

Selectmen's Meeting

Wednesday~ January, 21st

2015

2:30PM

**TOWN OF EASTHAM
BOARD OF SELECTMEN
WORK SESSION AGENDA
Wednesday, January 21, 2015
2:30 p.m.**

Location: Timothy Smith Room

2:30 p.m.	Request for LIP Status for Affordable/Market Housing Subdivision Proposed on Land at 2780 Nauset Road, Map 5 Parcel 24 & 36, District G – Michael Princi, Wynn & Wynn Attorney
3:00 p.m.	FY16 Municipal Budget Review DPW, Natural Resources, Sanitation, Conservation, Planning
Minutes:	Monday, January 5, 2015-Regular Session Friday, January 9, 2015- Work Session Friday, January 9, 2015- Executive Session Monday, January 12, 2015- Regular Session

Upcoming Meetings

<i>Friday, January 23, 2015</i>	<i>8:00 am</i>	<i>Executive Session – Location Boston Sheraton Hotel, Suite 1609</i>
<i>Tuesday, January 27, 2015</i>	<i>3:30 p.m.</i>	<i>Work Session – FY16 Budget Discussion</i>
<i>Wednesday, January 28, 2015</i>	<i>2:30 p.m.</i>	<i>Work Session – FY16 Budget Discussion – Nauset Schools Superintendent</i>
<i>Monday, February 2, 2015</i>	<i>5:00 p.m.</i>	<i>Regular Session – Finalize FY16 Budget</i>
<i>Wednesday, February 5, 2015</i>	<i>2:30 p.m.</i>	<i>Work Session – Petition Warrant Article Review</i>

**Per the Attorney General's Office: The Board of Selectmen may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting.*

**If you are deaf or hard of hearing or are a person with a disability who requires an accommodation, contact Laurie Gillespie-Lee, 5900 x207*



WYNN & WYNN^{PC}
ATTORNEYS

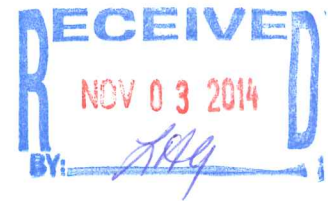
Dianna M. Gallagher
Jeni A. Landers
Jeffrey L. Madison
James M. McCarthy
Kevin P. McRoy**
Robert F. Mills
Charles D. Mulcahy
John J. O'Day, Jr.
Kevin J. O'Malley
Anthony T. Panebianco***
Raymond C. Pelote*
Thomas E. Pontes
Michael J. Princi
Ryan E. Prophett
Rebecca C. Richardson
Janice E. Robbins
William Rosa*
Dina M. Swanson
Andrew A. Toldo
Paul F. Wynn
Thomas J. Wynn

Of Counsel

Hon. Robert L. Steadman (Ret.)
Hon. James F. McGillen, II (Ret.)
Keough & Sweeney
William E. O'Keefe
Edward F. O'Brien, Jr.

Admitted:

*Massachusetts and Rhode Island
**Massachusetts and New Hampshire
***Massachusetts and New York



October 29, 2014

Sheila Vanderhoef, Town Administrator
Town of Eastham
2500 New State Highway
Eastham, MA 02642

RE: Gendron Construction LLC
Proposed 40B Development

Dear Ms. Vanderhoef:

Thank the Eastham's agents and you for your time and input on September 26, 2014. Following the meeting, Mr. Gendron's team reviewed and reassessed the three major areas of concern:

1. Drinking water;
2. Waste Water treatment and disposal
3. Access

While you have some reservations about this site, I believe it is an ideal site for the Town to partner with Mr. Gendron on a LIP. The NIMBY issues are minimal, and the success of the site in large part depends on our joint cooperation. Given that Eastham now has the lowest percentage of affordable housing among all of the Cape towns, a LIP would be a win/win for Eastham and Mr. Gendron and demonstrate Eastham's commitment to affordable housing.

With respect to the three key issues, I offer the following:

1. **Drinking Water**

The site is entirely within the Zone II areas of both the District G well and the Nauset Regional High School well. The two wells are approved for maximum pumping rates of 0.883 and 0.995 million gallons per day respectively so the Zone II areas are quite large.

Eastham's Ground Water Withdrawal Permit Application indicates that there is ample capacity. Estimated actual pumping rates at build out show that the current capacity and usage is only 55% of the maximum approved pumping rate for the Nauset well and 25% of the District G well. From a common sense ground water pumping perspective, Eastham and Mr. Gendron should jointly pursue approvals to

bring the Town water to the Site. We request that you reconsider your current position and work with us to provide Town water.

Mr. Gendron is prepared to install 84 individual wells on the cluster lots (7,000 to 8,000 square feet) . While this solves the water issue, Town water makes more sense.

Mr. Gendron will comply with all Board of Health regulations for installation of private wells, “all wells shall be located on the same lot as the building they serve” BOH Section II.A.1 and the set-backs set forth in BOH Section II.C.5.a (10' from the property line set-back, 50' from a septic, and 25' from subsurface drains).

Mr. Gendron will conduct water quality analysis throughout the site to demonstrate that total coliform bacteria, nitrate-nitrogen, pH conductivity, sodium, iron, and volatile organic compounds are within BOH Section 11.C.6.e. The water samples must also pass Massachusetts DEP and EPA Maximum Containment Level (MCL Standards) for these parameters.

Finally, the well pump test must demonstrate that the ground water will yield a minimum of 5 gallons per minute (BOH Section II.C.12.).

We are optimistic that water will not be an issue.

2. **Waste Water Treatment and Disposal**

Mr. Gendron will permit and construct a Waste Water Treatment System under a DEP permit greater than 10,000 gallons per day for the cluster development. Waste Water Treatment and Disposal are primarily regulated by DEP Groundwater Discharge Permit (“GDP”), although Eastham’s Board of Health has additional regulations and requirements for small Waste Water Treatment Facilities (not defined) and nitrogen loading. Our assessments is that the BOH Regulations are redundant and not as stringent as the DEP permitting requirements.

If required by Eastham, Mr. Gendron will size the system to include additional flow to meet Town needs on the adjacent site. This would be part of the LIP.

The proposed site is located within the mapped Zone II as indicated above. Zone II is defined as an area of the aquifer that contributes water to a well under the most severe pumping and recharge conditions that can realistically be anticipated (by definition 180 days of pumping at the approved yield with no recharge from precipitation).

