

Staff Report

Date: May 21, 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.
- The public hearing was closed on May 10, 2021.

RECOMMENDATION

- I recommend issuing an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw for SE 023-1349, CON 023-213, Cherrystone Road/Fir Street, 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. The driveway is to remain pervious and shall not be paved.
14. TRP-1: All mature trees on site not permitted to be removed shall have a no disturb zone established and demarcated around them for the duration of the project as follows:
 - Every 1-inch caliper equals 1 foot of protection around the tree as a lateral measurement from the base of the tree; i.e. a 6-inch caliper tree has a 6-foot no disturb zone all the way around with the tree at the center.
15. All work shall comply with all local, state, and federal flood zone regulations, including, but not limited to, regulations regarding fill in the flood zone.
16. The design flood elevation of the structure shall be one foot above base flood elevation.

B. Prior to Construction

17. CAP-3
 18. REC-3
 19. DER-1
 20. PCC-3
 21. EMC-1
 22. PCC-1
 23. The demarcated tree no disturb zones shall be installed prior to and inspected at time of erosion control inspection.
 24. SIL-5
 25. SIL-7
 26. SIL-9
 27. SIL-10
 28. Prior to any work, a planting plan that compensates 1:1 for the removal of vegetation necessary for the project shall be submitted for review and approval by the Conservation Commission.
- C. During Construction
29. STO-1
 30. STO-3
 31. MAC-3
 32. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 33. DEB-1
 34. DEB-5
 35. BLD-3
 36. BLD-4
 37. EMC-2
 38. SIL-3
 39. SIL-4
 40. SIL-8
 41. LOW-3
 42. WAS-2
 43. WAT-3
- D. After Construction/In Perpetuity
44. REV-1
 45. RES-4
 46. COC-1
 47. COC-2

Perpetual Conditions

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

48. CHM-1 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
49. DER-4

Staff Report

Date: May 24, 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 public hearing was closed on May 10, 2021.

RECOMMENDATION

- I strongly recommend that the Commission not issue any Certificates of Compliance for any open Orders until all work for all open orders is completed and proof of completion is provided to the Commission. Proof of completion should include a list of the items not completed and for what reason and as-builts and monitoring reports for the wetland restoration done at DPW.
- I recommend issuing an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw for SE 023-1340, CON 023-195, 1 Bella Vista Island, plan of record dated April 16, 2021, with the following conditions:

Special Conditions

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. With respect to all conditions, 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. The Plan-of-Record and this Order of Conditions shall be included in all construction contracts and sub-contracts dealing with the work proposed and shall supersede all other contract requirements.
4. During the construction phase, the applicant shall be responsible for maintaining a copy of the Plan-of-Record and this Order at the site. The applicant shall be responsible for compliance with the conditions of these Orders.
5. 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 Act and/or the Fairhaven Wetlands Bylaw.
6. This Order applies only to the scope of work depicted on the Plan-of-Record. Any future work not approved within the Order subject to jurisdiction under the Wetlands Protection Act will require the filing, at a minimum, of a Request for Determination or Applicability, a Request to Amend the Order, or a new Notice of Intent with the Commission. Prior to the commencement of any such future work, a receipt of a Negative Determination or valid Order of Conditions will be required.
7. All work shall be done in accordance with the Plan-of-Record, dated April 16, 2021 as approved by this Order. Any deviation must be approved by this Commission in writing prior to commencing work involved in this deviation.
8. Any changes to the plans identified above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
9. This Order of Conditions 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.
10. There shall be no discharge or spillage of petroleum product, hazardous material, or any other pollutant into any area of statutory interest.
11. Silt fence shall serve as the limit of work. The silt fence shall be placed along the wetland-side of the existing landscape beds to be removed/re-located. The silt fence location shall be staked in the field prior to installation and inspected by the Conservation Agent or the Commission's consultant. Once inspected, the silt fence shall be installed and the project activities shall commence.
12. The project shall begin no later than August 31, 2021 and must be completed by December 1, 2021. The project will be initiated with an inspection of the staked silt fence location. If the project is not initiated by August 31, 2021, the Commission may issue a new Enforcement Order with fines of up to \$300.00 per day.
13. The Salt Marsh boundary delineated in the field and/or shown on the plans is approved by the Conservation Commission through the issuance of this permit. The Salt Marsh flagging must be in place for the duration of the project.
14. No equipment whatsoever is permitted in the salt marsh at any time during any phase of the project.

