**Special Conditions**

### Map 23 Lot 3.1 and 3.2

### 71 & 81 Tisbury Lane West

### DEP File # SE79-425

**Project Description and Jurisdiction:**

On August 3, 2021 Vineyard Land Surveying & Engineering Inc. filed a Notice of Intent (NOI) on behalf of the Applicant for an Ecological Restoration Limited Project to remove invasive species in order to increase habitat quality, biodiversity and the ecological function of the resource areas on this property. Prior to the submission of the NOI an Appendix A was published in the Environmental Monitor on July 9, 2021.

The Applicant proposes to perform invasive species removal and restoration planting within 6.36 acres feet of Riverfront Area, including 132,776 feet of Bordering Vegetated Wetlands and adjacent Buffer Zone cover and the Riverfront Area as an Ecological Restoration Limited Project under 310 CMR 10.53 4(e) 5 (Other Restoration Projects) in order to improve the natural capacity of a Resource Area(s) to protect the interests identified in the Act and the Bylaw. Other Ecological Restoration Projects may include restoration, enhancement or management of habitat and habitat connectivity by the thinning or planting of vegetation to improve habitat values.

In 2018, under Order of Conditions SE79-385, the Applicant received approval to create a series of 6-foot-wide perimeter paths for access to all areas of the property in advance of the work approved under this Order, and to remove overhead utility poles. The paths were created by brush-cutting with walk behind brush cutters and hand tools. Shrubs were stump cut. Order of Conditions SE79-385 has been extended for the sole purpose of the allowing the utility work to proceed

This work is intended to be completed in 3 phases; wooded plant community restoration (approximately 1.57 acres estimated to be completed between 2021 and 2024),

Herbaceous plant community restoration ( approximately 2.15 acres estimated to be completed between 2021 and 2024), and wooded plant community restoration (approximately 4.07 acres and 0.16 acres) of herbaceous plant community restoration estimated to be completed beween 2024 and 2026.

**Not sure this time frame works if the extended time has to be less than 5 years.**

This project was reviewed the Wetlands Protection Act and 310 CMR 10.02 (Statement of Jurisdiction), Section 10.53(1) (General Conditions), Section 10.53 (4) (e) 5, (Ecological Restoration Limited Projects), Section 10.55 (Bordering Vegetated Wetlands), Section 10.58 (Riverfront Area) and 10.60 (Wildlife Habitat).

Under Section II of the West Tisbury Wetlands Protection Bylaw, the Buffer Zone is considered to be a Resource Area. This project was reviewed for compliance with Sections IV (Buffer Zone), Section XVI (Vegetated Wetlands), Section XX (Riverfront Area) of the West Tisbury Wetlands Protection Bylaw Regulations. ( Note; the bylaw only has regulations for wildlife habitat if it is within Estimated Habitat. )

The Applicant requested a waiver of the Bylaw provisions regarding work in the No-Disturbance and No Build Zones under Section IV of the Bylaw regulations.

Public hearings were held on August 10 and 24 at which time the public hearing was closed TBD There was no public comment.

**Findings:**

The Conservation Commission has conducted an on-site inspection, reviewed the NOI, Appendix A, the project plan, sequencing plan and project narrative identified below, including a proposed list of species to be planted and has determined that the area where the work is proposed is significant to the values of the Massachusetts Wetlands Protection Act and West Tisbury Wetlands Protection Bylaw.

The Commission may issue an Ecological Restoration Limited Project under 310 CMR 10.53 (4) (e) after consideration of the magnitude and significance of the benefits of the Ecological Limited Restoration Project in improving the capacity of the affected Resource Areas to protect and sustain the interests of the Act and Bylaw.

Portions of the proposed project occur within Bordering Vegetated Wetland (BVW). The Commission find the BVW is significant to the protection of private water supply, to the protection of ground water supply, to flood control, to storm damage prevention to prevention of pollution and to the protection of wildlife habitat. The Commission finds that the proposed work has the potential to adversely impair a portion of BVW unless the following special conditions are applied.

