

Staff Report

Date: June 11, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **27 Cove Street – Request for Certificate of Compliance – DEP# 023-1102**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- Order of Conditions issued November 29, 2010
- Notice of Intent dated September 28, 2010 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
- Buffer Zone
- Coastal Dune
- Coastal Beach

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.”
- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
- **Buffer Zone Wetlands Bylaw Regulations (Chapter 192 Regulations):** Section 1.2: “Floodplains and lands within 100 feet of other resource areas are presumed significant to the protection of functions and characteristics of the resource areas subject to the town bylaw because activities undertaken in close proximity have a high likelihood of adverse impact upon them, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, damage to or reduced water quality, and damage or loss of wildlife habitat. A growing body of research

evidence suggests that even “no disturbance” areas reaching beyond 25 feet from resource areas may be insufficient to protect many important characteristics and values. Problems of nutrient runoff, water pollution, siltation, erosion, vegetation change, and habitat destruction are greatly exacerbated by activities within 100 feet of resource areas.”

- **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 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.

PROJECT SUMMARY

- The Order of Conditions was issued for an area to be filled with 5 inches of sand and 5 inches of quahog shells; a 2-foot-by-25-foot area to be excavated by 1 foot, sloped on each side by 6 inches and filled with finely crushed stone; and grading and leveling the driveway using no fill and replacing with quahog shells.

COMMENTS

- The Order of Conditions was issued to permit work not permitted under a previous Order of Conditions (SE 023-945). The previous Order of Conditions received a Superseding Order by DEP and DEP will need to issue the COC for that filing.
- The Order of Conditions includes a condition that stipulates that no other fill was permitted by the Order.
- It appears the work was done in substantial compliance with the Order of Conditions

RECOMMENDATION

- I recommend issuing a Certificate of Compliance for Complete Certification for SE 023-1102, 27 Cove Street.

Staff Report

Date: June 11, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **685 Sconticut Neck Road – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-231**

DOCUMENTS REVIEWED

- Request for Determination of Applicability and associated documents
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Fairhaven Stormwater Bylaw (Chapter 194)
- Revised plan dated June 4, 2021

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE

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.”
 - **Buffer Zone Wetlands Bylaw Regulations (Chapter 192 Regulations):** Section 1.2: “Floodplains and lands within 100 feet of other resource areas are presumed significant to the protection of functions and characteristics of the resource areas subject to the town bylaw because activities undertaken in close proximity have a high likelihood of adverse impact upon them, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, damage to or reduced water quality, and damage or loss of wildlife habitat. A growing body of research evidence suggests that even “no disturbance” areas reaching beyond 25 feet from resource areas may be insufficient to protect many important characteristics and values. Problems of nutrient runoff, water pollution, siltation, erosion, vegetation change, and habitat destruction are greatly exacerbated by activities within 100 feet of resource areas.”
 - **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 requesting to removing existing concrete stairs and walkway and install a 38-foot-by-6-foot farmer’s porch and do some grading in the front and rear of the house to even out spots that have settled over the years.

COMMENTS

- The project initially included loam along the side of the dwelling, but a site visit revealed that the area is very likely to be a wetland, so the applicant agreed to remove that part of the project until a future time so he could move forward with the rest of the project.
- The farmer’s porch is proposed on sonotubes and primarily falls within the footprint of existing concrete stairs/walkway and a small portion of the front lawn.
- The applicant estimated that approximately 60 yards of clean loam will be needed to grade the depressions in the front and rear of the yard so water will drain properly rather than pooling in the center of the front and rear lawns.
- The area in the rear appears to have settled over the years possibly due to septic leaching field and possibly due to the location of a garden in the area for many years. The rear of the property by the marsh is a higher elevation than where the applicant would like to place the loam.

- The area in the front of the property is higher at the road and the house than in the center where the applicant would like to place the loam. He would like to even the slope from the house to the road.
- It doesn't appear that the proposed work will have a negative impact on any of the resource areas on or near the property.

RECOMMENDATION

- I recommend closing the public hearing for 685 Sconticut Neck Road, CON 023-231, and issuing a Negative 3 and Negative 6 Determination with the following conditions:
 - CAP-3
 - BLD-3
 - FZ-1: All work shall comply with all local, state, and federal flood zone regulations.

