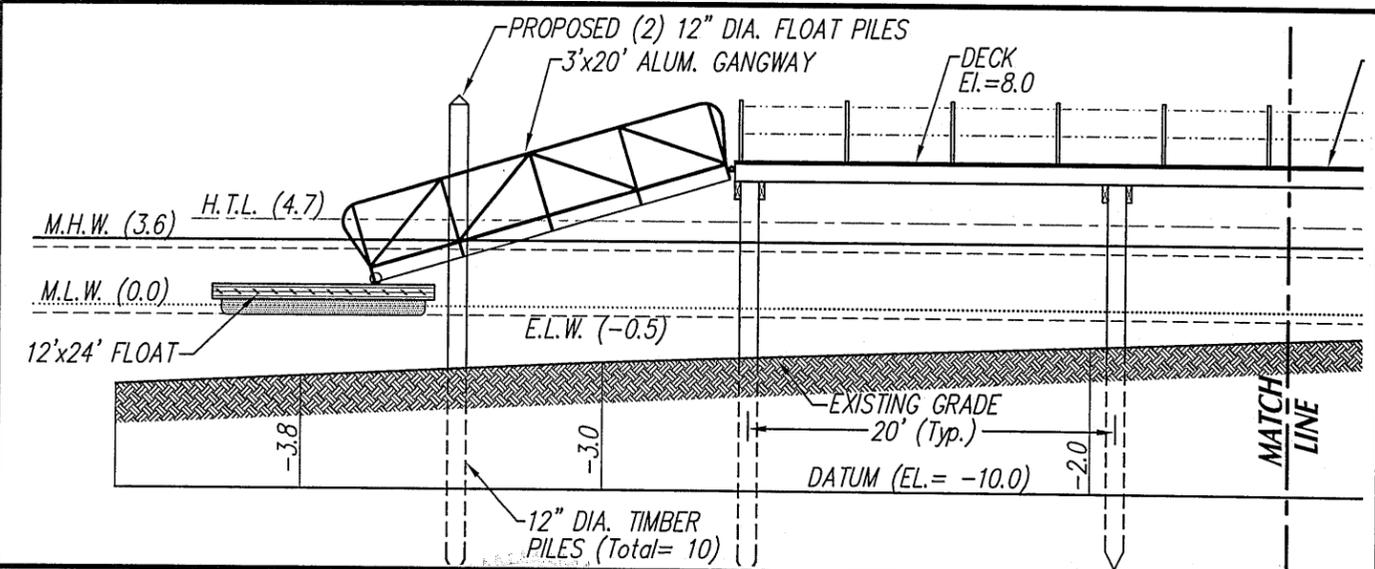
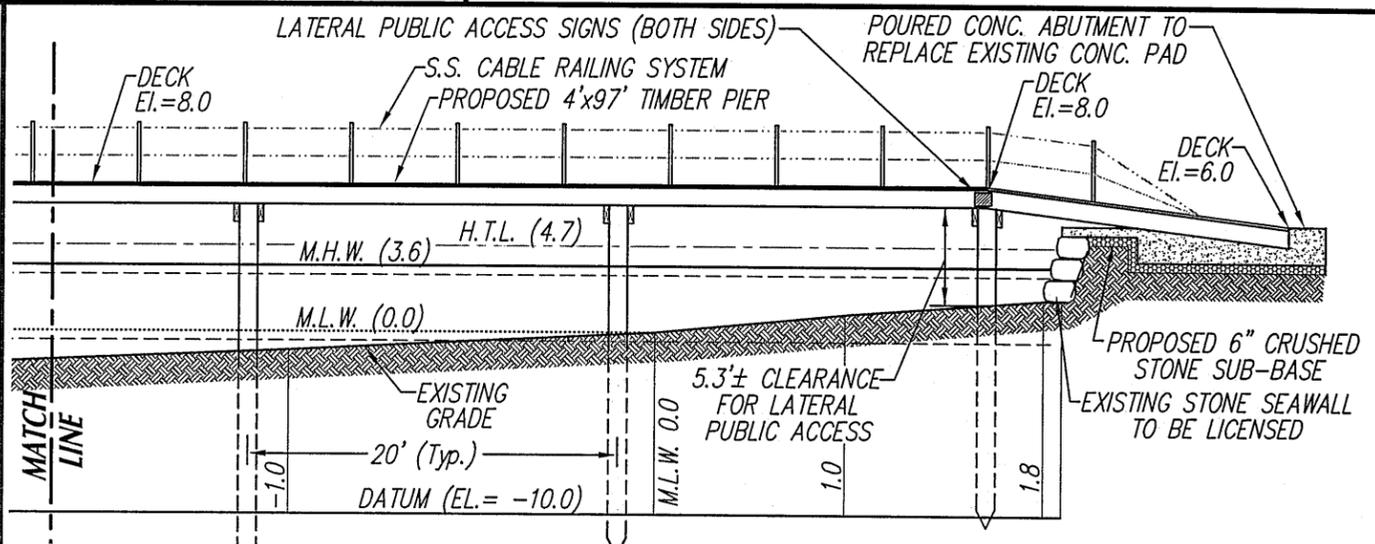
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**SHEET 2 OF 4 SHEETS**

Drawn By: D.M.D. Checked By: D.M.D. Job No. 3426

"I CERTIFY THAT THIS PLAN  
CONFORMS WITH THE RULES  
AND REGULATIONS OF THE  
REGISTERS OF DEEDS".

*David M. Davignon*  
PREPARER



**PIER PROFILE VIEW**

**DIANE G. TOMASSETTI REVOCABLE TRUST  
and AMES FAMILY LIVING TRUST  
ACUSHNET RIVER  
at 148 MAIN STREET in  
TOWN OF FAIRHAVEN**

FEBRUARY 16, 2022 SCALE AS NOTED

**SCHNEIDER, DAVIGNON & LEONE, INC.**

PROFESSIONAL CIVIL ENGINEERS & LAND SURVEYORS  
1 COUNTY RD, P.O. Box 480, MATTAPOISETT, MA 02739  
1-508-758-7866



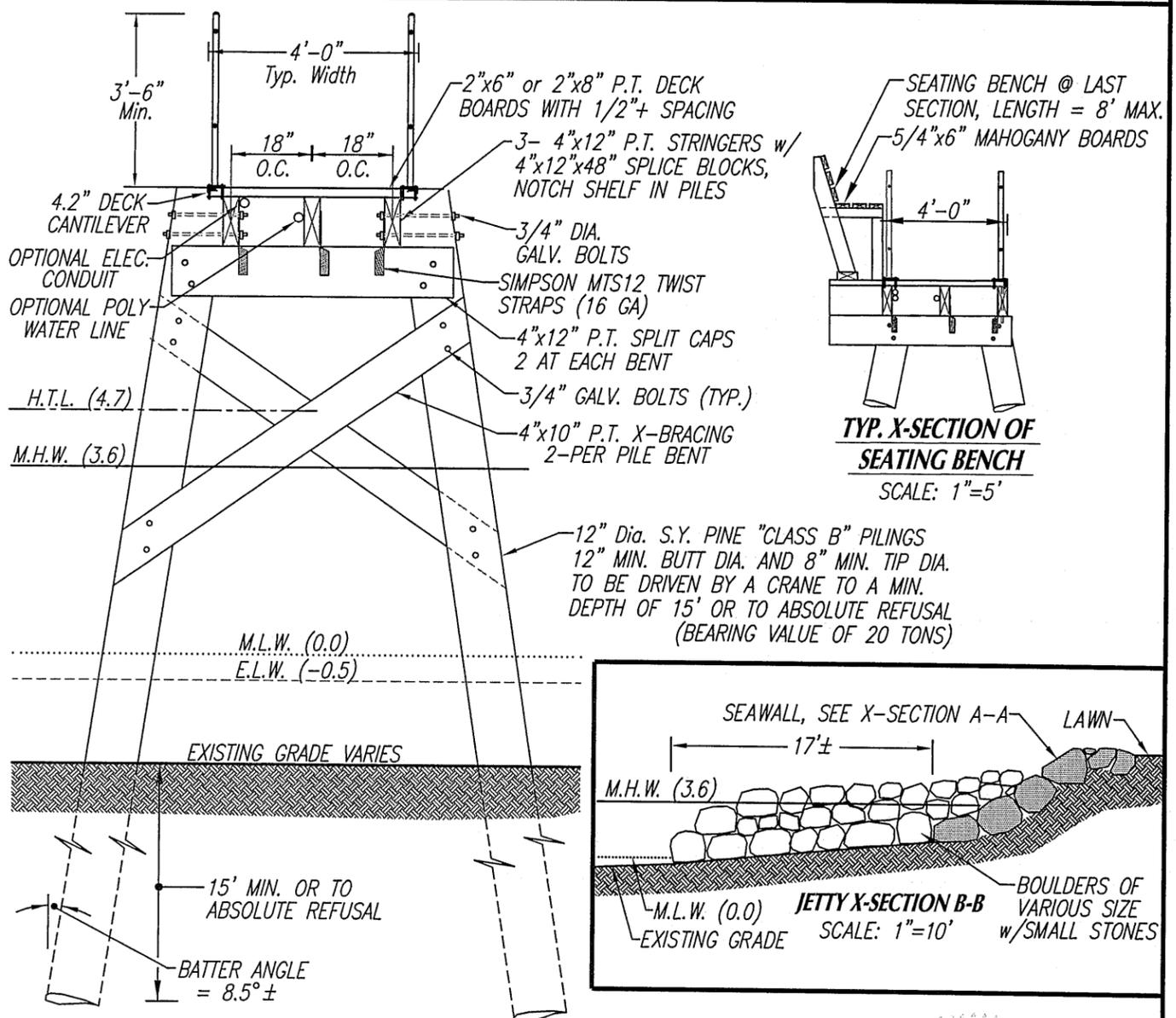
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NO.	REVISION DATE	DESCRIPTION
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**SHEET 3 OF 4 SHEETS**

