Dukes - 20/20 Perfect Vision i2 Document Detail Report

Current datetime: 5/17/2021 3:44:49 PM

Doc#	Document Type	Town	Book/Page	File Date	Consideration
998	ORDER		01489/593	02/25/2019	

Property-Street Address and/or Description

1282/790, SE79-390

Grantors

SPALDING PHILIP W TRS, SPALDING INVESTMENT REALTY TRUST

Grantees

WEST TISBURY TOWN CONSERVATION

References-Book/Pg	Description	Recorded Year
01282/790	DEED	2012

Registered Land Certificate(s)-Cert# Book/Pg

2019 00000998
Bk: 1489 Pg: 593 Doc: ORD
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Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
and the West Tisbury Wetlands Protection Bylaw and Regulations

Provided by MassDEP:
SE79-390
MassDEP File #

eDEP Transaction #

West Tisbury
City/Town

A. General Information

Please note: this form has been modified with added space to accommodate the Registry of Deeds Requirements

Important: When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.

1. From: West Tisbury
Conservation Commission

2. This issuance is for (check one): a. ☒ Order of Conditions b. ☐ Amended Order of Conditions

3. To: Applicant:

Jon (a. First Name) | McNeill (b. Last Name)

c/o Vineyard Land Surveying & Engineering, Inc. (c. Organization)

P.O. Box 421 (d. Mailing Address)

West Tisbury (e. City/Town) | MA (f. State) | 02575 (g. Zip Code)

4. Property Owner (if different from applicant):

Philip W. (a. First Name) | Spalding Trustee (b. Last Name)

Spalding Investment Realty Trust (c. Organization)

same as above (d. Mailing Address)

(e. City/Town) | (f. State) | (g. Zip Code)

5. Project Location:

160 Plum Bush Point Road (a. Street Address) | West Tisbury (b. City/Town)

35 (c. Assessors Map/Plat Number) | 6.15 (d. Parcel/Lot Number)

Latitude and Longitude, if known: d m s (d. Latitude) | d m s (e. Longitude)

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A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):

Dukes
a. County

b. Certificate Number (if registered land)

1282
c. Book

790
d. Page

7. Dates: October 24, 2018 (a. Date Notice of Intent Filed) February 19, 2019 (b. Date Public Hearing Closed) February 21, 2019 (c. Date of Issuance)

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

Site Plan in West Tisbury, Mass. Prepared for Jon McNeill
a. Plan Title

Vineyard Land Surveying & Engineering
b. Prepared By

unsigned not stamped
c. Signed and Stamped by

February 20, 2019
d. Final Revision Date

1"=30'
e. Scale

f. Additional Plan or Document Title

g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proceed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:

a. ☐ Public Water Supply
b. ☐ Land Containing Shellfish
c. ☒ Prevention of Pollution
d. ☒ Private Water Supply
e. ☐ Fisheries
f. ☒ Protection of Wildlife Habitat
g. ☒ Groundwater Supply
h. ☒ Storm Damage Prevention
i. ☒ Flood Control

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

a. ☒ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

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B. Findings (cont.)

Denied because:

b. ☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**

c. ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**

3. ☒ Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) — 0 a. linear feet

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. ☐ Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. ☐ Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
6. ☐ Land Under Waterbodies and Waterways	a. square feet	b. square feet	c. square feet	d. square feet
	e. c/y dredged	f. c/y dredged		
7. ☐ Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. ☐ Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. ☐ Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet

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B. Findings (cont.)

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. ☐ Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. ☐ Land Under the Ocean	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. ☐ Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. ☐ Coastal Beaches	a. square feet	b. square feet	c. nourishment cu yd	d. nourishment cu yd
14. ☐ Coastal Dunes	a. square feet	b. square feet	c. nourishment cu yd	d. nourishment cu yd
15. ☐ Coastal Banks	a. linear feet	b. linear feet		
16. ☐ Rocky Intertidal Shores	a. square feet	b. square feet		
17. ☐ Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. ☐ Land Under Salt Ponds	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. ☐ Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
20. ☐ Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	a. c/y dredged	b. c/y dredged		
21. ☐ Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		
22. ☐ Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet

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B. Findings (cont.)

