

**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: 4

Provided by DEP

**A. Request Information**

1. Location of Project

274 Indian Hill Rd  
 a. Street Address West Tisbury, MA 02575  
 b. City/Town, Zip  
8516 (Citizens)  
 c. Check number \$120.00  
 d. Fee amount

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

Abutters Marilyn & Daniel O'Connell, Rebekah & Joshua Thomson, Elizabeth Eisenhauer, Paul Caval, Ilaria Rebay, Richard Fehon  
 Name  
25 Luce Farm Rd  
 Mailing Address  
Vineyard Haven (physically located in West Tisbury) MA 02568  
 City/Town State Zip Code  
603-236-6260 oconnellwv@gmail.com  
 Phone Number Fax Number Email Address

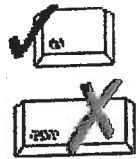
3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Christopher Cottrell  
 Name  
PO Box 2001  
 Mailing Address  
Oak Bluffs MA 02557  
 City/Town State Zip Code  
eastcoastmv@icloud.com  
 Phone Number Fax Number Email Address

4. DEP File Number:

SE79-395 (2019) and SE79-456 (2023). Please see attached annex.

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



**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

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

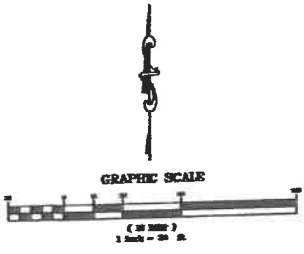
Department of Environmental Protection  
 Box 4062  
 Boston, MA 02211

## **Annex to Request for Departmental Action Fee Transmittal Form**

**In its Enforcement Order dated September 26, 2023, the West Tisbury Conservation Commission accepted a plan submitted by Ecosystem Solutions, Inc. on behalf of the owner of the property as the delineation for 274 Indian Hill Road. This delineation differs significantly from prior delineations on the property, as described in the additional information enclosed with this Form, and the applicants, who are abutters to the property, request the DEP to issue a Superseding Order of Resource Area Delineation of both Areas A and B in the ESI plan. The following additional information is enclosed:**

- **ESI plan (full report available upon request) 8/2023**
- **West Tisbury Conservation Commission Enforcement Order approved 9/26/23**
- **Letter from neighbor William Plapinger with attachments submitted 9/11/23**
- **MassDEP Environmental Complaint Form filed 2/12/23**

