



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:
054-2574

MassDEP File #

eDEP Transaction #
Orleans
City/Town

A. General Information

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

1. From: Orleans
Conservation Commission
2. This issuance is for (check one):
a. Order of Conditions b. Amended Order of Conditions
3. To: Applicant:

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



- a. First Name ORLEANS CONSERVATION TRUST b. Last Name _____
- c. Organization 203 S ORLEANS RD
- d. Mailing Address ORLEANS MA 02653
- e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

- a. First Name ORLEANS CONSERVATION TRUST b. Last Name _____
- c. Organization 203 S ORLEANS RD
- d. Mailing Address ORLEANS MA 02653
- e. City/Town f. State g. Zip Code

5. Project Location:

- 4 BRADDOCKS WY Orleans
- a. Street Address b. City/Town
- 49 50
- c. Assessors Map/Plat Number d. Parcel/Lot Number

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

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A. General Information (cont.)

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

a. County

34627

b. Certificate Number (if registered land)

161

c. Book

d. Page

7. Dates: Feb 25, 2022 Jul 19, 2022 Aug 02, 2022

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):

SEE ATTACHED Facts, Findings, and Special Conditions for Order SE 54-2574

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.

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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) <1'
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 |
|--|----------------------------------|----------------------------------|----------------------|-----------------------|
| <input type="checkbox"/> 4. Bank | a. linear feet | b. linear feet | c. linear feet | d. linear feet |
| <input type="checkbox"/> 5. Bordering Vegetated Wetland | a. square feet | b. square feet | c. square feet | d. square feet |
| <input type="checkbox"/> 6. 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 |
| <input type="checkbox"/> 7. 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 |
| <input type="checkbox"/> 8. 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 |
| <input type="checkbox"/> 9. Riverfront Area | a. total sq. feet | b. total sq. feet | | |
| Sq ft within 100 ft | c. square feet | d. square feet | e. square feet | f. square feet |
| Sq ft between 100-200 ft | g. square feet | h. square feet | i. square feet | j. square feet |

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B. Findings (cont.)

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

| | Proposed Alteration | Permitted Alteration | Proposed Replacement | Permitted Replacement |
|---|---|----------------------|----------------------|-----------------------|
| <input type="checkbox"/> 10. Designated Port Areas | Indicate size under Land Under the Ocean, below | | | |
| <input type="checkbox"/> 11. Land Under the Ocean | _____ | _____ | | |
| | a. square feet | b. square feet | | |
| | _____ | _____ | | |
| | c. c/y dredged | d. c/y dredged | | |
| <input type="checkbox"/> 12. Barrier Beaches | Indicate size under Coastal Beaches and/or Coastal Dunes below | | | |
| <input type="checkbox"/> 13. Coastal Beaches | _____ | _____ | _____ cu yd | _____ cu yd |
| | a. square feet | b. square feet | c. nourishment | d. nourishment |
| <input type="checkbox"/> 14. Coastal Dunes | _____ | _____ | _____ cu yd | _____ cu yd |
| | a. square feet | b. square feet | c. nourishment | d. nourishment |
| <input checked="" type="checkbox"/> 15. Coastal Banks | 366 lf | 366 lf | | |
| | a. linear feet | b. linear feet | | |
| <input type="checkbox"/> 16. Rocky Intertidal Shores | _____ | _____ | | |
| | a. square feet | b. square feet | | |
| <input type="checkbox"/> 17. Salt Marshes | _____ | _____ | _____ | _____ |
| | a. square feet | b. square feet | c. square feet | d. square feet |
| <input type="checkbox"/> 18. Land Under Salt Ponds | _____ | _____ | | |
| | a. square feet | b. square feet | | |
| | _____ | _____ | | |
| | c. c/y dredged | d. c/y dredged | | |
| <input type="checkbox"/> 19. Land Containing Shellfish | _____ | _____ | _____ | _____ |
| | a. square feet | b. square feet | c. square feet | d. square feet |
| <input type="checkbox"/> 20. Fish Runs | Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above | | | |
| | _____ | _____ | | |
| | a. c/y dredged | b. c/y dredged | | |
| | 35,000 sf | 35,000 sf | | |
| <input checked="" type="checkbox"/> 21. Land Subject to Coastal Storm Flowage | _____ | _____ | | |
| | a. square feet | b. square feet | | |
| <input type="checkbox"/> 22. Riverfront Area | _____ | _____ | | |
| | a. total sq. feet | b. total sq. feet | | |
| Sq ft within 100ft | _____ | _____ | _____ | _____ |
| | c. square feet | d. square feet | e. square feet | f. square feet |
| Sq ft between 100-200 ft | _____ | _____ | _____ | _____ |
| | g. square feet | h. square feet | i. square feet | j. square feet |

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B. Findings (cont.)