Staff Report

Date: June 23, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **6 Bernese Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-233**

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 VE

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 a deck roughly 34 feet by 10 feet on sonotubes.

COMMENTS

- The work is occurring within the existing lawn.
- The number of sonotubes is limited as the profile is the deck is fairly low.
- The project does not appear to have a negative impact on flood control or storm damage prevention.

RECOMMENDATION

- I recommend closing the public hearing for 6 Bernese Street, CON 023-233, and issuing a Negative 3 and Negative 6 Determination with the following conditions:
 - CAP-3
 - FZ-1: All work shall comply with all local, state, and federal flood zone regulations, including, but not limited to, regulations regarding fill in the flood zone.

Staff Report

Date: June 23, 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)
- Revised site plan dated June 29, 2021
- Peer review report dated June 21, 2021

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Isolated 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.
- The peer reviewer reviewed the submitted documentation and visited the site with the applicant's wetland scientist.
- Based on that site walk, the applicant revised the plan and the peer reviewer agrees with the plan as revised.

RECOMMENDATION

- I recommend closing the public hearing for SE 023-1355, CON 023-227, 14 Plaza Way, and issuing an Order of Resource Area Delineation for the boundaries of Bordering Vegetated Wetland, Isolated Vegetated Wetland, Intermittent Stream, and Bank of Intermittent Stream, as modified and shown on the plans dated June 29, 2021.

Staff Report

Date: June 11, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **78 Akin Street – Notice of Intent – DEP# 023-1357, Fairhaven CON 023-230**

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
- Riverfront Area

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.”
- **Buffer Zone Wetlands Bylaw Regulations (Chapter 192 Regulations):** Section 1.2: “Floodplains and lands within 100 feet of other resource areas are presumed significant to the protection of functions and characteristics of the resource areas subject to the town bylaw because activities undertaken in close proximity have a high likelihood of adverse impact upon them, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, damage to or reduced water quality, and damage or loss of wildlife habitat. A growing body of research evidence suggests that even “no disturbance” areas reaching beyond 25 feet from resource areas may be insufficient to protect many important characteristics and values. Problems of nutrient runoff, water pollution, siltation, erosion, vegetation change, and habitat destruction are greatly exacerbated by activities within 100 feet of resource areas.”
- **Riverfront Area:** 10.58(4)
 - (c) Practicable and Substantially Equivalent Economic Alternatives
 - (d) No Significant Adverse Impact
 - 2. 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.

PROJECT SUMMARY

- The applicant is proposing the construction of a new single-family house with connections to town water and sewer and associated site work.

COMMENTS

- The majority of this project is outside of the 100-foot buffer zone and Riverfront Area.
- The only work that occurs within the 50-100 foot buffer zone is a small portion of the house and the site grading associated with the rear of the house.
- The site is fairly flat, so the applicant has proposed straw wattle at the rear property line.

- Some fill will be needed to grade the site to raise the house to ensure proper drainage.
- Based on a site visit, there are a few mature trees along the side of the property beyond where grading will occur. They are not depicted on the site plan but should be preserved.
- The work appears to comply with all applicable regulations.

RECOMMENDATION

- I recommend closing the public hearing for SE 023-1357, CON 023-230, 78 Akin Street, and issuing an Order of Conditions, plans dated May 14, 2021, with the following conditions:

Approve plan dated May 14, 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

B. Prior to Construction

14. CAP-3
15. REC-3
16. DER-1
17. PCC-3
18. EMC-1
19. PCC-1
20. SIL-5
21. SIL-7
22. SIL-9
23. SIL-10
24. Mature vegetation proposed to be removed shall be flagged in the field for review and approval by the Commission or its Agent prior to the start of work.
25. 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.

C. During Construction

26. STO-1

27. STO-3
 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. EC-1: All work shall be conducted in such a manner that minimizes the area of exposed, destabilized soil to the maximum extent possible to prevent runoff and erosion on site.
 40. EC-2: 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.
 41. LOW-3
 42. WAT-3
- D. After Construction/In Perpetuity
39. REV-1
 40. COC-1
 41. COC-2

Perpetual Conditions

The below conditions do not expire upon completion of the project and shall be included on the Certificate of Compliance.