15. No grade changes are permitted anywhere on the property associated with any of the approved work.
16. A qualified wetland scientist hired by the Commission at the Property Owner's expense shall oversee all phases of the project to ensure compliance with the issued Order. The Wetland Scientist will provide reports to the Commission after the work is completed in 2021 and at the end of the 2022 and 2023 growing seasons or until the project has achieved success.
17. Success shall be defined as the complete removal and relocation of all unpermitted features in the fall of 2021 and restoration of the Buffer Zone with 75% coverage by native species within 2 full growing seasons (i.e. 2022 and 2023).
18. 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.
19. Job site posting of a sign clearly visible from the road not less than two square feet or more than three square feet with the words,

Massachusetts Department of Environmental Protection [or MassDEP]
File Number SE 023-1341
Fairhaven Conservation Commission [or FCC]
File Number CON 023-194

Included shall also be the Commission's office phone number (508) 979-4023 for further information. Special orders of the conditions shall be weatherproofed and posted on all activity sites, including a posting on the job site sign. The necessary replacement and maintenance of these postings shall be the sole responsibility of the applicant.

20. Proof of recording of Order at the Bristol County Registry of Deeds shall be provided to the commission prior to the commencement of any work (including erosion controls) on the site.
21. The Applicant shall provide the Commission with the name(s) and telephone numbers of the site contractor and the project manager(s) responsible on site for compliance with this Order. The project manager shall oversee any emergency placement of erosion and sedimentation controls and be responsible for the regular inspection or replacement of control devices and for the proper disposal of waste products. The commission shall be notified in the event that the project manager or site contractor is changed.
22. Adequate erosion and sedimentation control measures, as specified in the Notice of Intent and in this Order, shall be installed and maintained throughout the entire construction phase, until the site has been stabilized and their removal has been authorized (in writing or by issuance of the Certificate of Compliance) by the Commission or its agent. The erosion control specifications in the Notice of Intent and the erosion control provisions in the Order will be the minimum standards for this project; the Commission may require additional measures. The Commission reserves the right to require additional or modified erosion and siltation controls during construction if it deems that site conditions warrant such measures.
23. All equipment used on site must be stored or parked in an area outside the buffer zone.
24. The construction site shall be left in a stable condition at the close of each day. Construction refuse and debris shall be removed daily. The Commission may require specific approval for the disposition of such materials prior to the start of construction.

25. Upon completion of the work described herein, the applicant shall prepare an As-Built Plan based on instrument survey of the work area and request that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
26. After the COC is issued for this project the Commission may issue a COC for DEP File No. SE 23-1127.

Perpetual Conditions – The following conditions do not expire upon completion of the project.

27. No additional disturbance of this property to any jurisdictional areas is allowed without authorization from the Conservation Commission, including changes to existing developed areas and existing natural features as of the date of the issuance of this Order. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
28. 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.
29. 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."

Staff Report

Date: May 21, 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 associated with the shed/greenhouse.
- 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.
- The excess fill has been address and the rear yard has been graded properly.
- 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: April 23, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **12 Huttleston Ave (Fairhaven High School) – Request for Determination of Applicability under the Bylaw only – Fairhaven CON 023-212**

DOCUMENTS REVIEWED

- Request for Determination of Applicability and associated documents
- Fairhaven Wetlands Bylaw (Chapter 192)
- Fairhaven Stormwater Bylaw (Chapter 194)
- Supplemental Information dated April 20, 2021
- Peer Review letter by GCG Associates dated May 17, 2021
- Peer Review Response letter dated May 20, 2021
- Revised plans dated May 21, 2021

RESOURCE AREAS ON/NEAR SITE

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

PERFORMANCE STANDARDS

- The Fairhaven Wetlands Bylaw does not have performance standards specific to the 100-foot buffer zone to flood zone but the Commission should consider the project in the context of flood control, storm damage prevention, and prevention of pollution.
- The Fairhaven Stormwater Bylaw requires that the project include the following:
 - Erosion and sedimentation control plan
 - Stormwater management plan, which meets Massachusetts Stormwater Standards
 - Operation and maintenance plan

PROJECT SUMMARY

- The applicant is proposing to replace an existing natural turf field with a synthetic turf athletic field and construct an associated building.

