

**Map 39 Lots 9, 10 and 11
DEP File # SE79-415
NHESP # 09-27020**

Project Description

Reference is made to the original Order of Conditions (DEP file # SE79-344) for the details regarding the approval of the construction of a hybrid array containing gabion baskets, coir logs, and sand nourishment located at 234 Middle Point Road.

A Notice of Intent (NOI) filed on July 30, 2020 on behalf ENDOFTHEDIRTRoad, LLC and ALMOSTENDOFTHEDIRTRoad, LLC, (the “Applicant”) for approval of revisions to the ongoing maintenance, monitoring and nourishment protocols for this array (the “Project”)

In order to perform repairs, maintenance and sand nourishment of up to ninety-five (95) cubic yards of compatible sediment, temporary work to will occur once a year in March on a Coastal Bank, Coastal Beach and Land Subject to Coastal Storm Flowage, with access through the Buffer Zone.

Public hearings were held on August 11 and September 8, 2020 at which time the Commission voted to approve the work protocol for maintenance, monitoring and nourishment of this roll array dated January 8, 2020 subject tot the following special conditions.

Jurisdiction under the Wetlands Protection Act (the “Act”)

Whenever a proposed activity involves removing or altering a coastal beach or bank, the Commission shall presume that the coastal beach and bank are significant to the protection of the following values: flood control, erosion and sedimentation control, storm damage prevention, and wildlife habitat.

The Applicant filed the NOI under 310 CMR 10.30 (Coastal Bank), 10.27 (Coastal Beach), Land Subject to Coastal Storm Flowage (10.24), Land under a Salt Pond (10.33) and 10.37 (Estimated Habitat).

Jurisdiction under the West Tisbury Wetlands Protection Bylaw (the “Bylaw”)

Whenever a proposed activity involves removing or altering a coastal beach or bank, the Commission shall presume that the coastal beach and bank are significant to the protection of the following values: flood control, erosion and sedimentation control, storm damage prevention, and wildlife habitat.

The Project is also subject to the performance standards at Sections XXI C.2 & 3 of the West Tisbury Wetlands Protection Bylaw Regulations.

Findings under the Wetland Protection Act and the Bylaw

- 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. In addition, 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 (provided the gabions are not exposed) but the approval does not set any sort of

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precedent as each property and project are determined on their own merits.

- The Commission finds that the work shall not reduce the ability of the land to absorb and contain floodwater, or to buffer inland areas from flooding and wave damage.
- The Commission finds that the coastal bank is significant to storm damage prevention and flood control as it functions as a sediment source for down-drift beaches. The Applicant has not overcome the presumption of significance therefore sand nourishment is necessary to mitigate any adverse effect.
- The Commission finds that in order to remain consistent with the provisions of 310 CMR 10.30 (6) and (7) the array must continue to be covered with sand above elevation 6 to the top of bank that will continue to act as a sediment source.
- Pursuant to a letter dated July 29, 2020, issued by the Natural Heritage and Endangered Species Program (the "NHESP letter"), in order to avoid a prohibited take of state-listed wildlife species the Applicant is restricted from performing work between April 1 and September 30 of each year. Therefore, the Commission finds that this project will not have an adverse effect on specified habitat sites of rare vertebrate or invertebrate species provided the time of year (TOY) restrictions are adhered to as set forth in the NHESP letter. Due to the time of year restrictions imposed on this project by NHESP, every effort shall be made to coordinate work with a time of low pond elevation. If the Applicant is unable to access the site, the alternative means of access may be approved for use in the field upon consultation with the Commission. It is noted that approval from the Trustees of Reservations (holders of a conservation restriction on this parcel) will be required if the alternative means of access is called into use. Such approval shall be in writing and submitted to the Commission prior to utilizing the alternative access.
- The Commission finds that if as result a significant storm event (named or unnamed with sustained winds in excess of 50 mph during the TOY restriction period the array requires repairs, maintenance or nourishment, the Applicant will obtain written permission from NHESP so that no portion of the gabion baskets remain exposed during the TOY restrictions set by NHESP for more than two weeks.
- The Commission finds it necessary to continue to require the Applicant to provide a deconstruction cost and that the escrow amount continue to be held by the town to be used to pay for removal of the project if conditions are not met or if adverse impacts occur. In addition, the Commission finds that the funds deposited in this escrow account may be used to hire a third party to perform the required monitoring or beach nourishment if the Applicant fails to do so.

