

Staff Report

Date: July 8, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **Scotcut Neck Road/Overlook Lane – Request for Certificate of Compliance – DEP# 023-1239, Fairhaven CON 023-072**

DOCUMENTS REVIEWED

- Request for Certificate of Compliance and associated documents
- Order of Conditions (OOC) issued August 1, 2016 and extended to August 1, 2022, extended by COVID State of Emergency to November 6, 2023
- Notice of Intent submitted July 6, 2016
- 310 CMR 10.00
- Fairhaven Wetlands Bylaw (Chapter 192)
- Fairhaven Stormwater Bylaw (Chapter 194)

RESOURCE AREAS ON/NEAR SITE

- Bordering Vegetated Wetland
- Buffer Zone

PROJECT SUMMARY

- The applicant proposed to cut overgrown vegetation for the purposes of performing land surveying, specifically to obtain topography and locate stone walls and pertinent site features. Said clearing will be performed with a track-brush cutting machine. No grubbing of the root systems was proposed. All cutting was to occur within upland areas with the exception of the access paths shown on the plans.

COMMENTS

- Clearing was done in preparation for the subdivision that has been permitted under another Order of Conditions.
- Despite the Order being issued before receiving a file number and comments from MassDEP, the work seems to have been done in substantial compliance with the issued OOC.
- There are no special conditions noted on the OOC.

RECOMMENDATION

- I recommend issuing a Certificate of Compliance for Complete Certification for Scotcut Neck Road/Overlook Lane, Assessors Map 29, Lots 1C, 1D, and 1E, SE 023-1239, CON 023-072.

Staff Report

Date: July 8, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **19 James Street – Request for Determination of Applicability – No DEP#, Fairhaven CON 023-235**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) 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 12-foot-by-18-foot shed on sonotubes.

COMMENTS

- The entire property falls within the velocity flood zone (VE-15).
- The applicant is replacing an existing shed with a larger shed.
- It is possible that the larger shed in the velocity flood zone may have additional flood zone requirements per FEMA that the applicant will need to address when he applies for a building permit. FEMA may require sheds over 100 square feet in the velocity flood zone to comply with elevation requirements, but the applicant will need to confirm with the Building Commissioner prior to construction.
- The project does not appear to have a negative impact on storm damage prevention or flood control as long as it complies with all applicable flood zone regulations.

RECOMMENDATION

- I recommend closing the public hearing for CON 023-235, 19 James Street, 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: July 9, 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
- Revised plans dated June 10, 2021
- Letter from engineer dated June 10, 2021 addressing DMF comments
- Division of Marine Fisheries comments dated June 25, 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

- 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 groins
 - dredge under the bridge to allow the bridge channel to be deep enough for small crafts to navigate and dispose of the dredge material offsite
 - 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 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 been 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.
- DMF has issued a second comment letter noting that their concerns have been addressed and recommending certain restrictions and conditions to be included in any Order issued.

RECOMMENDATION

- I recommend closing the public hearing for SE 023-1309, CON 023-110, 1 Bella Vista Island, and issuing an Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the following recommended conditions:

Approve plan dated June 10, 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. 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. ADD-1
5. This Order applies only to the scope of work depicted on the Plan-of-Record (Sheets 1-3) and attached Exhibits. 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 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.
6. All work shall be done in accordance with the Plan-of-Record and Exhibits dated June 10, 2021 as approved by this Order. Any deviation must be approved by this Commission in writing prior to commencing work involved in this deviation.
7. The work depicted on Sheets 4 and 5 of the Plan-of-Record are subject to a separate Order of Conditions under DEP File No. SE 023-1340, Fairhaven File No. SE 023-195. This Order of Conditions does not supersede the Order of Conditions issued on May 28, 2021 for the non-ACOP activities approved by that Order.
8. ADD-4c

