



WPA Form 8A – Request for Certificate of Compliance

SE79-389

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

Provided by DEP

A. Project Information

Important:

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



Upon completion of the work authorized in an Order of Conditions, the property owner must request a Certificate of Compliance from the issuing authority stating that the work or portion of the work has been satisfactorily completed.

1. This request is being made by:

Blue Heron, LLC

Name

c/o Vineyard Land Surveying & Engineering, Inc. P. O. Box 421

Mailing Address

West Tisbury

City/Town

MA

State

02575

Zip Code

508-693-3774

Phone Number

2. This request is in reference to work regulated by a final Order of Conditions issued to:

Blue Heron, LLC

Applicant

2/12/2019

Dated

SE79-389

DEP File Number

3. The project site is located at:

99 Pond View Farm Road

Street Address

West Tisbury

City/Town

35

Assessors Map/Plat Number

1.9

Parcel/Lot Number

4. The final Order of Conditions was recorded at the Registry of Deeds for:

Blue Heron, LLC

Property Owner (if different)

Dukes

County

1606

Book

929

Page

Certificate (if registered land)

5. This request is for certification that (check one):

the work regulated by the above-referenced Order of Conditions has been satisfactorily completed.

the following portions of the work regulated by the above-referenced Order of Conditions have been satisfactorily completed (use additional paper if necessary).

the above-referenced Order of Conditions has lapsed and is therefore no longer valid, and the work regulated by it was never started.



A. Project Information (cont.)

6. Did the Order of Conditions for this project, or the portion of the project subject to this request, contain an approval of any plans stamped by a registered professional engineer, architect, landscape architect, or land surveyor?

Yes

If yes, attach a written statement by such a professional certifying substantial compliance with the plans and describing what deviation, if any, exists from the plans approved in the Order.

No

B. Submittal Requirements

Requests for Certificates of Compliance should be directed to the issuing authority that issued the final Order of Conditions (OOC). If the project received an OOC from the Conservation Commission, submit this request to that Commission. If the project was issued a Superseding Order of Conditions or was the subject of an Adjudicatory Hearing Final Decision, submit this request to the appropriate DEP Regional Office (see <http://www.mass.gov/dep/about/region/findyour.htm>).

Dukes - 20/20 Perfect Vision i2 Document Detail Report

Current datetime: 12/13/2021 8:44:04 AM

Doc#	Document Type	Town	Book/Page	File Date	Consideration
9914	ORDER		01606/929	12/10/2021	
Property-Street Address and/or Description					
1303/540, SE79-389					
Grantors					
BLUE HERON LLC					
Grantees					
WEST TISBURY TOWN CONSERVATION					
References-Book/Pg Description Recorded Year					
01303/540 DEED 2012					
Registered Land Certificate(s)-Cert# Book/Pg					



This is a copy of the original Order of Conditions that was never recorded. The original document has been lost or misplaced. I certify that this is a true, exact, and complete copy made by me and presented to the West Tisbury Town Clerk on December 1, 2021.

Maria G. McFarland, Board Administrator
West Tisbury Conservation Commission

A TRUE COPY, ATTEST:

TOWN CLERK



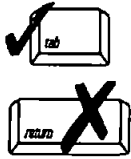
Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
and the West Tisbury Wetlands Protection Bylaw and Regulations

Provided by MassDEP:
SE79-389
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:

a. First Name Blue Heron, LLC b. Last Name _____
c. Organization _____
d. Mailing Address c/o Teles Landscaping 25 Holmes Hole Road
e. City/Town Vineyard Haven f. State MA g. Zip Code 02568

4. Property Owner (if different from applicant):

a. First Name _____ b. Last Name _____
c. Organization same as above
d. Mailing Address _____
e. City/Town _____ f. State _____ g. Zip Code _____

5. Project Location:

a. Street Address 99 Pond View Farm Road b. City/Town West Tisbury
c. Assessors Map/Plat Number 35 d. Parcel/Lot Number 1.9

Latitude and Longitude, if known: _____
d. Latitude _____ 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

1303

c. Book

b. Certificate Number (if registered land)

540

d. Page

7. Dates: October 26, 2018 January 22, 2019 February 12, 2019
a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance

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

Vegetation Management Plan

a. Plan Title

Teles Landscaping

b. Prepared By

11.27.2018

d. Final Revision Date

unsigned, not stamped

c. Signed and Stamped by

1"=20'

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 proposed 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)

Partially 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. See Exhibit A.



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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) 25
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. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet e. c/y dredged	b. square feet f. c/y dredged	c. square feet	d. square feet
7. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. ^{cu yd} nourishment	d. ^{cu yd} nourishment
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. ^{cu yd} nourishment	d. ^{cu yd} nourishment
15. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> 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. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		
22. <input type="checkbox"/> 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 than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]
"File Number SE79-389 "
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 hereby finds (check one that applies):
Conservation Commission
 - 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:

<u>West Tisbury Wetlands Protection Bylaw and Regulations</u>	<u>Exhibit A</u>
1. Municipal Ordinance or Bylaw	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.

2-12-2019
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.