* **#23.** If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23. ☐ Restoration/Enhancement *:

a. square feet of BVW | b. square feet of salt marsh

24. ☐ Stream Crossing(s):

a. number of new stream crossings | b. number of replacement stream crossings

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
   a. The work is a maintenance dredging project as provided for in the Act; or
   b. The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
   c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on _____ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.

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C. General Conditions Under Massachusetts Wetlands Protection Act

8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.

9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.

10. A sign shall be displayed at the site not less then two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]

"File Number SE79-390 "

11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.

12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.

13. The work shall conform to the plans and special conditions referenced in this order.

14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.

15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.

16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.

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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.

18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

19. The work associated with this Order (the "Project")
    (1) ☐ is subject to the Massachusetts Stormwater Standards
    (2) ☒ is NOT subject to the Massachusetts Stormwater Standards

    If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:

    a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.

    b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
    i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
    ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
    iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;

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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;

v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.

c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement) for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:

i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and

ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.

d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.

e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.

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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.

h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.

i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.

j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.

k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.

l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (if you need more space for additional conditions, please attach a text document):

See special conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

20. For Test Projects subject to 310 CMR 10.05(11), the applicant shall also implement the monitoring plan and the restoration plan submitted with the Notice of Intent. If the conservation commission or Department determines that the Test Project threatens the public health, safety or the environment, the applicant shall implement the removal plan submitted with the Notice of Intent or modify the project as directed by the conservation commission or the Department.

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D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? ☒ Yes ☐ No

2. The West Tisbury Conservation Commission hereby finds (check one that applies):

   a. ☐ that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

   _____ (1. Municipal Ordinance or Bylaw) _____ (2. Citation)

   Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

   b. ☒ that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

   West Tisbury Wetlands Protection Bylaw and Regulations (1. Municipal Ordinance or Bylaw) Exhibit A (2. Citation)

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

   The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

   See special conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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E. Signatures

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

9-21-2019
1. Date of Issuance

Please indicate the number of members who will sign this form.
This Order must be signed by a majority of the Conservation Commission.

4
2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Signatures:

☒ by hand delivery on

9-21-2019
Date

☐ by certified mail, return receipt requested, on

Date

F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction. **Appeals of this Order under the West Tisbury Wetlands Protection Bylaw and Regulations may be made to the Dukes County Superior Court in accordance with M.G.L. Ch. 249 Sec.4.**

EXHIBIT A

Special Conditions
Map 35 Lot 6.15
160 Plum Bush Point Road
DEP File No. SE79-390
NHESP File No.13-32495

Project Description and Jurisdiction:

On October 24, 2018 Vineyard Land Surveying & Engineering, Inc., filed a Notice of Intent (NOI) on behalf Jon McNeill (the "Applicant"), for a project located at 160 Plum Bush Point Road owned by Philip W. Spalding, Trustee of Spalding Investment Realty Trust. The original project consisted of landscaping and creation of view channels within the Buffer Zone accessory to a new single family dwelling to be constructed outside the Buffer Zone, construction of a 34' raised boardwalk through a Bordering Vegetated Wetland, an 80' long seasonal pier with fixed pilings, and a seasonal ramp and float. At the public hearing held on January 8, 2019, the applicant withdrew their proposal for the boardwalk and dock and further revised the proposal to include the conversion of woodland to a meadow within the Outer Buffer and Area of Estimated and Priority Habitat.

The Conservation Commission has conducted an on-site inspection, reviewed the NOI and submitted information and has determined that the area where the work is proposed is significant to the values of the Wetlands Protection Act and Regulations at 310 CMR 10.00 (the "Act") and the West Tisbury Wetlands Protection Bylaw and Regulations (the "Bylaw"). Public hearings were held on November 13 and 27, December 12, 2018, January 8, 22 and February 19, 2019, at which time the public hearing was closed.

