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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:

SE79-397

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 Sheriff's Meadow Foundation b. Last Name _____

c. Organization P.O. Box 1088

d. Mailing Address Vineyard Haven e. City/Town MA f. State 02568 g. Zip Code

4. Property Owner (if different from applicant):

a. First Name same as above b. Last Name _____

c. Organization _____

d. Mailing Address _____

e. City/Town _____ f. State _____ g. Zip Code _____

5. Project Location:

175 Obed Daggett Road West Tisbury

a. Street Address b. City/Town

5 3

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):

Dukes

a. County

850

c. Book

b. Certificate Number (if registered land)

525

d. Page

7. Dates: January 29, 2019 February 19, 2019 March 8, 2019
 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):

Cedar Tree Neck Sanctuary- Irvin Trail

a. Plan Title

Kristen Geagan

b. Prepared By

undated

d. Final Revision Date

unsigned not stamped

c. Signed and Stamped by

e. Scale

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. ☐ Public Water Supply b. ☐ Land Containing Shellfish c. ☒ Prevention of Pollution
 d. ☐ Private Water Supply e. ☐ Fisheries f. ☒ Protection of Wildlife Habitat
 g. ☒ Groundwater Supply h. ☒ Storm Damage Prevention i. ☒ 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) 0
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 checked="" 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 checked="" type="checkbox"/> Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	1,148	1,148		
Sq ft between 100-200 ft	500	500		
	c. square feet	d. square feet	e. square feet	f. square feet
	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	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. ^{cu yd} nourishment	d. ^{cu yd} nourishment
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. ^{cu yd} nourishment	d. ^{cu yd} nourishment
15. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	a. square feet	b. square feet	c. square feet	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			
	a. c/y dredged	b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		
22. <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.)

* #23. 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.

23. ☐ Restoration/Enhancement *:

a. square feet of BVW

b. square feet of salt marsh

24. ☒ Stream Crossing(s):

1

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.
 - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
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. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
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.



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C. General Conditions Under Massachusetts Wetlands Protection Act

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.
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 SE79-397 "
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.



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

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.
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.
19. The work associated with this Order (the "Project")
 - (1) ☐ is subject to the Massachusetts Stormwater Standards
 - (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;



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

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.

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.



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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 special conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

20. For Test Projects subject to 310 CMR 10.05(11), the applicant shall also implement the monitoring plan and the restoration plan submitted with the Notice of Intent. If the conservation commission or Department determines that the Test Project threatens the public health, safety or the environment, the applicant shall implement the removal plan submitted with the Notice of Intent or modify the project as directed by the conservation commission or the Department.



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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

Exhibit A

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 set forth in Exhibit A attached hereto and incorporated herein by this reference.



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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.

3-8-2019
 1. Date of Issuance

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

4
 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 Tappell
[Signature]
[Signature]

[Signature]
[Signature]

☒ by hand delivery on

3-28-2019
 Date

☒ by certified mail, return receipt requested, on

3/8/2019 NOT
 Date Delivered

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 for 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.



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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:

175 Obed Daggett Road

Project Location

SE79-397

MassDEP File Number

Has been recorded at the Registry of Deeds of:

Dukes

County

Book

Page

for:

Sheriff's Meadow Foundation

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

EXHIBIT A**SPECIAL CONDITIONS**

Sheriff's Meadow Foundation
 Irvin Property Map 5 Lot 3
 175 Obed Daggett Road
 DEP FILE # SE79-397

Project Description and Jurisdiction under the Wetlands Protection Act and West Tisbury Wetlands Protection Bylaw

On January 29, 2019 Sheriff's Meadow Foundation ("SMF") the ("Applicant"), filed a Notice of Intent ("NOI") for a project located at 175 Obed Daggett Road identified as the Irvin property. The project includes the creation of 1.5 mile trail that will start off Indian Hill Road and connects this property to the Cedar Tree Neck Sanctuary trail system. One sixteen (16) foot wide wooden boardwalk will span a stream along the trail.

The Conservation Commission has conducted an on-site inspection, reviewed the NOI and submitted information and has determined that the area where the work is proposed is significant to the values of the Wetlands Protection Act and Regulations at 310 CMR 10.00 (the "Act") and the West Tisbury Wetlands Protection Bylaw and Regulations (the "Bylaw"). A public hearing was February 19, 2019. There was no public comment.

Jurisdiction for review falls under 310 CMR 10.00 Sections 10.02 (Jurisdiction), 10.53 (General Provisions), and 10.58 (Riverfront Area).

Under the West Tisbury Wetlands Protection Bylaw, jurisdiction for review falls under Section IV (Buffer Zone), Section XVI (Vegetated Wetlands), and Section XX (Riverfront Area).