The Commission finds that the proposed project meets the performance standards for all other resource areas within the Riverfront Area. The Commission find that the proposed work will not impair the capacity of the Riverfront Area to provide important wildlife habitat functions and shall not impair groundwater or surface water quality.

The Commission also looked at how the Applicant proposes to avoid or minimize adverse impacts to Resource Areas and the interests defined in the Act and the Bylaw that are necessary to the achievement of the ecological restoration goals by utilizing best management practices such as erosion and siltation controls and proper sequencing to avoid and minimize adverse impacts.

The proposed project and proposed mitigation measures conform to the requirements of the Act with respect to Ecological Restoration Limited Projects. Therefore, the proposed work can be conditioned to protect the interests of the Act. The Commission approves the proposed project under the Act subject to the following special conditions.

The West Tisbury Wetlands Protection Bylaw does not have any corresponding provision to the state regulations covering ecological restoration limited projects such as this one.

Buffer Zone: In order to approve this project and issue an Order of Conditions under the Bylaw, the Commission finds that a waiver of the Buffer Zone requirements covering the first 50 feet of the Buffer Zone is necessary where no other practicable alterative exists. The proposed work can be conditioned to protect the interests of the Bylaw.

Vegetated Wetlands Section XVI: The Commission finds that the project can be conditions to meet the Performance Standards of this section.

Riverfront Area Section XX: The Commission finds that the proposed project has the potential to impact the resource values protected by the Bylaw unless the following special conditions are followed.

The Commission finds that the project can be conditioned so there are no adverse impacts from the proposed project to the interested protected by the Bylaw.

The Commission approves the proposed project under the Act and the Bylaw subject to the following special conditions:

**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.
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 Commission has approved this project in accordance with the specifications shown on the following plans and documents:
5. Plan entitled, “Site Plan in West Tisbury in West Tisbury, Mass prepared for JMMoulton Realty Trust & Harold Bartelt Realty Trust dated July 26, 2021by Vineyard Land Surveying and Engineering,
6. Lauprete Property land Management Sequencing Plan dated 5/27/2021 prepared by Phyto Studio dated 6/21/21 and
7. Project Narrative including planting list prepared by Phyto Studio dated 6/21/2021.

Collectively, the plans and narrative are referred to as the Project Plan. All notes on the Project Plan are adopted as additional conditions unless otherwise stated. Where the Commission’s orders are more restrictive, the Order shall apply. No deviation from the Project Plan is permitted without prior written approval of the Commission. **Any change to the Project Plan requires approval by the Commission. See General conditions No. 13 and No. 14 regarding approval of changes in the Project Plan.**

1. In accordance with General Condition 4 of this Order, the time for completion of this restoration project is extended to August \_\_\_ 2025, The extended date is warranted to allow for the phased approach being taken by the Applicant to complete this project. [they have an end date of 2026, but a permit can only be issued for less than 5 years.
2. It is the responsibility of the Applicant, Applicant’s representative, owner and /or successor (s) to ensure that all conditions of this Order are complied with. **A copy of this Order of Conditions including the special conditions and Project Plan shall be included in all construction contracts, subcontracts and specifications and shall be available on-site upon commencement and during the performance of any and all construction activities regulated by this Order.**
3. All site contractors shall review and adhere to these conditions of approval in performing the approved activities. **The Applicant or its representative shall obtain a signed receipt from all site contractors stating that they have reviewed and will adhere to this Order. The receipt(s) shall be submitted to the Commission**. 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.
4. Prior to the start of work there shall be a meeting on the site involving the landscaping company conducting the work, a representative of Phyto Studio, the Applicant or their agent, and a member or agent of the Commission to ensure that all parties understand the requirements of this Order. **The site visit shall be arranged with the Commission office at least 72 hours in advance of the start of work.**

