

Dukes - 20/20 Perfect Vision i2 Document Detail Report

Current datetime: 10/19/2023 9:50:07 AM

Doc#	Document Type	Town	Book/Page	File Date	Consideration
3591	ORDER		01660/382	07/28/2023	
Property-Street Address and/or Description					
1293/792, SE79-451					
Grantors					
BRODY PETER M, BRODY JENNY					
Grantees					
WEST TISBURY TOWN CONSERVATION					
References-Book/Pg Description Recorded Year					
01293/792 DEED 2012					
Registered Land Certificate(s)-Cert# Book/Pg					



**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:
SE79-451
MassDEP File #

eDEP Transaction #
West Tisbury
City/Town

A. General Information (cont.)

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

Dukes

a. County

1293

c. Book

b. Certificate Number (if registered land)

792

d. Page

7. Dates: April 21, 2023
a. Date Notice of Intent Filed

June 20, 2023
b. Date Public Hearing Closed

July 11, 2023
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 Peter Brody

a. Plan Title

Vineyard Land Surveing and Engineering

b. Prepared By

April 20, 2023

d. Final Revision Date

Brody Residence Permit Package prepared by Hutker Architects

f. Additional Plan or Document Title

Reid G. Silva

c. Signed and Stamped by

1" = 30'

e. Scale

April 20, 2023

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)

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) 42 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	<u> </u> a. square feet	<u> </u> b. square feet		
	<u> </u> c. c/y dredged	<u> </u> 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	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. nourishment cu yd	<u> </u> d. nourishment cu yd
14. <input type="checkbox"/> Coastal Dunes	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. nourishment cu yd	<u> </u> d. nourishment cu yd
15. <input type="checkbox"/> Coastal Banks	<u> </u> a. linear feet	<u> </u> b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	<u> </u> a. square feet	<u> </u> b. square feet		
17. <input type="checkbox"/> Salt Marshes	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	<u> </u> a. square feet	<u> </u> b. square feet		
	<u> </u> c. c/y dredged	<u> </u> d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> 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			
	<u> </u> a. c/y dredged	<u> </u> b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	<u> </u> a. square feet	<u> </u> b. square feet		
22. <input type="checkbox"/> Riverfront Area	<u> </u> a. total sq. feet	<u> </u> b. total sq. feet		
Sq ft within 100 ft	<u> </u> c. square feet	<u> </u> d. square feet	<u> </u> e. square feet	<u> </u> f. square feet
Sq ft between 100-200 ft	<u> </u> g. square feet	<u> </u> h. square feet	<u> </u> i. square feet	<u> </u> 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 SE79-451 "
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 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:

WEST TISBURY Exhibit A
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 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.

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

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.

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

7/11/2023
1. Date of Issuance
4
2. Number of Signers

DocuSigned by:
[Signature]
1D3A3DC38E6431
Signed by:
Walt Griswold
DCA2E9FB84FD4CF...
Angela Luekey
7FDF28FDCC8499...

DocuSigned by:
Peter Rodegast
8BD7326737AA46A...
DocuSigned by:
[Signature]
62E8778A8078AC8...
Michael Turnell
141C0876DB424EA...

by hand delivery on

by certified mail, return receipt requested, on

Date

Date

7/11/2023



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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 11 Lot 44
62 Ophelia Way
Brody
DEP File # SE79-451
NHESP File # 23-1124

Project Description and Jurisdiction:

On April 20, 2023 Vineyard Land Surveying & Engineering, Inc. filed a Notice of Intent (NOI) on behalf of Peter M. and Jenny Brody, (the "Applicant"), for a project located at 62 Ophelia Way. The proposed project consists of the following:

- Demolition of an existing single-family dwelling and construction of a new house relocated further back from the top of the coastal bank, septic system tie-in, and relocation of the leach field to outside the Buffer Zone together with landscaping and associated site work. As shown on the site and landscape plans detailed below, site work within the Buffer Zone to the following resource areas was reviewed for compliance with the Wetlands Protection Act under the following sections: 310 CMR 10.0 2(2) (b) 3 (Statement of Jurisdiction), 10.24(1) (General Provisions/Coastal Regulations and LSCSF), and 10.37 (Estimated Habitats of Rare Wildlife) (the "Act").

The project was also reviewed for compliance for work in the Buffer Zone under Section II of the West Tisbury Wetlands Protection Bylaw and regulations Sections IV (Buffer Zone), and to the resource areas covered by Sections XIII (LSCF), and XXI (Estimated Habitats of Rare Species and Wildlife), (the "Bylaw").

The Conservation Commission ("Commission") has conducted an on-site inspection, reviewed the NOI, and submitted information. Based on this review, the Commission has determined that the area where the work is proposed is significant to the values of the Act and the Bylaw. Public hearings were held on June 20, 2023 at which time the public hearing was closed. There was one letter of public comment from the Land Bank dated June 6 2023 that was noted for the record.

Findings under the Act and the Bylaw:

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.