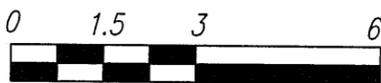
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AND REGULATIONS OF THE  
REGISTERS OF DEEDS".

*David M. Davignon*  
PREPARER



**VOLUME DISPLACEMENT NOTE:**

VOLUME DISPLACED BY PILES BETWEEN M.H.W. & M.L.W = <2 Cu.Yds.  
VOLUME DISPLACED BY SEAWALL BETWEEN M.H.W. & M.L.W = 40 Cu.Yds.  
VOLUME DISPLACED BY JETTY BETWEEN M.H.W. & M.L.W = 28 Cu.Yds.  
NOTE: VOID ALLOWANCE = 35%.



**TYP. X-SECTION VIEW**

**DIANE G. TOMASSETTI REVOCABLE TRUST  
and AMES FAMILY LIVING TRUST  
ACUSHNET RIVER  
at 148 MAIN STREET in  
TOWN OF FAIRHAVEN**

FEBRUARY 16, 2022 SCALE AS NOTED

**SCHNEIDER, DAVIGNON & LEONE, INC.**

PROFESSIONAL CIVIL ENGINEERS & LAND SURVEYORS  
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Drawn By: D.M.D. Checked By: D.M.D. Job No. 3426



*David M. Davignon* 2-17-22

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NO.	REVISION DATE	DESCRIPTION

**SHEET 4 OF 4 SHEETS**

# Staff Report

Date: March 11, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## DOCUMENTS REVIEWED

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

## RESOURCE AREAS ON/NEAR SITE

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

## RELEVANT PERFORMANCE STANDARDS

- **LSCSF General Provisions:** 10.24(1) “If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests.”
- **Coastal Beach:** 10.27 [also applies to Barrier Beach]  
(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 [also applies to Barrier Beach]  
(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.
- The peer reviewer conducted the site visit on March 1 and will have a full report prepared for the Commission by Wednesday, March 16.

## RECOMMENDATION

- Until the peer reviewer provides their report, I am unable to make a recommendation.

# Staff Report

Date: March 10, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## DOCUMENTS REVIEWED

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

#### 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 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.
- Upon further review by the Zoning Enforcement Officer, the project does not require filing with Zoning.
- No revisions were submitted by the submission deadline for the March 21 meeting.

## RECOMMENDATION

- Until such time as a complete variance request is submitted, I cannot make a recommendation other than a continuance to a subsequent meeting.

# Staff Report

Date: March 11, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## DOCUMENTS REVIEWED

- Previous permitting history for 25 & 29 Mangham Way
- Restoration plan dated December 15, 2021
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- Revised restoration plan dated March 7, 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 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 Commission asked the property owner to incorporate some sort of border at the 25-foot no disturb zone, whether it be native shrubs, split rail fence, etc.
- The revised restoration plan incorporates a shrub border along the 25-foot no disturb zone on the 29 Mangham Way property and two 8-foot sections of post-and-rail fence along the 25-foot no disturb zone within the disturbed area on the 25 Mangham Way property.

## RECOMMENDATION

- I recommend approving the restoration plan as revised.
  - *Possible motion:* Motion to approve the restoration plan for 25-29 Mangham Way dated March 7, 2022 under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the conditions outlined in the March 11, 2022 staff report.

### Restoration plan dated March 7, 2022

- 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) The restoration work outlined in Phases 1-9 in the approved restoration plan shall be completed no later than November 15, 2022 with a completion report submitted to the Fairhaven Conservation Commission no later than December 15, 2022.
- 4) 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.
- 5) 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.
- 6) ADD-4b: All work shall be done in accordance with the restoration plan prepared by Ecosystem Solutions, Inc., dated March 7, 2022, as approved by this Commission. Any deviation must be approved by this Commission in writing prior to commencing work involved in this deviation.
- 7) 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.
- 8) 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.
- 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.

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March 7, 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.

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### 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. Any soil brought onsite will be from a suitable source, clean, and free of invasive plant species. 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.

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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 (Upland Mix). This Upland Mix will be applied at the rate of 1 lb per 1750 square feet.

To demark the limit of the 25' no touch line and prevent entry with motorized vehicles or motorized equipment at 29 Mangham Way, a line of shrubs will be planted along the northern edge of the Upland Mix area. Based on measurements gathered in GIS software, these shrubs shall be planted at a spacing of one shrub every 6 feet, for a total of 17 shrubs. These will be native shrub species; Mountain laurel (*Kalmia latifolia*) and Flowering dogwood (*Cornus florida*), and their number and order may vary depending on nursery availability.

To demark the limit of the 25' no touch line and prevent entry with motorized vehicles or motorized equipment at 25 Mangham Way, a split rail fence will be installed along the northern edge of the Upland Mix area. The split rail fence will not completely cross the Property at 25 Mangham Way, but will extend westward from the Property line between 25 and 29 Mangham Way to the western extent of the Disturbed Area to be restored at 25 Mangham Way.

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. 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 corymbosum</i>	5
New England Wetmix (wetland)	<i>Various spp.</i>	1lb/2500 sq ft
Mountain laurel	<i>Kalmia latifolia</i>	±8
Flowering dogwood	<i>Cornus florida</i>	±8
New England Conservation/Wildlife mix (upland)	<i>Various spp.</i>	1lb/1750 sq ft

Invasive Control

Both the BVW and Buffer have large stands of invasive Japanese knotweed (*Polygonum cuspidatum*). Given its 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 FCC.

#### 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.

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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,