42. CHM-1
43. DER-4

Staff Report

Date: June 11, 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)
- Revised plan dated June 4, 2021

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.
- The applicant revised the plan to include a roof recharge system.

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 June 4, 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. FZ-1: All work shall comply with all local, state, and federal flood zone regulations, including, but not limited to, regulations regarding fill in the flood zone.
14. FZ-2: 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. A landscape plan shall be submitted for review and approval by the Commission prior to final site stabilization.

42. REV-1

43. COC-1

44. COC-2

45. FZ-3: A certificate shall be issued by the foundation design engineer that the breakaway walls are installed correctly and will function properly.

Perpetual Conditions

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

46. 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.

47. DER-4

48. RUN-3: Annual inspection and maintenance of the recharge system shall be the responsibility of the property owner and any successor in interest or successor in control of the property subject to this order.

49. No additional impervious surfaces shall be added to the property beyond what is permitted by this Order.

50. FZ-4: Breakaway walls shall not be modified at any point so they no longer function as breakaway walls.

Staff Report

Date: June 23, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **240 Alden Road – Notice of Intent – DEP# 023-1359, Fairhaven CON 023-232**

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
- Bank of Intermittent Stream
- Buffer Zone

PERFORMANCE STANDARDS

- No work is proposed within Bordering Vegetated Wetland or the stream or on the Bank.
- **Buffer Zone General Provisions:** 10.53(1) “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
- **Buffer Zone Wetlands Bylaw Regulations (Chapter 192 Regulations):**
 - 4.0 0 to 25 Foot Buffer Zone Resource Area
 - 4.1 An applicant shall demonstrate that no alteration is proposed within the 0-25 foot buffer zone resource area.
 - 4.2 The Commission may, in its discretion, permit a MBZA in a location closer than 25 feet to the resource area if, and only if, the proposed activity occurs exclusively within a previously disturbed area and is located no closer to the resource area than existing structures, activities, or disturbances. However, it is encouraged to increase the width of the buffer zone where possible.
 - 5.0 25 to 50 Foot Buffer Zone Resource Area
 - 5.1 Any applicant proposing a project within the 25-50 foot buffer zone resource area shall indicate that there are no structures including, but not limited to,

concrete, stone, or other impervious foundations and/or slabs for construction purposes that would significantly increase runoff.

5.2 Alteration of the 25-50 foot buffer zone resource area is limited to grading, tree clearing, stormwater management system components, lawns, gardens, and other low-impact uses as determined by the Commission or otherwise approved by the Commission by the variance procedures set forth in Section 8.0 of this regulation. Footings for building structures, such as a deck, as opposed to slabs or foundations, shall be used when technically feasible.

5.4 Previously disturbed areas: When there is a pre-existing disturbance (disturbed as part of a previously recorded Certificate of Compliance or Determination of Applicability or disturbed prior to the enactment of the Massachusetts Wetlands Protection Act (MGL Ch. 131 §40) and the Fairhaven Wetlands Bylaw (Chapter 192)), and the work proposed is entirely within this previously disturbed area, an applicant may propose impervious surfaces or other uses, such as pools, buildings, porches, and sheds within the 25-50 foot buffer zone resource area. The Commission shall evaluate the proposed uses based on the demonstration by the applicant that the functions, characteristics, and values of the resource area will not be adversely impacted.

6.0 50 to 100 Foot Buffer Zone Resource Area

6.1 Alterations including structures are allowed in the 50-100 foot buffer zone resource area. The Commission may require additional mitigation offsets when the slope within the buffer zone is steeper than 10%. Additionally, mitigation offsets may be required by the Commission when the applicant proposes that more than 30% of the 50-100 foot buffer zone resource area is proposed to be impervious surface.

PROJECT SUMMARY

- The applicant is proposing to construct a single-family home entirely outside the 100-foot buffer zone as well as associated site grading, driveway, and utilities.

COMMENTS

- The proposed dwelling and garage are entirely outside the 100-foot buffer zone.
- The vast majority of the site grading is outside the 100-foot buffer zone.
- A small area in the outer 15-30 feet of the buffer zone is proposed to be cleared for the house and associated grading.
- The driveway is proposed to be gravel within the 25-50 foot buffer zone in accordance with the buffer zone regulations and paved once the driveway crosses the 50-foot buffer zone line.
- The only section of the driveway proposed to be paved in the 25-50 foot buffer zone is the driveway apron coming in from Alden Road.
- No work is proposed within 25 feet of the BVW.
- Given the majority of the work is outside of the 100-foot buffer zone and the work within the 100-foot buffer zone is relatively low-impact, it appears that this project will not have a negative impact on the functions and values of the resource areas on site.