While no work is proposed within Estimated Habitat covered under 310CMR10.37 and Section XXI, the Natural Heritage and Endangered Species Program (NHESP) provided the Commission with a letter dated May 26, 2023 (the "NHESP Letter") which states that NHESP has determined that the project as proposed would not adversely affect the actual Resource Area Habitat of state-protected rare wildlife species under 310 CMR10.37. Under Section 10.37 or 321 CMR 10.18, the Commission may rely on the NHESP Letter in making a determination regarding the impacts to the habitat of protected wildlife species. The Commission finds that this project will not have any impacts to protected wildlife habitat provided the following special conditions are met.

The Commission **approves** the project and finds that the project as described in the NOI and shown on the plans listed below conforms to the performance standards specified in the Act and the Bylaw and that the proposed work can be conditioned to protect the interests of the Act and the Bylaw.

EXHIBIT A**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. All of the special conditions issued under Order of Conditions DEP File No. SE79-435 shall remain in full force and effect except as noted below:
- 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, and the Dukes County Superior Court in accordance with M.G.L. Ch. 249, Sec. 49. 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 following plans:
 - Site Plan entitled, "Site Plan in West Tisbury, Mass. Prepared for Peter Brody" by Vineyard Land Surveying & Engineering dated April 20, 2023,
 - Landscape plan entitle, " Brody Residence, 62 Ophelia Way, West Tisbury, MA' prepared by Horiuchi ~ Solien, Landscape Architects dated 6.20.2023 and;
 - Architectural plans entitled "Brody Resident Main House Permit Package" prepared by Hutker Architects dated April 20, 2023 (Collectively, these plans are referred to as the "Project Plan".)

All notes on the Project Plans 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.**

Pre-Construction

- 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) Prior to the start of the demolition, the Contractor shall submit **construction schedule** detailing the sequence of work and timelines for when site work and final landscaping work will be completed. The Commission may schedule site visits to monitor construction activities and check the site for compliance with this Order of Conditions upon notice to and with the permission of the Applicant or its representatives.
- 7) **The Limit of Work line shall be located as shown on the Project Plan. A pre-construction site visit is required once the Limit of Work fencing has been placed and prior to the demolition of the existing house. The Limit of Work shall consist of silt-fencing stapled to construction fencing and properly staked, monitored, and maintained throughout the entire construction process and shall remain in place until a Certificate of Compliance is issued.**
- 8) 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 all construction activities regulated by this Order.

EXHIBIT A**During Construction**

- 9) The construction site shall be maintained in a clean condition at all times. Construction refuse and debris generated during demolition of existing structures shall be contained within a covered dumpster or removed from the site on a daily basis. Wind-blown debris shall be collected from the site on a daily basis and removed. All materials stored on site shall be secured and or covered and located outside the Buffer Zone.
- 10) All construction equipment must be cleaned of accumulated soil or plant matter from other sites and inspected for leaks off site prior to entering the project premises.
- 11) 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.**
- 12) 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.

Landscaping

- 13) A final landscaping plan shall be submitted to the Commission for approval prior to implementation.
- 14) All plants installed within any Resource Area or Buffer Zone, shall be native species, selected from any of the following lists:
 - a. Barnstable County Cooperative Extension: *Trees and Shrubs for Coastal Environments*
 - b. Massachusetts Office of Coastal Zone Management: *Coastal Landscaping Plant List*
 - c. Association to Preserve Cape Cod: *Native Plant Initiative*
- 15) All fill brought on site must be clean, debris-free and devoid of invasive plants or their parts or seeds. Invasive plant species, as may appear on the current list of the Massachusetts Prohibited Plant List shall not be planted in any location on the property.
- 16) If approved, any new or restored lawn areas shall be planted with low maintenance, drought tolerant, fescue seed mix. No additional lawn may exist beyond that shown on the Project Plan. **This is an on-going condition that does not expire with the issuance of a Certificate of Compliance.**
- 17) No subsurface irrigation shall occur in the Buffer Zone to any Resource Areas. Above-ground drip irrigation shall be allowed for 2 growing seasons to allow new vegetation become established. Vegetation that does not survive shall be replaced.
- 18) All fill brought on site must be clean, debris-free and devoid of invasive plants or their parts or seeds.
- 19) No vegetation located outside of the revised Limit of Work shall be removed from the site.
- 20) Roof runoff shall be allowed to percolate down through the soils from the surface using best management practices. At no time may runoff be directed toward any resource area. Stormwater runoff from the terrace and decks shall not drain toward and potentially impact wetland resource areas. Grading shall be accomplished to avoid runoff toward wetland resource areas.
- 21) Upon completion of the project the Applicant shall submit the following to the Commission to request a Certificate of Compliance:
 - A Completed Request for a Certificate of Compliance

EXHIBIT A

- A final as-built Project Plan signed and stamped by a Registered Professional Engineer or Land Surveyor certifying compliance of the property with this Order of Conditions, and detailing any deviations that exist and their potential effect on the project. A statement that the work is in "substantial compliance" with no detailing of the deviations shall not be accepted. The plan shall show distances from any structures constructed under this Order to wetland resource areas. Structures include, but are not limited to all buildings, pools, septic system components, wells, utility lines, retaining walls, and road/driveways.
 - 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.

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