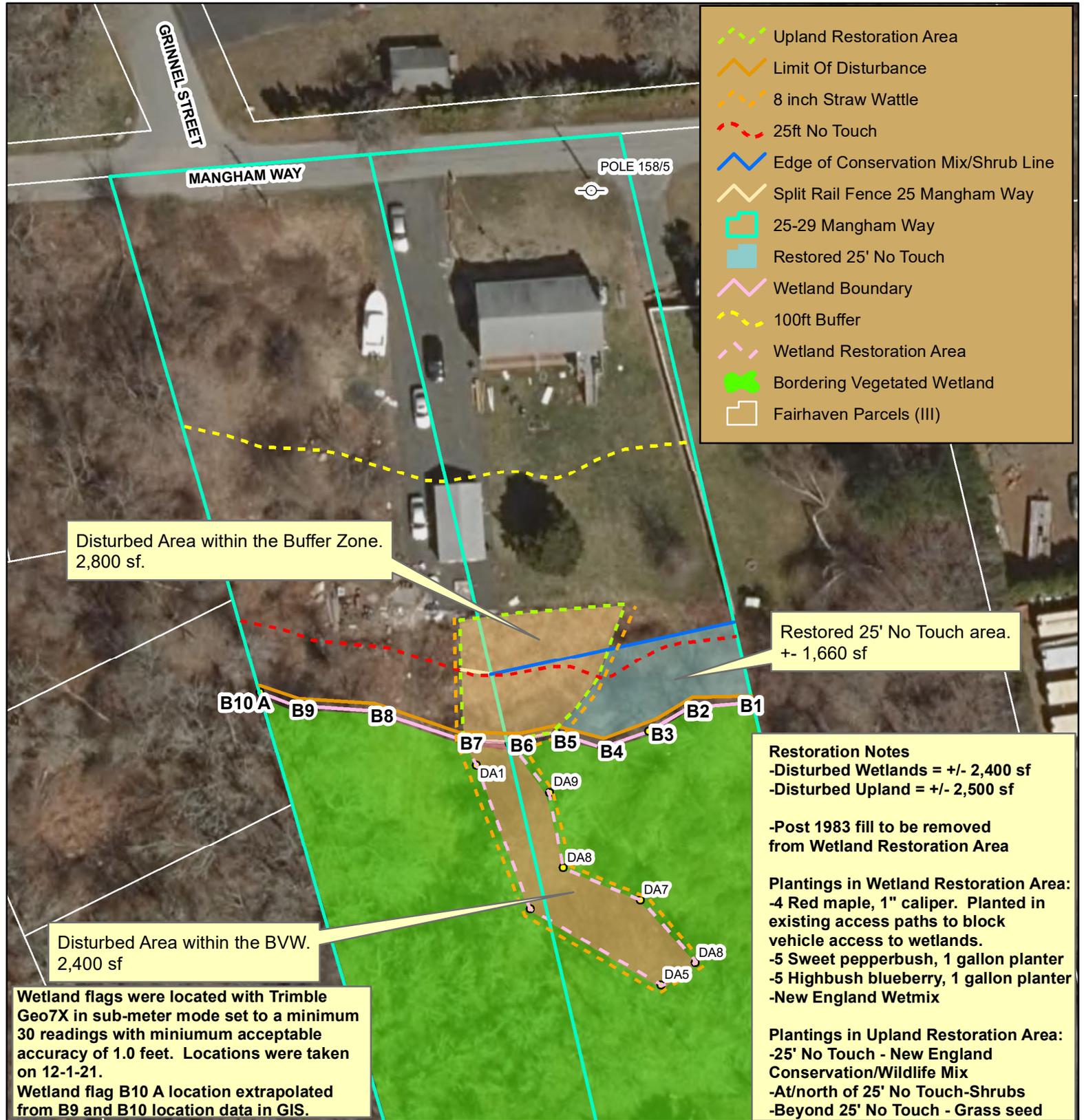
**Ecosystem Solutions, Inc.**

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



BF/bw

enclosures



		<b>FIGURE 1</b>	
		<b>Wetland Boundary &amp; Disturbed Area Map</b> 25-29 Mangham Way / Map 31A, Lots 300 & 300A Fairhaven, Massachusetts	
DATE: 2-18-2022		PROJECT #: W21-1589	
CREATED BY: BW		SCALE: 1 inch = 50 feet	
2019 Orthophoto			



Ecosystem Solutions, Inc.  
 100 Centerville Rd., Suite 4  
 Warwick, RI 02886





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 &amp; 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 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 &amp; 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 &amp; 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 &amp; 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  Picture 13-14</p>

# Staff Report

Date: March 11, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## DOCUMENTS REVIEWED

- Orders of Conditions issued April 28, 2021
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- Revised restoration plan dated March 9, 2022 and narrative dated March 9, 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 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 March 9, 2022 submitted identifying activities to return area to pre-construction condition*
- 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 January 14 letter accompanying the January 13 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.
- At the January 24 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 Commission stated at the 2/14 meeting that because a revised restoration plan was not submitted, the restoration plan and remaining fine would be discussed at the March 7 meeting. The remaining fine was not discussed at the 3/7 meeting.
- 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.
- The revisions to the restoration plan address the comments the Commission made at the last meeting and represent a return to preconstruction conditions as required by the Enforcement Order.

## RECOMMENDATION

- I recommend approving the restoration plan as revised.
  - *Possible motion:* Motion to approve the restoration plan and narrative for North Street Marsh, Assessors Map 15, Lot 43, dated March 9, 2022 under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the conditions outlined in the March 11, 2022 staff report.

Restoration plan and narrative dated March 9, 2022

- 1) ACC-1: The Conservation Commission, its employees, and its agents shall have a right of entry to inspect or compliance with the provisions of this Order of Conditions.
- 2) 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.
- 3) ADD-4b: All work shall be done in accordance with the restoration plan prepared by SITEC, Inc., dated March 9, 2022, as approved by this Commission. Any deviation must be approved by this Commission in writing prior to commencing work involved in this deviation.
- 4) 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.
- 5) No work beyond what is outlined by the restoration plan and narrative is permitted by this restoration plan approval. The work permitted under the existing Order of Conditions can only recommence once the work outlined here is completed and the Commission or its Agent has provided written certification that the project has returned to compliance with the issued Order of Conditions.
- 6) The construction notes on the plan do not apply to this restoration plan.
- 7) The outlined work shall be completed on or before May 1, 2022.
- 8) 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 requirements. 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 requirements for this project.
- 9) MAC-3: All mechanized vehicles under contract, subcontract or lease, participating in any manner, in any phase of activity within resource areas, shall carry on board absorbent materials to immediately respond to inadvertent discharge of petrochemicals.
- 10) MAC-8: All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
- 11) 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.
- 12) A qualified professional, not the property owner, shall execute all phases of the restoration plan. Upon completion of each of the following phases, a site inspection shall be scheduled with the Conservation Commission or its Agent to determine whether the next phase of the restoration can begin:
  - a. Removal of filter fabric and crushed stone
  - b. Slope regrading and stone placement
  - c. Addition of topsoil, if needed, and seeding

March 9, 2022

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

Subject: Lee & Elizett Miguel  
North Street  
DEP File # 023-1341, CON # 023-194  
CEC Project: 304-088

Dear Commission Members:

As discussed at the March 7, 2022 Conservation Commission meeting, we have made several additional modifications to the restoration plan for the upland area located adjacent to the westerly end of North Street. The plan revisions are as follows:

1. Revised the plan notations and Restoration Note #4 to require the removal of all filter fabric that was placed in the stockpile area and adjacent grassed areas. A note requiring all fabric removed shall be legally disposed of offsite.
2. Restoration Note #6 has been modified to require a maximum stone depth of 1"-2" in the area where the stone will be reset. The note all includes a requirement that the excess stone shall be removed from the site.
3. Note #7 has been added to the plan requiring an inspection by the Conservation Agent after rough grading and placement of the stone. The purpose of the inspection will be to obtain approval of the work completed as well as a determination if additional topsoil needs to be brought to the site to complete the vegetation area establishment and stabilization.
4. Note #8 has been added to the plan requiring an approval from the conservation Agent prior to bringing any topsoil on site.
5. Note #9 has been added requiring a slight berm edge at the stone/grass interface to minimize the potential migration of stone to the marsh.
6. Note #10 has been added to the plan stipulating the required seed mix for final stabilization.

The restoration notes on the plan form the basis for the work moving forward. As previously noted, we propose a start of restoration on April 15, 2022 with the completion of all required work on or before May 1, 2022, weather permitting.

The following is a listing of the proposed restoration plan from initial remedial action to final stabilization:

1. Contractor shall reset silt fencing and straw wattles along the perimeter of the restoration area.

2. An orange construction fence shall be installed up gradient of the erosion barrier as a visual guide for the contractor.
3. The post-2019 stone edging shall be removed and the stones disposed of legally offsite.
4. The crushed stone shall be removed beginning at the marsh perimeter to facilitate the removal of all filter fabric. Excess stone shall be removed from the site.
5. The perimeter slope of the disturbed area shall be regraded to the pre-alteration grades(see Step 7).
6. Based on the 2019 aerial photograph, crushed stone shall be reset in the areas shown to a depth of 1" to 2". All excess crushed stone shall be removed from the site.
7. Upon completion of the stone placement and slope grading, a site meeting shall be scheduled with the contractor and Conservation Agent to review the grades, stone edging, and limits of crushed stone. The work will be adjusted, if needed, after review by the Agent.
8. If needed for grass stabilization, additional topsoil will be applied and the area final graded. The grading shall be completed to create a slight berming at the soil/stone interface. The purpose of the berming is to minimize the potential for crushed stone migration into the marsh.
9. Seeding of the perimeter disturbed areas shall be completed using New England Erosion Control/Restoration Mix for Dry sites as supplied by New England Wetland Plants, Inc, Amherst, MA (413) 548-8000. Seed shall be applied in accordance with the supplier's specifications (Specification Attached).
10. The owner shall water the seed as needed until full stabilization of the area is achieved. The use of herbicides or pesticides is specifically prohibited.
11. At the end of the first and second growing season, a report shall be provided to the Commission for their review. If necessary, supplemental seed placement shall be completed at the start of the growing season.