In this case, the Waste Water Facility is proposed down gradient of all of the

wells within Zone II. The GDP requires the following:

- a. Preparation of a site specific hydrological report (that would include potential impacts to and affects of pumping the proposed on site and near by wells).
- b. Design of the treatment facility according to the DEP manual entitled "Guidelines for the Design, Construction, Operation, and Maintenance of Small Waste Water Treatment Facilities with Land Disposal."
- c. Meeting the affluent limitations calculated in accordance with DEP policy entitled "Nutrient Loading Approach to Waste Water Permitting and Disposal," which is a site specific approach, relying on the hydro geologic study that will likely require an affluent limit less than 5 mg/L nitrate-nitrogen.
- d. Several specific pollutant affluent limits apply because of the Zone 2 restrictions. The most significant is the total organic carbon ("DOC") less than 3 mg/L.
- e. If the discharge is located within a Zone II and the two year ground water travel time to the source (to be determined by hydro geologic study), more stringent limits apply, to wit, TOC less than 1 mg/L, biochemical organ demand ("BOD") less than 10 mg/L, total nitrogen and nitrate-nitrogen less than 5mg/L and disinfection that would guaranty zero fecal coliform bacteria per hundred milliliters and a 5 logs virus inactivation (i.e. 99.999% virus kill).

Mr. Gendron's team is compiling information regarding the site and will move forward with the DEP process. Again, we feel confident of designing and permitting GDP to serve the site. Waster water should not be an issue.

3. Access

We have provided you with a copy of the Court Judgment decreeing the 26' wide access to the site. We share with the Fire Department and Police Department some concerns about the turning radius and will continue to work with Eastham to lay out and construct an appropriate and safe access to the site off of the public road. We have informed you that we will work with the State to secure a secondary easement over the bike path similar to the easement granted to the Town for emergency access vehicles. Mr. Gendron feels confident that we can secure this easement for secondary and emergency access. As you are aware, the site design shows an emergency road accessing the infrastructure roads from the bike path. We feel confident the State will grant the easement and will need Eastham to accept the access and emergency access for the LIP.

All of the other issues raised at the meeting are manageable and will be taken

into account in any comprehensive permit application and LIP.

At this time, it is important for Mr. Gendron to know if the Town is willing to cooperate and continue to work with him on the project. We recognize that any LIP would be subject to obtaining the necessary GDP and approved access. The water issue will be solved with the installation of 84 wells; however, the best solution is to tie into town water.

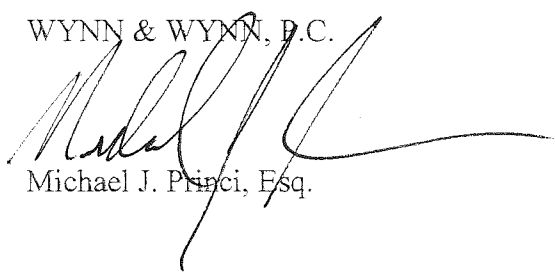
Mr. Gendron has a sincere interest in working with Eastham to bring an additional 22-23 affordable units on line within the next 3-5 years. From a market perspective, we believe that the affordable units will be sold easily. The market units will have a large number of pre-sales. Recently, several small residential units were placed on the market in Truro with strong buyer interest. Many of the market units will be sold to seasonal owners, who will not be taxing town services. We are exploring ways in which we can give an over 55 preference to the market units and town employees. The affordable units must be marketed in accordance with Massachusetts laws and regulations; however, we will take your advice as to allowable preferences.

We have pursued a cooperative process and would like the opportunity to make a final presentation to the Board of Selectman to secure a commitment for a LIP and cooperative comprehensive permit development.

I look forward to hearing from you.

Very truly yours,

WYNN & WYNN, P.C.


Michael J. Princi, Esq.

MJP:alu



TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642-2544
All departments 508-240-5900 • Fax 508-240-1291
www.eastham-ma.gov

Mike Prince
508-775-3665
x235
Called to F/U on
email
left message 11/26

TO: Eastham Board of Selectmen
FROM: Development Review Staff
DATE: November 24, 2014
SUBJ: Gendron Local Initiative Program

APPLICATION TYPE: LIP
LOCATION: 2780 Nauset Road, Map 5, Parcels 24 and 26
ZONING: District G

PLANS ON FILE:

Conceptual Site Plan, Survey of subject property, one-page summary of project prepared by applicant, Land Court decree concerning the access right-of-way.

SITE DESCRIPTION:

The subject property is an active sand mining operation, which is currently presumed to pre-date the current Zoning By-Law. It contains approximately 20.34 acres of land in two parcels. The land is remotely located at the end of a winding and narrow right-of-way (R.O.W.), said by the applicant to be 26 feet in width. The R.O.W. begins at Nauset Road at the former asphalt batching plant and terminates at the subject property. The ROW had been the subject of litigation in the Land Court, which resulted in the Court's decreeing the ROW to be valid to a width of 26 feet.

The land itself is a deep pit with very steep side slopes. A site inspection on 11/13/2014 indicated a variety of materials are currently stored on the property, including broken and painted concrete, a stockpile of unknown material, and a large stockpile of stumps and cut trees. Several businesses appeared to be using the pit in some manner.

PROJECT DESCRIPTION:

This application is for consideration by the Eastham Board of Selectmen to join with applicant Gendron to participate in the Local Initiative Program, a program of the Massachusetts Housing Partnership to encourage the creation of affordable housing.

The concept presented by the applicant is to construct the following:

1. 85 detached single-family homes
2. An access roadway on the subject property
3. An advanced wastewater treatment facility

ZONING BY-LAW PROVISIONS:

District G is intended to accommodate water resource protection uses and very low density residential use. The proposed density is substantially not conforming to these objectives. The applicant has indicated that the quality of the discharge water will be superior overall to the aggregate water quality from a collection of individual standard Title V systems. No engineering documentation has yet been presented to verify this claim.

STAFF COMMENTS:

Municipal staff from the departments of Building, Fire, Health, Planning, Police, and Public Works have collectively reviewed the conceptual plans and offer the following comments:

ACCESS AND SAFETY

1. The site is remotely located and poorly suited for 85 homes. The 1,500-foot access road is only 26 feet in width and falls significantly short of the 40 feet of width required of all land developers for residential construction, per the Town's subdivision regulations. It also substantially exceeds the length of dead-end road limit of 600 feet in the Town's subdivision regulations. The purpose of the 40' width is to accommodate two twelve-foot travel lanes and the water, electric, cable, and gas utilities (when available), which must be installed on both sides of the roadway and not beneath the pavement. A study of the curve radii has not been done but the road may also fall short of the regulations in this regard. While no indication of an intention to pave the road has been stated by the applicant, staff believes it imperative that the access road be paved.
2. The one-way-in and one-way-out arrangement is highly undesirable as it puts at risk not only the residents who would live there but also the various municipal personnel and equipment that would service this development. At the minimum, the remoteness of this site will cause police, fire and rescue personnel and equipment to be encumbered and less available for other calls while in transit over the approximately 1,500' length of roadway, plus the applicable length of on-site roadway.
3. The applicant has represented that an emergency access route over the Rail Trail Bike Path has been arranged with the Department of Environmental Management, which owns and manages the Bike Path. This has not been documented. More importantly, this is not an adequate route for a loaded fire engine, due to insufficient width, surface construction, and the presence of pedestrians and cyclists. The narrowness of the proposed access road greatly increases the importance of the adequacy of an alternative access route.
4. The site is highly vulnerable to wildfire threats, due to its remoteness and adjacency to abundant fuel for a forest fire. The location is also in a high velocity wind zone (Zone 4), which could accelerate a fire very quickly and engulf dwellings, despite a separation from the forest. The applicant should address the means to be deployed for reducing this threat. Absent a realistic plan for mitigating the threat from wildfires, it makes little sense to increase the residential density in this location.
5. It is unclear if the site can be served by the future municipal water supply system. The first phase of the system does not provide for service to this area. Thus, the flow needed to contain fires from any source is limited to what can be trucked in. In the absence of municipal water, on-site water storage tanks for fire suppression should be provided.
6. The above comments indicate that the proposed site is inappropriate for increased residential density, due to the public safety risks, which clearly

outweigh the public benefit of the proposed affordable housing, in our collective opinion.

