



2015 00080889

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**Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands**

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the West Tisbury Wetlands Protection Bylaw and  
Regulations

Provided by MassDEP:  
SE79-357  
MassDEP File #

eDEP Transaction #  
WEST TISBURY  
City/Town

**A. General Information**

**Please note:**  
this form has  
been modified  
with added  
space to  
accommodate  
the Registry  
of Deeds  
Requirements

1. From: WEST TISBURY  
Conservation Commission

2. This issuance is for  
(check one): a.  Order of Conditions b.  Amended Order of Conditions

3. To: Applicant:

**Important:**  
When filling  
out forms on  
the  
computer,  
use only the  
tab key to  
move your  
cursor - do  
not use the  
return key.

a. First Name \_\_\_\_\_ b. Last Name \_\_\_\_\_  
PARKS & RECREATION COMMITTEE TOWN OF WEST TISBURY  
c. Organization \_\_\_\_\_  
P.O. Box 278  
d. Mailing Address \_\_\_\_\_  
West Tisbury MA 02575  
e. City/Town \_\_\_\_\_ f. State \_\_\_\_\_ g. Zip Code \_\_\_\_\_

4. Property Owner (if different from applicant):

a. First Name \_\_\_\_\_ b. Last Name \_\_\_\_\_  
Goethals Lambert's Cove LP (Town holds an easement for access)  
c. Organization \_\_\_\_\_  
P.O. Box 71004  
d. Mailing Address \_\_\_\_\_  
Chevy Chase ND 20813  
e. City/Town \_\_\_\_\_ f. State \_\_\_\_\_ g. Zip Code \_\_\_\_\_



5. Project Location:

275 Lambert's Cove Road West Tisbury  
a. Street Address \_\_\_\_\_ b. City/Town \_\_\_\_\_  
3 91  
c. Assessors Map/Plat Number \_\_\_\_\_ d. Parcel/Lot Number \_\_\_\_\_

Latitude and Longitude, if known: \_\_\_\_\_ d \_\_\_\_\_ m \_\_\_\_\_ s \_\_\_\_\_ d \_\_\_\_\_ m \_\_\_\_\_ s  
d. Latitude e. Longitude



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**A. General Information (cont.)**

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):

<u>Dukes</u>	<u>Document # 10390 Certificate # 4357</u>
a. County	b. Certificate Number (if registered land)
<u>23</u>	<u>135</u>
c. Book	d. Page

7. Dates:

<u>April 29, 2015</u>	<u>May 26, 2015</u>	<u>June 16, 2015</u>
a. Date Notice of Intent Filed	b. Date Public Hearing Closed	c. Date of Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

<u>Lambert's Cove Beach Elevation Contours as of 2010</u>		
a. Plan Title		
<u>Martha's Vineyard Commission</u>	<u>unsigned not stamped</u>	
b. Prepared By	c. Signed and Stamped by	
<u>10/17/14</u>	<u>1"=50'</u>	
d. Final Revision Date	e. Scale	
<u>Letters from Sheriff's Meadow Foundation</u>		<u>May 20 &amp; 21, 2015</u>
f. Additional Plan or Document Title		g. Date

**B. Findings**

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:

- |  |  |   |
|--|--|---|
| a. <input type="checkbox"/> Public Water Supply  | b. <input type="checkbox"/> Land Containing Shellfish          | c. <input checked="" type="checkbox"/> Prevention of Pollution        |
| d. <input type="checkbox"/> Private Water Supply | e. <input type="checkbox"/> Fisheries                          | f. <input checked="" type="checkbox"/> Protection of Wildlife Habitat |
| g. <input type="checkbox"/> Groundwater Supply   | h. <input checked="" type="checkbox"/> Storm Damage Prevention | i. <input checked="" type="checkbox"/> Flood Control                  |

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

- a.  the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



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**B. Findings (cont.)**

Denied because:

- b.  the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c.  the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
- 3.  Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) \_\_\_\_\_ a. linear feet

**Inland Resource Area Impacts:** Check all that apply below. (For Approvals Only)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	_____ a. linear feet	_____ b. linear feet	_____ c. linear feet	_____ d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
	_____ e. c/y dredged	_____ f. c/y dredged		
7. <input type="checkbox"/> Bordering Land Subject to Flooding	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
Cubic Feet Flood Storage	_____ e. cubic feet	_____ f. cubic feet	_____ g. cubic feet	_____ h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	_____ a. square feet	_____ b. square feet		
Cubic Feet Flood Storage	_____ c. cubic feet	_____ d. cubic feet	_____ e. cubic feet	_____ f. cubic feet
9. <input type="checkbox"/> Riverfront Area	_____ a. total sq. feet	_____ b. total sq. feet		
Sq ft within 100 ft	_____ c. square feet	_____ d. square feet	_____ e. square feet	_____ f. square feet
Sq ft between 100-200 ft	_____ g. square feet	_____ h. square feet	_____ i. square feet	_____ j. square feet