COMMENTS

- The project falls under the jurisdiction of the bylaw because a portion of it falls within the 100-foot buffer zone to the flood zone.
- Because the project is in front of the Commission, the Conservation Commission is charged with ensuring compliance with Chapter 194 (Stormwater) per §194-4 A. (3).

- The change from natural turf to synthetic turf will increase the potential for contaminants.
- In installing the drainage associated with the construction of the field, best management practices should be adhered to in order to prevent pollution or contamination of stormwater, the storm drain system, or any waters of the US, especially since the area is being converted to synthetic turf instead of upgrading and improving the drainage for the existing natural turf field.
- The project will require a NPDES permit and an associated Stormwater Pollution Prevention Plan (SWPPP)
- The Public Works Superintendent stated he did not have concerns with regard to flooding because the project is tying into a 60-inch pipe.
- The Planning Director submitted the following comments:
 - I understand that the Conservation Commission has continued its review of the High School Synthetic Turf project until hearing from the Planning Board. I thank you and the Commission for taking the opinion of the Planning Board into consideration. There is a formal requirement for a project such as this to come before the Planning Board. This should have taken place before Town Meeting. While the Planning Board opinion in this case appears to be non-binding, it is required to be on the warrant and voted on at Town Meeting. It may not be required for the Conservation Commission to make its decision. I have placed the Chapter 65 Review of the High School Synthetic Turf project on the draft agenda for the Planning Board meeting next Tuesday. I will let you know when I have an approved agenda.
 - When I met with Dr. Baldwin and Ms. Potter and their consultants last week one of the consultants questioned where Chapter 65 says the project needs to come to the Planning Board. Chapter 65, the Powers and Duties of the Planning Board, in paragraph 3 states: "...It (the Planning Board) shall examine the plans for the exterior of any public building, monument or similar feature and for the development and treatment of the grounds about the same before the adoption thereof, and may make such recommendations thereon as it may deem needful."
 - Chapter 316, Procedural Rules for the Town of Fairhaven, in 316-6, Mandatory Referrals, states that: "All plans for parks, monuments or public works buildings must be submitted to the Planning Board for review at least two weeks prior to action by the Selectmen in inserting an article regarding them in the Town Warrant (§§ 65-3 and 65-4)." The citation of §65-3 and 4 indicates to me that 316-6 includes those items spelled out in those two sections.
 - While the project has already been voted on at Town Meeting I am trying to re-establish the procedures that I was not fully aware of and which appear to have been dropped in the last few years. To reiterate, the Planning Board opinion is mandatory for Town Meeting but is non-binding.
- The supplemental information submitted by the consultant includes the following items:
 - A letter summarizing responses to questions raised in the April 12 meeting
 - NOAA Atlas-14 rainfall data
 - Existing versus proposed hydrology plans
 - Hydrological calculations for existing and proposed conditions
 - Hydraulic pipe-sizing calculations
 - Groundwater recharge calculations
 - Fairhaven MVP Program's Summary of Findings for reference
- The cover letter notes the following:

- The existing field has very little infiltration and the drywells installed in 1994 have exceeded their life expectancy and are no longer infiltrating to the 60-inch pipe along Huttleston Avenue.
- Based on test pits done at the field, existing soils on site were modeled as a Type B soil.
- The drainage upgrades will utilize the existing drainage lines located within public rights-of-way.
- The drainage system for the proposed field has been designed to improve water quality and reduce peak flows and runoff volumes with no adverse impacts to regulated flood zones.
- The stormwater management system is designed in accordance with the MassDEP Stormwater Handbook.
- Precipitation data used is from the latest NOAA Atlas 14 Precipitation Frequency Atlas of the United States: Northeast States.
- Synthetic turf fields function very similarly to porous pavement in terms of stormwater management and treatment. Stormwater runoff directed to the synthetic turf field is filtered by the synthetic turf backing and the stone base layers beneath the synthetic turf prior to discharging to the perimeter manifold system. The synthetic turf system is expected to provide a decrease in pollutant loading compared to the existing natural turf field. The Fairhaven Bylaws Chapter 198 defines the water quality depth as the “first flush” or the first 1.25 inches of flow. Because the synthetic turf and stone base layers filter out any sediments the first flush will be fully treated as it seeps through the turf.
- The lowest elevation on the proposed synthetic turf field is elevation 8.5’, which is 2.5’ higher than elevation 6.0’ for FEMA flood elevation.
- The proposed synthetic turf field is a pervious surface equipped with flat drains laid in a herringbone pattern across the field. The flat drains connect to a perforated perimeter manifold drain pipe set in crushed stone which is routed to two outlet control structures. The outlet control structures will tie-into existing drainage lines located within public rights-of-way.
- The primary outlet will be to the 60-inch drain culvert on Huttleston Ave. The secondary “back-up” outlet will be to the Green Street drainage system.
- The peer review noted some minor items that needed to be addressed, but noted that the stone reservoir should be able to retain and exfiltrate the entire 100-year storm peak flow and volume.
- The applicant has provided responses to the peer review letter and revised the relevant sheets from the plan set.