**Additional materials, including photographs and videos, are available upon request.**

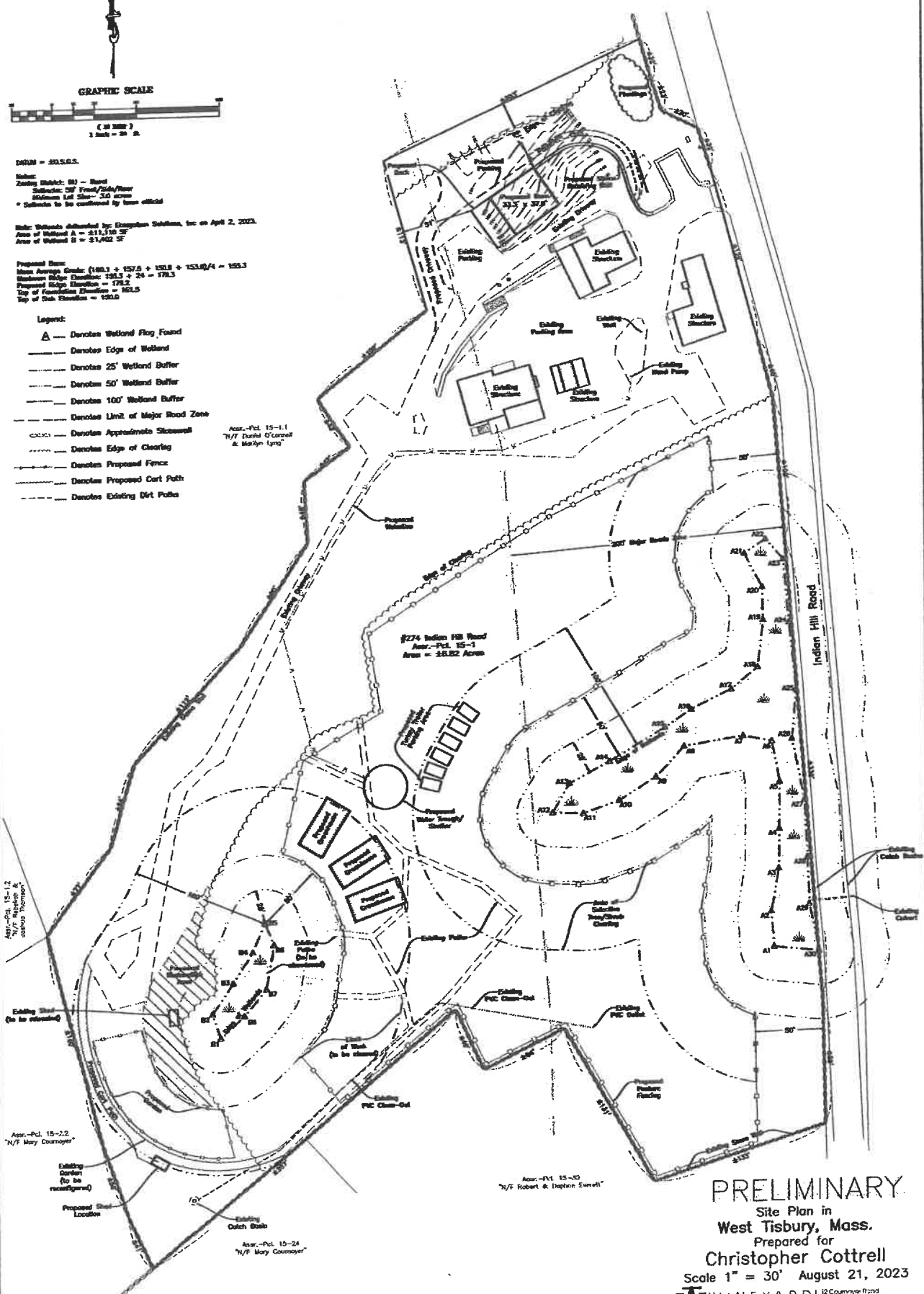


DRAWN - 2023.S.S.  
 Subject:  
 Zoning District: R3 - Rural  
 Substrate: 25' Flood/Floodway  
 Minimum Lot Size: 3.0 acres  
 \* Subject to be confirmed by town official

Note: Wetlands delineated by Ecological Solutions, Inc. on April 2, 2023.  
 Area of Wetland A = 211,118 SF  
 Area of Wetland B = 21,402 SF

Proposed Date:  
 Mean Average Grade:  $(180.3 + 157.5 + 150.8 + 153.0)/4 = 155.3$   
 Maximum Edge Elevation:  $155.3 + 24 = 179.3$   
 Proposed Edge Elevation = 179.2  
 Top of Foundation Elevation = 161.5  
 Top of Ditch Elevation = 150.0

- Legend:
- △ Denotes Wetland Flag Found
  - Denotes Edge of Wetland
  - Denotes 25' Wetland Buffer
  - Denotes 50' Wetland Buffer
  - Denotes 100' Wetland Buffer
  - Denotes Limit of Major Road Zone
  - Denotes Approximate Stakeswell
  - Denotes Edge of Clearing
  - Denotes Proposed Fence
  - Denotes Proposed Cart Path
  - Denotes Existing Dirt Paths



Ass.-PCL 15-1-2  
 "N/F Robert & Debra Thompson"

Ass.-PCL 15-2-2  
 "N/F Mary Cournoyer"

Ass.-PCL 15-2-4  
 "N/F Mary Cournoyer"

Ass.-PCL 15-2-0  
 "N/F Robert & Debra Everett"

**PRELIMINARY**  
 Site Plan in  
 West Tisbury, Mass.  
 Prepared for  
**Christopher Cottrell**  
 Scale 1" = 30' August 21, 2023

**VINEYARD**  
 LAND SURVEYING  
 & ENGINEERING

12 County Road  
 P.O. Box 421  
 West Tisbury, MA 02576  
 P 508-693-3774 F 508-625-0440  
 VISE-091



**TOWN OF WEST TISBURY  
CONSERVATION COMMISSION**

**P.O. BOX 278  
WEST TISBURY, MA 02575**

PH 508-696-6404 FAX 508-696-0103  
[concomm@westtisbury-ma.gov](mailto:concomm@westtisbury-ma.gov)

September 28, 2023

Via Email and Certified Mail  
70220410000123321536  
Mr. Christopher Cottrell  
P.O. Box 2001  
Oak Bluffs, MA 02557

Re: Map 15 Lot 1  
274 Indian Hill Road  
Enforcement Order

Dear Mr. Cottrell,

Enclosed please find the Enforcement Order the Commission voted to approve at their September 12 meeting. They reviewed and approved it again on September 26.

Please note the October 10 deadline to submit a restoration plan.

Until this matter is resolved, no work shall be done that would further alter the buffer zone or wetland areas on this property. Failure to comply with this letter will result in the issuance of fines issued in accordance with 310 CMR 10.08, MGL Chapter 40 Section 21D and the West Tisbury Wetlands Protection Bylaw Section X.

We trust that you will comply with the requirements of this letter.

DocuSigned by:

*Whit Griswold*

CC:3E9F84FD4CF  
Whit Griswold, Chair

Enclosure

Copies furnished to:

Brandon Franeuf  
Reid Silva  
Whitney McClees, SERO/ DEP  
Andrew Poyant, SERO/ DEP



# WPA Form 9 – Enforcement Order

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

## A. Violation Information

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



This Enforcement Order is issued by:

West Tisbury  
Conservation Commission (issuing Authority)

September 12 and 26, 2023  
Date

To:

Christopher Cottrell  
Name of Violator

274 Indian Hill Road  
Address

1. Location of Violation:

same as above  
Property Owner (if different)

Street Address

City/Town

Zip Code

Assessors Map/Plat Number

Parcel/Lot Number

2. Extent and Type of Activity (if more space is required, please attach a separate sheet):

See Attachment A

## B. Findings

The Issuing Authority has determined that the activity described above is in a resource area and/or buffer zone and is in violation of the Wetlands Protection Act (M.G.L. c. 131, § 40) and its Regulations (310 CMR 10.00), or the West Tisbury Wetlands Protection Bylaw and Regulations (the "Bylaw") because:

- the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone without approval from the issuing authority (i.e., a valid Order of Conditions or Negative Determination).