The new trail will be maintained to a width of less than 3 feet which makes its creation exempt from the Act, but is subject to review and approval under the Bylaw. The boardwalk requires a permit under both the Act and the Bylaw. The Applicant has requested a waiver from the requirements of the Bylaw for work in the No Disturbance and No Build Zones.

Findings:

The Commission finds that certain activities in the Buffer Zone are exempt under 310CMR 10.02(2) (b) 2a. Otherwise, when such activities do not meet the requirements of 310 CMR 10.02(2) (b) 2, the project requires pre-construction review.

The Commission finds that the establishment of unpaved pedestrian walkways for public access on conservation land is exempt if they are less than three (3) feet wide under the Act but are not exempt under the Bylaw and are subject to pre-construction review.

The Commission finds that there is no other practicable alternative to the site of the stream crossing and that the Applicant has proposed a simple boardwalk that will span the bank of the stream. Therefore, the Commission grants the waiver from the provisions of Section IV C. of the Bylaw for the construction of the boardwalk in the No-Disturbance Zone.

The Commission finds that the proposed activities may temporarily impact the buffer zone and listed resources areas, but that the following special conditions will serve to mitigate such impact. The project is approved.

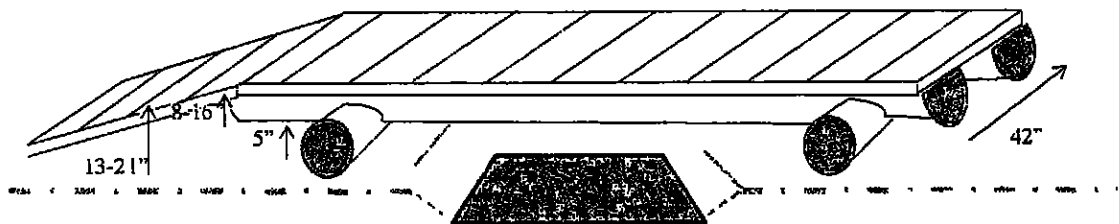
EXHIBIT A**Special Conditions under the Act and the Bylaw:**

- 1) The applicant and the applicant's agent(s) shall adhere to General Conditions 1 through 17 of this Order.
- 2) The Commission has approved the location of the path and the board walk as shown on the undated plan entitled, "Cedar Tree Neck Sanctuary – Irvin Trail", prepared by SMF (the "Project Plan"). Any change to the Project Plan before or after construction begins requires approval by the Commission. See General conditions No. 13 and No. 14 regarding approval of changes to the Project Plan.
- 3) To the extent possible, the work should be done at a dry time of year when there is a favorable five day forecast for dry weather.
- 4) The boardwalk shall be constructed in accordance with the boardwalk design shown on Exhibit B and shall be constructed of locally sourced locust or other rot resistant wood. The footings shall be constructed as shown on the boardwalk design plan. The use of pressure treated wood is not permitted.
- 5) A Gravelly mower may be used to remove the vegetation for the trails.
- 6) The trails will be reviewed by the Commission one year after installation.
- 7) SMF may conduct ongoing maintenance of the boardwalk and, trail under this Order of Conditions after the expiration of this Order upon written notice to the Commission. **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.**
- 8) Best management practices shall be used to handle all activities permitted under this Order of Conditions.
- 9) The applicant shall notify the Commission in writing in writing at least 48 hours prior to commencement of any clearing or mowing activity on the site.
- 10) Upon completion of the trail and the boardwalk, 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. A set of post-construction photographs of the work areas, access and project locus immediately after completion.
- 11) In case of emergencies, problems or the need to discuss site conditions with the Commission, contact the Board Administrator at 508-696-6404.

EXHIBIT B

Foot Bridge:

We propose to install a foot bridge to span the stream crossing at the new Irvin trail. The length of the bridge will be 16'. The height above water will be 10"-18". Materials including decking and supports will be made of locust. The support beams will be at least 10" in diameter with a flat cut top of 3-4 inches, reducing the end height by a few inches. The logs that cradle the beams at either end will also be at least 10" and will be notched approximately half way to hold the beams. The decking will be 1 1/4" thick 42" wide planks. They will be irregular and fit together like a puzzle leaving approximately 1" gaps between the boards. The decking will be drilled and nailed using stainless steel ring shanked nails. The eastern end of the boardwalk may need to be dug in slightly to the bank and the western end elevated to keep the boardwalk level. If needed, we will install ramps at the ends of the boardwalks with strips added to prevent slipping.



ATTEST: **Paula C. DeOliveira, Register**
Dukes County Registry of Deeds