

MAP 2 LOT 9.1
MAP 3 LOTS 80 & 81
SE 79-261
SPECIAL CONDITIONS
SHEET 5A

Project Description and Jurisdiction

The project consists of the construction of 600 feet of Universal Access (UA) trail, 250 feet of ground level boardwalk and an additional 280 feet of elevated boardwalk. Also proposed is the clearing of 2.5 miles of woodland walking trails and the removal of invasive species. The work will take place or be constructed within the Bordering Vegetated Wetland (BVW) and Buffer Zone adjacent to Duarte's Pond, Blackwater Pond, Turtle Pond and near 3 vernal pools. This work is permitted under 310 CMR 10.02(2)(b)(3), 310 CMR 10.53(3) (j) and 10.53(4).

Ground Level Boardwalk:

The sections of the trail network that cross the BVW, but that do not necessitate a raised boardwalk will be spanned using ground level boardwalks as shown on the NOI Map attached as Exhibit A to this Order of Conditions. The two sections of ground level boardwalk proposed total 250 feet. The first section which crosses the causeway between north and south Duarte's Pond will be 3 feet wide; the second section leaving View Platform #2 will be only 2 feet wide; both will be constructed of black locust 4x4 stringers with oak planking. The stringers will lay on the ground with the planking nailed to the top of them.

The Commission finds that this work is permitted as a limited project under 310 CMR 10.53 (3) (j) which provides for the construction and maintenance of footbridges and observation decks provided that such structures are constructed on pilings or posts so as to permit the reasonably unobstructed flowage of water and adequate light to maintain vegetation. These boardwalks eliminate the compaction and erosion problems associated with trails in saturated soils. The 1.5" spacing of the planking allows for ground vegetation to grow under and around the boardwalk.

Raised boardwalks or View Platforms:

The Land Bank proposes to construct a series of raised boardwalks where the proposed trail system crosses any overland seepage or where the trail enters the saturated BVW along the pond(s) shoreline as shown on the NOI Map attached as Exhibit A. The proposed four raised boardwalks will be 3 feet wide and total 310 linear feet. The boardwalks will be raised 12" to 24" above the ground to allow natural water flow. The raised boardwalks will be constructed using the pin foundation system. This system does not require the digging of footings. The support posts for the boardwalks will be black locust (which is naturally rot resistant); the frame will be made out of ACQ, a pressure treated wood product that does not contain arsenic or chromium. The decking will be made out of rough sawn oak planks.

The Commission finds that this work is permitted as a limited project under 310 CMR 10.53 (3) (j) which provides for the construction and maintenance of footbridges and observation decks provided that such structures are constructed on pilings or post so as to permit the reasonably unobstructed flowage of water and adequate light to maintain vegetation. These boardwalks

eliminate the compaction and erosion problems associated with trails in saturated soils. The 1.5" spacing of the planking allows for ground vegetation to grow under and around the boardwalk.

Pond Bank Retaining Wall:

The Land Bank proposes to rebuild a portion of eroding pond bank by constructing a 16 foot section of black locust retaining wall approximately 18" high; the locust laid on edge and held in place by ¾" rebar spikes (approx. 30" long). For location refer to NOI Map attached as Exhibit A.

The Commission finds that the Land Bank has not overcome the presumption that the bank does not play a role in the protection of the interests of the Wetlands Protection Act and the Bylaw, however, the work may be conditioned as set forth below to meet the performance standards as set forth in 310 CMR 10.54(4)(a) which states that any work on a bank will not impair the physical stability of the Bank; the water carrying capacity of the existing channel within the Bank, the ground water and surface water quality, the capacity of the bank to provide breeding habitat and food for fisheries, and the capacity of the bank to provide important wildlife habitat functions, provided that the protective structure is designed and constructed using best practical measures so as to minimize adverse effects on the characteristics and functions of the resource area.

Universal Access Fishing Platform:

The Land Bank proposed to replace the existing 2.5' X 30' old pier with a 6' X 30' UA fishing platform. The platform will be anchored using pin foundations. The framing stock and the decking material will be natural rot resistant wood (i.e. locust, fir, etc.).

The pin foundations for this structure will be located on land under a water body (310 CMR 10.56) and attached to a bank (310 CMR 10.54). The Commission finds that the applicant has overcome the presumption that the alteration of land under a water body and the bank does not play a role in the protection of the interests of the Act or the Bylaw as this is the replacement of an existing structure to provide handicapped access for fishing.