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

23. Restoration/Enhancement *:

a. square feet of BVW

b. square feet of salt marsh

24. Stream Crossing(s):

a. number of new stream crossings

b. number of replacement stream crossings

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. The work is a maintenance dredging project as provided for in the Act; or
 - b. The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
 - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the **Order will expire on Aug 02, 2025** unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.

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C. General Conditions Under Massachusetts Wetlands Protection Act

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

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]
"File Number 054-2574"
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.

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

17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
19. The work associated with this Order (the "Project")
- (1) is subject to the Massachusetts Stormwater Standards
- (2) is NOT subject to the Massachusetts Stormwater Standards

If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:

- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
- i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
 - ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
 - iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;

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

iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;

v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.

c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:

i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and

ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.

d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.

e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.

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

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

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

This Order is subject to the Standard Conditions on all Orders dated 11/1/18 and the completion of the Acknowledgment of Contractor Form. This Order is also subject to the attached Facts, Findings, and Special Conditions for Order SE 54-2574.

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

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D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? Yes No

2. The Town of Orleans hereby finds (check one that applies):

Conservation Commission

a. that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw

2. Citation

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

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

Orleans Wetlands Bylaw/Regulations

Ch 160/196A

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):

This Order is subject to the Standard Conditions on all Orders dated 11/1/18 and the completion of the Acknowledgment of Contractor Form: This Order is also subject to the attached Facts, Findings, and Special Conditions for Order SE 54-2574.



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E. Signatures

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

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.

8/2/22
1. Date of issuance
7
2. Number of Signers

Signatures:

[Signature]
[Signature]

[Signature]
[Signature]
[Signature]

by hand delivery on

by certified mail, return receipt requested, on

Date

Date

8/2/22

F. Appeals

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

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

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.

FINDINGS AND STANDARD CONDITIONS ON ALL ORDERS, AS APPLICABLE
In accordance with M.G.L. Chapter 131, Section 40 and the Orleans Wetlands Protection Bylaw, Ch160

DEP #: 054-2574

Applicant:

The Commission finds that, the Applicant, through the Public Hearing, has presented to the Commission clear and convincing evidence and was able to demonstrate that all State and Local Wetland Interests will be protected, the Commission hereby approves the project with the issuance of this Order and all of its protective Conditions.

1. Preface: Failure to comply with all conditions of this Order of Conditions may result in the following: Stop Work Order, Fines, or the inability to obtain a Certificate of Compliance.

2. Recording: No work shall be undertaken until the Order has been recorded in compliance with General Condition #9 (page 6) of this Order and proof of such recording has been submitted to this Commission.

3. Acknowledgement of Contractor: No work may proceed until the Commission is provided with an executed Acknowledgement of Contractor form proving that these Orders have been reviewed and received by such Contractor and that the Contractor understands the Order and all Conditions. The Contractor shall furnish any sub-contractor with a copy of this Order. The approved Contractor must monitor their work throughout the project to ensure its success and establishment. If he/she is unable to continue with the project, the new contractor must meet with the Conservation Commission or their Administrator for approval before commencing work under the Order.

4. Other Permits: No work may proceed until the Applicant has received all other permits required by law, (i.e. building permit, Board of Health, Planning Board, Board of Appeals, Army Corps of Engineers, etc.)

5. Appeals: No work shall be undertaken until all administrative appeal periods from this Order have elapsed or, if such an appeal has been filed, until all appeal proceedings have been completed.

6. Transfer of Ownership: If the Applicant transfers the interests authorized herein by conveyance of realty, the deed shall reference this Order and the terms and Conditions specified herein, and this Order shall be recorded along with the deed.

7. Term: *This Order is valid for three (3) years.* Application for an Extension must be submitted, *in writing, thirty (30) days prior to the date of its expiration.*

8. Certificate of Compliance: *Upon completion of the work permitted by this Order, or the expiration of this Order, a Certificate of Compliance shall be requested from the Commission in writing.* Where a project has been completed in accordance with plans stamped by a professional engineer, architect, or other qualified professional, a written statement by such professional certifying compliance with the plans and Orders, shall accompany the request for the Certificate of Compliance. Please note the request should accompany the appropriate completed DEP form and Town of Orleans fee.