**WPA Form 9 – Enforcement Order**

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

**B. Findings (cont.)**

the activity has been/is being conducted in an area subject to protection under c. 131, § 40, Bylaw, or the buffer zone in violation of an issuing authority approval (i.e., valid Order of Conditions or Negative Determination of Applicability) issued to:

Christopher Cottrell

Name

SE79-395

File Number

February 1, 2019

Dated

9, 11, and 12

Condition number(s)

The Order of Conditions expired on (date):

May 8, 2023

Date

The activity violates provisions of the Certificate of Compliance.

The activity is outside the areas subject to protection under MGL c.131 s.40 and the buffer zone, but has altered an area subject to MGL c.131 s.40.

Other (specify):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**C. Order**

The issuing authority hereby orders the following (check all that apply):

The property owner, his agents, permittees, and all others shall immediately cease and desist from any activity affecting the Buffer Zone and/or resource areas.

Resource area alterations resulting from said activity shall be corrected and the resource areas returned to their original condition.

A restoration plan shall be filed with the issuing authority on or before

October 10, 2023

Date

for the following:

See Attachment A

The restoration shall be completed in accordance with the conditions and timetable established by the issuing authority.



**Massachusetts Department of Environmental Protection**

DEP File Number: \_\_\_\_\_

**Bureau of Resource Protection - Wetlands**

**WPA Form 9 – Enforcement Order**

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

**C. Order (cont.)**

Complete the attached Notice of Intent (NOI). The NOI shall be filed with the Issuing Authority on or before:

Date

for the following:

No further work shall be performed until a public hearing has been held and an Order of Conditions has been issued to regulate said work.

The property owner shall take the following action (e.g., erosion/sedimentation controls) to prevent further violations of the Act:

Failure to comply with this Order may constitute grounds for additional legal action. Massachusetts General Laws Chapter 131, Section 40 provides: "Whoever violates any provision of this section (a) shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than two years, or both, such fine and imprisonment; or (b) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation". Each day or portion thereof of continuing violation shall constitute a separate offense.

**D. Appeals/Signatures**

An Enforcement Order issued by a Conservation Commission cannot be appealed to the Department of Environmental Protection, but may be filed in Superior Court.

Questions regarding this Enforcement Order should be directed to:

Maria McFarland, Board Adiminstator

Name

508-696-6404

Phone Number

Monday -Thursday Noon to 4:30

Hours/Days Available

Issued by:

West Tisbury

Conservation Commission

Conservation Commission signatures required on following page.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

DEP File Number: \_\_\_\_\_

**WPA Form 9 – Enforcement Order**

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

**D. Appeals/Signatures (cont.)**

In a situation regarding immediate action, an Enforcement Order may be signed by a single member or agent of the Commission and ratified by majority of the members at the next scheduled meeting of the Commission.

For authorization of electronic signatures see Certificate of Vote recorded in the Dukes County Registry of Deeds in Book 1530, Page 619.

**Signatures:**

DocuSigned by:  
Signature - 1D3A3BC1765C431...  
DocuSigned by:  
Signature - 1B92F76353041A...  
DocuSigned by: 0CA3E0FB64FD4CF...  
Signature  
Signature  
DocuSigned by:  
Signature  
Signature

Fred Barron  
Printed Name  
Geraldine Brooks  
Printed Name  
Whit Griswold  
Printed Name  
Angela Luckey  
Printed Name  
Peter Redegast  
Printed Name  
Ernie Thomas  
Printed Name  
Michael Turnell  
Printed Name  
Printed Name

70220410000123321537  
Signature of delivery person or certified mail number



## ATTACHMENT A

### Enforcement Order

#### A2.A Extent and Type of Activity

#### C. Order

Christopher Cottrell  
274 Indian Hill Road

Mr. Cottrell was sent a Notice of Violation on March 1, 2023, (the "March 1 Notice"). At that time, Mr. Cottrell was directed to cease and desist from any further activity within 100 feet of the wetland areas shown on the plan prepared by Schofield, Barbini & Hoehn dated December 19, 2018 as revised to January 22, 2019 (the "2019 Project Plan") because he was in violation of an Order of Conditions SE79-395. The Order of Conditions expired on May 8, 2023.

The March 1 Notice required Mr. Cottrell to have the wetland delineation shown on the 2019 Project Plan verified by having a person qualified to perform wetland delineations conduct a review of the delineation to confirm the wetland edge so that the Commission could determine the extent of violations within the Wetland Resource Areas and the Buffer Zone.

In compliance with this requirement Mr. Cottrell submitted a plan dated 04-10-23 prepared by Ecosystem Solutions, Inc, (the "ESI Plan") on April 10, 2023. The ESI plan shows the location of the 25, 50 and 100 ft setbacks from the wetland edge in order to document all alterations within the Commission's jurisdiction. This plan includes all cleared areas, any drainage pipes that have been installed and the location of filter fabric. The Commission now accepts this plan as the delineation for 274 Indian Hill Road. This plan was also filed with the Notice of Intent referenced below.

