

Staff Report

Date: May 7, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **132 Weeden Road – Request for Certificate of Compliance – DEP# 023-1313, Fairhaven CON 023-115**

DOCUMENTS REVIEWED

- Certificate of Compliance Request and associated documents
- Order of Conditions issued February 3, 2020
- Notice of Intent and associated plans and documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Riverfront Area
- Bordering Vegetated Wetland
- Coastal Bank
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF)

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.
- **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
- **Coastal Bank:** 10.30(4) Any project on a coastal bank or within 100 feet landward of the top of a coastal bank...shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action.
 - **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."
 - **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

- This is a sewer upgrade project. The applicant proposed to extend the sewer line onto the property to serve the main house and three rental cottages. The work will include abandoning the existing cesspools, connecting the sewer line to the three rental cottages, installing a pump and sewer manhole.

COMMENTS

- Based on the submitted documentation, the project appears to have been constructed in compliance with the Order of Conditions.

RECOMMENDATION

- I recommend that the Commission issue a Certificate of Compliance for Complete Certification for SE 023-1313, CON 023-115, 132 Weeden Road, with the following perpetual conditions:
 - CHM-2: No liquid or solid chemical lawn fertilizers, pesticides, herbicides or chemical or petroleum dust control agents shall be applied within the area of statutory interest or anywhere that the surface drainage is discharged into an area of statutory interest. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
 - DER-4: The owner of the property described in this Order must advise any potential buyer of the property that any construction or alteration to said property, including brush cutting or clearance, may require approval by the Fairhaven Conservation Commission. Any instrument conveying any or all of the owners' interest in said property or any portion thereof shall contain language similar to the following:

“This property is subject to the Fairhaven Wetlands Bylaw and/or the Massachusetts Wetlands Protection Act. Any construction or maintenance work performed on this property requires an Order of Conditions and/or a Determination of Applicability from the Fairhaven Conservation Commission.”

This condition is ongoing and shall not expire with the issuance of a Certificate of Compliance and shall be recorded in the deed.

Staff Report

Date: May 7, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **36 Balsam Street – Request for Continuance of Compliance – DEP# 023-0888, Fairhaven CON 023-226**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Fairhaven Stormwater Bylaw (Chapter 194)

RESOURCE AREAS ON/NEAR SITE

- Coastal Beach
- Coastal Dune
- Rocky Intertidal Shore
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE

PERFORMANCE STANDARDS

- No work was proposed within Coastal Beach, Coastal Dune, or Rocky Intertidal Shore.
- **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.”
- **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 Order of Conditions approved the construction of a flood-zone compliance single-family home.

COMMENTS

- The Order of Conditions is expired but the house has been built. Remaining is minor landscaping and site work.

RECOMMENDATION

- I recommend issuing a Certificate of Compliance for Complete Certification for 36 Balsam Street, SE 023-0888, CON 023-226.

Staff Report

Date: May 7, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **12 Hedge Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-220**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

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

PERFORMANCE STANDARDS

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

PROJECT SUMMARY

- The applicant is proposing to construct an 18-foot-by-16-foot deck on sonotubes.

COMMENTS

- The project appears to comply with flood zone regulations and does not appear to propose any negative impacts to storm damage prevention or flood control.

RECOMMENDATION

- I recommend closing the public hearing for 12 Hedge Street, CON 023-220, and issuing a Negative 3 and Negative 6 Determination with the following conditions:
 - CAP-3
 - All work shall comply with local, state, and federal flood regulations.

Staff Report

Date: May 7, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **48 Torrington Road – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-222**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

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

PERFORMANCE STANDARDS

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

PROJECT SUMMARY

- The applicant is proposing to install a stamped concrete patio and a 12-foot-by-20-foot concrete pad for a greenhouse and shed. They are also proposing minor site grading associated with the greenhouse and shed.

COMMENTS

- All work is proposed outside the 25-foot buffer zone. Minor grading may occur within the 25-foot buffer zone to address current inconsistencies with an existing Order of Conditions.
- Approximately half of the patio is located outside of the 50-foot buffer zone

- The area is currently bare ground due to the construction of the house. There is approximately three feet of additional fill currently on site from what the Order of Conditions for the house approved. The applicants are requesting to be able to keep some of it to have level grading around the proposed greenhouse/shed area.
- There fill is not currently properly graded into the rear of the yard near the wetland.
- Maintaining some of the extra fill for the greenhouse/shed makes sense. However, the “cliff” at the back of the yard before the boulders should be addressed and the grading needs to more closely match what was on the Order of Conditions. That does not need to be addressed as part of this filing as there is currently an open Order of Conditions.
- The proposed activities do not appear that they will have a negative impact on the resource area.