ENVIRONMENTAL QUALITY

7. The applicant has represented an intention to install and operate an advanced wastewater treatment system to service the proposed residential development. The system is said to be capable of reducing nitrate-nitrogen concentrations in the effluent to below 3 mg/l, whereas a typical Title V system has an output of roughly 30 mg/l (19 mg/l per Eastham Board of Health regulations). A complete wastewater design and management analysis by a qualified engineer is needed to further evaluate this aspect of the project. Given the location so close to the Town's limited water supply, it is essential that an adequate back-up treatment system also be provided, to minimize the threat of degradation of the drinking water resources upon which the public welfare will depend.
8. The site currently contains material not suitable for on-site fill, which will have to be excavated and disposed of properly. No indication of this intention has been described in the project materials.

MISCELLANEOUS COMMENTS

9. There are extraordinary costs associated with this proposed development. These include:
 - a. Excavation and proper disposal of the materials now stored on the site.
 - b. Stabilization of the steep side slopes.
 - c. Preparation of the site for home sites.
 - d. Design and construction of the on-site roadway and improvements to the 1000' feet of access roadway.
 - e. Design, construction, and long-term operation of an advanced wastewater treatment system, plus an adequate back-up system.

These costs must be recovered by the sale of the dwellings, which suggests that the proposed density may increase at some point to enable project completion.

10. The concept plan shows home sites directly beneath the existing NSTAR power lines. This arrangement is unlikely, based on the historic exclusion of most land uses, especially dwellings, from the Company's rights-of-way. Any revised plan should depict the location of the power line R.O.W. and not plan for home sites within it.



*Bourne Green Development Company
Proposed 40b Development
2780 Nauset Road
Eastham, MA*

No. of Units: 85+/-

No. of Affordable: 22+/-

Description of size (e.g. no. of 2 and 3 bedroom units): 2-3 Bedroom Units (~1000-1400 SF)

Amenities: Green Space, Bike Path Access, Walking Trails Access, Proximity to Route 6

Length of Roadway into complex: 1500 LF +/-

Length of Roadways within complex: 2500 – 3000 LF

% of open space: 80% +/-

Sq. Ft' open space: 650,000 +/-

% impervious lot coverage (including pavement): 20% +/-

Sq. Ft. impervious lot coverage: 180,000 +/-

Price Range Affordable: TBD

Price Range Market: TBD

Funding Sources: Private

Brief description of the proposed WWTF – capacity, cost, location, nitrogen loading:

- 20,000 to 30,000 gpd +/- capacity*
- Located at depression within subdivision, exact location TBD, likely in a secluded area.*
- Nitrogen discharge can be 3 mg/l (ppm) or lower at a higher cost plant, most package plants can achieve 10 mg/l nitrogen discharge as compared to a septic tank that discharges 30 to 50 mg/l.*
- There is an approximate 1:8 ratio comparing nitrogen discharge limits to a single family home on a package plant vs. title 5, or an 85 unit development tied to a 5 ppm package plant is equivalent to roughly 9 similar homes with title 5 systems when looking at nitrogen discharge.*



PROPOSED SITE PLAN

scale 1" = 100'