Based on the delineation on the ESI plan, there are currently no violations under MGL Chapter 40 Section 131 as amended in the Buffer Zone or Wetland Resource Area shown on the ESI Plan as Series A1-A30 which is a Bordering Vegetated Wetland. The violations that currently exist are within the Buffer Zone to the isolated wetland shown on the ESI Plan as Series B1-B8 9 (the "B-Series IVW")

ESI filed a Notice of Intent on behalf of Mr. Cottrell on August 30, 2023. At the September 12 public hearing on this Notice of Intent (SE79-456), the Commission voted to continue the hearing on the NOI to December 12, 2023 at 5:20 PM and to issue this Enforcement Order for the submittal of a restoration plan on or before October 10, 2023.

The restoration plan to be submitted shall include the following areas to be restored within the Buffer Zone to the isolated wetland shown as the B-Series IV:

- the removal of that portion of the dirt road/driveway and the garden area in the Buffer Zone,
- the restoration of the disturbed areas within 100 feet of the B-Series IVW as shown on the ESI Plan,

- the removal of the drainage pipe and restoration of this area,
- abandonment of the paths shown on the ESI plan; the removal of any fill, all filter fabric and wood chips, and
- removal of any lumber or other materials currently being stored in the Buffer Zone.

The new proposed work in Notice of Intent for SE 79-456 will not be considered for approval until such time as the restoration plan has been approved and implemented.

Until this matter is resolved, no work is to be conducted in the Buffer Zone or Wetland Resource Areas on this property. Failure to comply with this Enforcement Order will result in the issuance of fines issued in accordance with 310 CMR 10.08, MGL Chapter 40 Section 21D and the West Tisbury Wetlands Protection Bylaw Section X.

September 11, 2023

**BY E-MAIL**

**Town of West Tisbury Conservation Commission  
1059 State Road  
West Tisbury, MA 02575**

**Copy to:**

**Ronald H. Rappaport, West Tisbury Town Counsel**

**RE: Notice of Intent relating to 274 Indian Hill Road, West Tisbury**

**Ladies and Gentlemen:**

**Based on our previous submissions to the Conservation Commission regarding the continuing violation of multiple laws and regulations at 274 Indian Hill Road (see attached), and the need for remediation of the severe harm done to the wetlands on the property by the owner, the undersigned oppose the approval of any further work on the property until: (1) a determination is made of the extent of the damage from prior unauthorized activity; (2) appropriate remediation is ordered; and (3) such remediation is completed. Further, as previously requested, we ask that this matter be referred to the Massachusetts Department of Environmental Protection for investigation and a determination of the impact on the wetlands of prior activity and the appropriate remediation.**

**Sincerely,**

**Dan and Marilyn O'Connell, 25 Luce Farm Road**

**William Plapinger and Cassie Murray, 70 Obed Daggett Road**

**Joshua and Rebekah Thomson, 35 Luce Farm Road**

**(Attachments)**

August 16, 2023

BY E-MAIL

Town of West Tisbury Conservation Commission  
1059 State Road  
West Tisbury, MA 02575

*Copy to:*

Ronald H. Rappaport, West Tisbury Town Counsel

RE: 274 Indian Hill Road, West Tisbury

Ladies and Gentlemen:

My wife and I are neighbors of 274 Indian Hill Road (the "Property"), which we must pass on the way to and from our home on Obed Daggett Road. We are also signatories to the letter, dated July 31, 2023 (the "Neighbors' Letter"), from certain abutters and other neighbors of the Property to Ron Rappaport, West Tisbury Town Counsel, to whom an examination of issues relating to the Property was referred by the West Tisbury Select Board. I understand that Town Counsel subsequently referred that letter to the Conservation Commission (the "Commission") for a response on those issues under the jurisdiction of the Commission.

A copy of the Neighbors' Letter that omits references other than to the Conservation Commission and the matters within its authority is attached for your convenience. That letter includes a chronology of matters relating to the Property, but we have subsequently learned of another meeting of the Commission at which it was discussed, and the attached chronology has been amended to add the following—

**June 20, 2023** - Conservation Commission discussed 274 Indian Hill Road as "Old Business" on the agenda. The minutes from that meeting include this summary of the discussion: "Maria said nothing can happen until Chris's consultant comes back after July 4<sup>th</sup>. Peter said there is nothing to do with this one but the wetland delineation has been done which they will put on a plan and then come to them for an after-the-fact Order of Conditions."

I was not aware that the Commission intended to devote a substantial amount of time to issues relating to the Property at its meeting on August 8, 2023, where the Property was referred to on the Agenda under Old Business. As it turned out, a little over 29 minutes, or almost a quarter of the meeting, ended up being devoted to the Property and the wetlands issues raised in the Neighbors' Letter. Fortunately, two of our fellow signatories to the Neighbors' Letter were present by Zoom at the meeting, and I have now viewed the videotape of that meeting.

According to the website of the Commission, "The mission of the Conservation Commission is to protect the wetland resources of West Tisbury according to the statutes of the Commonwealth of Massachusetts. We uphold and implement the Massachusetts Wetlands Protection Act while striving to find a consensual balance between respect for individual property rights and protection of these resources."