Universal Access Trail:

The Land Bank proposes to construct 600 feet of universal access trail connecting the trailhead to the fishing platform and benches along the shore of Duarte's Pond (refer to the NOI Map attached as Exhibit A). The UA trail will be 5' wide. The UA trail will be surfaced with ¾" brown dense mix and plate compacted on a quarterly basis to maintain quality. The Land Bank will construct the trail by first removing all the loam and then applying 4 to 6 inches of dense mix, which is then plate compacted. Dump trucks, skid steer loaders, a spreader box and a plate compactor will be used during this process. A small low profile signboard will be erected along the UA trail adjacent to the trailhead.

The Commission finds that this portion of the work, located in the Buffer Zone is reviewable by the Commission under 310 CMR 10.02(3) as it is an activity within the Buffer Zone which does not meet the requirements of 310 CMR 10.02 (2)(b) 1 and 2 and is therefore subject to preconstruction review under the Wetlands Protection Act.

Trail System:

The Land Bank proposes to cut 6,000 feet of walking trail as shown on the NOI MAP attached as Exhibit A, within the BVW, its buffer zone and the Buffer Zone surrounding Duarte's, Blackwater, and Turtle Pond. The trail will be cleared using a Gravelly mower and a chainsaw. The trail will utilize the natural topography to minimize erosion. The trail will be sited to avoid the cutting of large trees and to minimize wetland disturbances. The proposed section of trail and its accompanying boardwalks along Blackwater Pond will be designated for pedestrian use only; mountain bike and horse back riders will be directed to use upland trails only. A series of split rail bar-ways will be used to discourage bike and horse traffic.

Earthen Steps:

In areas where steep grades are unavoidable the Land Bank proposes to install a series of earthen steps as shown on the NOI Map. These steps will be constructed of rough sawn black locust 3" x 7" and will be roughly 3 feet wide. There are two areas where the steps will be needed. Both sections will require roughly 5 steps and span a distance of 15' each. The earthen steps will be graded using hand shovels and mattocks. Steel rebar pins will be used to anchor the locust to the ground. The existing leaf litter will be reapplied to the surface of the stair treads to help them blend in to the surroundings and to prevent surface erosion.

Invasive Species Control:

The southeastern shoreline of Duarte's Pond is awash in two very pernicious invasive species: oriental bittersweet and Japanese knotweed. Both species are hard to eradicate and both spread out competing native shrubs and herbs. The Land Bank, in conjunction with The Nature Conservancy (TNC), proposes to embark on an eradication program for these species.

The Land Bank staff proposes to cut down the invasive plants with walk behind mowers and clearing saws, prior to them going to seed. Then the Land Bank proposes to work with TNC in developing a strategy which may include frequent mowing, limited excavation, sheet mulching or herbicide use.

The Land Bank prioritizes the stability of the pond bank and will work and plan thoroughly to minimize the impact to the bank. The removal of these species is paramount to the health of the native shoreline plants and their continued existence also jeopardizes a native plant nursery that the TNC operates on the adjacent property.

Jurisdiction under the Bylaw

Under the West Tisbury Wetlands Protection Bylaw this work is reviewable under Section II.

Findings

The Commission finds that the proposed activities may temporarily impact the resource area but that the following special conditions will mitigate such impact.

SPECIAL CONDITIONS

- 1) The applicant and the applicant's agent(s) shall adhere to General Conditions 1 through 17 of this Order.
- 2) The term "Applicant" as used in this Order of Conditions shall refer to the owner, any successor in interest or successor in control of the property referenced in the Notice of Intent, supporting documents and this Order of Conditions. The Commission shall be notified in writing within 30 days of all transfers of title of any portion of property that take place prior to issuance of the Certificate of Compliance.
- 3) The form provided at the end of this Order shall be completed and stamped at the Dukes County Registry of Deeds, after the expiration of the 10-day appeal period and if no request of appeal has been filed with the Department of Environmental Protection. This form should be returned to the Commission in accordance with General Condition 8, and prior to the commencement of work.
- 4) The work will conform to the details of a plan entitled, "Blackwater Pond Reservation, West Tisbury, MA NOI Map dated June 7, 2006" prepared by the Land Bank ("Plan") and attached as Exhibit A and to the project description set forth above.
- 5) The applicant shall notify the Commission by telephone or in writing at least 48 hours prior to commencement of work on the site.
- 6) The Land Bank foreman or other individual in charge of work on the site shall have a copy of this Order and the Plan available on the site at all times.
- 7) Work to construct the bridges and boardwalk in the BVW in the locations shown on the Plan shall be done during the dry season June 1st to March 1st.
- 8) The area around the retaining wall on the bank of Duarte's Pond will be re-graded and seeded with grass. The top portion of the retaining wall will be level with the UA trail, enabling the trail to be used for fishing as well.
- 9) The Universal Access fishing platform shall be anchored using the pin foundation system. The framing stock and the decking material will be natural rot resistant wood. (i.e.. locust fir, etc.) The used of pressure treated wood is not permitted.
- 10) During the construction of the bank retaining wall, silt fabric fencing will be installed along the pond edge to minimize erosion until the grass seed germinates. All the brush will be dispersed outside the resource area.
- 11) The earthen steps will be graded using had shovels and mattocks. Steel rebar pins will be used to anchor the locust steps to the ground. The existing leaf litter will be reapplied to the surface of the stair treads to help them blend into the surroundings and to prevent surface erosion.
- 12) The trail corridor will be cleared to 5 feet to allow for construction of the boardwalks. The vegetation will be cleared using chainsaws or clearing saws. All the brush will be dispersed outside the resource area. The lumber and materials will be hand carried in from outside the BVW. The boardwalks will be built onsite using hand and power