Please let me know if you require any additional information at this time.

Sincerely,

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.



Steven D. Gioiosa, P.E.  
Vice President



Daniel S. Gioiosa  
Project Manager

Enclosures: Seed Specification  
Revised Plan

cc: Lee & Elizett Miguel

## NEW ENGLAND WETLAND PLANTS, INC

820 WEST STREET, AMHERST, MA 01002

PHONE: 413-548-8000 FAX 413-549-4000

EMAIL: INFO@NEWP.COM WEB ADDRESS: WWW.NEWP.COM

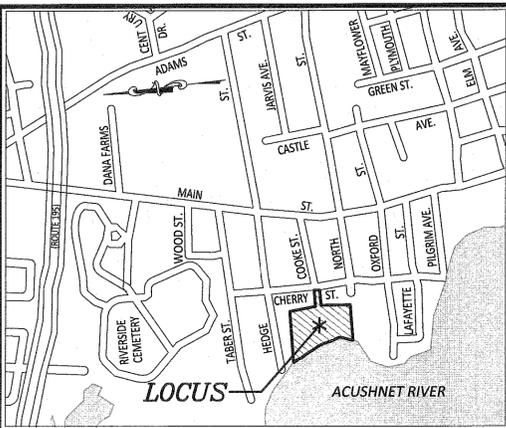
### New England Erosion Control/Restoration Mix for Dry Sites

Botanical Name	Common Name	Indicator
<i>Elymus canadensis</i>	Canada Wild Rye	FACU+
<i>Festuca rubra</i>	Red Fescue	FACU
<i>Lolium multiflorum</i>	Annual Ryegrass	
<i>Lolium perenne</i>	Perennial Ryegrass	
<i>Schizachyrium scoparium</i>	Little Bluestem	FACU
<i>Panicum virgatum</i>	Switch Grass	FAC
<i>Sorghastrum nutans</i>	Indian Grass	UPL

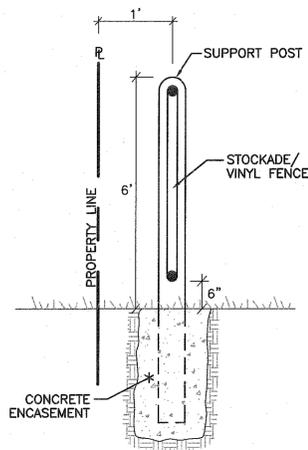
PRICE PER LB. \$18.00 MIN. QUANTITY 5 LBS. TOTAL: \$90.00 APPLY: 35 LBS/ACRE :1250 sq ft/lb

The New England Erosion Control/Restoration Mix For Dry Sites provides an appropriate selection of native and naturalized grasses to ensure that dry and recently disturbed sites will be quickly revegetated and the soil surface stabilized. It is an appropriate seed mix for road cuts, pipelines, steeper slopes, and areas requiring quick cover during the ecological restoration process. The mix may be applied by hydro-seeding, by mechanical spreader, or on small sites it can be spread by hand. Lightly rake, or roll to ensure proper soil-seed contact. Best results are obtained with a Spring or late Summer seeding. Late Spring through Mid-Summer seeding will benefit from a light mulching of weed-free straw to conserve moisture. If conditions are drier than usual, watering will be required. Fertilization is not required unless the soils are particularly infertile. Preparation of a clean weed free seed bed is necessary for optimal results.

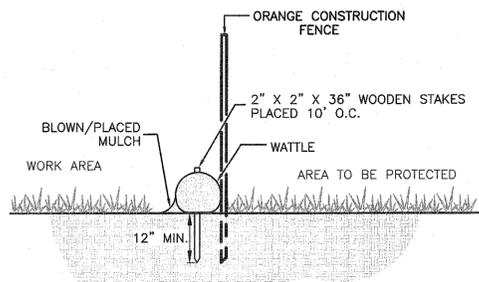
New England Wetland Plants, Inc. may modify seed mixes at any time depending upon seed availability. The design criteria and ecological function of the mix will remain unchanged. Price is \$/bulk pound, FOB warehouse, Plus SH and applicable taxes.



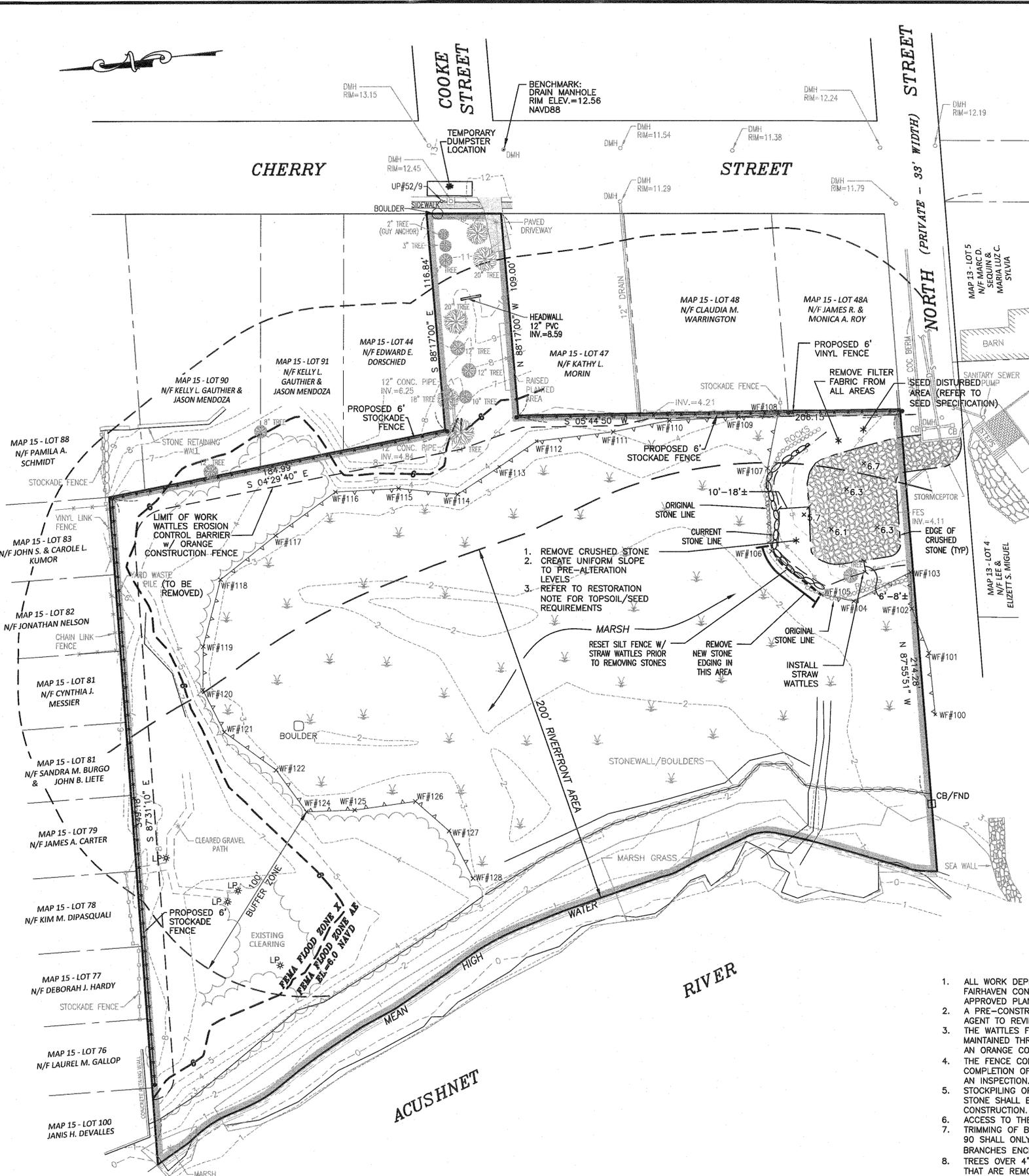
**LOCUS MAP**  
SCALE: 1"=600'±



**FENCE DETAIL**  
(NOT TO SCALE)



**WATTLE EROSION CONTROL DETAIL**  
(NOT TO SCALE)



**LEGEND**

- PROPERTY LINE
- - - EXISTING CONTOUR
- STONEMALL
- S SEWER LINE
- D DRAINAGE LINE
- CB CATCH BASIN
- DMH DRAIN MANHOLE
- SMH SEWER MANHOLE
- UP UTILITY POLE
- LP LAMP POST
- CHAIN LINK FENCE
- STOCKADE FENCE
- TREE LINE/BRUSH LINE
- TREE
- WF#111 WF#112 EDGE OF BORDERING VEGETATED WETLANDS
- ×6.7 SPOT GRADE