This project was reviewed for compliance with 310 CMR 10.2 (Statement of Jurisdiction), 10, 24 (General Provisions), 10.30 (Coastal Bank), and 10.37 (Estimated Habitats of Rare Wildlife). The property is located within Estimated or Priority Habitats as shown in the Massachusetts Natural Heritage Atlas, 13th Edition effective August 1, 2017, produced by the Massachusetts Division of Fisheries and Wildlife's Natural Heritage and Endangered Species Program (NHESP).

Under Section II of the Bylaw, the Buffer Zone is considered to be a Resource Area. This project was reviewed for compliance with Sections IV (Buffer Zone), Section IX (Coastal Banks) and XXI (Estimated Habitats of Rare Species and Wildlife).

The Applicant has requested a waiver from the provisions of the Bylaw for work in the Buffer Zone within the No-Disturbance and the No Build Zones.

Findings:

In making a decision on this project, the Commission has considered the magnitude of alteration, the environmental significance of the site, reasonable alternatives, and the minimization of impact and the extent of mitigation measures.

The Commission finds that each parcel of land and proposed project thereon has its own unique characteristics and impacts, therefore, every project brought before the Commission for approval will be considered on a site specific basis. And, because of this site specificity, each project will stand alone and shall not set a precedent in the decisions to be made on subsequent projects. Due to the project location and project design, the proposed project, as conditioned, is allowed but the approval does not set any sort of precedent as each property and project are determined on their own merits.

Under 310CMR 10.24(1), the Commission finds that work located in the Buffer Zone is subject to review under 310 CMR 10.02(3), and that the issuing authority shall impose conditions to protect the interests of the Act identified for the adjacent resource area.

EXHIBIT A

As defined in the Act, vista pruning (or view channel clearing) does not include the cutting of trees which would reduce the leaf canopy to less than 90% of the existing crown cover and does not include the mowing or removal of understory brush.

The Commission finds that certain activities in the Buffer Zone are exempt under 310CMR 10. 02(2) (b) 2a, and exempt under the Bylaw at Section III A. 3. Otherwise, when such activities do not meet the requirements of 310 CMR 10.02(2) (b) and 2, the project requires pre-construction review under the Act.

Vista pruning, provided the activity is located more than 50 feet from Bordering Vegetated Wetlands, is considered a minor activity under 310 CMR 10.02 (2) (b) 1 and 2. However, under the Bylaw, vista pruning/view channels in the Buffer Zone are not considered a minor activity and require a waiver under the provisions of the Bylaw if view channels extend into the first 50 feet of the Buffer Zone. The Commission finds that the establishment of view channels is subject to further review and approval of the Commission after the house has been constructed as noted below.

The Commission finds that this project appears to meet the state-listed species performance standard set forth in 310 CMR 10. 37 and Section XXI for the issuance of an Order of Conditions, and further that this project, as currently proposed, will not adversely affect the actual Resource Area Habitat of state-projected rate wildlife species, as determined by NHESP in its letter dated February12, 2019.

The Commission approves the proposed project under the Act and the Bylaw subject to the following special conditions.

Special Conditions under both the Act and the Bylaw

1) The Applicant and the Applicant's agent(s) shall adhere to General Conditions 1 through 17 of this Order.

2) The term "Applicant" as used in this Order of Conditions shall refer to the owner, any successor in interest or successor in control of the property referenced in the Notice of Intent, supporting documents and this Order of Conditions. The Commission shall be notified in writing within 30 days of all transfers of title of any portion of property that take place prior to issuance of the Certificate of Compliance.