Given the mission of the Commission, it is difficult to understand the combative, even hostile, posture of Ms. McFarland, the Board Administrator of the Commission, who, rather than addressing the very serious issues raised, appeared to be more concerned with the treatment of "Chris"--presumably Christopher Cottrell, the owner of the Property--and defending prior actions (or lack thereof) by the Commission and its staff relating to the Property; her lack of curiosity concerning the dramatic shrinking of the measured wetlands on the Property was disappointing given the Commission's mission. Her unprofessional and inappropriate challenging of Rebekah Thomson, one of the authors of the Neighbors' Letter who spoke knowledgeably during the meeting about what has occurred at the Property, was, in my view, unacceptable from someone who purports to serve the residents of West Tisbury. She even parroted an accusation Mr. Cottrell seems to make regularly of persons questioning his actions—that Ms. Thomson may have trespassed on the Property. Ms. McFarland should publicly apologize to Ms. Thomson at the next meeting of the Commission at which this matter is considered.

While Ms. McFarland stated on several occasions that this was not a public hearing on the Neighbors' Letter, to the uninitiated in such matters, it certainly sounded like it was. That was particularly concerning given that no notice of such a discussion was listed on the agenda for the meeting, as well as ironic as Ms. McFarland seemed to criticize its signatories for not sending the Neighbors' Letter to "Chris", even though it had been directed to Town Counsel on behalf of the Select Board. It is entirely within the province of the Select Board and Town Counsel to send the letter to Mr. Cottrell should they think it appropriate. As has repeatedly been made clear, this is not a dispute between the neighbors and Mr. Cottrell, but a matter that is the responsibility of the Town of West Tisbury and its public bodies and their elected members that are variously responsible for the matters referred to in the Neighbors' Letter. Commissioner Brooks acknowledged as much during the meeting when she said the job of the Commission is to protect resource areas and not mediate between neighbors.

Despite the obvious interest of the Commissioners, Ms. McFarland seemed remarkably uninterested in determining how, when or why the substantial wetlands on the Property had shrunk so dramatically, but instead appeared to be content to rely on a 2020 delineation of the wetlands that a more objective observer could reasonably believe was completed after actions taken by Mr. Cottrell to reduce the extent of the wetlands on the Property. The record shows that her statements that Mr. Cottrell has done everything the Commission has asked him to do is patently untrue. To review the facts:

- In December 2018, a Notice of Intent with respect to the Property was filed with the Commission that showed a lot size of 6.82 acres, of which 4.33 acres were wetlands. The Commission subsequently approved the proposed project with an Order of Conditions, including setting a boundary for any clearing and a prohibition on stockpiling excavated materials, and advised Mr. Cottrell that any work outside the boundary area would require a new Notice of Intent.
- In April 2019, Mr. Cottrell purchased the Property at a steeply discounted price that appeared to reflect the existence of substantial, unbuildable wetlands on the Property. It is highly unlikely that sophisticated sellers would have ignored that since the prior delineation of the Property some 20 years before that the wetlands had shrunk considerably, and, therefore, the Property was worth substantially more than the purchase price paid by Mr. Cottrell.
- In March 2020, the Commission discovered that a significant amount of clearing had been done outside the limit of work set in the 2019 Order of Conditions. As the Neighbors' Letter notes, somewhat surprisingly, no notice of violation was issued by the Commission.
- By the time Mr. Cottrell had a new delineation done in August 2020, that delineation showed a significantly reduced wetlands area. While anything is possible, it strains credulity that there was little change in the wetlands between the late 1990s/early 2000s and 2018, but that there was a substantial shrinkage between 2018 and 2020. (Another delineation in August 2022, ordered by the Commission, was similar to the one done in 2020.)
- The question is what happened to the wetlands between 2018 and 2020. We know that Mr. Cottrell stated to Commissioner Brooks during a site visit in the spring of 2023 that his intention is to get rid of all the wetlands on the Property, and the evidence appears to support a conclusion that he has been taking actions to accomplish that objective, although it is possible that natural forces also played a part. We also know that there has been added to the wetlands a "French drain", extensive filter fabric, and leaching pipe, all actions consistent with draining the wetlands. Commissioner Brooks noted that during the visit to the Property, it appeared that no water had flowed through the leaching pipe "for some time", but that visit occurred almost three years after the 2020 delineation and any draining that could have occurred prior to that time.
- We also know that abutters to the Property, Rebekah and Joshua Thomson, submitted to the Commission in February 2023 video and photos of bobcat loads of foreign soil being added to the wetlands and other unauthorized activities.
- During the meeting, Commissioners also questioned the relationship of the newly added gravel road near the wetlands to the possible further reduction of the wetlands.

Mr. Cottrell has a history on the Property of undertaking works that are unauthorized, often following the submission of an application but before any permitting is issued or, in some cases, following the issuance of a permit but in excess of its scope, such as occurred with the 2018 Order of Conditions. Unfortunately, the relevant regulatory body—in this case, the Commission—then starts its consideration of the next application assuming that all prior

work is either authorized or too difficult to remediate, thereby allowing Mr. Cottrell to maintain his unauthorized work.