RECOMMENDATION

- If the Commission is satisfied with the information provided by the applicant in response to the peer review, I recommend closing the public hearing and issuing a Negative 6 Determination for 12 Huttleston Ave, CON 023-212 with the following recommended conditions:
 - CAP-3
 - Best management practices shall be used to prevent pollution or contamination of stormwater, the storm drain system, or any waters of the US.
 - Prior to start of work, the following items shall be submitted to the Conservation Commission:
 - i. A copy of the SWPPP
 - ii. A copy of the Operation and Maintenance Plan

Staff Report

Date: May 21, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **14 Plaza Way – Abbreviated Notice of Resource Area Delineation – DEP# 023-1355, Fairhaven CON 023-227**

DOCUMENTS REVIEWED

- Abbreviated Notice of Resource Area Delineation and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Bank of Intermittent Stream
- Buffer Zone

PERFORMANCE STANDARDS

- No work is proposed under this filing

PROJECT SUMMARY

- The applicant is seeking confirmation of resource area boundaries

COMMENTS

- The wetland line should be verified. The Commission in the past has hired a third-party peer reviewer to assess the line.
- I have solicited estimates from a few peer reviewers regarding this project.

RECOMMENDATION

- If the Commission would like to have a third party peer review the line, I recommend making a motion to allow the Agent to hire a peer reviewer and coordinate the process.

Staff Report

Date: May 21, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **33 Point Street – Notice of Intent – DEP# 023-1354, Fairhaven CON 023-228**

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

- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE-16

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 raze the existing house and construct a new flood zone-compliant single-family house.

COMMENTS

- Minor fill is proposed to level the area for the foundation.
- The property is very flat and the plans do not propose major changes to the elevation.
- The applicant’s representative provided updated general notes for the plan indicating the following building and lot coverage information:
 - “Existing house should be 620 SF plus 218 SF concrete decks = 838 SF. So existing lot coverage is 18.9%. Proposed house is 1009 SF + 282; paved driveway = 1291 SF and proposed lot coverage is 29% - still under the 30% **building coverage** limit. That should be taken into consideration. If the total lot coverage is under the allowable building coverage, a paved driveway should be allowed – don’t you think? These folks are going to have over 70% of their lot pervious.”
- It doesn’t appear that the proposed project will have a negative impact on storm damage prevention and flood control.

RECOMMENDATION

- I recommend closing the public hearing for SE 023-1354, CON 023-228, 33 Point Street, and issuing an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw, plans dated April 28, 2021, with the following recommended conditions:

Standard Conditions

Approve plan dated April 28, 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 limit of work shall be the property boundaries.
13. All work shall comply with all local, state, and federal flood zone regulations, including, but not limited to, regulations regarding fill in the flood zone.
14. The design flood elevation of the structure shall be two feet above base flood elevation.

B. Prior to Construction

15. CAP-3
16. REC-3
17. DER-1
18. PCC-3
19. EMC-1
20. Erosion and sedimentation control shall be placed along the northern, southern, and eastern property lines.
21. PCC-1
22. SIL-5
23. SIL-7
24. SIL-9
25. SIL-10

C. During Construction

26. STO-1
27. STO-3
28. MAC-3
29. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
30. DEB-1
31. DEB-5
32. BLD-3

- 33. BLD-4
 - 34. EMC-2
 - 35. SIL-3
 - 36. SIL-4
 - 37. SIL-8
 - 38. LOW-3
 - 39. WAS-2
 - 40. WAT-3
- D. After Construction/In Perpetuity
- 41. REV-1
 - 42. COC-1
 - 43. COC-2

Perpetual Conditions

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

- 44. CHM-1 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
- 45. DER-4

Staff Report

Date: May 21, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **12-18 Rio Way – Notice of Intent – DEP# 023-1356, Fairhaven CON 023-229**

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

- Salt Marsh
- Coastal Beach
- Coastal Bank
- Buffer Zone
- Riverfront Area
- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE

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 Bank**: 10.30

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

(6) Any project on...a coastal bank [that is determined to be significant to storm damage prevention or flood control because it is a vertical buffer to storm waters] or within 100 feet landward of the top of such coastal bank shall have no adverse effects on the stability of the coastal bank.

- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
- **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.
- **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 60,000 square foot expansion of Building 3 to the east and southeast of the existing building. In support of that expansion, the project proposes providing public access to and along the river to comply with Chapter 91 regulations, upgrades and improvements to the stormwater management system, and breaking up some of the asphalt parking area with landscaped areas and stormwater features.

COMMENTS

- A short alternatives analysis was included in the narrative associated with the Notice of Intent.
- This project will need a Chapter 91 license from MassDEP and a NPDES permit from the EPA.
- This project will also need to go before the Planning Board. It has not yet been filed with Planning.
- The majority of the project is outside of the jurisdiction of the Wetlands Protection Act and Fairhaven Wetlands Bylaw.

- The portions of the project that fall within the 100-foot buffer zone to resource areas, the riverfront area, and/or land subject to coastal storm flowage are:
 - Portions of landscaped stormwater areas in the parking lot
 - A portion of the proposed public access passage
 - Removal of a transformer to be relocated
- Typically the Commission prefers to hold a hearing open when a project also needs to go before the Planning Board. The building addition and much of the stormwater management systems fall outside the jurisdiction of the Wetlands Protection Act and Fairhaven Wetlands Bylaw.
- The Commission will need to determine whether stormwater peer review is needed to confirm compliance with Chapter 194 and Massachusetts Stormwater Standards or if, since a large portion of the project is outside of the jurisdiction of the WPA and Wetlands Bylaw, stormwater peer review can be addressed during the special permitting process with the Planning Board.

RECOMMENDATION

- If the Commission would like to pursue stormwater peer review, I recommend authorizing the agent to facilitate the peer review process.
- If the Commission does not feel stormwater peer review is necessary for the purposes of the WPA and Wetlands Bylaw and doesn't have concerns over the Planning Board process not being initiated yet, I would recommend asking the applicant for a continuance to the following meeting to allow time for a draft set of conditions to be provided to the Commission.

Staff Report

Date: May 21, 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)
- Revised site plan dated May 17, 2021

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 minute amount of grading associated with the house
 - A portion of vinyl or stockade fence
 - Wildflower planting next to wetland
 - Two tupelo trees
- Work within the 25-50-foot buffer zone includes:
 - Grading on the southern side of the proposed house
 - A portion of vinyl or stockade fence
 - A portion of the paved driveway and associated recharge trench
 - Two tupelo trees
- Work within the 50-100-foot buffer zone includes:
 - Majority of the grading east, north, and west of the house
 - Approximately two-thirds of the swimming pool (to be drained outside of the buffer zone)
 - 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 mature tree is proposed to be removed
- Revisions to the plan include:
 - Reducing the size of the basketball court by 40% and relocating it outside the 100-foot buffer zone
 - Rotating the swimming pool, pool house, and patio 90 degrees to create larger separation from the wetland
 - Southern portion of the house will be a walkout basement, minimizing proposed fill for the project
 - Redesigned circular driveway to eliminate the easterly portion

- Inclusion of a planting plan that shows 4 tupelo trees, wildflower seed mix, and arborvitae along the northern property line
- The revisions to the plan have removed nearly all of the work outside the 25-foot buffer zone

RECOMMENDATION

- If the Commission is satisfied that project as revised 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 May 17, 2021, with the following recommended conditions:

Approve plan dated May 17, 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 of siltation fence and straw wattle/silt sock or compost filter socks.
15. The wildflower seed mix and the tupelo trees shall be native non-cultivars.

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. 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. Before any pool drainage or discharge occurs, the water must stand to dechlorinate for at least one week.
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.
52. At no point shall any additional wetland impacts, including but not limited to filling, be permitted on this property.
53. Mowing of the wildflower area shall only occur between November 15 and March 31 outside of the active wildlife season (April 1-November 15) of any year.