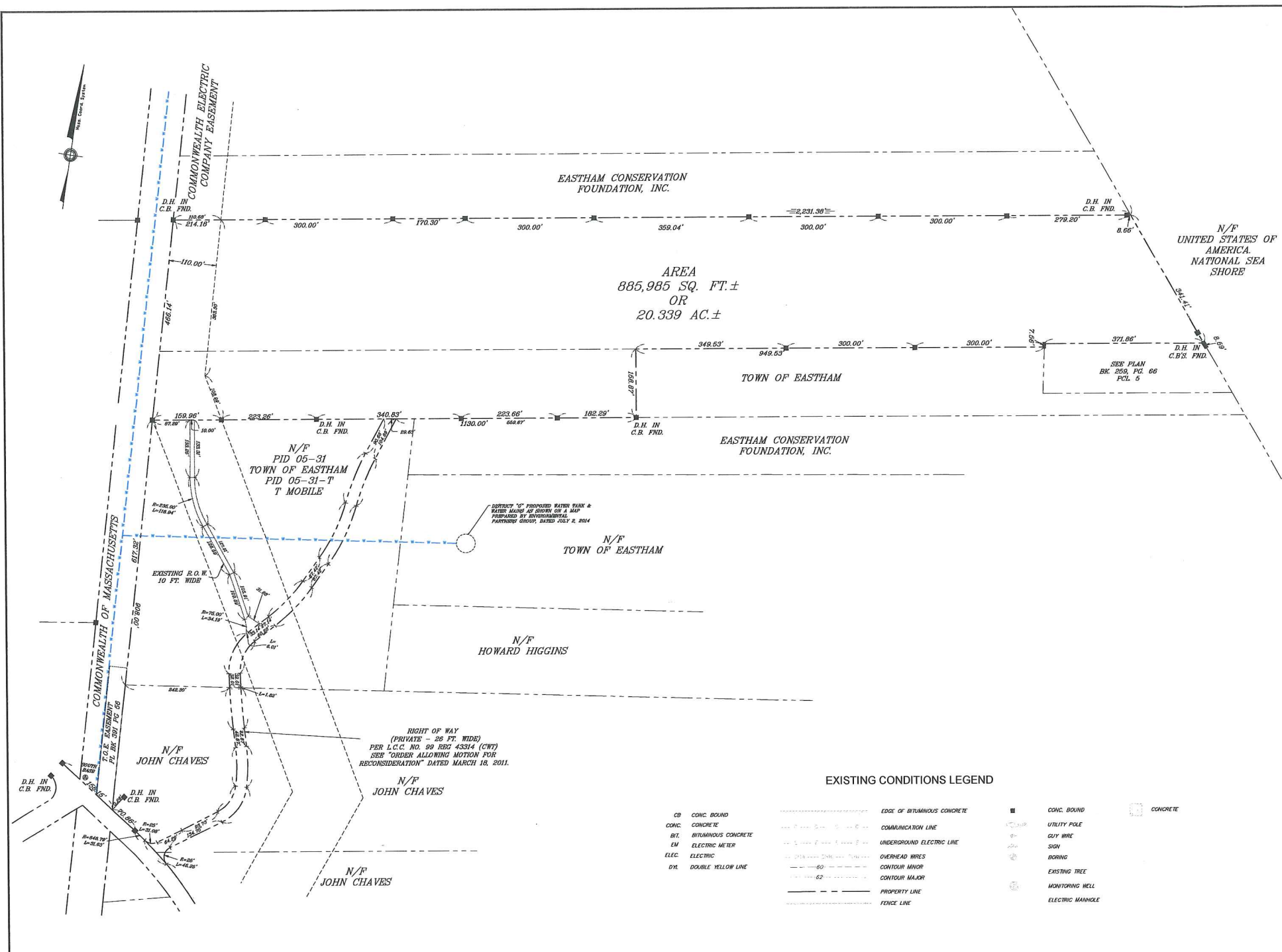
PROPOSED EASTHAM HOUSING DEVELOPMENT

2780 NAUSET ROAD EASTHAM, MA

date 8/20/14

BOURNE GREEN DEVELOPMENT COMPANY





AREA
885,985 SQ. FT.±
OR
20.339 AC.±

EXISTING CONDITIONS LEGEND

- | | | |
|--------------------------|-----------------------------|------------------|
| CB CONC. BOUND | EDGE OF BITUMINOUS CONCRETE | CONC. BOUND |
| CONC. CONCRETE | COMMUNICATION LINE | UTILITY POLE |
| BIT. BITUMINOUS CONCRETE | UNDERGROUND ELECTRIC LINE | GYL WIRE |
| EM ELECTRIC METER | OVERHEAD WIRES | SIGN |
| ELEC. ELECTRIC | CONTOUR MINOR | BORING |
| DYL DOUBLE YELLOW LINE | CONTOUR MAJOR | EXISTING TREE |
| | PROPERTY LINE | MONITORING WELL |
| | FENCE LINE | ELECTRIC MANHOLE |

LOCUS N.T.S.

Green Seal Environmental, Inc.
114 State Road, Building B
Sagamore Beach, MA 02562
Tel: (508) 888-6534
Fax: (508) 888-1506
www.gseenv.com

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Drawings are as indicated.

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It is the responsibility of the user to confirm discrepancies with the Engineer prior to use.

REVISIONS

NO.	DATE	COMMENT
1	8/15/14	ECP

PURPOSE:

EXISTING CONDITIONS PLAN

LOCUS:

MAP: 5 PARCELS: 24 & 26
2780 NAUSET ROAD
EASTHAM MASSACHUSETTS

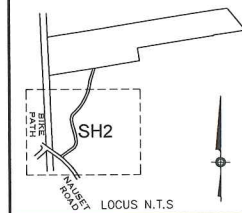
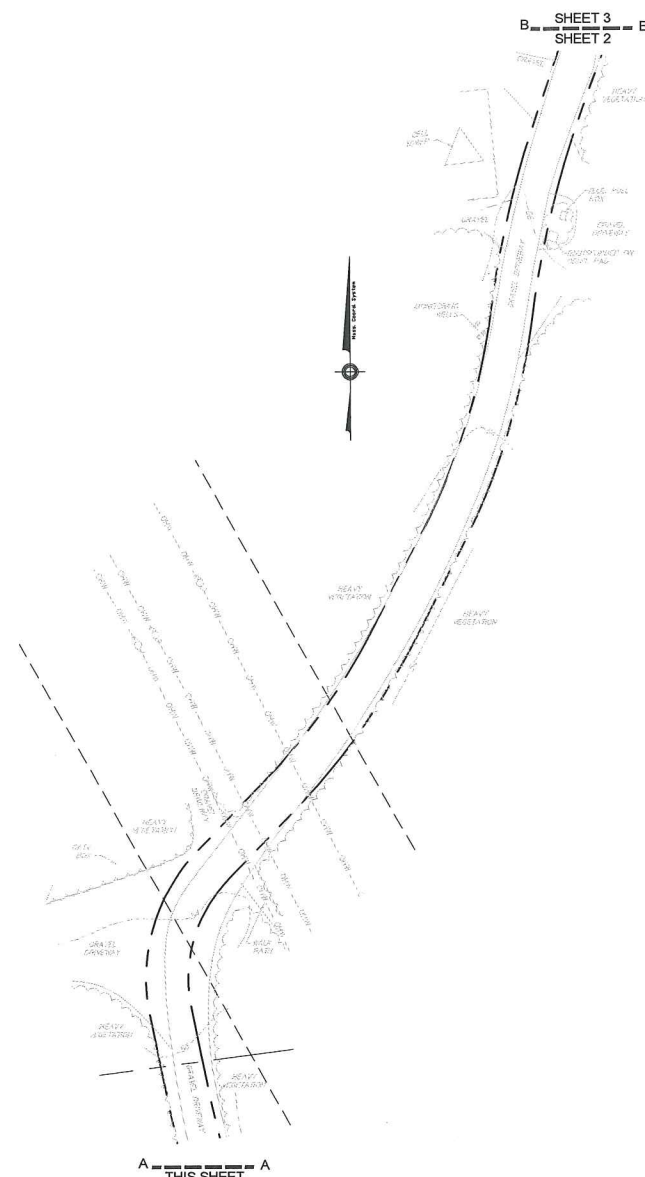
PREPARED FOR:

BOURNE GREEN
DEVELOPMENT, LLC

DRAWING TITLE:

PARCEL PLAN

CAD TECH:	CHECKED BY:
JDP	RHK
ENGINEER:	DATE:
GDJ	8/15/2014
	SCALE:
	1" = 100'
	SHEET:
	1 OF 4



Green Seal Environmental, Inc.
 114 State Road, Building B
 Sagamore Beach, MA 02562
 Tel: (508) 888-4034
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REVISIONS		
NO.	DATE	COMMENT
1	8/5/14	ECP

LOCUS:

MAP: 5 PARCELS: 24 & 26
2780 NAUSET ROAD
EASTHAM MASSACHUSETTS

PREPARED FOR:

BOURNE GREEN DEVELOPMENT, LLC

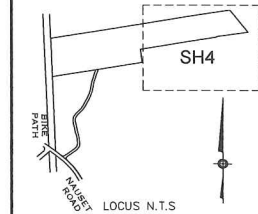
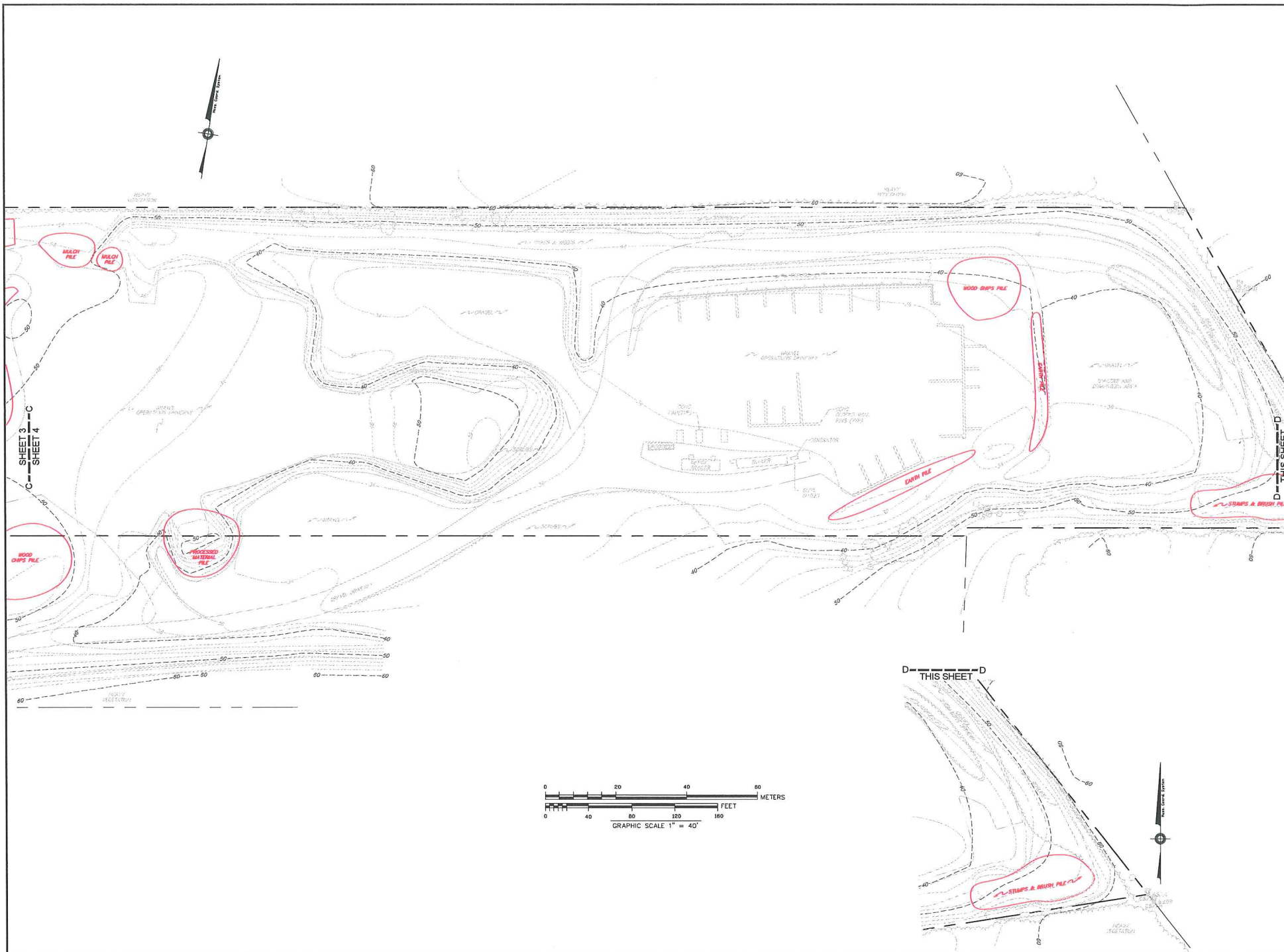
DRAWING TITLE:

EXISTING CONDITIONS PLAN

CAD TECH:	CHECKED BY:
JDP	RHK

ENGINEER:	DATE:
GDJ	8/15/2014

SCALE:
SHEET:
2 OF 4



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REVISIONS		
NO.	DATE	COMMENT
1	8/5/14	ECP

LOCUS:
MAP: 5 PARCELS: 24 & 26
2780 NAUSET ROAD
EASTHAM MASSACHUSETTS

PREPARED FOR:
BOURNE GREEN
DEVELOPMENT, LLC

DRAWING TITLE:
EXISTING CONDITIONS PLAN

CAD TECH:	CHECKED BY:
JDP	RHK
ENGINEER:	DATE:
GDJ	8/15/2014
SCALE:	SHEET:
1" = 40'	4 OF 4

INFORMATION

Eastham Conservation Commission

555 Old Orchard Road
Eastham, MA 02642



508-240-5971
Fax 508-240-6687

December 29, 2014

Town of Orleans
19 School Road
Orleans, MA 02653

Dear Mr. Kelly,

Enclosed please find a copy of the Order of Conditions for DEP SE 19-1573, for the Notice of Intent submitted for Nauset Spit Barrier Beach, Eastham, MA that was denied by the Conservation Commission at a public hearing on Tuesday, December 9, 2014. Enclosed are "Findings of Fact" pursuant to the Eastham Wetlands Bylaw and Massachusetts Wetlands Protection Act that were part of the basis of the Commission's decision.

Sincerely,

Shana Brogan
Conservation Agent

Cc: MA Department of Environmental Protection (DEP SE 19-1573)
MA Division of Fisheries and Wildlife
Cape Cod National Seashore
Eastham Town Administrator's Office
John Jannell, Orleans Conservation Office
Nathan Sears, Orleans Beach Manager
File

Eastham Conservation Commission
December 29, 2014
MA DEP SE 19-1573
Nauset Spit Barrier Beach, Eastham, Map 26A and Map 27A.

**Findings Pursuant to the Massachusetts Wetlands Protection Act, MGL Chapter 131
§40 and 310 CMR 10.00.**

1. The proposed Project consists of the operation of up to two hundred (200) off road vehicles (ORVs) at any one time to drive and park in travel and parking corridors on approximately one mile of Nauset spit barrier beach located in Eastham, MA.
2. The Project also includes a beach management component for boating and pedestrian uses not subject to regulation under the Wetlands Protection Act.
3. The Town of Orleans is the applicant. The owner of record is the Cape Cod National Seashore. The proposed project is located within the Town of Eastham. Ownership of the Project location is presently, though not officially, in dispute.
4. Nauset Spit is a barrier beach that is bordered by the Atlantic Ocean to the east and protects an approximately 800 acre salt marsh known as Nauset Marsh, and upland properties to the west from coastal storm erosion, damage and flooding.
5. The total length of barrier beach extending from Orleans northerly towards Eastham is approximately two miles. Approximately one mile is located in Orleans where off-road vehicle use is presently occurring and one mile is located in Eastham.
6. The proposed Project is detailed in a narrative with aerial photographs and other data prepared by Orleans town staff.
7. A coastal geologist, wetlands biologist, wildlife biologist or other relevant expertise was not hired or included to review or provide expert input and/or recommendations on the Project.
8. Resource Areas where the activity is proposed include: Coastal Beach 310 CMR 10.27, Coastal Dune 310 CMR 10.28, Barrier Beach 310 CMR 10.29 and Land Subject to Coastal Storm Flowage 310 CMR 10.02(1)(d).
9. The following interests of the Wetlands Protection Act 310 CMR 10.01(2) are significant to this project: Fisheries, Storm Damage Prevention, Flood Control, Protection of Land Containing Shellfish, Prevention of Pollution and Protection of Wildlife Habitat.
10. The Project is located within actual Wildlife Habitat for the Piping Plover (*Charadrius melodus*) and Least Tern (*Sternula antillarum*) listed under the MA Endangered Species Act (MESA) as "Threatened" and "Special Concern" respectively as determined by the Division of Fisheries and Wildlife in a letter dated October 14, 2014. The Piping Plover (*Charadrius melodus*) is also federally listed as "Threatened" under the US Endangered