RECOMMENDATION

- I recommend closing the public hearing for 48 Torrington Road, CON 023-222, and issuing a Negative 3 and Negative 6 Determination with the following conditions:
 - CAP-3
 - WAS-2
 - Only minor amounts of fill/grading are permitted with this project. All grading shall closely approximate what was approved under SE 023-1289, CON 19-034.

Staff Report

Date: May 7, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Scotcut Neck Road/Overlook Lane – Request for Amended Order of Conditions – DEP# 023-1258, Fairhaven CON 023-162**

DOCUMENTS REVIEWED

- Request for Amended Order of Conditions and associated documents
- Order of Conditions issued December 11, 2017
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone
- Intermittent Stream (Land Under and Bank of)

PERFORMANCE STANDARDS

- **Bordering Vegetated Wetland:** 10.55(4)
 - (a) work in a Bordering Vegetated Wetland shall not destroy or otherwise impair any portion of the BVW
 - (b) The ConCom may permit the loss of up to 5000 square feet of BVW when said area is replaced IF:
 1. The area is equal;
 2. The ground water and surface elevation are approximately equal;
 3. The overall horizontal configuration and location are similar;
 4. There is an unrestricted hydraulic connection to the same water body or waterway;
 5. It is in the same general area of the water body;
 6. At least 75% of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons; and
 7. The replacement area is provided in a manner which is consistent with all other regs in 310 CMR 10.00.
 - (c) The ConCom may permit the loss of a portion of BVW when;
 1. Said portion has a surface area less than 500 square feet;
 2. Said portion extends in a distinct linear configuration ("finger-like") into adjacent uplands; and
 3. In the judgment of the issuing authority it is not reasonable to scale down, redesign or otherwise change the proposal.

(d) No project may be permitted which will have any adverse effect on specified habitat sites of rare species

(e) No work shall destroy or otherwise impair any Area of Critical Environmental Concern

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

- **General Provisions (Limited Projects) 10.53**

(3) ...the Issuing Authority may issue an Order of Conditions...permitting the following limited projects...In determining whether to exercise its discretion to approve the limited projects listed in 310 CMR 10.53(3), the Issuing Authority shall consider the following factors: the magnitude of the alteration and the significance of the project site to the interests [of the Act], the availability of reasonable alternatives to the proposed activity, the extent to which adverse impacts are minimized, and the extent to which mitigation measures, including replication or restoration, are provided to contribute to the protection of the interests [of the Act].

(e) The construction and maintenance of a new roadway or driveway of minimum legal and practical width acceptable to the planning board, where reasonable alternative means of access from a public way to an upland area of the same owner is unavailable. **Such roadway or driveway shall be constructed in a manner which does not restrict the flow of water.** Reasonable alternative means of access may include any previously or currently available alternatives such as realignment or reconfiguration of the project to conform to [regulations for inland wetlands] or to otherwise minimize adverse impacts on resource areas.

PROJECT SUMMARY

- The applicant is requesting to amend an existing Order of Conditions to move the wetland crossing back to the originally proposed location.

COMMENTS

- The area of wetland will be filled and three 6-inch pipes will be placed under the driveway to maintain the hydrologic connection.
- Based on the discussion regarding the previous amendment request, the crossing has been changed to concrete as was the previously issued amendment.
- Moving the crossing back will necessitate two driveways along either side of the wetlands rather than a single shared driveway.
- The Commission appreciated moving the crossing for a future shared driveway rather than two driveways because of the reduction in potential wetland impacts in the future.
- Currently, the submitted NOIs for two of the three lots utilize this wetland crossing design rather than the currently approved crossing design.

RECOMMENDATION

- If the Commission has concerns related to moving the wetland crossing back to the original location, I recommend denying the Amendment Request.