Staff Report

Date: May 21, 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)
- Revised site plan dated May 17, 2021

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 gravel driveway
 - A small amount of grading associated with the driveway and removal of fill piles
- Work within the 25-50-foot buffer zone includes:
 - 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
 - Remainder of the paved driveway
- The applicant has proposed boulders and a vegetative buffer at the rear of the property to denote 25 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.
- Revised plans submitted include the following changes:
 - 25-foot no activity zone between wetland flags 120-129
 - Barn relocated closer to main driveway to shorten the access driveway

- Driveway surface changed from pavement to gravel
- Wildflower seed mix proposed along the southern side of the driveway
- Inclusion of Japanese knotweed removal on the plans
- Rotation of the house and pool to reduce fill and increase distance to BVW
- Addition of arborvitae along northern property line

RECOMMENDATION

- If the Commission is satisfied that project as revised limits potential impacts to the Bordering Vegetated Wetland, I recommend closing the public hearing and issuing an Order of Conditions for Sciticut Neck Road/Overlook Lane (Map 29, Lot 1D), SE 023-1351, CON 023-224, plans dated May 17, 2021, with the following recommended conditions:

Approve plan dated May 17, 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 of siltation fence and straw wattle/silt sock or compost filter socks.
15. The wildflower seed mix and the tupelo trees shall be native non-cultivars.
16. Only the mature tree depicted within the volleyball court is permitted to be removed.
17. TRP-1: All mature trees on site not permitted to be removed shall have a no disturb zone established and demarcated around them as follows:
 - Every 1-inch caliper equals 1 foot of protection around the tree as a lateral measurement from the base of the tree; i.e. a 6-inch caliper tree has a 6-foot no disturb zone all the way around with the tree at the center.

B. Prior to Construction

16. CAP-3
17. REC-3
18. DER-1
19. PCC-3
20. EMC-1
21. PCC-1

22. The demarcated tree no disturb zones shall be installed prior to and inspected at time of erosion control inspection.
 23. SIL-5
 24. SIL-9
 25. SIL-10
- 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
 43. Prior to final site stabilization, a landscape planting plan shall be submitted to the Commission for review and approval.
- D. After Construction/In Perpetuity
43. REV-1
 44. 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.
 45. RES-4
 46. COC-1
 47. COC-2

Perpetual Conditions

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

48. 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.
49. DER-4
50. Before any pool drainage or discharge occurs, the water must stand to dechlorinate for at least one week.
52. It shall be the responsibility of the landowner to continually maintain the site in a manner that assures stabilization and precludes any soil erosion.
53. At no point shall any additional wetland impacts, including but not limited to filling, be permitted on this property.
54. Mowing of the wildflower area shall only occur between November 15 and March 31 outside of the active wildlife season (April 1-November 15) of any year.

Staff Report

Date: May 21, 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)
- Revised site plan dated May 17, 2021

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 gravel 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
- 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 law is proposed 5 feet from the wetland)
 - Addition of some native shrub/tree plantings
- The revised plans made the following changes:
 - Driveway has been changed from pavement to gravel
 - Proposed permanent vegetative buffer along the south side has been increased from 10 feet to 15 feet
 - Proposed permanent vegetative buffer along the north side has been increased from 5 feet to 8 feet
 - Garage width has been reduced from 26 feet to 24 feet
 - Ground level porches have been omitted
 - Waterside yard area has been reduced in size and proposed fire pit and patio moved closer to the home
 - 34 highbush blueberry shrubs are proposed between the boulders on the northerly side to enhance and define the vegetative buffer zone

- Eight tupelo trees are proposed to mitigate for the potential loss of 1-3 mature trees
- The applicant should provide information as to how this level of development, in some cases 8 feet from the wetland, will not impact the adjacent wetlands

RECOMMENDATION

- If the Commission feels the information submitted by the applicant is not sufficient to describe the effect of the work on the interests identified in the Act and/or the Bylaw, the Commission can either ask the applicant to request a continuance to a subsequent meeting and provide a detailed information as to how the proposed project will not impact the resource area or the Commission can close the public hearing and issue a denial without prejudice under the Wetlands Protection Act and Fairhaven Wetlands Bylaw because the information submitted by the applicant is not sufficient to describe the effect of the work on the interests identified in the Act and the Bylaw.