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**B. Findings (cont.)**

**Coastal Resource Area Impacts:** Check all that apply below. (For Approvals Only)

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	<u>                    </u> a. square feet	<u>                    </u> b. square feet		
	<u>                    </u> c. c/y dredged	<u>                    </u> d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input checked="" type="checkbox"/> Coastal Beaches	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. nourishment	<u>                    </u> d. nourishment
14. <input checked="" type="checkbox"/> Coastal Dunes	<u>1,250</u> a. square feet	<u>1,250</u> b. square feet	<u>                    </u> c. nourishment	<u>                    </u> d. nourishment
15. <input type="checkbox"/> Coastal Banks	<u>                    </u> a. linear feet	<u>                    </u> b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	<u>                    </u> a. square feet	<u>                    </u> b. square feet		
17. <input type="checkbox"/> Salt Marshes	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. square feet	<u>                    </u> d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	<u>                    </u> a. square feet	<u>                    </u> b. square feet		
	<u>                    </u> c. c/y dredged	<u>                    </u> d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. square feet	<u>                    </u> d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	<u>                    </u> a. c/y dredged	<u>                    </u> b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	<u>                    </u> a. square feet	<u>                    </u> b. square feet		



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SE79-357  
MassDEP File #

eDEP Transaction #  
WEST TISBURY  
City/Town

**B. Findings (cont.)**

\* #22. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

22.  Restoration/Enhancement \*:

a. square feet of BVW

b. square feet of salt marsh

23.  Stream Crossing(s):

a. number of new stream crossings

b. number of replacement stream crossings

**C. General Conditions Under Massachusetts Wetlands Protection Act**

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - a. the work is a maintenance dredging project as provided for in the Act; or
  - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on \_\_\_\_\_ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.



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**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,  

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]  
"File Number            SE79-357 "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.



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Bureau of Resource Protection - Wetlands

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SE79-357  
MassDEP File #

eDEP Transaction #  
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City/Town

**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

**NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS**

19. **The work associated with this Order (the "Project")** (1)  is (2)  **is not subject to the Massachusetts Stormwater Standards. If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:**

a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.

b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:

- i.* all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
- ii.* as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
- iii.* any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;
- iv.* all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
- v.* any vegetation associated with post-construction BMPs is suitably established to withstand erosion.



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SE79-357  
MassDEP File #

eDEP Transaction #  
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City/Town

### C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following: *i.*) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and *ii.*) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

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And the West Tisbury Wetlands Protection Bylaw and  
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SE79-357  
MassDEP File #

eDEP Transaction #  
WEST TISBURY  
City/Town

**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

- g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
  2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
  3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (if you need more space for additional conditions, please attach a text document):

**See Exhibit A attached hereto and incorporated herein by this reference.**

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Bureau of Resource Protection - Wetlands

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SE79-357  
MassDEP File #

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City/Town

**D. Findings Under Municipal Wetlands Bylaw or Ordinance**

1. Is a municipal wetlands bylaw or ordinance applicable?  Yes  No
2. The West Tisbury hereby finds (check one that applies):  
Conservation Commission
  - a.  that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw

2. Citation

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

- b.  that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

West Tisbury Wetlands Protection Bylaw and Regulations

1. Municipal Ordinance or Bylaw

2. Citation

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

See special conditions noted on Exhibit A attached hereto and incorporated herein by this reference.

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 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
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MassDEP File #  
 SE79-357  
 eDEP Transaction #  
 WEST TISBURY  
 City/Town

**E. Signatures**

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

6/16/2015  
 1. Date of Issuance

Please indicate the number of members who will sign this form.

7  
 2. Number of Signers

This Order must be signed by a majority of the Conservation Commission.

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Signatures:

Michael Turnell  
Wendy Epner  
Bernie Rhee

[Signature]  
[Signature]  
[Signature]

by hand delivery on  
June 16, 2015  
 Date

by certified mail, return receipt requested, on  
 Date

**F. Appeals**

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request of Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction. **Appeals of this Order under the West Tisbury Wetlands Protection Bylaw and Regulations may be made to the Dukes County Superior Court in accordance with M.G.L. Ch. 249 Sec.4.**

## EXHIBIT A

MAP 3 Lot 91  
275 Lambert's Cove Road  
DEP File # SE 79-357  
SPECIAL CONDITIONS

### **Project Description and Jurisdiction**

On April 29, 2015, the Parks & Recreation Committee for the Town of West Tisbury (the "Applicant") filed a Notice of Intent (NOI) for the installation of a total of 250 feet of removable boardwalk to be placed up and over a Coastal Dune to aid beach goers in accessing the Town owned beach at Lambert's Cove. There will be 140 feet of boardwalk over the back dune, none over the plateau, and 110 feet of boardwalk over the front dune between the snow fencing to the beach. The boardwalk will be 5 feet wide allowing 2 people to pass side by side and for beach wheelchair access. Boards will be 1" thick Teak or Ipe wood with 1" spacing between the boards. Connections will be stainless steel connectors.

The Conservation Commission has conducted two site inspections and reviewed the Notice of Intent and submitted information. The Commission has also relied on the technical assistance on coastal processes at this site provided by Greg Berman of the Woods Hole Sea Grant Program. His recommendations were issued in several reports on the restoration of the dune at this site, the most recent of which is dated 9/24/2014 (the "Dune Management Protocol"). Hearings were held on May 12 and 26. In reviewing this project the Commission has relied on technical assistance reports from the Woods Hole Sea Grant Program dated April 3 and May 7, 2015.