Special Conditions

- 1) The Applicant and the Applicant's agent(s) shall adhere to General Conditions 1 through 17 of this Order.

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- 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) It is the responsibility of the Applicant, Applicant’s representative, owner and /or successor (s) to ensure compliance with all conditions of this Order. A copy of this Order of Conditions including the special conditions and Project Plan shall be included in all contracts, subcontracts, and specifications and shall be available on-site upon commencement and during the performance of activities regulated by this Order.
- 5) All contractors shall review and adhere to these conditions of approval in performing the approved activities. Any adverse impact to a Resource Area caused by vehicles, equipment, or workers shall be mitigated immediately by the applicant in consultation with the Commission.
- 6) The contractor hired to perform the work shall contact the Commission office at least 72 hours prior to beginning any activity permitted under this Order, to arrange a site visit to review the terms of this permit.
- 7) The Commission has approved the ongoing maintenance for this project in accordance with the specifications shown on the following plans and/or documents. Future maintenance shall be conducted in accordance with these plans. No deviations from these plans or from these orders are permitted without prior written approval from the Commission. See general conditions No. 13 and No. 14 regarding approval of changes in any of the following:
 - Beach Nourishment Plan in West Tisbury, Massachusetts, Assessor Parcels 39-7, 39-9, 39-10 & 39-11, dated January 13, 2020 prepared for ENDOFTHEDIRTRoad, LLC & ALMOSTENDOFTHEDIRTRoad, LLC by Sourati Engineering Group, LLC,
 - Plan showing proposed nourishment access for 234 Middle Point Road dated January 10, 2020, prepared by Wilkinson Ecological Design (the Access Plan”), and
 - Protocols for Nourishment, Maintenance and Monitoring of Fiber Roll Array 234 Middle Point Road, West Tisbury dated January 10, 2020 prepared by Wilkinson Ecological Design (the “Work Protocol”).
- 8) In 2014, the Applicant established an escrow account with the Treasurer of the Town of West Tisbury in the amount of \$ 25,000 (based on the contractor’s estimate plus a contingency), which may be used by the Commission to perform monitoring and/or nourishment required by this Order or to remove and dispose of debris, or damaged gabion baskets or

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end-of-useful life coir logs if the Applicant does not perform such work within thirty (30) days after the Commission issues an order for the performance of such work. The escrow account shall be required until the gabion baskets are removed and the fiber rolls are either determined to be biodegraded and supporting native plant materials or removed. Such determination shall be made by the Commission. After the escrow account has been determined to be no longer required, the full balance including any accrued interest shall be returned to the Applicant. Any subsequent owner or successor in interest or control of this project shall be required to maintain this escrow account.

- 9) In 2014, the Applicant submitted a notarized letter signed by the property owner granting permission to the Commission, the Town, or its agents to enter the property referenced in this Order to conduct work necessary to bring the property into compliance with the conditions stated in this Order or to deconstruct the Project in the event it fails. Said entry and work would only occur in the event that the property owner is unable or unwilling to perform the necessary work itself after notice from the Commission.
- 10) The gabion baskets, anchors, and coir logs shall all have metal identification tags. The Applicant shall be responsible for retrieving any and all materials stored, dislodged, or washed off-site (excluding sand) for the life of the project. The Commission shall require a current contract between the Applicant and a contractor for inspection, repair, monitoring and debris removal, and shall identify a responsible party and contact number and address for it. Such contract shall be submitted to the Commission annually and thereafter submit a renewal or new contract to the Commission. Prices listed in the contract may be redacted to protect the privacy of the Applicant and contractor.
- 11) Nourishment shall be done in strict accordance with the Work Protocol.
- 12) In accordance with the conditions stated in the NHESP letter, in order to protect state-listed species and their habitats, maintenance and nourishment associated with the project shall not occur during April 1- September 30.
- 13) Sand Nourishment shall be conducted annually, in the month of March, upon written notice to the Commission, with a single application of compatible sediment and shall equal a volume of ninety-five (95) cubic yards. In the event that the pond level of Tisbury Great Pond is higher than the level of the beach in the month of March, the applicant shall request written permission from NHESP to access the beach in April or as soon as the pond is, open, and upon approval, will supply the Commission with a copy of said permission.
 - a) The access route for nourishment is shown on the Access Plan. Sand shall be stockpiled in the driveway or on the beach. Sand should not be stockpiled on the top of the coastal bank at Map 39 Lot 10, which is the access point over the top of the bank. Depending on the condition of the coastal bank at the entry point, a sand ramp, the contractor may employ a sand ramp and mats in this area.
 - b) The slope of the nourished bank shall be no steeper than 1.5:1 (horizontal: vertical). Stabilized

