



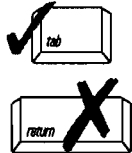
Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE 12 - 617
MassDEP File #
eDEP Transaction #
Chilmark
City/Town

A. General Information

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

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



1. From: Chilmark
Conservation Commission

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

3. To: Applicant:
Town of Chilmark c/o Tim Carroll
a. First Name b. Last Name
Kent Healy for Chilmark Town Hall
c. Organization
P.O. Box 119
d. Mailing Address
Chilmark MA. 02535
e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):
a. First Name b. Last Name
c. Organization
d. Mailing Address
e. City/Town f. State g. Zip Code

5. Project Location:
Boat House Road Connector Pier Menemsha
a. Street Address b. City/Town
Map 27.1 Lots 228, 229
c. Assessors Map/Plat Number d. Parcel/Lot Number
Latitude and Longitude, if known: d m s d m s
d. Latitude e. Longitude



A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):
County of Dukes County Lots 228, 229 LC16645A, LC16645B Lot A1
a. County b. Certificate Number (if registered land)

c. Book d. Page

7. Dates: 11/3/10 11/17/10 11/22/10
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):
Proposed Connector Pier in Menemsha basin Prepared for The Chilmark Selectmen
a. Plan Title
Vineyard Land Surveying & Engineering Kent A. Healy
b. Prepared By c. Signed and Stamped by
11/9/10 1" = 20'
d. Final Revision Date 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.



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	<u> </u> a. linear feet	<u> </u> b. linear feet	<u> </u> c. linear feet	<u> </u> d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
6. <input checked="" type="checkbox"/> Land Under Waterbodies and Waterways	<u>11</u> a. square feet	<u>11</u> b. square feet	<u>0</u> c. square feet	<u>0</u> d. square feet
	<u> </u> e. c/y dredged	<u> </u> f. c/y dredged		
7. <input type="checkbox"/> Bordering Land Subject to Flooding	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
Cubic Feet Flood Storage	<u> </u> e. cubic feet	<u> </u> f. cubic feet	<u> </u> g. cubic feet	<u> </u> h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	<u> </u> a. square feet	<u> </u> b. square feet		
Cubic Feet Flood Storage	<u> </u> c. cubic feet	<u> </u> d. cubic feet	<u> </u> e. cubic feet	<u> </u> f. cubic feet
9. <input type="checkbox"/> Riverfront Area	<u> </u> a. total sq. feet	<u> </u> b. total sq. feet		
Sq ft within 100 ft	<u> </u> c. square feet	<u> </u> d. square feet	<u> </u> e. square feet	<u> </u> f. square feet
Sq ft between 100-200 ft	<u> </u> g. square feet	<u> </u> h. square feet	<u> </u> i. square feet	<u> </u> j. square feet



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	<div>a. square feet</div>	<div>b. square feet</div>		
	<div>c. c/y dredged</div>	<div>d. c/y dredged</div>		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	<div>a. square feet</div>	<div>b. square feet</div>	<div>cu yd</div> <div>c. nourishment</div>	<div>cu yd</div> <div>d. nourishment</div>
14. <input type="checkbox"/> Coastal Dunes	<div>a. square feet</div>	<div>b. square feet</div>	<div>cu yd</div> <div>c. nourishment</div>	<div>cu yd</div> <div>d. nourishment</div>
15. <input type="checkbox"/> Coastal Banks	<div>a. linear feet</div>	<div>b. linear feet</div>		
16. <input type="checkbox"/> Rocky Intertidal Shores	<div>a. square feet</div>	<div>b. square feet</div>		
17. <input type="checkbox"/> Salt Marshes	<div>a. square feet</div>	<div>b. square feet</div>	<div>c. square feet</div>	<div>d. square feet</div>
18. <input type="checkbox"/> Land Under Salt Ponds	<div>a. square feet</div>	<div>b. square feet</div>		
	<div>c. c/y dredged</div>	<div>d. c/y dredged</div>		
19. <input type="checkbox"/> Land Containing Shellfish	<div>a. square feet</div>	<div>b. square feet</div>	<div>c. square feet</div>	<div>d. square feet</div>
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			
	<div>a. c/y dredged</div>	<div>b. c/y dredged</div>		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	<div>a. square feet</div>	<div>b. square feet</div>		



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

Provided by MassDEP:
SE 12 - 617
MassDEP File #
eDEP Transaction #
Chilmark
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.



**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

Provided by MassDEP:

SE 12 - 617

MassDEP File #

eDEP Transaction #

Chilmark

City/Town

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 SE 12 - 617 "
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.



