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**Sent:** Monday, October 25, 2021 5:57 PM
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**Subject:** Re: Doane v. Eppel and West Tisbury Conservation Commission - Paperwork for 10/26 meeting 21 New Lane West Tisbury

Thank you Maria. Given your prior instruction, and given the flagging that was clearly observable from the Eppel property that did NOT conform to the instructions of the WTCC at the last hearing, we suspected there would be and have been waiting to see if there would be further written submissions from the Doanes.  We only became aware by your courteous email that OxBow Associates for the Doanes only submitted further changes to its vegetative augmentation plan later this afternoon.

Please note that, as I'm sure the WTCC site visit revealed, the Doanes have recently as of the end of September, 2021, for the first time ever, posted the area in issue with signage instructing that No Trespassing is to occur and that criminal liability could result, despite the fact that the Doanes had long ago lost claims to this property. The Doanes' attorney after having suggested his client would permit the experts for the Eppels to have unfettered access to the area in question to perform their own study and to create a proposal to address the WTCC concerns, has, just last week, when the Lucas Environmental team was arranging to come to perform such a visit for today (ironically), made it abundantly clear that his clients will now NOT permit any experts retained by the Eppels to access the property under any circumstance.

I hope the WTCC will see this gamesmanship that is being made of its oversight powers by the Doanes. The Doanes want to impose their own will over everyone involved without permitting a fair and due process where adverse parties, the Eppels, could, under the proposals of the WTCC itself in the Enforcement Order, prepare their own "remediation plan."

Given this incredibly unfair arrangement, I would hope that the prior suggestion by at least two ConComm members that the entire matter of the Enforcement Order be continued to next June, 2022 when re-growth of much of that which was removed in actuality (and not based on a mere belief of Ox Bow Associates which group has still not presented any complete plan showing the locations of bushes or trees that they can reasonably prove were cut) can be seen, and a plan then presented by both sides to be weighed by the WTCC based on some level of reasonable proof, will be reconsidered as a reasonale and fair accommodation.

At the prior hearing, there was urging by you as the administrator, that the WTCC announce a policy statement of the performance standard for remediation plans and that the longest standing members guide the WTCC on the history of how the WTCC has handled such matters in the past. Unfortunately, others did not wish to have such a policy statement made nor a particularized history of the WTCC precedents become the rule for this particular matter. Thus, neither the public nor the parties have been made aware as to what a "remediation plan" is to be in terms of any performance standard.  Are not "remediation plans" to be a 1 for 1 bush for bush cut and, likewise, 1 for 1 tree saplings cut? If the replacement of the vegetation cut is the standard, which is implicit in the term "remediation," then would not any proposed planting of additional vegetation be an "augmentation plan," and thus falling under a different type of process being that of a Notice of Intent?

Instead, what we heard at the prior meeting was not any standard for remediation but a subjective review where the WTCC felt the mere number of trees and bushes was a bit too high and needed to come down, all without any clear presentation as to what had been cut in the first place, and the locations of such cut vegetation. Yet, even todays OxBow submittal goes beyond the directive of the WTCC at the last hearing with more trees thasn directed, and now only with a suggestion that planting should be more focused in an area very close to the pond bank where clearly very little in the way of established growth had been cut.

I would urge the WTCC to re-consider where this process has been and continues to be going in light of the steadfast refusal of the Doanes to permit the Eppels to perform any reasonable study of their own (despite the WTCC implication the Eppels could do so), and to push any review of the site until next June when the spring re-growth will clearly demonstrate what needs to be remedied, and not based on estimates of just one side. The WTCC could, as part of a revised Enforcement Order, order the Doanes to permit the Eppel experts to be permitted unfettered entry to perform their own study. However, it is possible that the Doanes have stalled the process enough that the time to perform a reasonable study now is now too late in the fall season.

As for todays OxBow submissions, the Lucas Environmental team is only now in a position to review these and will do their best to prepare something for the hearing continued until tomorrow. Please understand that if the WTCC accepts something today, our group needs a fair and reasonable opportunity to reply, even if that can only be submitted just prior to or during the hearing.

Thank you for your courteous attention.

Best, Ben

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