9. ADD-5
 10. The limit of work for this project is restricted to the scope of work outlined above and shown on the approved plans. No work is permitted beyond the specific activities approved by this Order.
 11. Any in-water silt-producing work shall be staged to occur outside of the January 15 to May 31 time-of-year (TOY) restriction period of any year work is occurring to protect winter flounder during spawning and juvenile development life history phases.
 12. A qualified professional hired by the Commission at the Property Owner's expense shall oversee all phases of the project to ensure compliance with the issued Order.
 13. Should any habitat conversion occur during the project, habitat mitigation shall be required at the direction of the Fairhaven Conservation Commission and the Division of Marine Fisheries.
 14. The proposed roadside erosion protection (12" to 24" stone) shall not displace any existing salt marsh habitat and construction activities shall also avoid salt marsh habitat by working from the road.
 15. Pursuant to Chapter 192-11, any violation of these conditions is an automatic fine of \$300.00 per day until such time as the project has come back into compliance.
- B. Prior to Construction
16. The applicant shall submit a shellfish mitigation fee of \$31,440, made payable to the Town of Fairhaven, in accordance with the Commission's fee schedule prior to the start of work.
 17. Prior to any work within Land Containing Shellfish, all shellfish within the area of work shall be relocated at the direction of the Fairhaven Harbormaster/Shellfish Warden.
 18. CAP-3
 19. REC-3
 20. DER-1
 21. PCC-3
 22. EMC-1
 23. The 6" x 6" wooden posts in the salt marsh along the property line near the entrance shall be removed before any other work commences.
- C. During Construction
24. REC-2
 25. All groin and seawall work shall occur at low tide.
 26. All dredging work and work along the causeway bridge shall occur from the road only. Should any work need to be done that is not accessible from the road, it shall be done by hand only. No equipment is permitted on the resource areas at any time.
 27. Before any dredging work is to begin, the Fairhaven Harbormaster shall be notified in a timely fashion so he or his designated representative can be onsite during all dredging operations.
 28. At no time shall any construction materials, soils, fills, sediments, dredging or any other substances be stockpiled or stored within an area of statutory interest.
 29. STO-3
 30. STO-4
 31. STO-5
 32. MAC-3
 33. MAC-7
 34. MAC-8: All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 35. MAC-9: Spill kits shall be maintained on site at all times for the immediate response to any potential spill of anything that could cause harm to resource areas and water bodies.

36. DEB-1
37. SIL-8
38. WAT-3
39. DRG-4: Siltation curtains shall be utilized at all times to prevent the intrusion of water-borne sediments into adjacent protected areas. It shall be the sole responsibility of the applicant to ensure the proper placement of this system during dredging, dewatering and spoil transfer activities.
40. All dredged material shall be hauled offsite to be disposed of in an appropriate location over 200 feet from any wetland resource areas and shall not be used for beach nourishment on site. Disposal records for the dredged material shall be submitted to the Commission.

D. After Construction/In Perpetuity

41. Within 60 days of the 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 in compliance with this Order and the Plan-of-Record. The Certificate of Compliance request and accompanying as-built plan, signed and stamped by a Massachusetts Registered Professional Engineer, shall include, but is not limited to, the following information:
 - i. Bathymetric contours of the entire dredge footprint
 - ii. Full extent of dredge footprint
 - iii. Disposal records of dredge material
 - iv. Full extent of groin footprint
 - v. Cross-sections of repaired groins
 - vi. Full extent of seawall and associated cross-sections
 - vii. Coastal bank restoration details, including cross-sections and revegetation documentation
 - viii. All resource area boundaries and the date of confirmation of those boundaries
 - ix. Confirmation that no salt marsh habitat has been damaged by the work or displaced by the placement of the 12- to 24-inch stone to stabilize the causeway road
 - x. Confirmation that no habitat conversion below mean high water has occurred
 - xi. Documentation that all construction debris and related items, such as boom and silt curtains, have been entirely removed from the site

The as-built plan shall be submitted with all information on one sheet as much as possible and in the same dimensions and scale as the approved plans.

Perpetual Conditions

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

42. 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.
43. 310 CMR 10.30(3), promulgated under M.G.L. c. 131, §40, requires that no coastal engineering structure, such as a bulkhead, revetment, or seawall shall be permitted on an eroding bank at any time in the future to protect the project allowed by this Order of Conditions.
44. CHM-2: No liquid or solid chemical lawn fertilizers, pesticides, herbicides or chemical or petroleum dust control agents shall be applied within the area of statutory interest or

anywhere that the surface drainage is discharged into an area of statutory interest. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.