The work on the wetlands is consistent with this approach. Ms. McFarland's position appears to be that requesting a delineation in 2023, rather than the issuance of an Enforcement Order, is a sufficient remedy for violations of the Commission's earlier orders. This scenario not only rewards Mr. Cottrell for his violations, but does nothing to protect the residents of West Tisbury from the harm to these valuable wetlands. (Ms. McFarland noted her absence from the Commission due to medical leave from March 2023 until late May/early June as an explanation for why an enforcement order had not been issued, but failed to address why such an order could not have been issued, either before or since that time. While I am extremely sympathetic to Ms. McFarland's personal medical issues, those, of course, cannot be an excuse for why the Commission does not enforce its prior orders.) From the minutes of the Commission's June 20, 2023 discussion (referred to above), it appears that the Commission expects to see the most recent delineation on a plan and then issue "after-the-fact" Order of Conditions. This seems not only highly unusual, but also confusing and alarming, suggesting that the new Order of Conditions might accept, and in effect forgive, all past activity that was done without a Notice of Intent and outside the boundary set by the Commission.

As we wrote in the Neighbors' Letter, we defer to the Commission in fashioning remedies for the violations present on the Property. We did suggest that the Commission refer the very serious and complicated wetlands issues to the Massachusetts Department of Environmental Protection for investigation (including ground penetrating radar to locate buried PVC leaching pipes) and enforcement actions. We also recommended that no new wetlands delineation be accepted given the extensive amount of unauthorized activity in the wetlands, which have likely impacted the dimensions of the protected area. And, finally, we recommended that the piping and filter fabric should be removed and the wetlands allowed to return to 2018/19 conditions, to be monitored by the Massachusetts DEP over a period of years.

I understand that it is the intention of the Commission to once again consider the Property at its September meeting, and I look forward to participating in that meeting along with the other signatories to the Neighbors' Letter.

Very truly yours,

/s/ WILLIAM A. PLAPINGER

William A. Plapinger  
70 Obed Daggett Road

(Attachment)

**[EXCERPTS RELEVANT TO CONSERVATION COMMISSION]**

**July 31, 2023**

**BY EMAIL**

**Ronald H. Rappaport, West Tisbury Town Counsel  
Reynolds, Rappaport, Kaplan & Hackney, LLC  
106 Cooke Street  
P.O. Box 2540  
Edgartown, MA 02539**

***Copies to:***

**Town of West Tisbury Select Board  
1059 State Road  
PO Box 278, 1st Floor  
West Tisbury, MA 02575  
Attention: Jennifer Rand, Town Administrator**

**Joseph K. Tierney, Jr.  
Inspector of Buildings  
Town of West Tisbury  
West Tisbury, MA 02575**

**Town of West Tisbury Conservation Commission  
1059 State Road  
PO Box 278, 2nd Floor  
West Tisbury, MA 02575  
Attention: Maria McFarland, Board Administrator**

**Town of West Tisbury Planning Board  
1059 State Road  
PO Box 278  
West Tisbury, MA 02575  
Attention: Jane Rossi, Board Administrator**

**RE: 274 Indian Hill Road, West Tisbury**

**Dear Mr. Rappaport:**

**We very much appreciated the opportunity to appear before the West Tisbury Select Board on July 19 to review the alarming, continuing situation at 274 Indian Hill Road, and the Board's referral to Town Counsel, together with the Town Administrator and Building Inspector, to investigate these matters.**



To assist in that review, we are writing to set out some of the facts of which we are aware, arranged generally in chronological order, and our concerns:

- **December 2018** – Schofield, Barbini and Hoehn, Inc. filed a Notice of Intent with the Massachusetts Department of Environmental Protection (“DEP”) and the West Tisbury Conservation Commission for a “project” at 274 Indian Hill Road “property” on behalf of Christopher Cottrell. At the time, the property was owned by Brian and Elizabeth McBride. The project involved: (i) restoration of the historic structure on the property and addition of a garage, (ii) construction of another garage with one small bedroom above it, and (iii) construction of a main house containing only two bedrooms. The plan submitted with this Notice of Intent showed a lot size of 6.82 acres, including 4.33 acres of wetlands.
- *COMMENT: The lot area required for zoning compliance should not include these 4.33 acres of wetlands. See West Tisbury Zoning Bylaw (“Zoning Bylaw”) 4.2-2 A.1. As a result, only 2.49 acres of this lot is considered buildable. Under Zoning Bylaw 4.2-2 A.1., the minimum lot size in the Rural District in which the property is sited is “contiguous 100,000 square feet” [2.2956 acres], not including wetlands, so 274 Indian Hill Road just satisfies that requirement. However, under Zoning Bylaw 4.4-1 (“Dwelling Unit Densities Permitted by Right”) provides, “The number of dwelling units on a parcel allowed by right is determined by dividing the total acreage of buildable land (as defined in the bylaw) by the minimum lot size in the district”. Assuming the application of these two Bylaws to this property, dividing the 2.49 acres of buildable area of 274 Indian Hill Road by 2.2956 acres (the minimum lot size in the Rural District) suggests only one dwelling unit may be built on this property, a restriction that obviously has been violated.*
- **January 22, 2019** – The West Tisbury Conservation Commission held a public hearing to consider the Notice of Intent. Mr. Cottrell stated at this hearing that the perc tests and the wetlands delineation were 20 years old. It was noted that the septic system is designed for only three bedrooms. Mr. Cottrell also stated that he “might want to do work in the wetlands” and was told that he “would need to file for a new permit to do work in the resource area”. The Conservation Commission approved the project, with an Order of Conditions, including setting a boundary for any clearing and a prohibition on stockpiling excavated materials. (Order of Conditions DEP File SE79-395). Mr. Cottrell was advised that any work outside the boundary would require a new Notice of Intent or an amendment to the Order of Conditions.
- **April 29, 2019** - Mr. Cottrell (hereinafter “Owner”) purchased 274 Indian Hill Road at a steeply discounted price that appeared to reflect the existence of substantial, unbuildable wetlands on the property. At the time, the only structure on the property was the small historic structure near the road, which had been used as a residence for many decades.