1. REMOVE CRUSHED STONE
2. CREATE UNIFORM SLOPE TO PRE-ALTERATION LEVELS
3. REFER TO RESTORATION NOTE FOR TOPSOIL/SEED REQUIREMENTS

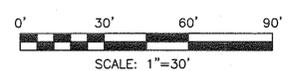
- RESTORATION**
1. SET & MAINTAIN STRAW WATTLES.
  2. INSTALL ORANGE CONSTRUCTION FENCE UPGRADIENT OF EROSION CONTROL BARRIER.
  3. REMOVE NEW STONE EDGING AS SHOWN.
  4. REMOVE ALL CRUSHED STONE IN ORDER TO REMOVE ALL FILTER FABRIC. LEGAL OFFSITE DISPOSAL OF THE FABRIC IS REQUIRED.
  5. REGRADE PERIMETER TO PRE-ALTERATION SLOPE. REMOVE ADDITIONAL STONES THAT WERE ADDED AFTER EPA MARSH RESTORATION PROJECT, IF APPLICABLE.
  6. BASED ON 2019 AERIAL PHOTOGRAPH, CRUSHED STONE TO BE LIMITED TO THE ORIGINAL LIMITS OF THE COMPACT GRAVEL SURFACE. THE CRUSHED STONE DEPTH SHALL BE 1"-2" (MAXIMUM). EXCESS STONES SHALL BE REMOVED FROM THE SITE.
  7. UPON COMPLETION OF GRADING AND STONE PLACEMENT, THE CONTRACTOR SHALL SCHEDULE A SITE MEETING WITH THE CONSERVATION AGENT. THE PURPOSE OF THE MEETING IS TO REVIEW GRADES, LIMITS OF STONE, AND ADEQUACY OF THE TOPSOIL IN AREAS TO BE RESEED.
  8. ADDITIONAL TOPSOIL, IF NEEDED, WILL BE APPLIED BASED ON INPUT PROVIDED BY THE CONSERVATION AGENT. QUANTITIES WILL BE LIMITED TO THE MINIMUM AMOUNT REQUIRED TO SUPPORT GRASS GROWTH.
  9. CONTRACTOR SHALL GRADE THE PERIMETER SLOPED AREA TO CREATE A SLIGHT EDGE ADJACENT TO THE CRUSHED STONE TO MINIMIZE THE POTENTIAL MIGRATION OF THE STONE INTO THE MARSH.
  10. SEED UTILIZED FOR STABILIZATION OF DISTURBED AREAS SHALL BE NEW ENGLAND EROSION CONTROL/RESTORATION MIX FOR DRY SITES, AS PREPARED BY NEW ENGLAND WETLAND PLANTS, INC., AMHERST, MA.
- 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.

- CONSTRUCTION NOTES**
1. ALL WORK DEPICTED ON THIS PLAN IS SUBJECT TO ALL ORDER OF CONDITIONS ISSUED BY THE FAIRHAVEN CONSERVATION COMMISSION. THE CONTRACTOR SHALL HAVE A COPY OF THE ORDER AND APPROVED PLAN ON SITE AT ALL TIME DURING THE CONSTRUCTION PROVIDED.
  2. A PRE-CONSTRUCTION MEETING WILL BE SCHEDULED BY THE CONTRACTOR WITH THE CONSERVATION AGENT TO REVIEW THE REQUIREMENTS OUTLINED IN THE ORDER OF CONDITIONS.
  3. THE WATTLES FOR EROSION CONTROL SHALL BE SET PRIOR TO THE START OF CONSTRUCTION AND MAINTAINED THROUGHOUT THE CONSTRUCTION PROCESS UNTIL ALL DISTURBED AREAS ARE STABILIZED. AN ORANGE CONSTRUCTION FENCE SHALL BE INSTALLED BEHIND THE WATTLES.
  4. THE FENCE CONTRACTOR SHALL MARK ANY TREES OVER 4" DIAMETER PRIOR TO CLEARING. UPON COMPLETION OF MARKING THE CONTRACTOR SHALL NOTIFY THE CONSERVATION OFFICE TO SCHEDULE AN INSPECTION.
  5. STOCKPILING OF MATERIALS SHALL BE LIMITED TO THE DESIGNATED UPLAND AREA. CLEAN CRUSHED STONE SHALL BE RE-SPREAD OVER THE STOCKPILE AREA AT THE CONCLUSION OF THE CONSTRUCTION.
  6. ACCESS TO THE SITE SHALL BE THROUGH THE CHERRY STREET FRONTAGE
  7. TRIMMING OF BRANCHES, AS NEEDED, FROM THE TREE LOCATED ON THE BOUNDARY AT MAP 15-LOT 90 SHALL ONLY BE COMPLETED BY A QUALIFIED ARBORIST. TRIMMING SHALL BE LIMITED TO BRANCHES ENCRDACHING ON APPLICANT'S PROPERTY TO THE EXTENT NEEDED TO INSTALL THE FENCE.
  8. TREES OVER 4" IN DIAMETER SHALL NOT BE REMOVED UNLESS DIRECTLY ON FENCE LINE. ANY TREES THAT ARE REMOVED SHALL BE REPLACED WITH LEYLAND CYPRESS OR APPROVED EQUAL.
  9. A PORTABLE CHIPPER SHALL BE USED TO CREATE MULCH FROM MATERIAL CUT IN THE WORK ZONE. EQUIPMENT USED TO COMPLETE THE FENCE INSTALLATION SHALL BE LIMITED TO HAND TOOLS AND HAND AUGER. THE FENCE ALONG THE WEST LINE OF LOTS 47, 48, 48A, AS SHOWN, SHALL BE INSTALLED USING HAND TOOLS AND HAND AUGER ONLY.
  11. EXCESS SOILS SHALL BE SPREAD NEAR THE FENCE POSTS, AND THE AREA SEED FOR STABILIZATION. IF REQUIRED, THE SOILS WILL BE AMENDED WITH ORGANIC TOPSOIL TO FACILITATE GRASS GROWTH.
  12. IF REQUIRED, A LINED CONCRETE WASHOUT PIT SHALL BE SET IN THE STOCKPILE AREA WITH SILT FENCING SET ALONG THE DOWNGRADIENT PERIMETER OF THE PIT.

**RESTORATION SEED**  
NEW ENGLAND EROSION CONTROL/RESTORATION MIX FOR DRY SITES

**SUPPLIER**  
NEW ENGLAND WETLAND PLANTS, INC  
820 WEST STREET  
AMHERST, MA 01002  
(413) 548-8000  
WWW.NEWP.COM

**OWNER/APPLICANT:**  
LEE & ELIZETT S. MIGUEL  
3 NORTH STREET  
FAIRHAVEN, MA 02719



No.	Date	Revision Description	App'd. By
10	MARCH 09, 2022	REVISE REMEDIATION PLAN	SDG
9	FEBRUARY 17, 2022	REVISE REMEDIATION PLAN	SDG
8	JANUARY 13, 2022	REVISE REMEDIATION PLAN	SDG
7	NOVEMBER 26, 2021	REVISE REMEDIATION PLAN	SDG
6	NOVEMBER 08, 2021	REVISE REMEDIATION PLAN	SDG
5	OCTOBER 18, 2021	ASBUILT CRUSHED STONE	SDG
4	MARCH 15, 2021	MODIFY CONSTRUCTION NOTES	SDG
3	FEBRUARY 26, 2021	ADD CONSTRUCTION NOTES	SDG
2	DECEMBER 28, 2020	ELIMINATE PORTION OF FENCE	SDG
1	DECEMBER 07, 2020	REVISIONS PER CONSERVATION COMMISSION COMMENTS	SDG

Scale: 1"=30'  
Date: JULY 2, 2020  
Drawn: KJ  
Checked: SDG  
Approved: SDG  
Sheet: 1 of 1  
Drawing Number: SP-1