45. DER-4: The owner of the property described in this Order must advise any potential buyer of the property that any construction or alteration to said property, including brush cutting or clearance, may require approval by the Fairhaven Conservation Commission. Any instrument conveying any or all of the owners' interest in said property or any portion thereof shall contain language similar to the following:

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

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

46. As required by Chapter 91 License No. 5746, the area underneath the causeway bridge shall be kept clear for the free passage of small craft and maintained at a depth of at least 1 foot below mean low water in perpetuity. Dredging to maintain the opening shall be done in accordance with all applicable Division of Marine Fisheries TOY restriction windows and from the road. No equipment is permitted on the resources areas for the purposes of dredging.
47. Each time a dredging operation is to occur, the Fairhaven Conservation Commission and the Fairhaven Harbormaster shall be notified, to allow for any additional conditions resulting from modifications in dredging operations in the life of this Order or these perpetual conditions. All dredged material shall be hauled offsite to be disposed of in an appropriate location over 200 feet from any wetland resource areas and shall not be used for beach nourishment on site. Disposal records for the dredged material shall be submitted to the Commission.

Staff Report

Date: July 8, 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
- Revised site plan dated June 30, 2021
- Wetland Impact and Mitigation Areas Plan dated May 17, 2021
- Wetland Mitigation Report dated June 3, 2021
- Buffer Zone Regulations Variance request

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 revised plans dated June 30 incorporate several changes discussed at the previous meeting:
 - Inclusion of the wetland mitigation areas and areas of wetland fill on the overall site plan
 - Inclusion of a stone check dam in the existing drainage channel
 - Inclusion of a riprap apron and rain garden to address water flow from the driveway
 - Inclusion of a small section of split rail fence with Virginia rose, marked with a protected wetlands marker
- The applicant also submitted a variance request under the buffer zone regulations related to the zoning restrictions for the property.

RECOMMENDATION

- If the Commission is satisfied with the changes the applicant has made and the submitted variance request, I recommend closing the public hearing for SE 023-1347, CON 023-210, 1 Boulder Court, and issuing an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following recommended conditions:

Approve plan dated June 30, 2021 and mitigation plans 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. ADD-1
5. ADD-2
6. ADD-4b
7. ADD-4c
8. ADD-5
9. LOW-2 with the exception of the wetland mitigation areas.
10. WET-1
11. 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.
12. FZ-2: The design flood elevation of the structure shall be 2 feet above base flood elevation.
13. The split rail fence shall be extended to the east from flags KT-4 to KT-1 parallel with the wetland line and maintaining 10 feet off the wetland line on the upland side. The split rail fence shall be extended to the west 45 feet to test pit location B1, following the wetland line between KT-14 and test pit B1.
14. Either compost filter sock or a combination of straw wattle and silt fence shall be used as erosion and sedimentation control for this project.
15. SIL-5
16. SIL-9
17. SIL-10
- B. Prior to Construction
 18. CAP-3
 19. REC-3
 20. DER-1
 21. PCC-3
 22. EMC-1
 23. 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.
 24. PCC-1
- C. During Construction
 25. The wetland mitigation areas shall be constructed first, in accordance with the approved plans and documents and all other applicable permits. Once the mitigation areas have been established and protected with erosion and sedimentation control, the applicant shall contact the Agent to perform a site inspection. Once the wetland mitigation areas and erosion and sedimentation controls have been inspected and approved by the Agent, the construction of the remainder of the project can commence.
 26. REC-2
 27. 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.
 28. STO-1

29. All equipment used on site must be stored or parked in an area outside the 50-foot buffer zone.
 30. STO-4
 31. STO-5
 32. MAC-3
 33. MAC-7
 34. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 35. Spill kits shall be maintained on site at all times for the immediate response to any potential spill of anything that could cause harm to resource areas and water bodies.
 36. DEB-1
 37. DEB-5
 38. BLD-3
 39. BLD-4
 40. SIL-3
 41. SIL-4
 42. SIL-8
 43. WAS-2
 44. WAT-3
 45. EC-1
 46. EC-2
- D. Wetland Mitigation
47. REP-2
 48. REP-3
 49. REP-5
 50. REP-8
 51. REP-9
 52. REP-10
 53. REP-11
- E. After Construction/In Perpetuity
54. REV-1
 55. Upon the completion of the project, a Certificate of Compliance shall be requested and an as-built plan certifying compliance with the conditions of this Order shall be submitted with the following documentation:
 - i. Final contour elevations, longitudinal cross-sectional profile(s) and square footage of the wetland alteration and wetland mitigation areas
 - ii. Certification by a licensed wetland scientist that the wetland mitigation areas have successfully established. Success shall be defined as the mitigation areas having at least 75% coverage by native species at the end of three (3) full growing seasons).
 - iii. Confirmation of the design flood elevation of the structure
 56. 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.