RECOMMENDATION

- I recommend closing the public hearing for SE 023-1359, CON 023-232, 240 Alden Road, and issuing an Order of Conditions, plans dated December 29, 2020, with the following conditions:

Approve plan dated December 29, 2020

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 except for the removal of vegetation approved subject to Condition B21.
13. This Order does not extend the approval of the wetland line under SE 023-1303, CON 023-075.
14. TRP-1: All mature trees on site not permitted to be removed shall have a no disturb zone established, demarcated, and maintained around them throughout construction 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.

This condition only applies to mature vegetation inside the limit of work.

B. Prior to Construction

15. CAP-3
16. REC-3
17. DER-1
18. PCC-3
19. EMC-1
20. PCC-1
21. The vegetation proposed to be removed between the erosion control line and the proposed treeline shall be marked in the field prior to the erosion control inspection for review and approval by the Commission or its Agent.
22. TRP-3: All mature vegetation proposed to remain shall be marked in the field and have their protection zones established prior to erosion control inspection.
23. SIL-5
24. SIL-7
25. SIL-9
26. SIL-10

C. During Construction

27. The cellar drain line shall be laid around existing mature vegetation such that mature vegetation shall not be removed unless absolutely necessary. Should mature vegetation need to be removed for the cellar drain line installation, all proposed vegetation to be removed must be marked in the field and approved by the Commission or its Agent prior to removal.
 28. STO-1
 29. STO-3
 30. MAC-3
 31. MAC-7
 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 except for the removal of vegetation approved subject to Condition B21.
 42. WAS-2
 43. WAT-3
 44. EC-1
 45. EC-2
- D. After Construction/In Perpetuity
46. REV-1
 47. COC-1
 48. COC-2

Perpetual Conditions

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

49. CHM-3
50. DER-4
51. EC-3: It shall be the responsibility of the landowner to continually maintain the site in a manner that assures stabilization and precludes any soil erosion. This condition is perpetual and does not end with the issuance of a Certificate of Compliance.

Staff Report

Date: June 24, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **249 Huttleston Ave – After-the-Fact Notice of Intent – DEP# 023-1358, Fairhaven CON 023-234**

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

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

PERFORMANCE STANDARDS

- **Riverfront Area:** 10.58(6) Activities Grandfathered/Exempt from RFA Requirements
 - (a) Maintenance of [structures in existence on August 7, 1996] is allowed without the filing of a Notice of Intent for work within the riverfront area, but not when such work is within other resource areas or their buffer zones
 - (b) certain minor activities defined in 310 CMR 10.02(2)(b)1.
 - (c) On-site sewage disposal systems in existence on August 7, 1996 and the repair or upgrade of existing systems in compliance with Title 5. New construction of a system under Title 5 must comply with 310 CMR 10.58.
- **LSCSF General Provisions:** 10.24(1) “If the issuing authority determines that a resource area is significant to an interest identified in [the Act]...,the issuing authority shall impose such conditions as are necessary to contribute to the protection of such interests.”

PROJECT SUMMARY

- The applicant filed an after-the-fact Notice of Intent for the upgrade of an existing septic system to a Title 5 compliant system.

COMMENTS

- Because the system was in existence and the work done was to upgrade that system to a Title 5-compliant system, the work is exempt from Riverfront Area requirements. No alternatives analysis is required.
- Upgrading the system to a Title 5-compliant system is an improvement for the area and is likely to decrease impacts on the Riverfront Area.

- The work also does not appear to have a negative impact on flood control and storm damage prevention.