Species Act. Moreover, the Project location is a migratory habitat for the Rufa Red Knot (*Calidris canutus rufa*) recently listed as "Threatened" under the US Endangered Species Act.

11. The Project includes off-road vehicle operation at all times of the year, particularly from April through September, with the exception of closures for the presence of Piping Plover (*Charadrius melodus*) and Least Tern (*Sternula antillarum*) chicks and/or nests, when the Project location serves as a peak nesting, foraging and migratory habitat for shorebirds. The applicant did not demonstrate why the Project needed to include operation during these months and could not be minimized to exclude them in order to minimize adverse impacts to Wildlife Habitat for rare species.
12. The applicant does not meet the requirements of the Massachusetts Division of Fisheries and Wildlife determination letter dated October 14, 2014 because the Applicant proposes to employ one shorebird monitor from April 1 to August 31. The Applicant did not address comments from DEP in their file number issuance for who will monitor the beach when Least Tern (*Sternula antillarum*) chicks may be present after August 31.
13. The applicant noted the Project meets the performance standards for Coastal Dunes and Coastal Beaches due to historic use and the easterly location of the off road vehicle driving and parking corridor and they believe no impacts will occur though elaborated no further in the Project proposal on this belief and did not include relevant expertise such as a coastal geologist, scientific data or information.
14. The applicant did not address in their performance standards analysis how the Project meets 310 CMR 10.28(3) (a) affecting the ability of waves to remove sand from the dune, and 310 CMR 10.28(3) (e) causing removal of sand from dunes artificially. The applicant also has not explained why modification to small dune areas is only expected to be limited.
15. The proposed project does not meet the performance standards for a Coastal Beaches, 310 CMR 10.27(6) because:
 - A. The applicant does not indicate how and why the impact to the beach form is only anticipated to be temporary. Geologic and climatic reasons were noted, but elaborated no further. Moreover, the applicant did not include how the off-road vehicle traffic itself would not impact beach form or volume in the long term.
 - B. The applicant does not include how the project will not increase the potential for storm damage or erosion.
16. Pursuant to 310 CMR 10.03(1)(a)(2), mitigation measures such as planting beach grass, other coastal vegetation or other dune-building or other resource area enhancement efforts such as confining pedestrian pathways on the Coastal Dunes were not proposed as part of the project in order to contribute to the values and protection of the resource areas and minimize any adverse impacts.
17. The Applicant did not demonstrate why the Project could not be minimized by operating on one mile of barrier beach located in the Town of Orleans where it currently occurs, and is necessary to operate on the entirety of the Nauset Spit. If the project operated on the approximate one mile of beach in Orleans as it presently does, all 200 vehicles would have 26.5 linear feet of beach front if the beach were at full capacity of 200 vehicles at all times.

18. The Applicant did not demonstrate for what purpose the off-road vehicles were necessary to be used in Eastham and why walking, the use of all-terrain vehicles (ATVs), a shuttle service and/or boating were not feasible alternatives to be utilized that may have less adverse impacts to the Resource Areas and meet the performance standards for Coastal Beaches and Coastal Dunes. If the project operated on the approximate one mile of beach in Orleans as it presently does, all 200 vehicles would have 26.5 linear feet of beach front if the beach were at full capacity of 200 vehicles at all times.
19. Pursuant to 310 CMR 10.03(1)(a)(2), the applicant has not demonstrated that the proposed Project will contribute to the protection of the Resource Areas by complying with general performance standards.

Eastham Conservation Commission
December 29, 2014
MA DEP SE 19-1573
Nauset Spit Barrier Beach, Eastham, Map 26A and Map 27A.

Findings Pursuant to the Eastham Wetlands Bylaw

This project was denied on December 9, 2014, pursuant to Eastham Wetlands Bylaw ("Bylaw") Chapter 155, based on the determination by the Conservation Commission that the applicant has failed to submit any alternatives analysis and supporting information and thus failed to prove that there is no technically demonstrated feasible alternative to the project with less adverse effects and that the proposed activities will have no significant adverse impact on the resources or values protected by this Bylaw.

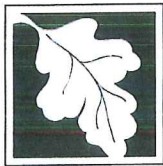
1. The proposed Project consists of the operation of up to two hundred (200) off road vehicles (ORVs) at any one time to drive and park in travel and parking corridors on approximately one mile of Nauset spit barrier beach located in Eastham, MA.
2. The Town of Orleans is the applicant. The owner of record is the Cape Cod National Seashore. The proposed project is located within the Town of Eastham. Ownership of the project location is presently, though not officially, in dispute.
3. Nauset Spit is a barrier beach that is bordered by the Atlantic Ocean to the east and protects an approximately 800 acre salt marsh known as Nauset Marsh, and upland properties to the west from coastal storm erosion, damage and flooding.
4. The total length of barrier beach extending from Orleans northerly towards Eastham is approximately two miles. Approximately one mile is located in Orleans where off-road vehicle use is presently occurring and one mile is located in Eastham.
5. The proposed project is detailed in a narrative with aerial photographs and other data prepared by Orleans town staff.
6. A coastal geologist, wetlands biologist, wildlife biologist or other relevant expertise was not included or hired to review and provide expert input and/or recommendations on the project with the Applicant.
7. Resource Areas of the Eastham Wetlands Bylaw where the Project is proposed includes: Coastal Beach, Coastal Dune, Land Subject to Coastal Storm Flowage and Land Subject to Tidal Action. An additional protected resource area of the Eastham Wetlands Bylaw is the 100' buffer zone to these areas.
8. The following interests of the Eastham Wetlands Bylaw are significant to this project: Wildlife, Erosion Control, Prevention Flood Control, Storm Damage, Water Pollution, Fisheries and Shellfish.
9. Wildlife is a protected interest of the Eastham Wetlands Bylaw. The Project is located within actual Wildlife Habitat for the Piping Plover (*Charadrius melodus*) and Least Tern

(*Sternula antillarum*) listed under the MA Endangered Species Act (MESA) as “Threatened” and “Special Concern” respectively as determined by the Division of Fisheries and Wildlife in a letter dated October 14, 2014. The Piping Plover (*Charadrius melodus*) is also federally listed as “Threatened” under the US Endangered Species Act. Moreover, the Project location is a migratory habitat for the Rufa Red Knot (*Calidris canutus rufa*) recently listed as “Threatened” under the US Endangered Species Act.