57. CHM-3
58. DER-4

59. FZ-4: Breakaway walls shall not be modified at any point so they no longer function as breakaway walls.
60. The rain garden, riprap apron, and stone check dam shall be maintained in good working order in perpetuity.
61. No additional wetland areas shall be allowed to be filled or altered on this property without the approval of the Conservation Commission, now or in the future.
62. The driveway shall not be permitted to be paved now or at any point in the future.

Staff Report

Date: July 9, 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
- Buffer Zone Regulations variance request

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):**
 - 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.

PROJECT SUMMARY

- The applicant is proposing to construct a single-family dwelling with a garage, multi-level deck 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
- 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.
- The applicant submitted a buffer zone regulations variance request noting that the only alternative to what has been proposed is a no-build scenario, which would constitute a taking of the property.

RECOMMENDATION

- If the Commission feels the submitted variance request has addressed all of their concerns, I recommend closing the public hearing for SE 023-1352, CON 023-225, Scoticut Neck Road/Overlook Lane, and issuing an Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the following conditions:

Approve plan dated June 7, 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. ADD-1
5. ADD-2
6. ADD-4b
7. ADD-4c
8. ADD-5
9. LOW-2, with the exception of the plantings as shown on the approved plans,
10. WET 1: The wetland boundary delineated in the field and/or shown on the plans has not been accepted or approved by the Conservation Commission through the issuance of this permit. The issuance of this Order of Conditions does not extend the approval of the

wetland line as depicted on the approved plans. Once the Orders of Conditions (see SE 023-1239 and SE 023-1258) approving that line expire, the wetland line will need review and approval by the Commission for any projects in the future.

11. All native plantings on the property shall be non-cultivars.
 12. SIL-5
 13. SIL-9
 14. SIL-10
 15. SIL-12: All depicted erosion and sedimentation controls shall use either compost filter socks or a combination siltation fence and straw wattle/silt sock.
- B. Prior to Construction
16. CAP-3
 17. REC-3
 18. DER-1
 19. PCC-3
 20. EMC-1
 21. 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.
 22. PCC-1
- C. During Construction
23. REC-2
 24. TRP-1
 25. STO-1
 26. All equipment used on site must be stored or parked in the existing constructed Overlook Lane.
 27. STO-7: 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.
 28. STO-4
 29. STO-5
 30. MAC-3
 31. MAC-7
 32. MAC-8: All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 33. MAC-9: Spill kits shall be maintained on site at all times for the immediate response to any potential spill of anything that could cause harm to resource areas and water bodies.
 34. DEB-1
 35. DEB-5
 36. BLD-3
 37. BLD-4
 38. SIL-3
 39. SIL-4
 40. SIL-8
 41. WAS-2
 42. WAT-3

43. 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.
 44. 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.
 45. 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.
- D. After Construction/In Perpetuity
46. REV-1
 47. Should greater than 25% of the planted shrubs and trees fail to become established, the property owner and any successor in interest or successor in control of the property subject to this order shall be responsible for replacing them in kind so at least 75% of the tree and shrub plantings become established.
 48. Upon the completion of the project, a Certificate of Compliance shall be requested and an affidavit and as-built plan certifying compliance with the conditions of this Order and the plan-of-record shall be submitted with the following documentation:
 - i. Final location of all proposed plantings
 - ii. Final location of the boulders depicting the permanent vegetated buffer
 - iii. Final location of the grass water quality swale
 - iv. Final elevations and grades
 - v. Certification that the roof runoff recharge systems have been installed and are functioning properly

Perpetual Conditions

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

49. 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. If fertilizing the lawn is necessary, only slow-release organic granular type fertilizers shall be used within the wetland buffer zone. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
50. DER-4
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. 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. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
54. The driveway shall remain pervious and is not permitted to be paved now or at any point in the future.

Staff Report

Date: July 9, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **6 Cherrystone Road – Notice of Intent – DEP# 023-1360,
Fairhaven CON 023-236**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Land Subject to Coastal Storm Flowage (LSCSF) Zone AE-14

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 demolish the existing cottage and construct a new flood zone-compliant single-family dwelling.

COMMENTS

- Half of the property falls within the flood zone. The other half is outside of the flood zone.
- The work within the flood zone includes a portion of the house and decks, the propane tanks, a portion of the site grading, and a portion of the electricity/telephone/cable lines.
- The proposed paved driveway is located outside of the flood zone.
- There are three mature trees on the lot. It doesn't appear they are proposed to be removed.
- The house is proposed to be flood-zone compliant.
- Overall, this project appears as though it will not have a negative impact on flood control and storm damage prevention.