tools with the help of a small generator. Cutting of all pressure treated wood materials will be done over a tarp outside the resource area so that the sawdust can be collected and removed from the site. All debris will be removed from site and disposed of properly. Once the boardwalks are in place, the vegetation around the boardwalk shall be allowed to regrow but may be maintained as necessary.

- 13) The Land Bank shall designate that the sections of trail and accompanying boardwalks along Blackwater Pond will be for pedestrian use only. Mountain bikes and horses shall be directed to use upland trails only. A series of split rail bar-ways shall be used to prohibit bike and horse traffic. This condition shall survive the expiration of this Order and shall be noted as an ongoing condition in the Certificate of Compliance issued for this project.
- 14) Invasive Species Control: Once the Land Bank and TNC have a plan in place for the invasive species control, the plan shall be submitted to the Commission for its review and approval.
- 15) The raised boardwalks shall be constructed using the pin foundation system. This system does not require the digging of footings. The support post for the boardwalks shall be black locust. The frame may be made out of ACQ pressure treated wood. The decking will be made out of rough sawn oak planks. This condition shall survive the expiration of this Order and shall be noted as an ongoing condition in the Certificate of Compliance issued for this project.
- 16) Once established, the trails may be maintained to a width of 4 ft wide and the dock, boardwalks and bridge may be maintained without further approval from the Commission. Notice of maintenance work shall be made to the Commission in writing at least 48 hours before commencement of the work. This Condition shall survive the expiration of this Order and shall be included as continuing condition on the Certificate of Compliance. Any new work will require the Land Bank to file the appropriate application with the Commission.
- 17) Members and agents of the Commission shall have the right to enter and inspect the premises to evaluate and ensure compliance with the conditions and performance standards stated in this Order, the Act or regulations and may require any information, measurements, photographs, observations and /or materials or may require the submittal of any data or information deemed necessary by the Commission for that evaluation.
- 18) If any changes are made in the Plan unless specified otherwise in this Order, which may or will alter an area subject to protection under the Wetlands Protection Act or the West Tisbury Wetlands Protection Bylaw ("Bylaw") and any change(s) in activity subject to regulation under M.G. L Chapter 131, Section 40, or the Bylaw, the applicant shall inquire from the Commission in writing, prior to their implantation in the field, whether the change(s) is significant enough to require the filing of a new Notice of Intent. Any errors in the Plan or information submitted by the applicant shall be considered changes and above procedures shall be followed. Should the issuance of additional permits result in a change(s) in the project; the provisions of General Condition 13 apply, regarding the process for plan changes.

- 19) The Commission reserves the right to impose additional conditions on portions of this project or this site to mitigate any actual or potential impacts such as eroding trail due to overuse, resulting from the work herein permitted.
- 20) The Commission reserves the right to amend this Order of Conditions after a legally advertised public hearing if plans or circumstances are changed or if new conditions of information so warrant.
- 21) In case of emergencies, problems or the need to discuss site conditions with the Commission, the contact person is Maria McFarland 508-696-6404.

Additional Special Conditions under the West Tisbury Wetlands Protection Bylaw

All of the above special conditions shall also apply to all areas within the Commission's jurisdiction under the Bylaw. In addition the following special conditions shall also apply to those areas under the jurisdiction of the Commission where the requirements of the Bylaw are more stringent than the Massachusetts Wetlands Protection Act.

- 1) No trail shall be located within 100 feet of a vernal pool except as shown on the Plan. The Land Bank shall post signs in these areas alerting walkers to the location of the vernal pools and the need to leash dogs in this area between March 1st and June 1st. This condition shall survive the expiration of this Order and shall be noted as an ongoing condition in the certificate of Compliance issued for this project.