



500A Washington Street, Quincy, MA 02169

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November 8, 2021

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

Re: Enforcement Order Response Letter  
21 New Lane, Map 31, Lot 48  
West Tisbury, MA 02575

Dear Ms. McFarland and Members of the West Tisbury Conservation Commission,

As you are aware, Lucas Environmental, LLC (LE) was retained by Ms. Cheryl Eppel to assist with matters related to the Enforcement Order (EO) issued by the West Tisbury Conservation Commission (WTCC) for alleged vegetation clearing that occurred at 21 New Lane in West Tisbury, Massachusetts and in regard to the pending lawsuit in Dukes County Superior Court entitled Doane v. Eppel, Docket # 2174 CV 00030 (the "Lawsuit"). LE had been retained to review the areas of land where it was alleged that, in June 2021, there were activities undertaken in terms of brush trimming which were violations of the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, § 40; WPA) and regulations (310 CMR 10.00 *et seq.*), and the West Tisbury Wetlands Bylaw (WTWB) and the regulations promulgated under each (Wetlands Laws), to determine what vegetation had been trimmed, to map the area, and to propose a response plan to address the issues determined on a fact-based analysis in the "Area of Concern" under the various Wetlands Laws, and otherwise to provide expert information as needed in the Lawsuit.

LE's review commenced with the Remediation Proposal prepared by Oxbow Associates, Inc. (Oxbow), dated September 13, 2021 (the "Remediation Proposal"), although no planting plan was submitted, and was thus re-directed to conduct an additional investigation to verify the suitability of the proposed "remediation." At the September 14, 2021 WTCC meeting, LE understands that OxBow offered to have a survey plan prepared that would demarcate such planting proposal.

Thereafter, LE was asked to review the revisions to Remediation Proposal prepared by Oxbow, and to conduct an additional investigation to verify the suitability of the proposed restoration. As of the date of this letter, LE has continued to be denied permission to inspect the property in question and therefore is not able to speak to the suitability of the proposed planting plan that was discussed during the October 12, 2021 Public Hearing and as further proposed at the October 26, 2021 continued hearing, nor for the November 9, 2021 continued hearing.

That being said, the most recent submission LE has been able to review was proposed by OxBow on November 4, 2021.

It was LE's understanding from the prior WTCC hearing on October 26, 2021, that following the flagging of proposed planting, and the site visit by the WTCC, that the WTCC had asked OxBow to revise the remediation plan in the following manner:

1. Remove any mention of a mesh protection barrier;
2. Remove any plan for any grass or other seeding mix;
3. Remove all proposed trees from the plan;
4. Any proposed shrubs should be moved to place no closer than ten feet from the edge of the Bank of Tisbury Great Pond and should not be concentrated in the area of apparent trimming north of the "yellow line"; and
5. Shrubs, to the extent they are still part of the proposal should be reduced in number and concentrated mostly to the area south of the "yellow line."

In review of the November 4, 2021 revised proposal by OxBow, LE does not see than any of these requests have been adopted by the Doanes' proposal. LE also perceived, from the October 26, 2021 continued hearing, a sense from some of the WTCC members of a tendency to want to review what re-growth may come back during the 2022 growing season and a desire to review the conditions to address any remediation plan for planting in September 2022.

It is LE's understanding that the Doanes seek to replant the impact area as soon as possible. However, LE is very concerned with the time of year this would occur and it is not common practice for planting in November or later as the growing season has ended, and frost is possible. Planting outside the growing season may cause mortality to the plants and replacing them would be an undue and unfair cost for planting outside the recommended time of year. Planting is best suited for early spring in late April/May or early fall in September, and early October after a review of what may have started to otherwise re-grow from the roots and stumps of various bushes and undergrowth observed in the Area of Concern.

Based upon review of Oxbow's photos dated July 14, 2021, vegetation is resprouting from the remnant stems. Oak (*Quercus* sp.), arrowwood (*Viburnum* sp.), sweet pepperbush (*Clethra alnifolia*), and highbush blueberry (*Vaccinium corymbosum*) sprouts were observed growing from cut stems. Based upon the time of year, the understanding that frost events have occurred in the area, and the re-establishing vegetation observed by Oxbow and the WTCC during site visits, LE recommends the area be reevaluated by the end of June 2022 or beginning of July 2022, following the spring portion of the growing season, and determine if supplemental plantings are warranted at that time for planting in September 2022.

LE requests the Conservation Commission to consider the following:

- Allow the Restoration Area to naturally revegetate through the Spring 2020 growing season.
- Allow time for Ms. Eppel through her counsel to gain an order for unfettered entry into the Area of Concern and elsewhere as needed for LE to perform the study of the vegetation, the biological and geographical nature of the area, and to prepare a report of the same, which would be used for Ms. Eppel to present an independent evaluation and proposal for the WTCC.



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- Inspect the impact area by June of 2022 to determine if sufficient growth is re-sprouting.
- Adapt the restoration plan at that time to reduce the quantity of plantings if sufficient growth of plants has re-established.
- Require that the planting of new shrubs to occur within the fall portion of the growing season, following the June inspection, preferably in September of 2022.

Thank you for your consideration in this matter. If you have any questions, please do not hesitate to contact me at 617.405.4140 or [tel@lucasenvironmental.net](mailto:tel@lucasenvironmental.net). Thank you for your consideration in this matter.

Sincerely,  
**LUCAS ENVIRONMENTAL, LLC**

A handwritten signature in black ink that reads 'Thomas E. Liddy'.

Thomas E. Liddy, PWS/CWS, CESSWI  
Environmental Consultant/Wetland & Soil Scientist

cc: Benjamin Lambert Hall, Jr., Esq.