**VEGETATION MANAGEMENT**

1. No clear cutting of vegetation is permitted. **This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance.**
2. Within the actual Resource Areas vegetation management shall be completed by hand or with hand tools only excepted where noted.
3. If the use of the small track equipment is necessary for select vegetation removals, it may be utilized only with the 50 to 100-foot buffer zone as shown on the project plan.
4. Cut debris from the work shall be hauled from the site via the paths either by hand or by small track equipment (dingo) and will not be dragged through adjacent areas. Disposal of invasive plant material shall be done in accordance with best management practices.
5. Installation of in-ground irrigation system shall not be permitted within 100 feet of any wetland resource areas. Temporary above ground irrigation systems may be used to establish mitigation plantings were permitted to be planted.
6. After the monitoring season, and prior to implementation in the field to seed or plant within the wetlands and the No Disturbance Zone, the Applicant shall submit a detailed plant inventory including quantities and size of plants; the composition of the seed mix to be used and any other information the Commission deems necessary.
7. To protect wildlife, pruning and removal of vegetation, including invasive species removal shall not occur from May 1 through August 15, annually.

NOTE TO COMMISSIONERS; WE HAVEN’T TALKED WITH THE APPLICANT ABOUT IMPACTS TO WILDLIFE HABITAT SO YOU MIGHT WANT TO CONSIDER CONDITIONS 16, 17, 18 AND 19.

1. Pruning or vegetation removal proposed within the seasonal restriction (May1-August 15), is subject to the submittal of a comprehensive bird nesting survey, completed by a qualified wildlife biologist stating that work will not adversely affect wildlife. The nesting survey shall include a survey for owl nests. The nesting survey shall also record other wildlife. A written description of the nesting survey protocol shall be submitted to the Conservation Commission for review by the Commission prior to conducting the nesting survey. The bird nesting survey shall incorporate “Point Counts” or an equivalent method approve by the Conservation Commission.
2. The bird nesting survey shall be subject to review and approval by the Commission prior to commencement of work.
3. A nesting survey shall be performed each year that invasive species removal is proposed. Once a nesting survey is approved, the nesting survey is valid for the remainder of that year’s vegetation management period.
4. Vegetation removal proposed with the seasonal restriction (May 1-August 15), is limed to hand cutting of invasive species and limited tree removal work and does not include any cutting go removal for the purpose of vista management.
5. A licenses Arborist approved by the Commission shall conduct all tree removal and pruning. The name, address, and telephone number of the supervising Arborist shall be submitted to the Commission prior to the commencement of any work.
6. The work includes the removal of 7 very large Black Locust trees, 12 Black Locust saplings and 7 Western Cedars. Because some of these trees are in the actual wetland, there is the potential for negative impacts to the resource areas. Therefore, the Applicant shall submit a detailed plan for the execution of the removal process including the name of the tree removal company hired to perform the work under the guidance of a licensed Arborist. These trees shall be flush cut. The Applicant will also submit a written plan to address the management of Black Locust sprouts without the use of herbicides.
7. A written work request for site inspection shall be submitted a minimum of five days prior to each vegetation management session.
8. Included with each work request for site inspection shall be a series of photographs taken from known photo points showing the areas of invasive plants to be removed. These photos shall be labeled with the date, general view description and location.
9. Another series of photographs taken form the same photo point as the previous condition showing after conditions shall be submitted to the Commission after each work session. These photos shall be included in the annual monitoring reports.
10. Vegetation management shall occur in a phased approach to determine regrowth potential of native species. Following initial vegetation management within the approved management area, \_\_\_\_\_\_\_\_\_\_\_\_\_growing seasons will be allowed for re-growth of native species to occur. Following \_\_\_seasons of regrowth, the managed area shall be assessed for mitigations plantings by the licensed Arborist and the Commission. Mitigation planting plans shall for each phase shall be submitted for approval by the Commission. These plans shall detail native species to be used for complete restoration and stabilization, to include location , count and species choice. Mitigation planting are limited to native species as detailed in the project narrative.
11. Only the tree species identified in this Order are allowed to be removed. No other trees shall be permitted to be removed in the wetland resource areas or the buffer zone unless found to be damaged or diseased once the invasive vines have been removed. In this instance, the tress in question shall be flagged and a written report by the licensed Arborist shall be submitted to the Commission documenting the need for removal or pruning.
12. As mitigation for the removal of these trees, they shall be replaced on a 1:1 ration with native shrub species outside the wetland resource areas.
13. The tree removal work shall be done either at a time of year when the ground is frozen or a dry time of year when there is a favorable 5 day forecast. No heavy equipment shall be permitted to enter the resource areas.
14. Once invasive vines are removed from the shrub layer, irreparably damaged shrubs shall be replaced with two shrubs of equal or more wetland habitat value and size for each removed.
15. Removal of vegetation within he wetland resource areas shall be completed by hand including the removal of the trees noted above. No heavy equipment is allowed in the wetland resource areas.
16. Other than approved invasive species removal and selective pruning and removals, the existing native trees and shrubs shall remain untouched.
17. Invasive vines may be cut from native tree and shrubs.
18. The control of invasive plants during and after the project is completed shall be by manual methods only. The use of any types of chemical fertilizers, pesticides, herbicides and sodium-based projects is strictly prohibited within the Bordering Vegetated Wetlands, Riverfront Area and Buffer Zone to reduce the impact of these products on the resource areas when transported by storm water or by leaching through the soil. **This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance**
19. Upon completion of the project, the path within the Bordering Vegetated Wetland may be maintained to a width of four (4) feet and the path within the Buffer Zone may be maintained to a width of six (6) feet **twice a year** by mowing with a walk behind mower without further approval from the Commission. **This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance.**