6
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:

Binnery Raychel
Paul Marshall
Michael D'Amico

[Signature]
[Signature]
Justin Egan

by hand delivery on

by certified mail, return receipt requested, on

Date

Date

2-12-2019

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
99 Pond View Farm Road
Map 35 Lot 1.9
DEP File # SE79-389
NHESP File # 08-25731

Project Description and Jurisdiction:

On October 26, 2018, Teles Landscaping filed a Notice of Intent (NOI) on behalf of Blue Heron, LLC (the “Applicant”), for a project at 99 Pond View Farm Road. The project consists of transplanting 40 to 50 Eastern Red Cedars within the first twenty-five (25) feet of the Buffer Zone (the “No-Disturbance- Zone” under the Bylaw), removing several Eastern Red Cedars in the second twenty-five five (25) feet (the “No-Build Zone under the Bylaw) and the minimal removal of several invasive vines on trees located on the top of a coastal bank.

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 310CMR10.00 (the “Act”), and the West Tisbury Wetlands Protection Bylaw and Regulations (the “Bylaw”). Public hearings were held on November 11 and 27, 2018 and January 22, 2019. There was no public comment.

This project was reviewed for compliance with the Act and 310 CMR 10. 02 (Statement of Jurisdiction), Section 10.24 (General Provisions) and 10.37 (Estimated Habitats of Rare Wildlife). A portion of the Eastern Red Cedars are 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 the Bylaw Regulations Sections IV (Buffer Zone) and Section XXI (Estimated Habitats of Rare Species and Wildlife).

The Applicant requested a waiver from compliance with the performance standards established at Section IV. C. 4 dealing with activities in the No-Disturbance and 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

EXHIBIT A

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.

The Commission finds that work located in the Buffer Zone that will alter this area is reviewable by the Commission under 310 CMR 1 0.02 (3) when such activities do not meet the requirements of 310 CMR 10.02 (2) (b) 2.

The Commission finds that under 310 10.24 (1) for work in the Buffer Zone, the Commission shall impose such conditions as are necessary to contribute to the protection of such interests. For work in the Buffer Zone subject to review, the issuing authority may consider the characteristics of the Buffer Zone that may increase the potential for adverse impacts on resource areas depending on the extent of the work and the proximity to the resource area and shall impose conditions that may include limits on the scope and location of the work to avoid alteration of resource areas.

The Commission finds that even though Natural Heritage and Endangered Species Program determined that this project will be no adverse impact to Estimated Habitat, the Commission feels that there is so little vegetation on this property beyond what currently exists on the top of the coastal bank that to remove these trees substantially reduces wildlife habitat on this property.

The Commission finds that the trees are located within the Federal Flood Zone AE as shown on the Federal Flood Insurance Rate Maps and the Project Plan. The Eastern Red Cedars may provide flood control, erosion control and prevention of pollution. The use of a tree spade to remove the trees opens the site up to the introduction of invasive species and has the potential to destabilize the coastal bank which are always changing and eroding.

Under the Bylaw, the Commission finds that there is a practicable alternative to removing the trees within 25 feet of the bank, which is to leave them in place.

The Commission finds that the selective removal of invasive species climbing on trees and shrubs on top of the coastal bank will serve to enhance the wildlife habitat value of this vegetation.

The Commission finds that the proposed activities outside the No-Disturbance Zone will have no significant adverse impact on the Buffer Zone or adjacent resource areas provided the following special conditions are adhered to.

The Commission approves the tree work in the No-Build Zone and the work to remove invasive vines proposed project under the Act and the Bylaw subject to the following special conditions.

EXHIBIT ASpecial 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 shall be returned to the Commission in accordance with General Condition 8, and prior to the commencement of work.
- 4) The Commission has approved the work in the No-Build Zone and on the coastal bank in accordance with the specifications shown a plan entitled, "Vegetation Management Plan", dated 10.26.2018 prepared for Blue Heron LLC by Teles Landscaping (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 requires prior 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) 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 Plan 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.**
- 7) The landscape contractor shall review and adhere to these conditions in performing the approved activities. Any adverse impact to the Buffer Zone caused by vehicles, equipment or workers shall be mitigated immediately by the applicant in consultation with the Commission.

EXHIBIT A

- 8) Selective removal of invasive vines on trees along the top of the coastal bank shall be done by hand. All debris shall be removed from the site. This work is not intended to create a view channel. No trees or shrubs may be cut down or pruned. **NOTE: A site visit is required to review this work prior to the commencement of work in the field.**
- 9) The three Eastern Red Cedars located in the Outer Buffer Zone and within the boundary of Estimate Habitat shown on the Project Plan shall not be removed. **This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance.**
- 10) Any landscaping beyond the grading, top dressing and seeding the of the Outer Buffer Zone (as set forth in Order of Conditions SE79-394) requires the submittal of a landscaping plan for review and written approval of this board and may requirement an amendment to this Order if additional conditions are required. **This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance.**
- 11) No chemical fertilizers, herbicides, pesticides or fungicides shall be used in the Buffer Zone. The applicant shall abide by the West Tisbury Board of Health Regulations for the application of fertilizers. **This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance.**
- 12) 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:
SE79-389
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:

99 Pond View Farm Road (35-1.9)
Project Location

SE79-389
MassDEP File Number

Has been recorded at the Registry of Deeds of:

Dukes
County

Book

Page

for: Blue Heron LLC
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

ATTEST: Paulo C. DeOliveira, Register

Dukes County Registry of Deeds

Re: #99 Pond View Farm Rd., West Tisbury Assessor Parcel 35-1.9
VLS&E Job No. 934-10

Photographs