10. The Applicant does not meet the requirements of the Massachusetts Division of Fisheries and Wildlife determination letter dated October 14, 2014 because the Applicant proposes to employ one shorebird monitor from April 1 to August 31. The Applicant did not address who will monitor the beach when Least Tern (*Sternula antillarum*) chicks may be present after August 31 to ensure protection of wildlife and their habitat.
11. The Applicant noted the Project protects Coastal Dunes and Coastal Beaches due to historic use and the easterly location of the off road vehicle driving and parking corridor and they believe no impacts will occur though elaborated no further in the Project proposal on this belief and did not include relevant expertise such as a coastal geologist or scientific data or information.
12. The proposed project does adequately protect Coastal Beaches, because:
 - A. The applicant does not indicate how and why the impact to the beach form is only anticipated to be temporary. Geologic and climatic reasons were noted, but elaborated no further. Moreover, the applicant did not include how the off road vehicle traffic itself would not impact beach form or volume in the long term.
 - B. The applicant does not note how the project will not increase the potential for storm damage or erosion.
13. Section 2 of the Eastham Wetlands Bylaw states: *No permit shall be issued for any activity in the buffer zone, unless the applicant, in addition to meeting the otherwise applicable requirements of this Bylaw, has proved by a preponderance of the evidence that: 1) there is no technically demonstrated feasible alternative to the project with less adverse effects; and 2) that such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this Bylaw.*
14. Despite the Conservation Commission’s request for an alternatives analysis, the applicant explored no alternatives to the proposed Project and explained the alternatives are only for the buffer zone. The commission differs with the applicant in that:
 1. A reasonable person would understand that a Project located in a Resource Area would have more scrutiny over proposed impacts and mitigation measures than a project located in the buffer zone to the resource area.
 2. The Eastham Wetlands Bylaw designates the 100 foot buffer zone as a regulated resource area as well.
15. Mitigation such as planting beach grass, other coastal vegetation or other dune-building or resource area enhancement efforts such as minimizing pedestrian pathways on the Coastal Dunes, were not proposed as part of the Project in order to contribute to the values and protection of the resource areas and minimize any adverse impacts.
16. The Applicant did not demonstrate why the Project could not be minimized by confining off road vehicle use on one mile of barrier beach located in the Town of Orleans where it presently occurs and is necessary to operate on the entirety of the Nauset Spit. If the project operated on the approximate one mile of beach in Orleans as it presently does, all

200 vehicles would have 26.5 linear feet of beach front if the beach were at full capacity at all times.

17. The Project includes off-road vehicle operation at all times of the year, particularly from April through September, with the exception of closures for the presence of Piping Plover (*Charadrius melodus*) and Least Tern (*Sternula antillarum*) fledglings and/or nests, when the Project location serves as a peak nesting, foraging and migratory habitat for shorebirds. The applicant did not demonstrate why the Project needed to include operation during these months and could not be minimized and was not a feasible alternative in order to minimize adverse impacts to Wildlife and Wildlife Habitat for rare species.
18. The Commission finds that walking, all-terrain vehicles (ATVs), a shuttle service or boating are feasible alternatives to be utilized for access with less adverse impacts to Resource Areas. The Applicant did not provide any evidence or demonstrate for what purpose off-road vehicles were necessary to operate in Eastham and why walking, all-terrain vehicles (ATVs), a shuttle service or boating were not sufficient alternatives.
19. The Project will result in the increase and potential for storm damage and flooding. The applicant does not note how the project will not increase the potential for storm damage or erosion other than historic use and the easterly location of the off road vehicle corridor and parking area. The applicant did not submit or include any relevant expertise, data or information to support their belief that it would not.
20. Pursuant to Section 6 of the Eastham Wetlands Bylaw, in its judgment such denial has been determined as necessary to preserve the environmental quality of the land and resources of Eastham and the Project as proposed does not adequately protect or address the requirements for minimizing adverse impacts to Resource Areas.



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 19-1573
MassDEP File #

eDEP Transaction #
Eastham
City/Town

A. General Information

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: Eastham
Conservation Commission

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

3. To: Applicant:

a. First Name Town of Orleans b. Last Name _____
c. Organization 19 School Road
d. Mailing Address Orleans MA 02653
e. City/Town Orleans f. State MA g. Zip Code 02653

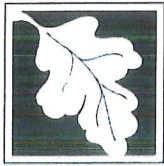
4. Property Owner (if different from applicant): Ownership in dispute

a. First Name _____ b. Last Name _____
c. Organization _____
d. Mailing Address _____
e. City/Town _____ f. State _____ g. Zip Code _____

5. Project Location:

a. Street Address Nauset Spit Barrier Beach Eastham
b. City/Town Eastham
c. Assessors Map/Plat Number 26A and 27A d. Parcel/Lot Number _____

Latitude and Longitude, if known: d. Latitude _____ e. Longitude _____



Massachusetts Department of Environmental Protection
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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):
Barnstable
a. County
b. Certificate Number (if registered land)
c. Book
d. Page
7. Dates: September 5, 2014 December 9, 2014 December 29, 2014
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):
a. Plan Title
b. Prepared By
c. Signed and Stamped by
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.



Massachusetts Department of Environmental Protection
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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 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 e. c/y dredged	b. square feet f. c/y dredged	c. square feet	d. square feet
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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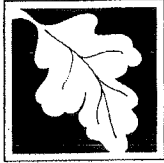
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B. Findings (cont.)

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 type="checkbox"/> Coastal Beaches	<u> </u> a. square	<u> </u> b. square	<u> </u> c.	<u> </u> d.
14. <input type="checkbox"/> Coastal Dunes	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. nourishment	<u> </u> d. nourishment cu yd
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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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 **12/29/2017** 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
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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 **SE 19-1573** "

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.

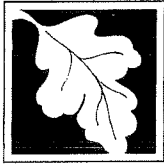
13. The work shall conform to the plans and special conditions referenced in this order.

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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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.



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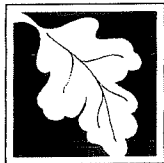
C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

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.