Project: ASSESSORS MAP 15, LOT 43  
NORTH STREET / CHERRY STREET  
FAIRHAVEN, MASSACHUSETTS

Client: LEE & ELIZETT MIGUEL

WWW.SITEC-ENGINEERING.COM

**SITEC, Inc.**  
449 Fauce Corner Road  
Fairhaven, MA 01924  
(508) 999-2125  
FAX (508) 999-7554

**SITEC**  
Civil and Environmental Engineering  
Land Use Planning

Acad No. FVN 18-7102 SP.DWG  
File No. 18-7102

# Staff Report

Date: March 11, 2022

To: Conservation Commission

From: Whitney McClees, Conservation Agent

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

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## DOCUMENTS REVIEWED

- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192) and associated regulations
- Fairhaven Stormwater Bylaw (Chapter 194)
- Part 2 of the Restoration plan dated February 25, 2022

## RESOURCE AREAS ON/NEAR SITE

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

## RELEVANT PERFORMANCE STANDARDS

- **Riverfront Area:** 10.58(4)
  - (c) Practicable and Substantially Equivalent Economic Alternatives
  - (d) No Significant Adverse Impact
    1. Within 200 foot riverfront areas, the issuing authority may allow the alteration of up to 5000 square feet or 10% of the riverfront area within the lot, whichever is greater ..., provided that:
      - a. At a minimum, a 100' wide area of undisturbed vegetation is provided... preserved or extended to the max. extent feasible...
      - b. Stormwater is managed ...
      - c. Proposed work does not impair the capacity of the riverfront area to provide important wildlife habitat functions. ...
      - d. ... incorporating erosion and sedimentation controls and other measures to attenuate nonpoint source pollution.
- **Bank:** 310 CMR 10.54(4)
  - (a) ...Work on a Bank shall not impair the following:
    1. The physical stability of the Bank;
    2. The water carrying capacity of the existing channel within the Bank;
    3. Ground water and surface water quality;
    4. The capacity of the Bank to provide breeding habitat, escape cover and food for fisheries;

5. The capacity of the Bank to provide important wildlife habitat functions. A project or projects on a single lot, for which Notice(s) of Intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 50 feet (whichever is less) of the length of the bank found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. In the case of a bank of a river or an intermittent stream, the impact shall be measured on each side of the stream or river. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures contained in 310 CMR 10.60.

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

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

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

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

10.56 (4)

(a) Work shall not impair the following:

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

2. Ground and surface water quality;

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

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

5. Work on a stream crossing shall be presumed to meet the performance standard set forth in 310 CMR 10.56(4)(a) provided the work is performed in compliance with the Massachusetts Stream Crossing Standards by consisting of a span or embedded culvert in which, at a minimum, the bottom of a span structure or the upper surface of an embedded culvert is above the elevation of the top of the bank, and the structure spans

the channel width by a minimum of 1.2 times the bankfull width. This presumption is rebuttable and may be overcome by the submittal of credible evidence from a competent source. Notwithstanding the requirements of 310 CMR 10.56(4)(a)4., the impact on Land under Water Bodies and Waterways caused by the installation of a stream crossing is exempt from the requirement to perform a habitat evaluation in accordance with the procedures established under 310 CMR 10.60.

- (b) ...the issuing authority may issue an Order...to maintain or improve boat channels
- (c) ...no project may be permitted which will have any adverse effect on [rare species].

- **Bordering Vegetated Wetland:** 10.55(4)

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

## **VIOLATION SUMMARY**

- Evidence of work without permits was observed during an erosion control inspection for a permitted solar array project. The observed activities are located on the resource area side of the erosion control barrier and are not affiliated with the approved solar array project. The following was observed:
  - Significant vegetation clearing and grubbing within Riverfront Area and Bordering Vegetated Wetland
  - Evidence of machinery within Riverfront Area and Bordering Vegetated Wetland
  - Removal of large amounts of debris from Riverfront Area and Bordering Vegetated Wetland
  - Impact to bank of perennial stream

- Based on the depicted edge of vegetation on the approved plans for the solar array (SE 023-1269), approximately 2.41 acres of Riverfront Area and approximately 6.88 acres of Bordering Vegetated Wetland (BVW) have been impacted.

## **COMMENTS**

- The wetland scientist submitted a revised restoration plan for the second half of the project on February 25, 2022, prior to the February 28, 2022 deadline.
- This restoration plan addresses the next three phases of the project, proposed to occur between Summer 2022 and early Spring 2023:
  - Regrade site and natural stream
  - Re-establish topsoil, installation of live stake shrubs, seeding of restoration areas
  - Monitoring (through Fall 2025)
- The Commission had previously discussed engaging peer review for this more technical portion of the restoration due the work involving the stream to ensure the work proposed will adequately restore function and flow of the perennial stream.

## **RECOMMENDATION**

- Until the Commission discusses the possibility of peer review and other potential revisions, I reserve making a recommendation.

February 25, 2022

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

Re: Wetland Replication, Buffer Zone, & Stream Restoration Plan  
20 Yankee Lane, Fairhaven, MA 02719 (Fairhaven Enforcement Order 023-014)

Dear Conservation Commission:

Goddard Consulting is pleased to submit this Wetland Replication, Buffer Zone, & Stream Restoration Plan for 20 Yankee Lane, Fairhaven, MA. This plan addresses phases 3, 4, and 5 of restoration efforts, in conjunction with the *Phase 1 & 2 Wetland Replication, Buffer Zone & Stream Restoration Plan*, dated 12/14/21. An Enforcement Order (Fairhaven File # EO 023-014) was issued on 5/6/21 to Brian Lopes for clearing within Buffer Zone to Bordering Vegetated Wetlands (BVW) and Riverfront Area. Upon receipt of the Enforcement Order, Mr. Lopes immediately ceased all ongoing unpermitted activities on-site. The purpose of this plan is to restore on-site wetlands, buffer zone areas, and improve the function of the perennial stream.

### Phase 3: Regrade Site & Natural Stream

**Estimated Timeframe:** Summer 2022- Fall 2022

On-site grades will be restored to those as shown on Atlantic Design Engineers' *Overall Wetland Location Plan* (11/22/17), including the stream. These plans show grades of the site prior to the disturbances and represent a more natural condition for the site. Surveyors will verify these locations in the field. In consultation with the Fairhaven Conservation Agent, Goddard Consulting has taken measurements of bankful width and stream height in natural off-site portions of the stream, upgradient and downgradient of the on-site alterations to serve as a reference point in designing this plan. These measurements and the average stream width and height are depicted in Table 1 below. Locations of where measurements were taken is shown on Figure 1. With this information in mind, after elevations are graded to match the 2017 plan, the stream will be constructed to have a bankful width of 8' with 1' high banks. The stream will be constructed to have a continuous pitch downgradient across the site from west to east. These restoration efforts will restore the stream's ability to function as a resource area and will prevent incising in the future.



Figure 1. Off-site locations in which the stream was measured.

**Table 1. Stream measurements in natural off-site portions of the stream, upgradient and downgradient of the on-site alterations.**

Location	Stream Width	Stream Height
<b>Point 1 (Upgradient)</b>	9'	1'
<b>Point 2 (Upgradient)</b>	5'	1'
<b>Point 3 (Downgradient)</b>	8	1'
<b>Point 4 (Downgradient)</b>	9.5'	1'
<b>Averages</b>	<b>~8'</b>	<b>1'</b>

The bank of the natural stream itself will be graded down to match surrounding elevations prior to the addition of topsoil as described below. Work within the stream shall take place during low- to no-flow conditions, which is typically between July 1 and October 30.

- a. If flow is encountered, provide a temporary sandbag dam or pump system upstream to divert stream around construction area.
- b. Provide dewatering basin if pumping is required.

Note: Restoration work as described in the following phases may begin to occur prior work occurring directly within the stream.

To improve the stream's ability to function as wildlife habitat, an effort will be made to include wildlife habitat features along the edges of the stream. This includes rocks, stones (at least 6-inches long +/-) or large woody debris. These features should be stockpiled nearby for later replacement within the stream portions of the replication area. These features shall be randomly placed throughout the replication area to provide cover for wildlife and provide wildlife habitat.

A trench was dug out in an effort to extend the stream in the southeastern corner of the site (see Figure 2). This trench will be filled in following the same protocol as outlined in Phase 1 to allow the stream to revert to its natural form in this area.