- If the Commission is satisfied that the crossing is designed to maintain appropriate hydrologic connection between the wetlands and that reverting to the original design necessitating two separate driveways is not an issue, I recommend closing the public hearing and issuing an Amended Order of Conditions for Scoticut Neck Road/Overlook Lane, SE 023-1258, CON 023-162, plans dated April 19, 2021, with the following recommended conditions:

Approve plan dated April 19, 2021

A. General Conditions

1. ACC-1
2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
3. REC-1
4. REC-2
5. ADD-1
6. ADD-2
7. ADD-4b
8. ADD-4c
9. ADD-5
10. STO-4
11. STO-5
12. The erosion and sedimentation barrier, as shown in driveway cross-section A-A, shall be placed in the location depicted by the square box and line detail on either side of the wetland crossing.
13. LOW-2
14. The driveway crossing depicted on the approved plans shall be the only wetland crossing permitted for access to Map #29, Lot #1E (Sub. Lot #6).
15. Any and all impact to the wetland resource area shall be kept to the absolute minimum necessary to carry out the approved work.

B. Prior to Construction

16. CAP-3
17. REC-3
18. DER-1
19. PCC-3
20. EMC-1
21. PCC-1
22. SIL-5
23. SIL-9
24. SIL-10

C. During Construction

25. Construction access shall be from the existing constructed hammerhead of Overlook Lane
26. Any storage of materials shall be in the existing constructed Overlook Lane or a portion of the cleared area of Map #29, Lot #1C (Sub. Lot #4).
27. All equipment used on site must be stored or parked in the existing constructed Overlook Lane.
28. MAC-3
29. MAC-7

30. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.

31. DEB-1

32. DEB-5

33. BLD-3

34. BLD-4

35. EMC-2

36. SIL-3

37. SIL-4

38. SIL-8

39. LOW-3

40. WAS-2

41. WAT-3

D. After Construction/In Perpetuity

42. REV-1

43. RES-4

44. COC-1

45. COC-2

Perpetual Conditions

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

46. CHM-2 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.

47. DER-4

48. Any and all alterations of wetlands situated within the entire property (Sconticut Neck Road, Map 29, Lots 1C, 1D, and 1E, Subdivision Lots 4, 5, and 6 on subdivision plan entitled "Overlook Acres", a Definitive Subdivision, Fairhaven, MA, Prepared for "Overlook Realty Trust" dated July 12, 2017, revised November 6, 2017, by N. Douglas Schneider & Associates Inc.) shall not exceed a cumulative total of 4,957 square feet in area.

49. The pipes under the wetland crossing shall be properly maintained so as to ensure proper hydrologic connection between the bordering vegetated wetlands on site.

Staff Report

Date: May 7, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Scotcut Neck Road/Overlook Lane (Map 29, Lot 1C) – Notice of Intent – DEP# 023-1353, Fairhaven CON 023-223**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone

PERFORMANCE STANDARDS

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

- (e) No work shall destroy or otherwise impair any Area of Critical Environmental Concern
- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”

PROJECT SUMMARY

- The applicant is proposing to construct a single-family dwelling with a garage, in-ground swimming pool, pool house, basketball court, paved driveway, and associated utilities and site grading.
- Retaining walls are proposed to minimize fill within the 100-foot buffer zone.

COMMENTS

- The majority of the work falls entirely within the 100-foot buffer zone. Only a portion of the house and pool are outside of the buffer zone entirely.
- Work within the 0-25-foot buffer zone includes:
 - A small portion of the paved driveway
 - A small amount of grading associated with the driveway and the house
- Work within the 25-50-foot buffer zone includes:
 - Much of the grading on the southern side of the proposed house
 - Half of the proposed basketball court and associated grading and recharge trenches
 - A portion of the proposed paved driveway
 - A portion of vinyl or stockade fence
- Work within the 50-100-foot buffer zone includes:
 - Half of the proposed basketball court and associated grading and recharge trenches
 - Majority of the grading east, north, and west of the house
 - Approximately half of the swimming pool and the majority of the associated pool house
 - A portion of vinyl or stockade fence
 - The garage and the house
- Sedimentation control has been proposed along the west and south property lines and from the existing hammerhead to the north property line east of the house.
- The project was submitted prior to the Commission’s vote to adopt the buffer zone regulations. If the project had been submitted after, the basketball court would need to be moved out of the 25-50-foot buffer zone.
- It appears some grading might impact the only mature tree depicted on the property.