[TEXT OMITTED]

- **March 2020** – The Conservation Commission discovered that a significant amount of clearing had been done outside the limit of work set in the 2019 Order of Conditions. An August 2020 revised plan submitted to the Conservation Commission by Owner showed a significantly reduced wetland, placing much of the questioned clearing and alteration either

in the outer Buffer Zone or more than 100 feet from wetlands. This 2020 delineation was never accepted by the Conservation Commission, but, somewhat surprisingly, no notice of violation was issued.

**[TEXT OMITTED]**

- **January 31, 2023** - Emails (with photos) from neighbors to Conservation Commission, Planning Board and Building Inspector regarding equipment and activity in the rear portion of the property within or near wetlands. [\[LINK\]](#)
- **Evening of January 31- during the day on February 1, 2023** - Abutters Rebekah and Joshua Thomson observed extensive activity in the wetlands, including crews carrying PVC leaching piping, dozens of bobcat loads of soil, followed by raking and leaf blowing. These abutters contacted the Building Inspector and then the Conservation Commission repeatedly via phone to report these observations.

**[TEXT OMITTED]**

- **February 3, 2023** – Email from abutters Rebekah and Joshua Thomson to Conservation Commission detailing their observations of extensive activity in the area of the wetlands, with photos and videos. [\[LINK\]](#) At about the same time, abutter Marilyn O’Connell reported this activity to the DEP and submitted copies of the photos and videos that were provided to the Conservation Commission. (DEP opened a file but deferred to the Conservation Commission.) [\[LINK\]](#)
- **February 9, 2023** – Conservation Commission conducts a site visit to 274 Indian Hill Road.

**[TEXT OMITTED]**

- **February 13, 2023** - Email from neighbors to Conservation Commission regarding the significant changes to the wetlands [\[LINK\]](#), with attached wetlands maps [\[LINK\]](#).
- **February 14, 2023** - Conservation Commission meeting regarding wetlands concerns. At this meeting, Owner admitted installing a drain in the back area of the property within the area of concern. He also admitted to installing filter fabric in protected areas. Extensive discussion regarding the Commission’s observations on the site visit. [\[LINK\]](#)

**[TEXT OMITTED]**

- **February 28, 2023** – Conservation Commission meeting regarding wetlands violations on the property. [\[LINK\]](#)
- **March 1, 2023** – Conservation Commission issued a notice of violation of the 2019 Order of Conditions, ordering Owner to cease and desist from any further activity within 100 feet of the wetlands as shown on the 2019 plan. The letter cited numerous instances of “unauthorized activities outside the limit of work on the 2019 Project Plan”, including “removal of trees, brush cutting, laying of PVC pipes, and placement of fabric filters”. The

Commission also ordered a new wetland delineation, to include all cleared areas, any drainage pipes and the location of filter fabric. [\[LINK\]](#)

**[TEXT OMITTED]**

- **April 2023** – New wetlands delineation submitted by Owner showed additional significant reductions of the wetlands and buffer zone areas. It did not include information as requested of cleared areas, drainage pipes and filter fabric. [\[LINK\]](#)

**[TEXT OMITTED]**

- **May 9, 2023** - Letter from neighbors to Conservation Commission regarding wetlands delineation. [\[LINK\]](#)

**[TEXT OMITTED]**

- **[NEW--June 20, 2023** - Conservation Commission discussed 274 Indian Hill Road as "Old Business" on the agenda. The minutes from that meeting include this summary of the discussion: "Maria said nothing can happen until Chris's consultant comes back after July 4<sup>th</sup>. Peter said there is nothing to do with this one but the wetland delineation has been done which they will put on a plan and then come to them for an after-the-fact Order of Conditions."]

**[TEXT OMITTED]**

## **SUMMARY**

As Rebekah Thomson said in her presentation to the Select Board on July 19, 2023, this is not a neighborhood dispute, but rather a matter to be addressed by the Select Board as our elected representatives, who set policies for the Town of West Tisbury, including the Zoning Bylaws, and to whom the Building inspector reports. It is not for abutters and other neighbors of 274 Indian Hill Road to suggest possible remedies, but as we have been considering these matters for much longer than the Select Board or Town Counsel, we offer below our suggestions for possible remedial actions that might be taken to address the many continuing zoning bylaw and other violations occurring on the property.