9. Approved Plans: *A copy of this Order of Conditions and all approved plans shall be kept on site at all times during construction.* All contractors and sub-contractors retained during construction must be provided with a copy of this Order and subsequent plans by the Applicant and should be prepared to produce the Order along with approved plans and supporting documents, upon request of the Conservation Commission. *No deviations from the plans are allowed herein without prior Commission approval.* All notes on the approved plans herein are adopted as additional conditions of this Order unless otherwise stated, except that where the Commission's Orders are more restrictive, they shall apply.

10. DEP Signage: A visible sign shall be displayed at the site, not less than two (2) square feet or more than three (3) square feet in size bearing the words "Massachusetts Department of Environmental Protection SE 54-" or "MA DEP SE 54-". Said sign is to remain in place until a Certificate of Compliance has been issued.

11. Silt Fence: If need is determined by the Commission, a continuous, securely staked fabric sedimentation barrier or other erosion control measures shall be installed along the Limit of Work and/or the access route as shown on the approved plan. *Five (5) days prior to construction, notice shall be given to the Conservation office that all sedimentation controls or other markings required by these Orders are in place and ready for inspection by the Conservation Administrator.* Properly installed sedimentation controls shall remain in place and be maintained throughout construction until the site is stabilized with vegetation and its removal has been permitted by the Commission or its Administrator. Additional erosion control measures may be required during construction activity, if needed, at the Commission or its Administrator's discretion.

12. Limit of Work: The Limit of Work as shown on the plan shall be clearly marked by stakes or by installation of a sedimentation barrier/silt fence, and be inspected and approved by the Commission or its Administrator prior to commencement of construction, and shall remain in place and in good order until all disturbed areas have been revegetated. *No work shall take place within the buffer zone or resource area outside the Limit of Work as marked on the plan without further approval by the Commission or its Administrator.*

13. Excavated Materials: All excess excavated materials shall be stockpiled per approved plan and as far from the resource area as possible. Excess materials shall be removed from the site upon completion of grading/construction. In no event shall excavated materials or additional materials brought on the site be stock piled less than 25' from the edge of a wetland or resource area unless approved by the Commission for special purposes.

14. Fertilizer Use: No fertilizer is permitted within 100' of a Resource Area per Town of Orleans General By-Law Chapter 103. If lawn and/or shrub fertilizers are used, in accordance with the exemptions allowed under Chapter 103, extreme care must be exercised to avoid contamination into the wetlands or groundwater.

15. Roof Runoff: Gutters and downspouts to drywells, or stone trenches at the roof drip line, are to be utilized to contain roof runoff. Drywell capacity should be able to accommodate a 2" rainfall in a 24-hour period. The size and location of the drywells shall be identified on the plan.

16. Vegetation Mitigation: All areas disturbed during construction are to be revegetated with suitable native plant materials according to the approved plans. Revegetation shall commence immediately upon completion of construction, unless otherwise addressed by an approved land management or landscape plan, and is to be completed by the beginning of the first growing season following completion of construction. Planting plans must be completed as part of this Order. Plants will be placed to ensure good coverage for the type and size of plant. More plants may be required than are shown on the planting plan and plants installed will be maintained and replaced until they have survived. Said vegetation and plants shall be successfully established, through multiple growing seasons, before a Certificate of Compliance can be granted.

17. Right of Entry: The Conservation Commission and/or its Administrator shall have the right of entry, during the period of the open Order, to inspect the property to determine and evaluate compliance with the provisions of this Order.

18. Violations: Failure to comply with any Conditions set forth herein shall be deemed a violation and good cause, after notice and an opportunity to be heard, to revoke or modify this Order, to impose fines of up to \$300 per day per violation, to impose a stop work Order, or to require mitigation or such other measures as are legally justified. *Owners, contractors, and sub-contractors will be liable for any violation of these Orders.*

In issuing these Orders, the Commission has relied on the information and data provided by the Applicant. If, subsequent to the issuance of this Order, such information and data prove to be false, incomplete, or inaccurate, this Order may be modified or revoked in whole or in part and the Commission may institute appropriate legal proceedings.

Facts, Findings, and Special Conditions for Order SE 54-2574**8/2/22****FACTS**

The applicant is Orleans Conservation Trust. The applicant submitted a Notice of Intent (NOI) for work at 4 Braddock's Wy, Orleans (Map 49, Parcel 50) that was received by the Conservation Office on 2/25/22.

The Notice of Intent was filed by Coastal Engineering Company, and Wilkinson Ecological Design on behalf of the applicant for the proposed vegetation management within the 100' buffer zone to the Edge of Wetland and a Coastal Bank, on a Coastal Bank, within Land Subject to Coastal Storm Flowage, and within the Pleasant Bay ACEC.