RECOMMENDATION

- If the Commission has concerns related to the location of any of the proposed work in relation to the wetland, I would recommend asking the applicant to request a continuance.
- If the Commission is satisfied that project as proposed limits potential impacts to the Bordering Vegetated Wetland, I recommend closing the public hearing and issuing an Order of Conditions for Scoticut Neck Road/Overlook Lane (Map 29, Lot 1C), SE 023-1353, CON 023-223, plans dated April 26, 2021, with the following recommended conditions:

Approve plan dated April 26, 2021

A. General Conditions

1. ACC-1
2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
3. REC-1
4. REC-2
5. ADD-1
6. ADD-2
7. ADD-4b
8. ADD-4c
9. ADD-5
10. STO-4
11. STO-5
12. LOW-2
13. WET 1. The issuance of this Order of Conditions does not extend the approval of the wetland line as depicted on the approved plans. Once the Order of Conditions (SE 023-1258) approving that line expires, the wetland line will need review and approval by the Commission for any projects in the future.
14. All depicted erosion controls shall use either a combination siltation fence and straw wattle/silt sock or compost filter socks.

B. Prior to Construction

15. CAP-3
16. REC-3
17. DER-1
18. PCC-3
19. EMC-1
20. PCC-1
21. SIL-5
22. SIL-9
23. SIL-10
24. A planting plan shall be submitted for review and approval by the Commission for the addition of a living fence/shrub border along the erosion control barrier between the garage and the wetland as well as native plantings along the southern property line.

C. During Construction

25. All equipment used on site must be stored or parked in the existing constructed Overlook Lane.
26. MAC-3
27. MAC-7
28. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
29. DEB-1
30. DEB-5
31. BLD-3
32. BLD-4
33. EMC-2

34. SIL-3
 35. SIL-4
 36. SIL-8
 37. All materials that are stockpiled or stored shall be protected from erosion with strawbales, silt fence, compost filter sock, or mulch. All materials shall be stockpiled at least 50 feet away from wetlands, and at a location to prevent surface runoff from sediment entering the wetlands. 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.
 38. All work shall be done in phases as much as possible so that at no time the entire site is denuded of vegetation and soil stabilization.
 39. All disturbed areas shall be graded, loamed, and seeded prior to November 1 of each year, if possible. No disturbed areas or stockpiled material shall be left unprotected or without erosion controls during the winter.
 40. LOW-3
 41. WAS-2
 42. WAT-3
- D. After Construction/In Perpetuity
43. REV-1
 44. RES-4
 45. COC-1
 46. COC-2

Perpetual Conditions

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

47. CHM-2 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
48. DER-4
49. Any pool drainage or discharge shall be to the north or west side of the pool and the water must stand to dechlorinate for at least one week before any drainage shall occur. This condition is perpetual and does not end with the issuance of a Certificate of Compliance.
51. It shall be the responsibility of the landowner to continually maintain the site in a manner that assure stabilization and precludes any soil erosion. This condition is perpetual and does not end with the issuance of a Certificate of Compliance.
52. At no point shall any additional wetland impacts, including but not limited to filling, be permitted on this property. This condition is perpetual and does not end with the issuance of a Certificate of Compliance.

Staff Report

Date: May 7, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Scotcut Neck Road/Overlook Lane (Map 29, Lot 1D) – Notice of Intent – DEP# 023-1351, Fairhaven CON 023-224**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone

PERFORMANCE STANDARDS

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

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

PROJECT SUMMARY

- The applicant is proposing to construct a single-family dwelling with a garage, in-ground swimming pool, barn, volleyball court, paved driveway, and associated utilities and site grading.

COMMENTS

- The majority of the work falls entirely within the 100-foot buffer zone. Only a portion of the house and pool are outside of the buffer zone entirely.
- Work within the 0-25-foot buffer zone includes:
 - The majority of the paved driveway
 - A small amount of grading associated with the driveway, barn, and volleyball court
- Work within the 25-50-foot buffer zone includes:
 - Much of the grading on the southern side of the proposed house
 - A portion of the sand volleyball court
 - A portion of the proposed paved driveway
 - The proposed barn and a portion of the proposed gravel access drive
 - A portion of the grading associated with the house
- Work within the 50-100-foot buffer zone includes:
 - The remainder of the volleyball court
 - The in-ground swimming pool
 - The house and garage (designed with a drive under garage to minimize fill in the buffer zone)
 - Majority of the grading associated with the house and pool
- The applicant has proposed boulders and a vegetative buffer at the rear of the property to denote 15 feet off the wetland
- A number of items were discussed during the site visit for this project, which the applicant plans to address after discussing with the Commission so all feedback can be implemented at once. Items included:
 - Pervious driveway
 - Seeding the area between the driveway and the wetland with a native wildflower/pollinator mix
 - Moving the work at the rear out of the 25-foot entirely, so the vegetated buffer extends the full 25 feet all the way along the wetland until flag #117 or so.
 - Invasive species management plan and associated native planting plan to address significant presence of Japanese knotweed on site. Area will likely need to be completely grubbed and material disposed of properly due to monoculture of knotweed.