The Commission voted to approve the final version of the Project at the May 26 meeting subject to 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 NOI and supporting documentation was reviewed for compliance under 310 CMR 10.28 for Coastal Dunes and 310 CMR 10.37 for Estimated Habitat of Rare Species for Coastal Wetlands.

The property is located within Estimated or Priority Habitats as shown in the Massachusetts Natural Heritage Atlas, 13<sup>th</sup> Edition effective October 1, 2008, produced by the Massachusetts Division of Fisheries and Wildlife's Natural Heritage and Endangered Species Program (NHESP).

#### **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 reviewable under Section II of the Under the West Tisbury Wetlands Protection Bylaw and Section VII and XXI of the Bylaw regulations.

## EXHIBIT A

The NOI was reviewed for compliance under Section II of the West Tisbury Wetlands Protection Bylaw and Sections VII (Coastal Dunes) and Section XXXI Estimated Habitat.

### **Findings**

The Commission finds that this boardwalk may be permitted under 310 CMR 10.28 (5) which provides that pedestrian walkways, designed to minimize the disturbance to the vegetative cover and traditional bird nesting habitat may be permitted provided that any alteration of a coastal dune does not have an adverse effect on the coastal dune by disturbing the vegetative cover so as to destabilize the dune, cause any modification of the dune form that would increase the potential for storm or flood damage, interfering with the landward or lateral movement of the dune, causing removal of sand from the dune artificially or interfering with mapped or otherwise identified bird nesting habitat.

The Commission also finds that the 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.

The Commission finds that this boardwalk is permitted under Section VII of the Bylaw regulations because it will minimize disturbance of vegetative cover on the dune and will not interfere with the landward or lateral movement of the dune and will not cause the rate of sand removal to increase through man-made means.

The Commission finds that in order to maintain the health and height of this coastal dune, the Dune Management Protocol must be followed. Ongoing maintenance of snow fencing is an essential component of this management.

The Commission finds that this project appears to meet the state-listed species performance standard for the issuance of an Order of Conditions, and further that this project as currently proposed, will not adversely affect the actual Resource Area Habitat of state-projected rare wildlife species as determined by NHESP in its letter dated May 26, 2015.

### **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.

## EXHIBIT A

4. The work will conform to the details of a plan entitled, "Lambert's Cove Beach elevation Contours as of 2010" dated 10/17/14, prepared by CL Seidel of the MVC, to the project description set forth above, and to the Dune Management Protocol.
5. It is anticipated that the West Tisbury Highway Department (DPW) will assist in the installation and removal of the boardwalk. If the DPW cannot do this work, the Applicant shall provide the contact information for the installer. 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 Parks and Recreation Committee shall appoint one of its members to oversee the annual installation and removal of the boardwalk.
7. The boardwalk shall be installed annually on or before May 30 and must be removed no later than October 15 each year. **This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance.**
8. The boardwalk sections shall be stored off-site. It may not be stored anywhere along the path to the beach. **This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance.**
9. No motorized equipment shall be used on the Coastal Dune for any purpose. Hand rakes may be used for any grading that may be required. There shall be no removal of sand from the dune by machine. If allowed under the conservation restriction held by Sheriff's Meadow Foundation, a small truck may be used to transport the boardwalk sections from the parking lot to the end of the split rail fence along the path. **This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance.**
10. Maintenance of the fencing to protect the path shall include the installation and maintenance of seasonal sand fencing as shown on Figure 3 of the Dune Management Protocol.
11. In order to monitor changes in the elevation of the dune, the Applicant shall submit a plan to measure elevations from the peak of the dune and along the slope to the toe of the dune twice a year to the Conservation Commission for their approval. **This plan shall be submitted no later than the date of removal of the boardwalk at the end of the 2015 season. This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance.**
12. 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.
13. 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 implementation in the field, whether the

## EXHIBIT A

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.

14. 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.
15. 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.
16. In case of emergencies, problems or the need to discuss site conditions with the Commission, the contact person is the Board Administrator 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.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the West Tisbury Wetlands Protection Bylaw and  
Regulations

Provided by MassDEP:  
SE79-357  
MassDEP File #

eDEP Transaction #  
WEST TISBURY  
City/Town

**G. Recording Information**

Prior to commencement of work, this Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

WEST TISBURY

Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

WEST TISBURY

Conservation Commission

Please be advised that the Order of Conditions for the Project at:

275 LAMBERT'S COVE ROAD

Project Location

SE79-357

MassDEP File Number

Has been recorded at the Registry of Deeds of:

DUKES

County

Book

Page

for: PARKS AND RECREATION/TOWN OF WEST TISBURY

Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant



Doc 00080229

DUKES LAND COURT

REGISTRY DISTRICT

RECEIVED FOR REGISTRATION

On: Jul 08, 2015 at 02:55P

Document Fee 75.00 Rec Total \$75.00

NOTED ON: CERT 11473 BK 00061 PG 269