RECOMMENDATION

- I recommend closing the public hearing for SE 023-1360, CON 023-236, 6 Cherrystone Road, and issuing an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following conditions:

Approve plan dated June 11, 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. ADD-1
5. ADD-2
6. ADD-4b
7. ADD-4c
8. ADD-5
9. LOW-2
10. 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.
11. FZ-2: The design flood elevation of the structure shall be at least one foot above base flood elevation.
12. SIL-5
13. SIL-7
14. SIL-9
15. SIL-10

B. Prior to Construction

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

C. During Construction

23. REC-2
24. TRP-1
25. STO-1
26. STO-4
27. MAC-3
28. MAC-8: All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
29. MAC-9: Spill kits shall be maintained on site at all times for the immediate response to any potential spill of anything that could cause harm to resource areas and water bodies.
30. DEB-1

- 31. DEB-5
- 32. BLD-3
- 33. BLD-4
- 34. SIL-3
- 35. SIL-4
- 36. SIL-8
- 37. WAT-3
- 38. EC-1
- 39. EC-2
- D. After Construction/In Perpetuity
 - 40. REV-1
 - 41. COC-1
 - 42. COC-2

Perpetual Conditions

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

- 43. CHM-1
- 44. DER-4

Staff Report

Date: July 9, 2021

To: Conservation Commission

From: Whitney McClees, Conservation Agent

Subject: **1 & 2 Marsh Island – Notice of Intent – DEP# 023-____, Fairhaven CON 023-237**

DOCUMENTS REVIEWED

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

RESOURCE AREAS ON/NEAR SITE

- Coastal Beach
- Coastal Dune
- Bordering Vegetated Wetland
- Salt Marsh
- Buffer Zone
- Riverfront Area
- Land Subject to Coastal Storm Flowage

PERFORMANCE STANDARDS

- No work is proposed within Coastal Beach or Coastal Dune
- **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
- **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].
 - **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
 - 4.2 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
 - 5.4 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.
 - **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.
- **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 approximately 8.2 acres of invasive plant control and management as part of a larger 12-acre salt marsh restoration project.

COMMENTS

- The applicant is proposing to control approximately 7.9 acres of common reed (*Phragmites australis*) and approximately 0.3 acres of other invasive plants.
- They are proposing control for at least two growing seasons ahead of the future salt marsh restoration project and annual monitoring and spot treatment of invasive plants is proposed to continue thereafter.
- They are proposing to control the invasive species onsite through a combination of manual cut-stem treatments as well as foliar herbicide application to limit their presence and prevent their continued spread on the property. Management techniques are species-specific and include:
 - Cut-stem treatments for woody species
 - Selective foliar treatments for herbaceous species
 - Hand wiping or cut and drip applications when near sensitive plant communities
- A solution of herbicide, surfactant, and marking dye will be used for all treatments and conducted by licensed contractors.
- Beginning to control these plants this summer ahead of the larger restoration project, which is proposed for fall 2022, will result in a much greater chance of success to establish native vegetation in areas of newly created salt marsh.
- In subsequent years, monitoring of treated areas will be conducted annual and spot treatments applied as needed with foliar spray, hand wiping, or cut-stem treatment of herbicide by pesticide-licensed staff. Hand pulling will be utilized where possible for species such as spotted knapweed.

RECOMMENDATION

- Currently, MassDEP has not issued a file number for this project. The public hearing cannot be closed until a file number is issued.

- If MassDEP issues a file number prior to Monday's meeting, I recommend closing the public hearing for SE 023-____, CON 023-237, 1 & 2 Marsh Island, and issuing an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the following recommended conditions:

Approve plans dated July 1, 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. This Order of Conditions is valid for five years since the work involves invasive species management of conservation land.
6. This Order and a copy of approved drawings and plans shall be available at the project site at all times for easy reference.
7. DER-1
8. CAP-3
9. PCC-3
10. All invasive species control work shall be overseen by a qualified professional.
11. Invasive species control and monitoring shall be done in accordance with the project narrative, as attached to this Order.

Perpetual Conditions

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

12. Annual monitoring of the site and spot treatment of invasive species as needed is permitted without re-filing with or notification to the Commission.