RECOMMENDATION

- The applicant indicated they intended to request a continuance after discussing any additional changes with the Commission so all changes could be incorporated at once.

Staff Report

Date: May 7, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Scotcut Neck Road/Overlook Lane (Map 29, Lot 1E) – Notice of Intent – DEP# 023-1352, Fairhaven CON 023-225**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone

PERFORMANCE STANDARDS

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

- (e) No work shall destroy or otherwise impair any Area of Critical Environmental Concern
- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”

PROJECT SUMMARY

- The applicant is proposing to construct a single-family dwelling with a garage, fire pit and patio, and associated utilities and site grading.

COMMENTS

- This project is contingent upon the Commission approving the amendment request to revert to the original wetland crossing location.
- All of the work falls entirely within the 50-foot buffer zone.
- Work within the 0-25-foot buffer zone includes:
 - The majority of the paved driveway
 - The fire pit and patio
 - Small portions of the garage and house
 - All site grading
- Work within the 25-50-foot buffer zone includes:
 - The majority of the garage and house
- The applicant has proposed permanent boulders and a permanent vegetative buffer of varying widths between 5 and 10 feet
- A number of items were discussed during the site visit for this project, which the applicant plans to address after discussing with the Commission so all feedback can be implemented at once.
Items included:
 - Pervious driveway
 - Estimation of how many mature trees are to be impacted
 - Addition of native planting area on the inside of the boulders on the north side of the property to increase the distance between lawn and wetland (currently lawn is proposed 5 feet from the wetland)
 - Addition of some native shrub/tree plantings

RECOMMENDATION

- The applicant indicated they intended to request a continuance after discussing any additional changes with the Commission so all changes could be incorporated at once.

Staff Report

Date: May 7, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Cherrystone Road/Fir Street (Map 43B, Lots 313-315) – Notice of Intent – DEP# 023-1349, Fairhaven CON 023-213**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Revised site plan dated April 2, 2021
- Revised site plan dated April 26, 2021

RESOURCE AREAS ON/NEAR SITE

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

PERFORMANCE STANDARDS

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

PROJECT SUMMARY

- The applicant is proposing the construct a single family house and associated septic.

COMMENTS

- During the site visit, the following items were discussed:
 - plan should include the LiMWA (Limit of Moderate Wave Action)
 - plan should show any proposed grading changes associated with the proposed work; no fill for structural purposes and the lowest structural member of the dwelling should be at 15 feet at least, preferably 16 feet
 - there is a possibility the structure will need to meet V-zone standards
 - total number of trees larger than 4" dbh proposed to be removed
 - estimated amount of smaller vegetation to be removed
 - planting plan or agreement to do a planting plan to offset what is removed
 - will the structure have a driveway?
 - move the erosion control line to match the limit of clearing rather than property line

- The applicant submitted a revised site plan and some additional information in response to the above items. The changes included:
 - Inclusion of the LiMWA on the plan
 - Addition of a driveway on the plans, no notation as to whether it is paved or unpaved
 - The applicant submitted the following information related to the removal of vegetation: “there will be 9 trees greater than 4” in diameter cut down at cherrystone. There will also be up to 11 smaller trees that could potentially be cut down. As for replanting, I am happy to work with the commission to create a planting plan.”
 - The erosion control line was moved to match the limit of clearing
 - Addition of grading around the septic and proposed dwelling.
- In speaking with the applicant, the driveway is proposed to be unpaved.
- Overall, it appears the majority of the site will be brought up approximately 1-2 feet.

RECOMMENDATION

- If the Commission doesn't have concerns about the amount of fill to bring the property to elevation 13, I recommend closing the public hearing.
- I will provide draft conditions for the next meeting.