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slopes shall be maintained as designed and constructed.

- c) All sand used for beach nourishment shall be clean course sand compatible with what is naturally found on the existing bank and beach. The Applicant shall submit a written grain size analysis that compares size, angularity, and color of the existing sediment to the proposed sample. The written analysis shall be prepared by a third party at the Applicant's expense and submitted to the Commission together with a sediment sample for approval prior to placement in the field. The Commission may conduct a site visit to perform further verification of the sediment size and color. The Applicant shall use best efforts to use locally sourced sand.
- 14) If the Applicant is unable to access the site, the alternative means of access may be approved for use in the field upon consultation with the Commission. It is noted that approval from the Trustees of Reservations (holders of a conservation restriction on this parcel) will be required if the alternative means of access is called into use. Such approval shall be in writing and submitted to the Commission prior to utilizing the alternative access.
- 15) Monitoring and maintenance shall be done in accordance with the Work Protocol and the following conditions
- a) Five (5) photo-monitoring stations shall be located landward of the array as shown on the Project Plan at approximately 50-foot intervals and extending 20 feet north and south from ends of the coir logs. A parallel set of monitoring stations shall be survey located fifteen feet seaward.
 - b) In accordance with the Work Protocol, formal inspections of the array will be performed twice a year (spring and fall). Monitoring reports shall be submitted to the Commission in triplicate with photos. Relative beach elevation and condition of vegetation should be noted in each report. An electronic copy shall also be sent to the Commission. Monitoring locations shall be identified by the engineer of record. The report shall include copies of invoices for nourishment sand, and shall specify how much sand was deposited.
- 16) In the event of a significant storm event (named or unnamed) where sustained winds of 50mph, the property owner's caretaker shall perform a site visit and submit photographs of the conditions of the array to the Commission.
- 17) In the event of a significant storm event or series of storm events causes the beach profiles to drop below the historic beach profile, as determined by the project engineer, the Applicant may restore the beach through sand nourishment to the previous profile with advance notice and approval by the Commission. Detailed plans and specifications shall be submitted and approved in advance of work in the field.
- 18) Damage, Repair and Removal
- a. If the coir logs are damaged beyond repair, they shall be promptly removed and be properly disposed within the allowable TOY limitations (October 1-April 1). Any damaged

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coir logs, regardless of the time of year, during the TOY limitations shall be removed after consultation and approval by NHESP, and the Commission. Written evidence of consultation with NHESP shall be provided to the Commission.

- b. The Applicant shall notify the Commission and NHESP concerning the extent of repairs and maintenance necessary prior to proceeding with any repair and maintenance work.
 - c. If the Commission has a basis to believe the coir logs and or gabion baskets are causing scour or erosion on the subject property and/or abutting properties, or are adversely impacting offshore deposition process, or otherwise creating negative or unintended consequences, it may issue an Order to Show Cause why either the coir logs or gabions baskets should not be removed. The Commission will conduct a hearing to evaluate the evidence and will issue a decision on removal at the Applicant's expense.
- 19) Special conditions 4 through 18 shall remain in full force and effect and will not expire upon the issuance of a Certificate of Compliance.