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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 ATTACHED SPECIAL CONDITIONS



Massachusetts Department of Environmental Protection
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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 Eastham 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:

Eastham Wetlands Protection Bylaw

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:

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 ATTACHED SPECIAL CONDITIONS

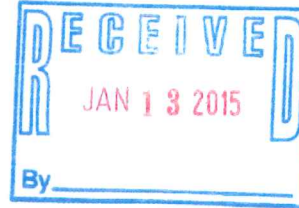
LAW OFFICES OF MICHAEL D. FORD
ATTORNEYS AT LAW
72 MAIN STREET, P.O. BOX 485
WEST HARWICH, MA 02671
TEL. (508)430-1900 FAX (508)430-9979
mdfesq1@verizon.net

MICHAEL D. FORD
JEFFREY M. FORD

CERTIFIED MAIL NO. 7013 3020 0000 4071 9656

January 8, 2015

Ms. Elizabeth Kouloheras
Department of Environmental Protection
Southeast Region
20 Riverside Drive
Lakeville, MA 02347



Re: MA DEP SE 19-1573, Request for Superseding Order of Conditions
Applicant: Town of Orleans
Locus: Nauset Spit Barrier Beach, Eastham, MA

Dear Ms. Kouloheras:

This office represents the applicant, the Town of Orleans (Town) with respect to a Notice of Intent (NOI) filed by the Town with the Town of Eastham Conservation Commission (Commission) for an Order of Conditions for an ORV and Beach Management Plan for Nauset Spit Barrier Beach located in the Town of Eastham.

Pursuant to 310 CMR 10.05(7) (c), please accept this letter and the enclosed copy of the Request for Departmental Action Fee Transmittal Form (with copy of check for filing), as provided in 310 CMR 10.03(7) (a) 2, as a request for a Superseding Order of Conditions resulting from the denial of the NOI by the Commission at a public hearing held on Tuesday, December 9, 2014. The Order of Conditions (OOC) was issued by the Commission on December 29, 2014, under the Wetlands Protection Act, M.G.L. c.131 §40, and under the provisions of the local Eastham Wetlands Bylaw. A copy of the OOC is attached hereto as Exhibit A.

The Town objects to the OOC as follows:

1. The Commission failed to take Action on the NOI.

No Action was taken by a majority of the members of the Commission present at the meeting at which the Commission purported to vote to issue the attached OOC as required by 310 CMR10.05(2). (The vote by the Commission was 3 in favor of issuing an OOC authorizing the work with conditions and 3 opposed).

2. The OOC purports to be a denial of the requested work.

Assuming arguendo that the vote of the Commission was an Action within the meaning of 310 CMR 10.05(2), the OOC purports to deny the proposed work (the Town's operation of the ORV and Beach Management Plan). The purported OOC is inconsistent with 310 CMR 10.00 and does not contribute to the interests identified in M.G.L. c.131, §40 as follows:

- (a) The Commission's purported "Findings Pursuant to the Massachusetts Wetlands Protection Act, MGL Chapter 131 § 40 and 310 CMR 10.00" upon which the OOC is based contain numerous factual errors which are inconsistent with the record before the Commission, including without limitation Findings 1, 2, 3, 4, 5, 7, 9, 11, 12, 13, 14, 15, and 19.
- (b) The Commission incorrectly applied the provisions of 310 CMR 10.28(3) (a) and (e) regarding Coastal Dunes as no vegetative cover of any dune will be disturbed nor will any sand be artificially removed from any dune and 310 CMR 10.27(6) regarding Coastal Beaches since that portion of the work which occurs on tidal flats will not cause any adverse effects to marine fisheries and wildlife habitat.
- (c) The Commission incorrectly applied the provisions of 310 CMR 10.03(1)(a)(2) in that no mitigation was suggested or requested by the Commission of the Town and the record clearly reveals that the applicant through the proposed beach management plan has demonstrated that the proposed project meets the applicable performance standards and will contribute to the protection of the Resource Areas.

In view of the foregoing the Town would respectfully request that you please schedule an on-site inspection at your earliest convenience, and thereafter, issue a Superseding Order of Conditions approving the project consistent with the conditions proposed by the Town in its Beach Management Plan.

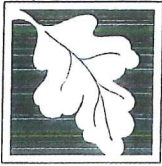
Thank you for your anticipated attention and cooperation.

Very truly yours,



Michael D. Ford
Town Counsel

cc: Town of Orleans
Town of Eastham Conservation Commission (Certified Mail No.7013 3020 0000 4071
9663)



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 19-1573
MassDEP File #

eDEP Transaction #
Eastham
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.

12/29/2014

1. Date of Issuance

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

Five

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

2. Number of Signers

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:

[Handwritten signatures in blue ink over horizontal lines]

☐ by hand delivery on

☒ by certified mail, return receipt requested, on

Date

12/29/2014

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.



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 19-1573

MassDEP File #

eDEP Transaction #

Eastham

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.

Eastham

Conservation Commission

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

To:

Eastham

Conservation Commission

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

Nauset Spit Barrier Beach

Project Location

19-1573

MassDEP File Number

Has been recorded at the Registry of Deeds of:

Barnstable

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

SPECIAL CONDITIONS FOR ORDER OF CONDITIONS SE 19-1573:

THE PROJECT IS PERMITTED UNDER THIS ORDER OF CONDITIONS.

Sheila Vanderhoef

From: Mady Magill <buildingdept@eastham-ma.gov>
Sent: Wednesday, January 07, 2015 9:35 AM
To: 'Sheila Vanderhoef'
Subject: Windmill Green

Hi Sheila!

I've received 2 applications so far for the use of the green for June and July for Hands on the Arts Festival and Wellfleet Spat and another inquiry from East Coast Crafts Shows for July, August and September.

Has any policy decision been made yet as to whether you will go to bid or go as we have been, even with the construction and lack of parking. The vendors need to know if their dates are secure so they can set up their publication printing and magazine advertising.

Thanks,
Mady

BOS
agenda
1/22

Date: January 15, 2015

Memo:

To: Sheila Vanderhoef, Town Administrator and Board of Selectmen

From: Vicky Anderson, Front Desk

Re: Jesse J. Cifelli DBA EAST COAST CRAFT SHOWS

1. Please find attached an Application for the use of the Windmill Green by the above-captioned vendor for a fifth season. He is located in Harwich Port and he advertises these shows in magazines with national circulation. Thus he sends the Application early in the calendar year.
 2. It is my understanding that one of the shows was cancelled and the Town had to refund the \$200.00 paid for two days on the Green.
 3. Mr. Cifelli charges vendors each \$200.00 for their space on the Green and he projects that he will have 40 vendors for each show for a grand total of \$8,000.00. Individual vendors must also pay \$20.00 for our Transient Vendor License.
 4. These shows are strictly for-profit activities, unlike Historical Society Antique shows, Eastham Painters Guild, and Windmill Weekend; increased traffic in July, August, and, most especially on Labor Day Weekend is certainly a negative to be considered.
 5. I respectfully request that the Board discuss the above items and consider the advisability of continuing these shows and/or discuss fees and expenses involved in these events.
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