The Public Hearing was advertised on 3/4/22 and the hearing was opened on 3/15/22. The Conservation Commission held the initial public hearing on 3/15/22 and, after discussion, voted to continue the hearing to 4/5/22. The Commission received written continuance requests to 4/19/22 and 5/3/22. On 5/3/22, after discussion, the Commission voted to continue the hearing to 6/7/22. The Commission received written continuance requests to 6/21/22, 7/5/22, and 7/19/22.

On 7/19/22 the Conservation Commission voted (6-1-0) to close the Public Hearing.

On 8/2/22 the Conservation Commission, after review and final discussion, voted to issue an Order of Conditions for the proposed project including the following Findings and Special Conditions.

The following list of documents reflect the final project as reviewed by the Commission and represent the project that seeks an Order of Conditions under the ***Massachusetts Wetlands Protection Act (Act) and the Orleans Wetlands Bylaw (Bylaw)***:

1. Plan Showing Proposed Land Management Activities by Coastal Engineering Co., dated 6/28/22
2. Restoration Plan by Wilkinson Ecological Design, dated 7/13/22
3. Land Management Plan by Wilkinson Ecological Design, dated 7/13/22
4. Site Section by Wilkinson Ecological Design, dated 7/13/22
5. Performance Standard Narrative by Wilkinson Ecological Design, dated 7/13/22
6. Vegetation Observation Plot Data by Wilkinson Ecological Design, dated 6/28/22
7. Natural Heritage and Endangered Species Program email, dated 7/26/22

The following is a list of correspondence received by the Conservation Commission during the open Public Hearing for the proposed project:

1. Nutter, McClennen & Fish LLC letter, dated 3/15/22
2. Natural Heritage and Endangered Species Program letter, dated 3/17/22
3. Independent Environmental Consultants, Inc. letter, dated 4/7/22
4. Nutter, McClennen & Fish LLC letter, dated 5/13/22
5. Natural Heritage and Endangered Species Program letter, dated 5/19/22
6. Nutter, McClennen & Fish LLC letter, dated 7/18/22

7. Wilkinson Ecological Design Requests for Continuance, dated 4/4/22, 4/18/22, 6/15/22, 6/29/22

FINDINGS

- A. The Commission finds that the NOI, and all the accompanying documents listed above constitute a complete filing. The Commission finds that the applicant did not file a Variance Request, seeking relief from applicable regulations, with the NOI. Furthermore, after review of all material submitted at the Hearing, the Commission did not require a Variance be filed after the Public Hearing was opened on 3/15/22.
- B. The Commission finds that the proposed vegetation management lies partially on a **Coastal Bank**, as defined in 310 CMR 10.30(2), and OWR 196A-4, and is subject to performance standards detailed in 310 CMR 10.30. The Commission acknowledges that the Coastal Bank on the property acts as both a vertical buffer and a sediment source. The Commission recognizes that the proposed project will not inhibit the Coastal Banks' ability to provide either sediment or Storm Damage Prevention. Specifically, the Commission finds that no alteration to the Coastal Bank will take place other than vegetation management and the removal of an existing boathouse/structure. At the completion of this project, the Coastal Bank will continue to act as a vertical buffer by remaining vegetated and stable, and will continue to be a source of sediment, thereby still providing the same level of **Storm Damage Prevention and Flood Control**. Furthermore, the removal of the boathouse/structure, will provide additional benefits and functions to this Resource Area that it is located within.
- C. The Commission finds that the proposed vegetation management lies partially within **Land Subject to Coastal Storm Flowage (LSCSF)**, as defined in 310 CMR 10.02(1)(d) and a **Resource Area**, as defined in OWR 196A-2.A.(5). Specifically, the Commission finds that per the FEMA FIRM Map, dated 7/16/14, the flood zones present on the proposed project site are the Flood Zone AE and Flood Zone X and that there is no Velocity Zone or Coastal A-Zone on the applicant's proposed project site. Lastly, the Commission finds the proposed vegetation management is subject to the performance standards of **LSCSF** detailed in OWR 196A-9A. Through the materials submitted and detailed above and through testimony during the Public Hearings, the applicant has specifically addressed the performance standard 196A-9A(C)(2) that prohibits a proposed project from creating the likelihood of a reduction in the ability of the land to buffer more inland areas from flooding and wave damage. No fill or re-grading is proposed for LSCSF and therefore the Flood Zone AE on the project site will continue to protect the state and local Wetland Interests including but not limited to **Flood Control, Storm Damage Prevention, Prevention of Pollution, and Erosion and Sedimentation Control**.
- D. The Commission finds that the proposed vegetation management lies partially within the **Pleasant Bay Area of Critical Environmental Concern (ACEC)**, an area uniquely designated by the Secretary of Energy and Environmental Affairs (310 CMR 10.24(5)(a)), and a **Resource Area** designated in OWR 196A-2(6) and subject to performance standards detailed in OWR 196A-8. The project applicant, the Orleans Conservation Trust, has permanently protected these 3.74 acres from development. This application, with its proposed boathouse/structure removal in the ACEC, will completely un-develop this parcel, allowing it to remain open and