Figure 2. The location of the stream extension to be removed. Grades

## Phase 4.1: Re-establish Topsoil

**Estimated Timeframe:** Summer 2022-Fall 2022

Almost the entirety of the restoration area in its existing condition has been stripped of topsoil. Once the site is regraded to the appropriate elevations as described above, 6” of nutrient rich organic topsoil will be added to the restoration areas.

The supervising wetland scientist will ensure that the areas to be seeded will have at least 6in. of organic, nutrient rich topsoil is added to the areas prior to planting. Any re-exposed, buried topsoils found on-site may be reused as applicable with the approval of the supervising wetland scientist.

## Phase 4.2: Installation of Live Stake Shrubs

**Estimated Timeframe:** Late Fall 2022 – Early Spring 2023

The central portion of the site was previously vegetated with shrubs prior to disturbances. This area will be re-planted with several live stake shrubs. This area along with paths to access it during construction are shown in Figure 3 below.

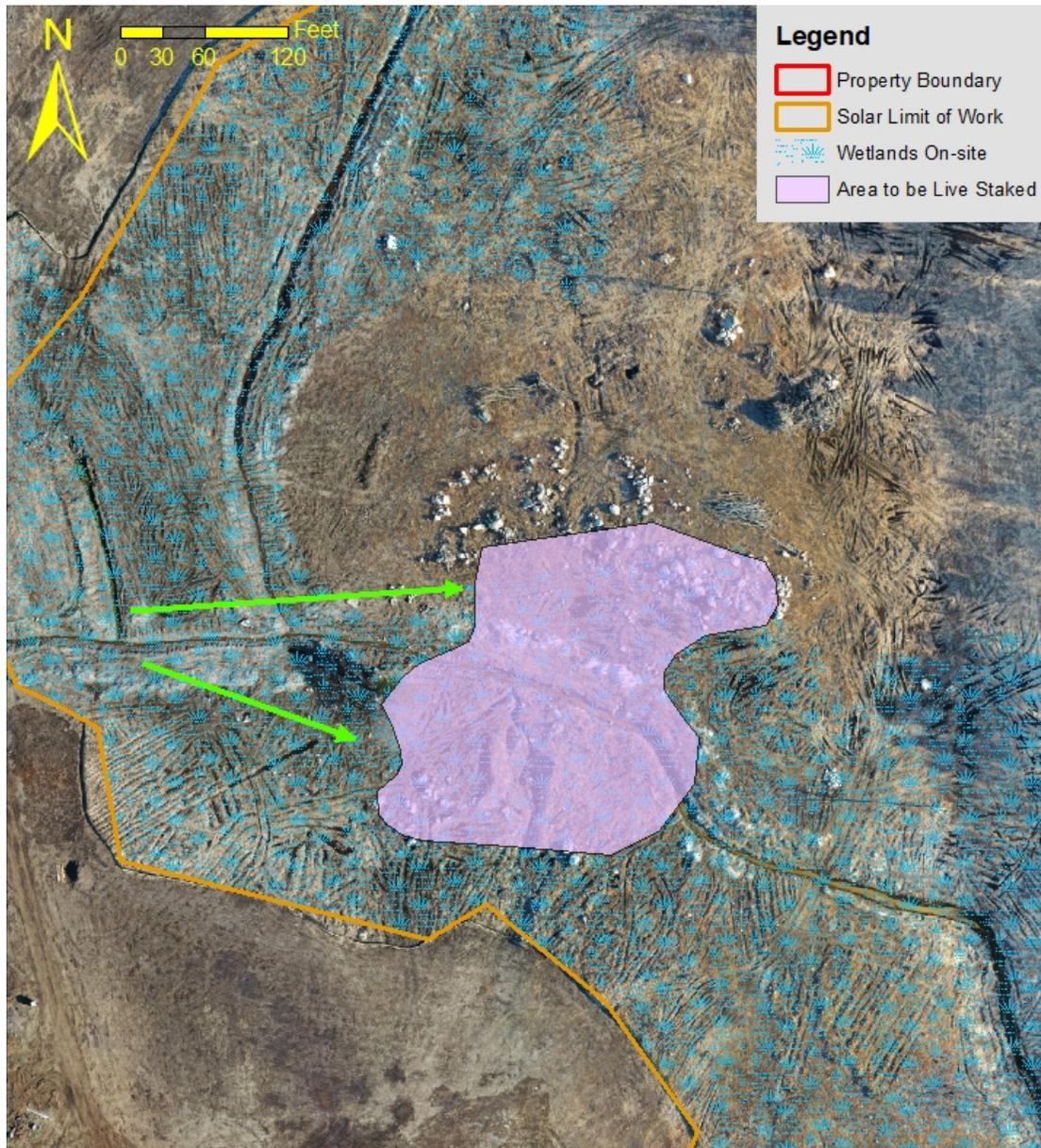


Figure 3. The area in the central portion of the site that was formerly vegetated with shrubs. Access paths are shown via the green arrows, consistent with those to be used in phases 1 & 2.

This formerly shrubbed area is approximately 44,800sf in size. Live stake plantings will be installed based on the Army Corps of Engineer’s guidelines for Wetland Replication Area plantings at 10’ on center. This results in a total of 448 live stake shrubs. Plantings were selected to be those that have previously occurred onsite that will thrive within the replication area. See Table 2 below for the planting schedule, and Figure 4 for planting locations.

**Table 2: Planting schedule within the shrubbed portion of the wetland replication area.**

Size	Quantity	Common Name	Scientific Name
1-2 gallon(s) or 2-4' or larger	64	Red Maple	<i>Acer rubrum</i>
1-2 gallon(s) or 2-4' or larger	64	Highbush Blueberry	<i>Vaccinium corymbosum</i>
1-2 gallon(s) or 2-4' or larger	64	Northern Arrowwood	<i>Viburnum dentatum</i>
1-2 gallon(s) or 2-4' or larger	64	Sweet Pepperbush	<i>Clethra alnifolia</i>
1-2 gallon(s) or 2-4' or larger	64	Swamp White Oak	<i>Quercus Bicolor</i>
1-2 gallon(s) or 2-4' or larger	64	Common Spicebush	<i>Lindera benzoin</i>
1-2 gallon(s) or 2-4' or larger	64	Black Chokecherry	<i>Photinia melanocarpa</i>

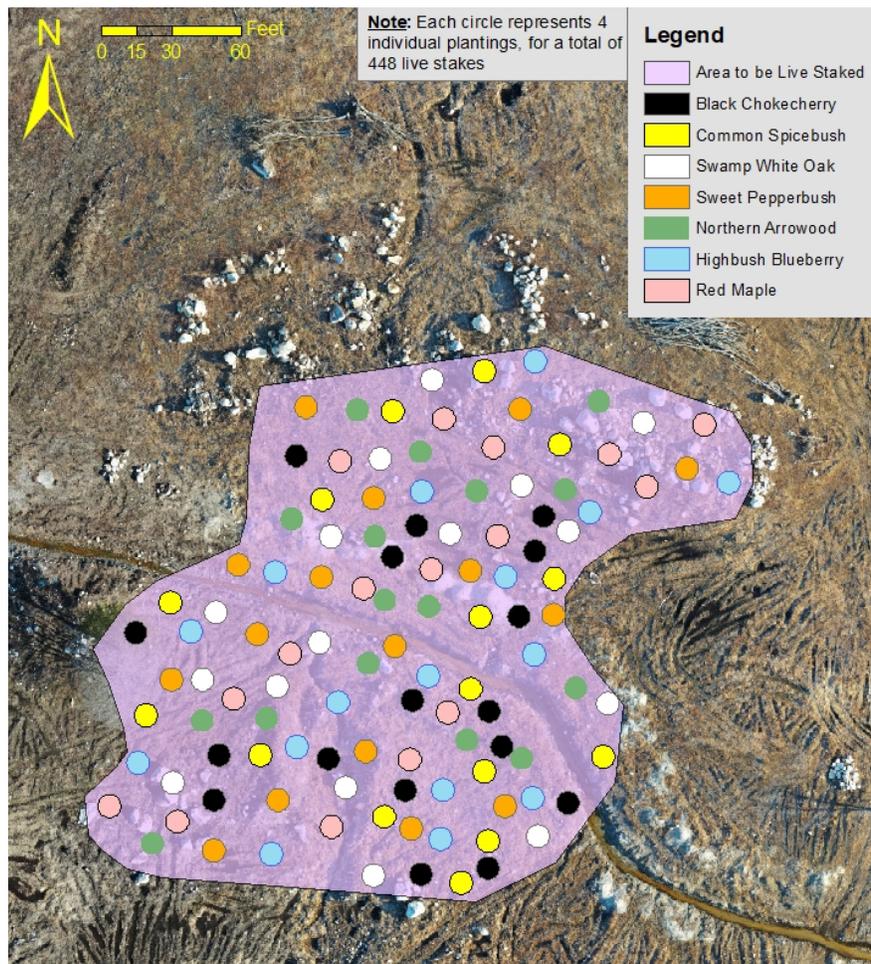


Figure 4. The approximate location of the 448 live stake plantings

Stakes should be planted so at least half their length is buried in soil (see Figure 5). Live stakes can be planted in the late fall through early spring, Live stakes should be planted in areas that will remain moist throughout the growing season, such as along the water line on streambanks or in wetlands, as is the case in this proposed plan.