**[TEXT OMITTED]** Also, we recommend that no new wetlands delineation be accepted given the extensive amount of unauthorized activity in the wetlands which likely impacted the dimensions of the protected areas.

In furtherance of this, we make the following suggestions:

- 1. The Conservation Commission should refer the very serious and complicated wetlands issues to DEP for investigation (including ground penetrating radar to locate buried PVC leaching pipes) and enforcement actions.**
- 2. It may be necessary for the Town to engage an expert in zoning enforcement to oversee the process of enforcing all past and ongoing zoning violations on this property. Under no circumstances should any new building permit be issued until all violations have been identified, investigated and remedied.**
- 3. The Town should conduct a site visit to determine uses of existing structures, including number of bedrooms, properly measured square footage, rental apartments or businesses in order to determine if all uses have been properly permitted and are allowable under the Zoning Bylaws and with the current septic system.**
- 4. We leave it to the experts to determine the details of what should be required to remedy the violations that have occurred. But at a minimum, the contours of the land should be restored to pre-June 2022 conditions, many new, large trees should be planted, the damaged stone wall repaired, the trucks, the tent and the commercial dumpster removed, and the fence completed or removed. And for wetlands, piping and filter fabric should be removed and wetlands allowed to return to 2018/2019 conditions, to be monitored by MA DEP over a period of years.**

#### **CLOSING**

**We would like to again reiterate our gratitude to the members of the Town of West Tisbury Select Board for listening to our concerns and agreeing to refer these matters for investigation.**

**The undersigned stand ready to assist that investigation in any way we can, whether by supplying additional documents or photographs of the property, or otherwise.**

**Sincerely,**

**Dan and Marilyn O'Connell  
25 Luce Farm Road**

**William Plapinger and Cassie Murray  
70 Obed Daggett Road**

**Joshua and Rebekah Thomson  
35 Luce Farm Road**

**From:** noreply@formstack.com <noreply@formstack.com>  
**Sent:** Sunday, February 12, 2023 10:15 AM  
**To:** Complaints, SERO (DEP) <sero.complaints@mass.gov>; Complaints, SERO (DEP) <sero.complaints@mass.gov>; zzzWhiteside, Michael (DEP) <michael.whiteside@mass.gov>  
**Subject:** MassDEP Environmental Complaint Form Form

**CAUTION:** This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.



**Formstack Submission For: MassDEP Environmental Complaint Form**

**Submitted at 02/12/23 10:15 AM**

Select the town where it happened::

West Tisbury

Enter the address, or describe the impacted location, intersection, mile marker, etc.:

274 Indian Hill Road.  
Near the back of the parcel.

Describe the issue in detail, including what you witnessed, what it looked like, any odors, what/who was affected, the location of any discharges and any identifying information such as a DEP File#, Tracking #, License #, Permit # if known.:

Owner of 274 Indian Hill Road had a crew working for two or three days, approximately February 1 and 2, 2023, in the area to the rear of the lot (Map\_15\_lot\_1). On February 1, we (neighbors) observed leaching pipes being stored along a new road, workers carrying the pipes into the woods on or near the wetlands area, and laying the pipes. On February 2, we observed many bobcats loads of dirt moved from a pile into the woods where the pipes had been placed. That afternoon, we observed raking and leaf blowing in the woods where the pipe work had been happening. Later a bobcat and an excavator moved and smoothed soil between the stonewall and the "garden" area and people raked and smoothed soil along the side of the road.

On February 1 or 2, we contacted the West Tisbury Conservation Commission of this activity. (We also called the DEP and left a voicemail complaint, but have not had any response from DEP.) The Conservation Commission were not able to schedule a visit to the property until February 9. At the Conservation Commission meeting coming up on February 14, this possible violation is listed as new business. The owner has submitted a letter to the Conservation Commission suggesting that he will be filing a notice of intent, but this would appear to be after the alteration has occurred. Here is the Conservation Commission info for the February 14 meeting, which includes map and letter from the owner:

<https://www.westtisbury-ma.gov/conservation-commission/events/57301>

Is it ongoing or occurring right now?:

No

How often have you noticed it occurring?:

Just once

Enter the date / time that you first noted the issue. If it occurred repeatedly, enter the time of day or day of the week when it happens.:

February 1 and 2 as detailed above.

Have you reported this complaint before?:

Yes

If yes, enter the federal, state, or local agency or official that you contacted. Provide both name & contact, if known.:

Voicemail to DEP on or about February 2 or 3. West Tisbury Conservation Commission - Maria MacFarland emails and phone calls starting February 2. Photos and videos from neighboring property submitted to Maria MacFarland.

Enter the responsible party or source, if known.:

Christopher Cotrell

Enter the location or contact information for the suspected responsible party or source, if known.:

274 Indian Hill Road, West Tisbury.

May MassDEP contact you if we need more information?:

Yes



If yes, enter  
your Email  
Address::

oconnellwv@gmail.com

If yes, when  
may we contact  
you?:

If yes, enter  
your name,  
address and  
phone number.:

Marilyn O'Connell 603 236 6260  
and  
Rebekah Thomson 917 455 3054

(If yes, follow  
instructions on  
how to send /  
share after you  
submit this  
form):

Yes, I have more information to send / share with  
MassDEP.

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