RECOMMENDATION

- I recommend closing the public hearing for SE 023-1358, CON 023-234, 249 Huttleston Ave, and issuing an Order of Conditions, plans dated June 3, 2021, with the following recommended conditions:

Approve plans dated June 3, 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. ADD-1
4. ADD-2
5. ADD-4b
6. ADD-4c
7. ADD-5

B. Prior to Construction

8. CAP-3
9. REC-3
10. DER-1
11. EMC-1

C. During Construction

12. MAC-3
13. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
14. EMC-2

D. After Construction/In Perpetuity

15. REV-1
16. COC-1
17. COC-2

Perpetual Conditions

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

18. CHM-3
19. DER-4

Staff Report

Date: June 11, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Boulder Court – Notice of Intent – DEP# 023-1347, Fairhaven CON 023-210**

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 May 17, 2021
- Wetland Impact and Mitigation Areas Plan dated May 17, 2021
- Wetland Mitigation Plan dated June 3, 2021

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone
- Land Subject to Coastal Storm Flowage (LSCSF) Zone VE

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."
- **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 single family home and associated driveway and utilities.

COMMENTS

- Because the applicant did not schedule a meeting with the Agent prior to submitting per Commission policy, a number of items need to be addressed before moving forward. During the site visit, the following items were discussed:
 - inconsistencies with the wetland line
 - identify on the plans whether the driveway will be pervious or impervious
 - identify the flood zone on the plans
 - address compliance with FEMA flood regulations, i.e. no fill for structural purposes and de minimus fill (2 feet or less for non-structural purposes) only in the velocity flood zone
 - lowest structural member of house needs to be at 17 feet minimum
 - address % of 25-foot buffer zone that will be impacted
 - address amount of vegetation to be removed/impacted; Commission may require some sort of planting plan depending on amount of vegetation impacted
 - include what the closest distance of work to the edge of the wetland is and why it is necessary to do work so close to the wetland edge
 - provide an explanation as to why the driveway can't come in from the front of the property and has to come around the side; address size of driveway in relation to the house
 - address the apparent excessive "vista pruning"/underbrush clearing on the property
- The following activities are proposed within 0-25 feet of the wetland: grading, vegetation removal, installation of the blue stone driveway
- Based on estimates from the site plan, the driveway is proposed to encompass a larger area than the proposed house.
- A second site visit was conducted with the Agent and the applicant's wetland scientist. Some of the flags were moved and need to be resurveyed. The wetland scientist indicated he would talk to the applicant and engineer and recommend requesting a continuance to revise the plans.
- The revised plans dated April 2 included the following revisions and information:

- Revision of the proposed driveway from paved to bluestone
 - Flood zone has been noted on the plan and grading has been adjusted to meet FEMA requirements for fill within a velocity flood zone
 - Lowest structural member of the house has been set at elevation 19.5
 - Total area of vegetation to be disturbed is 4,194 square feet
 - The total area of the 25-foot buffer zone is 7,707 square feet. The proposed total disturbance of the buffer will be 1,192 square feet or 15.4%.
 - The closest area of disturbance to the wetlands will be 3 feet near the end of the proposed driveway. The site contains a limited buildable area which will allow for conformance to the zoning setback requirements and that allows for the dwelling to remain outside of the 25 foot buffer zone. Side access to the garage area located beneath the dwelling provides for easiest access due to site sloping and preventing stormwater from entering the garage area.
- The applicants still need to address the apparent excessive "vista pruning"/underbrush clearing on the property.
 - The revised plans dated May 17 and June 3 propose wetland fill and replication as mitigation for encroachment into the buffer zone.
 - The proposed wetland impacts account for 398 square feet of fill with 428 square feet of wetland mitigation.
 - The proposed fill area increases the disturbance setback to the wetland edge from 3 feet to 8 feet at the closest point.
 - The mitigation proposes three types of native shrubs in addition to wetland seed mix.
 - The Commission will need to determine whether the proposed wetland fill and mitigation to increase the distance between work and the wetlands is sufficient or if additional mitigation measures, such as a permanent vegetated buffer along the wetland line, should be included on the plans.
 - The overall site plan does not show the wetland impact/mitigation areas. The Commission will need to determine if having the wetland mitigation plans as separate plans is sufficient or if everything should be shown on one plan. For the purposes of clarity and continuity, it would be good to have everything on one plan.

RECOMMENDATION

- If the Commission is comfortable with the wetland fill and mitigation areas to help put distance between the proposed work and the wetland, I would recommend asking the applicant to revise the plans to show the wetland fill and mitigation areas on the site as well as consider asking the applicant to provide a vegetated buffer for the wetland areas closest to the structure/grading since there is a slope from the road to the rear of the proposed dwelling.