undeveloped in perpetuity. While this NOI proposes work to part of the parcel, a large portion of the parcel remains in its natural state and undisturbed (Wilkinson Ecological Design Site Section, 7/13/22). Given the facts and materials presented to date, the proposed project will not adversely affect the ACEC Resource Area. The proposed project, when complete, shall only provide additional benefits and functions to the Area of Critical Environmental Concern that it is located within.

- E. The Commission finds that the proposed vegetation management lies partially within the Estimated Habitat of Rare Wildlife and is therefore subject to MA Endangered Species Act review (321 CMR 10.18). The 3.74-acre parcel is home to many types of wildlife, the MESA program staff has identified the Diamondback Terrapin, a state Threatened species, to be present on this site. The proposal to complete extensive habitat restoration, for Diamondback Terrapin, as detailed on the Wilkinson Ecological Design Restoration Plan and Land Management Plan, will provide an improved habitat condition for the species and therefore will be a benefit to **Wildlife Habitat**, a Wetland Interest, and specifically, the Wildlife Habitat of a threatened species. Notably, the removal of existing boat house will create new Wildlife Habitat where none or severely degraded habitat presently exist due to the structure's location. To further these findings, on 3/17/22, 5/19/22, and 7/26/22 the Natural Heritage & Endangered Species Program determined that this project will not adversely affect the actual Resource Area Habitat of state-protected rare wildlife species.
- F. The Commission finds that the proposed vegetation management lies partially within the **100' Buffer Zone** to the Top of a Coastal Bank and is therefore subject to OWR 196A-7. The Commission finds that the proposed project within the buffer zone will not alter the Resource Areas protected by the Wetlands Protection Act. The Commission cites the significance of vegetation in the entire 100' buffer zone in the **Prevention of Pollution, Erosion Control, Wildlife Habitat, and Aesthetics, Wetland Interests (OWR 196A-7(3))**. The applicant proposes vegetation management, including re-vegetation, in the entire 100' buffer zone so that it will continue to protect the state and local interests and provide additional benefit and function to this buffer zone. The Commission finds that any temporary disturbance due to nonnative species removal in the buffer zone is being properly mitigated via temporary sediment and erosion control methods while revegetation is taking place and getting established.
- G. In summary, The Commission finds that, the Applicant, through the Public Hearing, has presented to the Commission clear and convincing evidence and was able to demonstrate that all State and Local Wetland Interests will be protected. Furthermore, with the approved plans and findings detailed above, the Commission finds that the proposed vegetation management will sufficiently address the Interests protected by the Wetlands Protection Act or Orleans Wetlands Bylaw. **Specifically, the Commission hereby approves the project with the following Special Conditions:**

SPECIAL CONDITIONS

1. A Pre-Construction meeting shall take place before any work under this Order shall proceed. The Conservation Agent, applicant, and applicant's contractors, at a minimum, shall be required to be in attendance to review and understand planned work protocols before work begins.
2. Work related to the removal of the boathouse shall only be allowed to take place between Nov. 1 and Apr. 1 under this Order. The boathouse removal shall follow the work protocol detailed by the Wilkinson Ecological Design (WED) Restoration Plan dated 7/13/22.
3. Work related to vegetation management, specifically the initial removal of vegetation, shall only be allowed to take place between Nov. 1 and Apr. 1 under this Order.
4. All native trees, including saplings, shall remain, except for those native trees and saplings that are located within proposed turtle nesting sites. If a native tree must be removed for a specific purpose (health/location/etc.) they must be reviewed and approved by the Conservation Administrator before being removed. The prohibition of the removal of native trees and saplings shall not apply to Area 3 (WED Land Management Plan, 7/13/22), the area proposed for transition to a warm season grass meadow specifically for the benefit of Wildlife Habitat for the threatened Diamondback Terrapin, where trees and saplings are planned to be flush cut or coppiced and allowed to regenerate for the creation of this habitat.
5. The work detailed in the Restoration Plan and Land Management plan by Wilkinson Ecological Design (WED), both dated 7/13/22, shall be completed by WED, or, if another contractor wishes to complete this work, he or she must meet with the Commission in order to be qualified.
6. Any change or additional pathways not shown on the plans, shall require Conservation Commission approval.