Staff Report

Date: May 7, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Bella Vista Island – Notice of Intent – DEP# 023-1340, Fairhaven CON 023-195**

DOCUMENTS REVIEWED

- Notice of Intent and associated site plans and documents
- MassDEP Administrative Consent Order with Penalty and Notice of Noncompliance dated June 25, 2019
- Previous Notices of Intent, Order of Conditions, Enforcement Orders
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Division of Marine Fisheries comments dated December 4, 2020
- Additional revised documents submitted February 1, 2021
- Peer review letter dated February 22, 2021
- Planting plan dated April 5, 2021
- Planting plan dated April 16, 2021

RESOURCE AREAS ON/NEAR SITE

- Salt Marsh
- Coastal Beach
- Coastal Dune
- Coastal Bank
- Land Containing Shellfish
- Land Under the Ocean
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF)
- Isolated Vegetated Wetlands

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].
- **Coastal Beach:** 10.27

- (3) Any project on a coastal beach...shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.
- (5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.
- **Coastal Dune: 10.28**

(3) Any alteration of, or structure on, a coastal dune or within 100 feet of a coastal dune shall not have an adverse effect on the coastal dune by:

 - (a) affecting the ability of waves to remove sand from the dune;
 - (b) disturbing the vegetative cover so as to destabilize the dune;
 - (c) causing any modification of the dune form that would increase the potential for storm of flood damage;
 - (d) interfering with the landward or lateral movement of the dune;
 - (e) causing removal of sand from the dune artificially; or
 - (f) interfering with mapped or otherwise identified bird nesting habitat.
 - **Coastal Bank: 10.30**

(4) Any project on a coastal bank or within 100 feet landward of the top of a coastal bank...shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action.

(6) Any project on [a coastal bank significant to storm damage prevention or flood control] or within 100 feet landward of the top of such coastal bank shall have no adverse effects on the stability of the coastal bank.
 - **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...

(6) ...the issuing authority may, after consultation with the Shellfish Constable, permit the shellfish to be moved from such area under the guidelines of, and to a suitable location approved by, the Division of Marine Fisheries, in order to permit a proposed project on such land.
 - **Land Under Ocean: 10.25**

(3) Improvement dredging for navigational purposes affecting land under the ocean shall be designed and carried out using the best available measures so as to minimize adverse effects...

(4) Maintenance dredging for navigational purposes affecting land under the ocean shall be designed and carried out using the best available measures so as to minimize adverse effects...

(5) Projects...which affect nearshore areas of land under the ocean shall not cause adverse effects by altering the bottom topography so as to increase storm damage or erosion of coastal beaches, coastal banks, coastal dunes, or salt marshes.

(6) Projects...shall...be designed and constructed...so as to minimize adverse effects [or] have no adverse effects on marine fisheries habitat or wildlife 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."
 - **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 seeking after-the-fact approval for:
 - Wooden posts and rope line that extend north and south perpendicular to the causeway along the eastern property line
 - Reconstruction of the existing stone seawall, including removing the southern end of the seawall
 - Conversion of seasonal depressions to manicured lawn and relief from installing the previously agreed-to plantings

COMMENTS

- The applicant's representative submitted additional information on February 1, 2021 including revised plans, revised Notice of Intent, photographs of the dredge area, and some photographs of areas that had debris, but not all.
- The Commission conducted a site visit with the applicant's engineer on February 17, 2021. The items discussed at the site visit included:
 - The debris still has not been removed from the resource area. Before any decisions are made on either filing, numerous items should be removed by hand from resource areas as soon as possible, including booms, anchors, and associated wires, the wooden float, and the 6" x 6" wooden posts along the property line near the entrance. These items need to be removed by the March 8 Conservation Commission meeting and proof provided to the Commission. Otherwise, the applicant may risk daily fines.
 - Under the non-ACOP filing, the applicant needs to submit a planting plan for the buffer zone that includes the removal of the planting beds, electrical features, etc. and the installation of native shrubs and grasses within the first 25 feet of the resource areas and then another 25-50 feet at least of meadow creation, complete with maintenance plan involving limited mowing and no fertilizers, herbicides, or pesticides. This should also include a phased installation plan and monitoring.
 - This plan, once approved, needs to be started by the end of May 2021. Otherwise, the applicant will face daily fines for an ongoing violation of non-permitted items installed within a jurisdictional area.
- The planting plan shows the following:
 - A 40-foot indigenous shrub replanting area comprising the first 40 feet of the buffer zone
 - A 40-foot wildflower planting area comprising the second 40 feet of the buffer zone.
 - The relocation of all existing fruit trees, water spigots, and lighting entirely outside the 80-foot buffer zone area.
 - Removal of the mulched beds
- The plan is now at a point where it can be conditioned to move forward, especially given the planting season.

RECOMMENDATION

- I recommend closing the public hearing for 1 Bella Vista Island, SE 023-1340, CON 023-195.
- A draft set of conditions will be presented at the following meeting.
- The Commission could consider imposing daily fines if the work is not started by the end of May/early June 2021 for an ongoing violation of non-permitted items installed within a jurisdictional area.