Staff Report

Date: June 11, 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
- Revised site plan dated June 7, 2021
- Cover Letter dated June 7, 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."
 - **Buffer Zone Wetlands Bylaw Regulations (Chapter 192 Regulations):** Section 1.2: "Floodplains and lands within 100 feet of other resource areas are presumed significant to the protection of functions and characteristics of the resource areas subject to the town bylaw because activities undertaken in close proximity have a high likelihood of adverse impact upon them, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, damage to or reduced water quality, and damage or loss of wildlife habitat. A growing body of research evidence suggests that even "no disturbance" areas reaching beyond 25 feet from resource areas may be insufficient to protect many important characteristics and values. Problems of nutrient runoff, water pollution, siltation, erosion, vegetation change, and habitat destruction are greatly exacerbated by activities within 100 feet of resource areas."

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

- All of the work falls entirely within the 50-foot buffer zone and the vast majority of the work falls within the 25-foot buffer zone.
- Work within the 0-25-foot buffer zone includes:
 - The majority of the gravel driveway
 - Small portions of the garage and house
 - All site grading
 - All proposed plantings and boulder placement
- 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 dated May 17, 2021 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 revised plans dated June 7, 2021 propose the following changes:
 - Elimination of the fire pit and patio
 - Proposed lawn area has been reduced and a note included stating it will be treated only with natural organic fertilizers
 - Inclusion of a tupelo tree corridor (11 trees) the entire length of the driveway along the south side
 - 4 more tupelo trees will be planted throughout the site
 - Inclusion of a shrub corridor of 16 hydrangea shrubs along the southerly side of the house and 34 highbush blueberry shrubs along the northerly side of the house to be planted between the proposed row of boulders.
 - Shrub corridors are proposed to function as a filter strip and permanent barrier to protect the wetland
 - Two roof runoff recharge systems have been included to recharge groundwater
 - A water quality grass swale has been included along the southerly side of the driveway to the east of the house to treat stormwater runoff from the driveway and parking areas
- The project complies with the Wetlands Protection Act and 310 CMR 10.00.
- Town Counsel confirmed that there is no grandfathering with bylaw regulations, so the Commission should consider whether the applicant needs to submit a formal variance request per section 8.0 of the buffer zone regulations.
- The Commission will need to determine whether or not the project complies with the Bylaw and regulations.

RECOMMENDATION

- If the Commission feels it is important to have the applicant submit a variance request per section 8.0 to comply with the buffer zone regulations, I recommend asking the applicant to request a continuance to submit that documentation.

- If the Commission feels the variance request is not necessary and/or the document submitted by the applicant dated June 7, 2021 is sufficient, the Commission will need to determine whether or not the project complies with the Bylaw and regulations.
- If the Commission feels the project can be conditioned to prevent negative impacts to the resource area and that the information and revisions submitted by the applicant sufficiently addresses the Commission's concerns and describes the effects of the work on the interests of the Act and the Bylaw, I recommend closing the public hearing and issuing an Order of Conditions at the next meeting.
- If the Commission feels the project does not comply with the Bylaw and regulations, I recommend closing the public hearing and issuing decisions under the Act and the Bylaw at the next meeting.

Staff Report

Date: June 11, 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
- Supplemental information submitted June 10, 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 May 10 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 dated 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.
 - Additionally, this would likely constitute a habitat conversion and need mitigation.

- No changes have been made to the planting bed despite several previous comments noting the lack of shrubs.
- The supplemental information submitted June 10, 2021 included two photos and states the following:
 - “As we have discussed, it appears that the concern regarding the north groin is centered around the distinction between new construction and repair or maintenance. As you can see the photo taken a week before the Delano's initiated the work depicts a mostly intact groin with the one gap in the center where the steps have been built [photo dated May 16, 2020].

This appears to confirm that this is more a repair/maintenance than a new construction project. These photos are also consistent with the aerial photos I sent a couple of weeks ago.”

- 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.
- Ultimately, the Commission should not approve a plan that includes work they will not approve. The Commission will need to request from the applicant very specifically what they will approve to be shown on the plan. Otherwise, the Commission should consider denying it for not meeting the coastal beach performance standards.