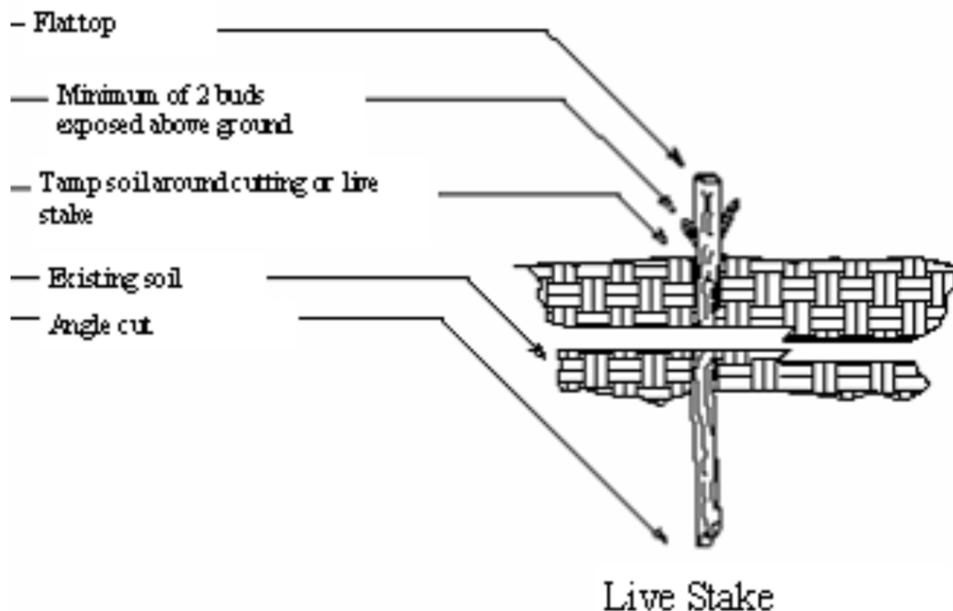


Figure 5. A detail depicting a live stake planting.

### Phase 4.3: Seeding of Restoration & Replication Areas

**Estimated Timeframe:** Fall 2022

Wetland seed mix comparable to that specified in this document, shall be scattered evenly by hand throughout the wetland and stream portions of the replication area. Upland portions of the restoration area will be seeded with New England conservation/wildlife seed mix or a similar upland mix. Following seeding a light application of weed free hay mulch shall be applied to the areas to encourage seed germination and reduce water loss.

Seed mix specifications were followed to calculate the exact quantity of bag mix to be implemented across the replication/restoration areas. With these calculations, the wetland replication area should be seeded with a total of 293lbs of New England FACW mix, and the upland portions of the site should be seeded with 37lbs of New England conservation seed mix. See Table 3 below for planting schedule and Figure 4 for areas to be seeded.

**Table 3.** Seeding schedule.

Seed Mix	Quantity	Species
New England FACW Mix	293lbs.	See Attached Spec. Sheet
New England Wildlife/Conservation Mix	37lbs.	See Attached Spec. Sheet

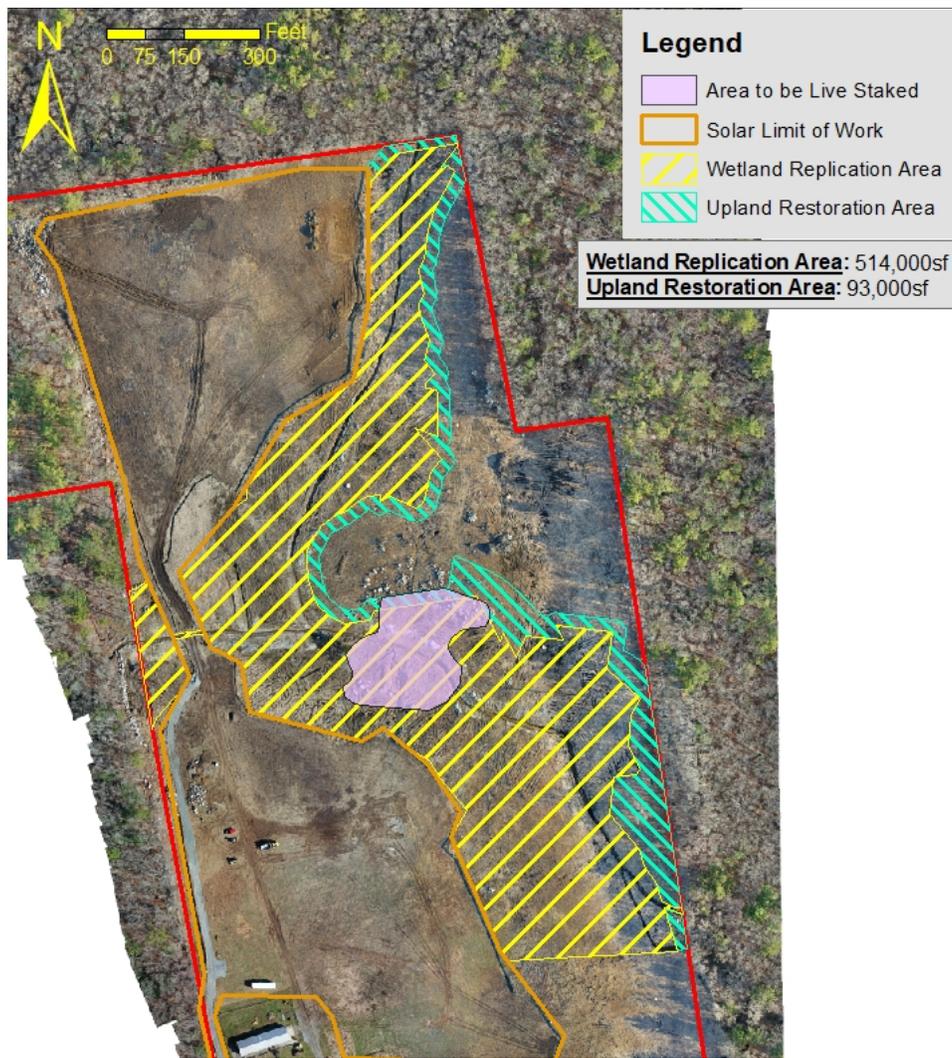


Figure 4. The locations of the areas to be seeded, the entirety of the wetland replication and the upland restoration areas, including the area to be plan.

## Phase 5: Monitoring

**Estimated Timeframe:** Spring 2023 -Fall 2025

**Seasonal monitoring reports** shall be prepared for the replication and restoration areas by a qualified wetland scientist for a period of three additional years after replication completion. This monitoring program will consist of early summer and early fall inspections. Monitoring reports shall be submitted to the Commission by November 15th of each year. Monitoring reports shall describe, using narratives, plans, and color photographs, the physical characteristics of the replication area with respect to stability, survival of vegetation and plant mortality, aerial extent and distribution, species diversity and vertical stratification (i.e., herb, shrub, and tree layers). Specific notes and photographs relating to hydrology, soil characteristics, plant survivorship, and stream functionality will also be included. Invasive species will be documented if present within areas impacted by the project, monitored and removed.

**At least 75% survival of installed native plants** shall be observed by the end of the second growing season. If the replication area does not meet the 75% survival requirement by the end of the second growing season after installation, the Applicant shall submit a remediation plan to the Commission for approval that will achieve, under the supervision of a Wetland Specialist, replication goals. This plan must include an analysis of why the areas have not been successful and how the applicant intends to resolve the problem.

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

Very truly yours,



Scott Goddard,  
Principal & PWS