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

Provided by MassDEP:

SE 12 - 617

MassDEP File #

eDEP Transaction #

Chilmark

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") is (1) ☒ is not (2) ☐ 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.



**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

Provided by MassDEP:

SE 12 - 617

MassDEP File #

eDEP Transaction #

Chilmark

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

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

SE 12 - 617

MassDEP File #

eDEP Transaction #

Chilmark

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):

1. All construction debris shall be stored on a barge and a covered dumpster as necessary. 2. The Engineer and a Commission representative shall be on site during key phases of construction. The Commission shall be notified of any problems as soon as they are detected. 3. The pier, causeway, floating docks and related structures may be maintained in perpetuity provided the Commission is notified of any significant repairs--particularly under water repairs--before work begins.

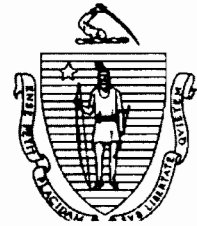


Paul J. Diodati
Director

Commonwealth of Massachusetts

Division of Marine Fisheries

1213 Purchase St, 3rd Floor
New Bedford, MA 02740
(508) 990.2860
Fax (508) 990.0449



Deval Patrick
Governor

Ian A. Bowles
Secretary

Mary B. Griffin
Commissioner

November 12, 2010

Mr. Mitch Ziencina, Environmental Engineer
DEP, Waterways Regulation program
20 Riverside Drive
Lakeville, MA 02347

Re: W10-3163

Dear Mr. Ziencina:

The Division of Marine Fisheries (*Marine Fisheries*) has reviewed the Waterways License Application by the Town of Chilmark, 28 Boat House Road, to replace a pier damaged by fire on Menemsha Harbor in the Town of Chilmark, with respect to potential impacts to marine fisheries resources and habitat.

The project site lies within mapped shellfish habitat for bay scallop (*Argopecten irradians*), quahog (*Mercenaria mercenaria*), and blue mussel (*Mytilus edulis*). Mapped land containing shellfish is deemed significant to the interest of the Wetlands Protection Act and the protection of marine fisheries.

Lobsterville Beach is mapped horseshoe crab (*Limulus polyphemus*) spawning habitat. Horseshoe crabs deposit their eggs in the upper intertidal regions of sandy beaches from late spring to early summer during spring high tides (Barlow Jr., et al., 1986). Adult crabs congregate in deep waters such as channel areas during the day while waiting to move on to the beaches at night to spawn. The eggs hatch approximately two to four weeks later. Recent stock assessment shows a decline in horseshoe crab abundance in the New England region (ASMFC Horseshoe Crab Stock Assessment Subcommittee, 2009).

Marine Fisheries has identified Menemsha Basin as spawning habitat for winter flounder (*Pseudopleuronectes americanus*). Winter flounder enter this embayment and spawn from January through May, laying clumps of eggs directly on the substrate. These demersal eggs hatch approximately fifteen to twenty days later. The Atlantic States Marine Fisheries Commission has designated winter flounder spawning habitat as "Habitat Areas of Particular Concern" (HAPC). A recent stock assessment has determined that the Southern New England/Mid Atlantic winter flounder stock is at only 9 % of the recommended recovery level and is considered nearly depleted (Northeast Fisheries Science Center, 2008).

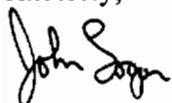
Menemsha Creek also provides passage for alewife (*Alosa pseudoharengus*) to spawning habitat. *Marine Fisheries* has placed a ban on river herring (alewife and blueback herring) harvest due to population declines (Taylor, et al., 2009). Habitat impacts should be minimized to aid recovery of these species.

Marine Fisheries offers the following comments for your consideration:

- To minimize impacts to alewife and winter flounder populations in the area, efforts should be made to complete any in-water, silt-producing work prior to January 15. To protect alewives passing through this constricted region to spawning habitat, the time-of-year (TOY) restriction should extend to June 15.

Questions regarding this review may be directed to John Logan in our New Bedford office at (508) 990-2860 ext. 141.