3) The form provided at the end of this Order shall be completed and stamped at the Dukes County Registry of Deeds, after the expiration of the 10-day appeal period and if no request of appeal has been filed with the Department of Environmental Protection. This form should be returned to the Commission in accordance with General Condition 8, and prior to the commencement of work.

4) The Commission has approved the proposed project in accordance with the specifications shown on the plan entitled, "Site Plan in West Tisbury, Mass.", prepared for Philip Spalding dated December 26, 2018 as revised to February 20, 2019, prepared by Vineyard Land Surveying & Engineering, Inc.,(the "Project Plan"). All notes on the Project Plan are adopted as additional conditions unless otherwise stated. Where the Commission's orders are more restrictive, the Order shall apply. No deviation from the Project Plan is permitted without prior written approval of the Commission. **Any change to the Project Plan before or after the building permit is issued requires approval by the Commission. See General conditions No. 13 and No. 14 regarding approval of changes to the Project Plan.**

5) It is the responsibility of the Applicant to procure all other applicable federal state and local permits and approvals associated with this project. Should issuance of additional permits result in a change in the project, the provisions of special condition #4 above apply regarding the process for plan changes shall apply.

6) The lawn in the Outer Buffer Zone may be cleared and rotovated and planted with a drought tolerant seed mix.

EXHIBIT A

7) Where the meadow and the view channels overlap in the Outer Buffer Zone as shown on the Project Plan, the meadow area (within the view channels) may be brush cut once the building permit has been issued. Trees that the applicant would like to remove shall be tagged but not cut until a landscape plan is submitted to the Commission for review and approval as set forth in special condition number 8.

8) No alteration of vegetation within the proposed view channels in the No-Disturbance and No –Build Zones (the first 50 feet of the Buffer Zone from the wetland edge) as shown on the Project Plan is permitted **until the house is framed and windows and doors are in their final location, a landscaping plan is submitted and a site visit is conducted by the Commission. The landscaping plan shall show the view channels, the number and species of trees to be pruned or cut down and any other landscaping work within the Buffer Zone that is not already approved under this Order of Conditions.**

   In addition, an as-built foundation plan, signed and stamped by a RPE or Land Surveyor, showing the location of the foundation for the house and pool together with the actual distances from all wetland resource and buffer zone boundaries shall also be submitted to the Commission. A statement of any deviations from the Project Plan is required.

   The approval of work within the view channels and the waiver request will determined at that time and set forth in an amendment to this Order of Conditions.

9) No mowing, brush cutting, pruning or cutting of understory or trees is permitted in the first 50 feet of the Buffer Zone outside the proposed view channels shown on the Project Plan without prior review and approval from the Commission. **This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance.**

10) The Applicant shall comply with the conditions set forth in the NHESP letter with respect to the setting of permanent boundary monuments for Lot 4B as shown on the Project Plan.

11) It is the responsibility of the Applicant, Applicant's representative, owner and /or successor (s) to ensure that all conditions of this Order are complied with. A copy of this Order of Conditions including the special conditions and Project Plans shall be included in all construction contracts, subcontracts and specifications and shall be available on-site upon commencement and during the performance of any and all construction activities regulated by this Order.

12) All site contractors shall review and adhere to these conditions of approval in performing the approved activities. The Applicant or its representative shall obtain a signed receipt from all site contractors stating that they have reviewed and will adhere to this Order. The receipt(s) shall be submitted to the Commission. Any adverse impact the Buffer Zone caused by vehicles, equipment or workers shall be mitigated immediately by the Applicant in consultation with the Commission.

13) Prior to the start of any excavation or construction, there shall be a pre-construction meeting on the site involving the contractor conducting the work, the site engineer, the Applicant or their agent, and a member or agent of the Commission to ensure that all parties understand the requirements of this Order. **The pre-construction site visit shall be arranged with the Commission office at least 72 hours in advance of the start of work.**

14) **Erosion control measures consisting of silt fence stapled to rigid snow fencing shall be placed along the limit of work line/limit of Estimated and Priority Habitat Boundary as shown on the Project Plan. This fencing must be in place at the time of the pre-construction site visit and properly maintained until the project is completed. No work shall take place outside the limit of work.**

15) All fill brought on site must be clean, debris–free and devoid of invasive plants or their parts or seeds.