Staff Report

Date: May 21, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **10 Nelson Ave – Notice of Intent – DEP# 023-1344, Fairhaven CON 023-207**

DOCUMENTS REVIEWED

- Notice of Intent and associated documents
- Enforcement Order issued June 15, 2020
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Comments from MassDEP dated March 4, 2021
- Comments from Division of Marine Fisheries dated March 3, 2021
- Revised site plan dated April 5, 2021
- Revised site plan dated April 16, 2021
- Response memo dated April 19, 2021
- Revised site plan dated May 17, 2021

RESOURCE AREAS ON/NEAR SITE

- Coastal Bank
- Coastal Beach
- Rocky Intertidal Shore
- Buffer Zone
- Land Subject to Coastal Storm Flowage

PERFORMANCE STANDARDS

- **Coastal Bank: 10.30**
(4) Any project on a coastal bank or within 100 feet landward of the top of a coastal bank...shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action.
(6) Any project on...a coastal bank [that is determined to be significant to storm damage prevention or flood control because it is a vertical buffer to storm waters] or within 100 feet landward of the top of such coastal bank shall have no adverse effects on the stability of the coastal bank.
- **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.

(4) Any groin, jetty, solid pier, or other such solid fill structure which will interfere with littoral drive, in addition to complying with 310 CMR 10.27(3), shall be constructed as follows:

(a) It shall be the minimum length and height demonstrated to be necessary to maintain beach form and volume. In evaluating necessity, physical oceanographic and/or coastal geologic information shall be considered.

(b) Immediately after construction any groin shall be filled to entrapment capacity in height and length with sediment of grain size compatible with that of the adjacent beach.

(c) Jetties trapping littoral drift materials shall contain a sand by-pass system to transfer sediments to the downdrift side of the inlet or shall be periodically redredged to provide beach nourishment to ensure that downdrift or adjacent beaches are not starved of sediments.

(5) Beach nourishment with clean sediment of a grain size compatible with that on the existing beach may be permitted.

- **Rocky Intertidal Shore: 10.31**

(3) ...Significant to Storm Damage Prevention, Flood Control, or Protection of Wildlife Habitat, any proposed project shall be designed and constructed...so as to minimize adverse effects on the form and volume of exposed intertidal bedrock and boulders.

(4) ...Significant to the Protection of Marine Fisheries or Wildlife Habitat, any proposed project [that is water-dependent shall be] designed and constructed...so as to minimize adverse effects...on water circulation and water quality [and any proposed project that is not water-dependent shall have no adverse effects on water circulation and water quality.]

- **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 reconstruction of the northern groin on the property and approval for reconstruction of the southern groin and adding a concrete cap on top of the concrete revetment. The plans also show stabilizing disturbed lawn area and the installation of a fence on top of the existing revetment.

COMMENTS

- This project was initiated prior to permits being requested and an Enforcement Order was issued because no permits were granted by the Commission and the property owner had large equipment on the Coastal Beach with no protections for the resource area.
- MassDEP noted that work is proposed in a Coastal Beach resource area and that the performance standards in 310 CMR 10.27 Coastal Beaches should be addressed.

- Filing with DEP for a 401 Water Quality permit may be necessary. The addition of the fence posts on the revetment may need Chapter 91 licensing as they are proposed on an already licensed structure.
- The applicant should submit information detailing how the project complies with each of the performance standards outlined in 310 CMR 10.27.
- The Division of Marine Fisheries provided a number of comments, which should be addressed before any decision is made on this submittal.
 - No narrative was submitted with the NOI. *Questions for Applicant:* How will the two groins be repaired/reconstructed? Will there be concrete forms in the water to contain the concrete? Will the work be conducted behind cofferdams in the dry? Will a barge be used to transport materials?
 - No side profile of the two groins was included. *Questions for Applicant:* Will the elevation of the groins be higher than the original groins? Is there any seaward encroachment of either groin?
 - Impacts to adjacent eelgrass beds is a concern for the project.
- Plans do not show the original licensed footprint of the groins, only what is proposed. The plan should show both what was originally licensed and permitted and what is being requested.
- Plans need to include side profiles of the groins to be reconstructed, again superimposed over what was originally licensed and permitted.
- During the site visit, the submission of a planting plan for the top of the seawall structure was discussed to help increase flood control and storm damage prevention.
- The southern groin is significantly deteriorated and work would constitute rebuilding the structure rather than repair. As such, it should be treated as new construction, and therefore comply with 310 CMR 10.27(4):
 - Any groin, jetty, solid pier, or any other such solid fill structure which will interfere with littoral drift...shall be constructed as follows:
 - It shall be the minimum length and height demonstrated to be necessary to maintain beach form and volume. In evaluating necessity, physical oceanographic and/or coastal geologic information shall be considered.
 - Immediately after construction any groin shall be filled to entrapment capacity in height and length with sediment of grain size compatible with that of the adjacent beach.
 - Jetties trapping littoral drift materials shall contain a sand by-pass system to transfer sediments to the downdrift side of the inlet or shall be periodically redredged to provide beach nourishment to ensure that downdrift or adjacent beaches are not starved of sediments.
- Hardened coastal engineering structures such as groins can impede downdrift sediment transfer, directly impacting the coastal beach from serving the purposes of storm damage prevention and flood control by dissipating wave energy, by reducing the height of storm waves, and by providing sediment to supply other coastal features, including coastal dunes, land under the ocean, and other coastal beaches (310 CMR 10.27(1)).
- The applicant must demonstrate how the proposed work does 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 (310 CMR 10.27(3)).
- Reconstruction of the northern groin had already begun and was substantially completed by the time the Commission issued a cease and desist. Had the project come before the Commission before work was initiated, my comments would be the same as for the southern groin. If the

