

BUCHANAN & ASSOCIATES
100 CAMBRIDGE STREET, 14TH FLOOR
BOSTON, MA 02114

JAMY BUCHANAN MADEJA, ESQ.
JMADEJA@BUCHANANASSOCIATES.COM

OFFICE: (617) 227-8410
MOBILE: (617) 256-8491

September 20, 2022

Via Email Only (conscom@townofnewbury.org)

Newbury Conservation Commission
c/o Samantha Holt, Conservation Agent
12 Kent Way
Byfield, MA 01922

Re: 3 33rd Street (Sea Chanty, LLC) – Notice of Intent - DEP File # 050-1386

Dear Ms. Holt, and through you to the Commission Members:

This letter supplements the July 16, 2022 comment letter submitted on behalf of my client the Christine Elizabeth Morris Trust (the “Trust”), through its Trustees Christine E. Morris and Gabriel O. Dumont, Jr., the abutter to the property at 3 33rd Street, concerning the work proposed under DEP File No. 050-1386.

The 3 33rd Street project as described in the July 6, 2022 Notice of Intent (herein “Project”) submitted by Hughes Environmental Consulting for Sea Chanty, LLC (“Applicant” or “Proponent”) does not meet the applicable performance standards under the Wetlands Protection Act Regulations for impacted resource areas. Moreover, as of the date of this letter the Applicant has provided no additional materials or analysis to show how it will meet the performance standards, which are outlined below.

I. Performance Standards

The Project does not meet the performance standards for “Coastal Dune” which state that it “shall have no adverse effect”¹ 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 or 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.

¹ See 310 CMR 10.28(3)-(6).

While the Wetlands Protection Regulations state that for a Coastal Dune, a parking space accessory to an existing residential building therein “may be permitted,” that provision neither mandates such permitting nor exempts it from the above-referenced Performance Standards.² Moreover, the Newbury Wetlands Bylaw provides no such granted right for accessory parking spaces.

Additionally, the Project does not meet the performance standards for “Barrier Beach” which state that it “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 [or barrier] beach.”³

As noted in our July 16th letter, the complete removal of the existing dune, which contains deeply-rooted vegetation including the Rosa Rugosa plant native to Plum Island and serves as habitat for various wildlife, is clear violation of these regulatory requirements, and is contrary to the Wetlands Protect Act and accompanying Regulations’ interests of “flood control,” “storm damage prevention,” and “protection of wildlife habitat,” which mirror the “special purposes” of the Newbury Wetlands Bylaw.⁴

II. Wildlife Habitat

“Protection of wildlife habitat” is one of the stated purposes of the Massachusetts Wetlands Protection Act which is accordingly an interest protected by the Wetlands Protection Regulations. The Project Applicant has provided no wildlife habitat analysis, which is critical for this precarious Barrier Beach. All that is on the record regarding wildlife is the NHESP letter stating that the Project “will not adversely affect Priority Habitat” for state- and federally-listed piping plover. This is not the same as an analysis for “nesting bird habitat” which the applicable WPA Regulatory Performance Standards require.⁵ Neither the NHESP nor the Project Applicant has undertaken any analysis of wildlife within the Project Area, including “nesting bird habitat”, and therefore we argue the Project is insufficient under the Performance Standards’ requirement of “no adverse effect on “identified bird nesting habitat” and is contrary to the purpose of the Wetlands Protection Act and Regulations. Separate from a needed analysis on “nesting bird habitat”, there is also no study of other wildlife which utilize the site, which my clients can confirm include rabbits and foxes.

III. Availability of Alternatives

Sections 24 and 53 of the Wetlands Protection Act Regulations require Conservation Commissions to “consider the availability of reasonable alternatives” to a project as proposed, as well as “the extent to which adverse impacts could be minimized.” The Applicant has a clear, less adversely impactful solution to parking for their rental home: the tenants can park on the street, by obtaining a Town parking permit. Such on-street parking would wholly avoid any

² See 310 CMR 10.28(4).

³ See 310 CMR 10.29(2)-(3); 310 CMR 10.27(3)-(6).

⁴ See Town of Newbury Bylaws, Chapter 95 (“Wetlands”), Section 95-1 B.

⁵ The Newbury Wetlands Bylaw also requires that projects be “designed to minimize the disturbance to traditional bird-nesting habitat.”

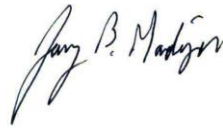
adverse impacts to “wildlife habitat,” as and would be more consistent with the Wetlands Protection Act and Regulations’ interests of “flood control” and “storm damage prevention.”

IV. Conclusion

In conclusion, not only is there no entitlement to altering a Dune, Barrier Beach or Land Subject to Coastal Storm Flowage for a residential parking space, the Project directly violates performance standards requiring ‘no adverse impact.’ The Applicant has not provided either in its Notice of Intent or in supplemental filings any supporting evidence to demonstrate that the Project will not have any adverse impacts. Whereas ample evidence is on the record of actual adverse impacts on native plant species, bird nesting habitat, and other wildlife documented at the Project Site. Moreover, the Applicant has failed to demonstrate why the Project’s wetlands resource area impacts are necessary compared to the much more environmentally and ecologically sound solution of on-street parking via a Town permit. Therefore, we respectfully request the Commission votes to deny an Order of Conditions for this Project.

I and my clients thank the Commission members for their public service and attention to these environmental concerns and for considering our comments.

Cordially,

A handwritten signature in black ink, appearing to read "Jamy B. Madeja". The signature is fluid and cursive, with the first name "Jamy" being the most prominent.

Jamy Buchanan Madeja, Esq.,
for the Christine Elizabeth Morris Trust,
106 Northern Boulevard
& 108 Northern Boulevard