EXHIBIT A

16) The construction site shall be maintained in a clean condition at all times. Construction refuse and debris shall be contained within a covered dumpster placed outside of the Buffer Zone or removed from the site on a daily basis. Wind-blown debris shall be collected from the site on a daily basis and placed in the dumpster or removed. All materials stored on site shall be located within the limit of work outside the Buffer Zone and secured or covered.

17) While the house will be constructed outside the Buffer Zone, all roof runoff shall be directed away from wetland areas.

18) No underground propane tanks shall be located within the Buffer Zone. **This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance.**

19) The Project Plan shows a pool to be located just outside the Buffer Zone. The pool shall not be drained into the Buffer Zone and there shall be no alteration of the Buffer Zone in order to construct the pool. **This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance.**

20) The use of chemical fertilizers, pesticides, herbicides and sodium-based projects is prohibited within the Buffer Zones in order to reduce the impact of these products on the resource areas when transported by storm water or by leaching through the soil. The Applicant shall abide by the West Tisbury Board of Health Regulations for the application of fertilizers on this property outside the Buffer Zones. **This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance.**

21) Upon completion of construction of the house, the Applicant shall submit the following to the Conservation Commission to request a Certificate of Compliance (COC):

    1. A Completed Request for a Certificate of Compliance
    2. A set of post-construction photographs of the work areas, access and project locus immediately after completion.

22) In case of emergencies, problems or the need to discuss site conditions with the Commission, call the Board Administrator at 508-696-6404.

Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
and the West Tisbury Wetlands Protection Bylaw and Regulations

Provided by MassDEP:
SE79-390
MassDEP File #

eDEP Transaction #

West Tisbury
City/Town

G. Recording Information

Prior to commencement of work, this Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

West Tisbury
Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

West Tisbury
Conservation Commission

Please be advised that the Order of Conditions for the Project at:

160 Plum Bush Point Road (35-6.15) — Project Location
SE79-390 — MassDEP File Number

Has been recorded at the Registry of Deeds of:

Dukes — County
Book
Page

for: Philip Spalding, Trustee
Property Owner

and has been noted in the chain of title of the affected property in:

Book
Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant

Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

Request for Departmental Action Fee Transmittal Form

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

Provided by DEP

A. Request Information

1. Location of Project

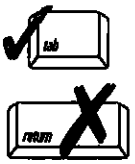
a. Street Address

b. City/Town, Zip

c. Check number

d. Fee amount

Important: When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



2. Person or party making request (if appropriate, name the citizen group's representative):

Name

Mailing Address

City/Town

State

Zip Code

Phone Number

Fax Number (if applicable)

3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Name

Mailing Address

City/Town

State

Zip Code

Phone Number

Fax Number (if applicable)

4. DEP File Number:

B. Instructions

1. When the Departmental action request is for (check one):

☐ Superseding Order of Conditions – Fee: $120.00 (single family house projects) or $245 (all other projects)

☐ Superseding Determination of Applicability – Fee: $120

☐ Superseding Order of Resource Area Delineation – Fee: $120

Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

Request for Departmental Action Fee Transmittal Form

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

Provided by DEP

B. Instructions (cont.)

Send this form and check or money order, payable to the *Commonwealth of Massachusetts,* to:

Department of Environmental Protection
Box 4062
Boston, MA 02211

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.

3. Send a **copy** of this form and a **copy** of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office (see http://www.mass.gov/eea/agencies/massdep/about/contacts/).

4. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

ATTEST: Paulo C. DeOliveira, Register
Dukes County Registry of Deeds