Sincerely,



John Logan
Fisheries Habitat Specialist

cc: Chilmark Conservation Commission
Kent A. Healy, Vineyard Land Surveying & Engineering, Inc.
Isaiah Scheffer, Shellfish Constable
Mike Syslo, DMF
Christopher Boelke, NOAA
Robert Boeri, CZM
Ed Reiner, EPA
Ken Chin, DEP
Christian Petitpas, DMF

JL/cp

KENT A. HEALY Sc. D. PE
Civil Engineering
1 Farms End Road
P.O. Box 128
West Tisbury, MA 02575
508-693-6736

November 16, 2010

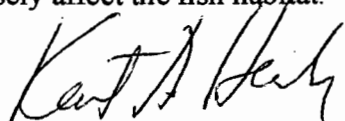
Timothy R. Carroll, Exec. Sec.
Town of Chilmark
PO Box 119, Chilmark, MA
02535

Dear Mr. Carroll:

I have read the November 12, 2010 letter from John Logan, Div. Of Marine Fisheries, to Mitch Ziecina, DEP Waterways Regulation Program, regarding the proposed replacement of the burned out pier connecting Boat House Rd. to the west filled pier in Menemsha Harbor, Chilmark, MA, as shown on my plan dated November 9, 2010, and the possible adverse effect the proposed work might have on the shell and fin fish habitat due to disturbance of silt and sediment on the harbor bottom.

I have sampled the bottom of the harbor for several dredging projects from 1990 to the present and reviewed logs of test borings in the area of the proposed work. The proposed underwater work will consist primarily of driving pipe and sheet piling in a strip of harbor bottom about 15 feet wide and 500 feet long along the eastern edge of the Menemsha Creek channel. The bottom material into which the piling will be driven is a well scoured medium to coarse sand and gravel with no sediment or silt that could be put in suspension by the work.

The underwater work will start early in January 2011 and will be completed by the end of February 2011. I will be present during the construction and will be alert to any activity that could adversely affect the fish habitat.



Kent A. Healy
PE MA #28498



www.chilmarkma.gov

TOWN OF CHILMARK CHILMARK, MASSACHUSETTS

November 17, 2010

TOWN OFFICES:
Beetlebung Corner
Post Office Box 119
Chilmark, MA 02535
508-645-2100
508-645-2110 Fax

John Logan
Commonwealth of Massachusetts
Division of Marine Fisheries
1213 Purchase St, 3rd Floor
New Bedford, MA 02740

Dear Mr. Logan:

The Town of Chilmark is very dedicated to the preservation of our spawning fish stocks in the Menemsha Pond Estuary. We would not undertake any harbor construction project that we thought would restrict our spawning fish or our juvenile young of the year class.

This month (November, 2010) we have begun a winter flounder stock enhancement project funded by a federal Sea Grant program. This project has been organized by Dr. Elizabeth Fairchild from the University of New Hampshire, a leading expert on winter flounder populations and winter flounder stock enhancement projects in New England Estuaries. As part of this project we are taking twice a month samples of winter flounder populations in Menemsha and Nashaquitsa Ponds and in March of 2012 we will be releasing 50,000 juvenile fish into the Menemsha Pond estuary. In Chilmark we are taking the protection of our winter flounder stock very seriously.

This morning I reviewed with Dr. Fairchild the plan for the construction of our new connector pier. We walked the burned and charred remains of our town dock and studied the engineered plan for our replacement. Dr. Fairchild believes that the most disruptive part of the construction project will be the removal of the old pilings. This is when some of the bottom will be disturbed. Dr. Fairchild states that the spawning period for winter flounder in Vineyard Sound is March and April. We will be collecting the brood stock for our nursery operation in late March of 2012. Dr. Fairchild believes that if we can complete the demolition of the old pier in January and drive the pilings for the new pier before March 1 then we will have little or no impact on winter flounder spawning in our estuary.

I want to emphasize that in the Town of Chilmark we take preservation of our shellfish and finfish stocks very seriously. We have spent hundreds of thousands of dollars protecting and enhancing our shellfish and finfish populations. And we have particularly focused on Winter flounder as a stock top be fostered. We would not undertake a project that would damage this resource. We urge you to permit this construction of our damaged town pier during January and February of 2011.

Sincerely,

Warren M. Doty
Chairman, Board of Selectmen



D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? ☒ Yes ☐ No
2. The Chilmark Conservation Commission hereby finds (check one that applies):
- 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:
- | | |
|---|-------------|
| <u>Chilmark Wetland Protection Bylaws</u> | <u>1.02</u> |
| 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):
1. There shall be no underground storage of fossil fuels.



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

Provided by MassDEP:
SE 12 - 617
MassDEP File #
eDEP Transaction #
Chilmark
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.
Please indicate the number of members who will sign this form.
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.

11/22/10
1. Date of Issuance
2. Number of Signers

Signatures:

☒ by hand delivery on
11/22/10
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.



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.

Chilmark
Conservation Commission

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

To:
Chilmark
Conservation Commission

Please be advised that the Order of Conditions for the Project at:
Boathouse Rd. Connector Pier Map 27.1 SE 12 - 617
Lots 228, 229 MassDEP File Number

Has been recorded at the Registry of Deeds of:
County Book Page

for: 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