RECOMMENDATION

- Depending on how the Commission wants to act on the above items, it seems likely that further plan changes are needed before the public hearing can be closed.

Staff Report

Date: June 24, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 Bella Vista Island – Notice of Intent – DEP# 023-1309, Fairhaven CON 023-110**

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
- Division of Marine Fisheries comments dated January 7, 2020
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Preliminary Peer Review Report, prepared by LEC Environmental Consultants, Inc. dated February 13, 2020
- Overall Site Plan dated April 16, 2020
- Existing Conditions plan dated June 6, 2020
- Additional revised documents submitted February 1, 2021
- Peer review letter dated February 22, 2021
- Letter from engineer dated March 5, 2021 with associated photos regarding debris removal

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

- This NOI is a result of an Administrative Consent Order with Penalty (ACOP) with MassDEP that establishes corrective actions to bring the property into compliance. The applicant proposes to:
 - repair the existing eastern groin and provide beach nourishment
 - dredge under the bridge to allow the bridge channel to be deep enough for small crafts to navigate and place the dredged sand on the beach for nourishment purposes
 - repair the southeast end of the causeway side slope by placing large stones

COMMENTS

- MA DMF has provided commentary on the ACOP project with regard to potential impacts to several marine fisheries resources and habitat.
 - Prohibit silt-producing activities or dredging from January 15 through May 31 of any year
 - Plan does not indicate where beach fill will be deposited. Disposal of beach fill in the intertidal area should be consistent with DEP’s Beach Nourishment Guide and be of equal grain size and appropriate slope to avoid premature loss from the beach and impacts to nearshore bottom habitat.
 - Proposed relocated seawall shall not be constructed below the mean high water line within the intertidal area
 - Plan does not depict the groin work. MA DMF recommends that groin repairs remain within the existing footprint. Groin shall be constructed with interstitial spaces to support marine fisheries habitat for macroalgae
- The ACOP NOI is missing the square footage of Land Subject to Coastal Storm Flowage impacted and the square footage of Land Containing Shellfish impacted.
- A portion of the proposed dredging associated with the ACOP filing is located within Natural Heritage Estimated Habitat.
- The applicant has submitted to Natural Heritage.
- 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 submitted photographs of debris removal do not document all areas where debris was located.
- 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 ACOP filing, proof should be submitted that the disposal of beach fill in the intertidal area is consistent with DEP’s Beach Nourishment Guide and be of equal grain size and appropriate slope to avoid premature loss from the beach and impacts to nearshore bottom habitat.
- The applicant’s representative submitted a letter and photographs documenting the removal of debris in the resource areas and buffer zones.

- The follow items still need to be addressed so the Commission can move forward on the ACOP filing:
 - Fully address DMF’s letter in response to the NOI, dated January 7, 2020, including information related to the disposal of dredged material in the intertidal area and compliance with DEP’s Beach Nourishment Guide.
 - The applicant’s representative should initiate dialogue with DMF with the Agent copied, providing the most up-to-date revised plans for this filing (SE 023-1309, CON 023-110).
 - Once DMF has issued commentary stating they are satisfied with the plans as revised, the Commission can move forward and incorporate DMF’s comments into any conditions.
 - The condition of the Coastal Bank where the seawall was removed needs to be addressed. It appears that the slope should be covered with loam and seed to minimize erosion, though we recognize that it is a naturally eroding Coastal Bank. The existing fabric on the slope should be removed in favor of stabilizing with loam and seed.
- These items were outlined on the peer reviewer’s letter of February 22, 2021 as well as in the previous staff report dated February 19, 2021, and were provided to the applicant’s representative on February 22, 2021.
- The above items have begun to be addressed. The applicant’s representative met with the Agent on Thursday, June 10 to discuss the outstanding items. Later that day, he provided revised plans and a letter addressing the comments from DMF.
- Most of DMF’s original comments no longer apply since the project has changed in scope. I submitted the revised plans and letter to DMF for their review to confirm that they don’t have additional comments that need to be addressed or incorporated to an Order of Conditions.

RECOMMENDATION

- DMF anticipates providing feedback the morning of the meeting, so to allow time to incorporate any of DMF’s comments into any plans or decision, I recommend asking the applicant to request a continuance to the next meeting to allow time to review DMF’s feedback and draft decision documents with the peer reviewer.