**MITIGATION PLANTING**

1. Mitigation plantings shall be installed following \_\_\_\_\_seasons of native re-growth and approval of the Commission following receipt and review of mitigation planting plan for each phase.
2. Mitigation planting shall be installed in accordance with the approved Project Plan subject to review and approval by the Commission. Substitutions from the approved plans shall be subject to review and approval by the Commission.
3. All new plantings shall be tagged in the field for monitoring purposes. The tags shall remain on the planted species for easy inspection by the Commission throughout the required monitoring period.
4. All new plantings shall survive three full growing seasons or be replaced in kind the Applicant.

**MONITORING**

1. All new plantings shall be monitored for three years. Progress reports and photographs of the plantings all be submitted to the Commission prior to November 30 on an annual basis.
2. Invasive species removal shall also be monitored for three years. Project reports and photographs of areas where invasive species have been managed shall be included in the annual monitoring report for the Commission. Recommendation for future invasive management shall be included in the report.
3. The annual reports shall include a description of any pruning activities and any other impact to the teeland resulting from the work on this project. The report shall include any recommended future actions.
4. A final report, which shall include any effect on the wetland resources shall be submitted upon completion of the project and prior to a Request of Certificate of Compliance. A final series of date color photographs shall be taken.
5. The Commission shall require three full growing seasons for any mitigation plantings before issuing a Certificate of Compliance. Any COC granted before plant viabilities shall be conditional on prior submittal of a performance bond, to be held until the Commission determines that plantings are mature enough to ensure survivability.
6. Upon completion of the project, the Applicant shall submit the following to the Conservation Commission to request a Certificate of Compliance (COC):
   * + 1. A Completed Request for a Certificate of Compliance
       2. It is a requirement that a written statement by an Environmental Consultant experienced with restoration activities in wetland environment certify substantial compliance with the plan and an “ as-planted/as-pruned” plan be included. If the plan shows any deviation from the approved plan, the landscape professional shall describe any deviation for the approved plan in the statement.
       3. A set of post-construction photographs of the Buffer Zone, Bordering Vegetated Wetlands and Riverfront Area, work areas, access and project locus immediately after completion.
7. In case of emergencies, problems or the need to discuss site conditions with the Commission, call the Board Administrator at 508-696-6404