northern groin was substantially deteriorated similar to the southern groin, compliance with the above would need to be demonstrated.

- The applicant is asking for after the fact approval for the work that has already been completed on the northern groin. The plans need to clearly reflect this.
- Additionally, the Commission should determine the impacts of the northern groin remaining as is versus removing portions of it to minimize the length and height of the structure.
 - Having a comparison of what was originally licensed and constructed to what is proposed to be permitted would be helpful in determining this.
- A portion of the northern groin falls within rocky intertidal shore and must comply with those performance standards as well. The applicant should submit information demonstrating compliance with the performance standards outlined in 310 CMR 10.31.
- The applicant also needs to submit detailed information on what was done without a permit so the Commission can determine the exact scope of work that is being requested to be approved after-the-fact and whether or not it complies with the Wetlands Protection Act and Fairhaven Wetlands Bylaw. A narrative addressing what was done, what is proposed, and compliance with all applicable performance standards would be helpful.
- An abutter submitted a correction based on the discussion at a previous meeting: the two groins were systematically demolished with a sledge hammer over quite a few years, eliminating cement, putting the northern groin in a similar state of deterioration to the southern groin. Additionally, the northern groin appears to have been installed longer than what was previously there.
- The planting bed includes one non-native species (daylily) and does not include any shrubs, such as Northern Bayberry, Bearberry, or Beach Heather.
- The April 19 memo from the engineer addressed most of the comments above and those from the last meeting related to whether or not work continued after the cease and desist was issued.
- Because this is essentially an after-the-fact permit for the work done on the northern groin, the Commission will need to determine if they feel the significant reconstruction of the northern groin meets the provisions of 310 CMR 10.27(4) with regard to:
 - “[A groin] shall be the minimum length and height demonstrated to be necessary to maintain beach form and volume. In evaluating necessity, physical oceanographic and/or coastal geologic information shall be considered.
- At the previous meeting, the following motion was made and approved:
 - Deny after-the-fact construction of a concrete groin as new construction which serves no purpose and has caused damage to the beach.
- The engineer submitted revised plans with the following changes:
 - Sawcut and remove the portion of the concrete structure seaward of the Chapter 91 40-foot length
 - Addition of stones at a 1:1 side slope from the seaward end of the shortened groin to a point 5 feet upgradient of Mean High Water
- The addition of stones are proposed to have concrete fill to stabilize the base.
 - The WPA Performance Standards for Coastal Beach state that “immediately after construction any groin shall be filled to entrapment capacity in height and length with sediment of grain size compatible with that of the adjacent beach.”
 - The solid concrete nature of the unpermitted work and the proposed addition of more concrete fill do not comply with the performance standards for Coastal Beach.

- No changes have been made to the planting bed despite several previous comments noting the lack of shrubs.
- The applicant still has not submitted detailed information on what was done without a permit so the Commission can determine the exact scope of work that is being requested to be approved after-the-fact and whether or not it complies with the Wetlands Protection Act and Fairhaven Wetlands Bylaw. A narrative addressing what was done, what is proposed, and compliance with all applicable performance standards would be helpful.

RECOMMENDATION

- There are still revisions that the plan needs and information that needs to be provided to the Commission. If the applicant is unable to submit all of the information the Commission has previously requested and revised plans in time for the next meeting, the Commission should consider denying the project without prejudice for lack of information.