

**THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT**

BARNSTABLE, ss.

SUPERIOR COURT DEPARTMENT

**CAPE CLUB BUILDING, INC.
AND
MEGANSETT BY THE BAY, LLC**

PLAINTIFFS

v.

**TOWN OF BOURNE CONSERVATION
COMMISSION**

DEFENDANT.

**PETITION FOR CERTIORARI PURSUANT TO M.G.L. c. 249, § 4; AND FOR
DECLARATORY JUDGMENT, PURSUANT TO M.G.L. c. 231A, § 1**

INTRODUCTORY STATEMENT

1. The Plaintiffs, Megansett By the Bay, LLC (“Megansett”), and Cape Club Building, Inc. (“Cape Club”) (hereinafter collectively referred to as “Plaintiffs”) bring this action pursuant to M.G.L. c. 249, § 4 in the nature of certiorari and seeking equitable relief, against the Defendant Town of Bourne Conservation Commission (“Commission”), seeking judicial review of the Commission’s administrative review of a Notice of Intent (“NOI”) filed by Cape Club as the applicant and Megansett as the owner of 96 Megansett Road, Bourne, MA (“Site”) under the Town of Bourne Wetland Protection Bylaw (Article 3.7, “Bylaw”) and associated Regulations.
2. This Complaint seeks relief from the Commission’s OOC, in which the Commission issued a ruling on September 1, 2023, regarding the NOI application for construction of a seasonal walkway, pier, ramp, and float (“Project”) extending from the Site into what is known as

Squeteague Harbor. The OOC approved the Project under the state Wetlands Protection Act and its Regulations, but denied the Project under Article 3.7, the local Bourne Wetlands Protection Bylaw (“Bylaw”), and under the Bourne Wetlands Regulations (“BWR”).

3. The OOC finds that the Project would not comply with specific provisions of the Bylaw and BWR, primarily relying on speculation and public comments asserting that the Project would have an adverse impact on or would impair protected wetlands resources.
4. The issuance of the OOC denying the Project under the Bylaw was not based on substantial evidence and is contrary to the only expert evidence in the record, and purports to be based on speculation from the public and members of the Commission as evidence that the Project will not comply.
5. The Commission may not simply reject an expert opinion with no basis. The Commission may only discount an expert opinion if there is an explicit and objectively adequate reason in the record.
6. There is no such objectively adequate reason in the record.
7. The Bylaw purports to protect interests including navigation, which is an interest already regulated and protected under M.G.L. c. 91 and its associated Regulations at 310 CMR 9.00 et seq.
8. In Count I, Plaintiff seeks certiorari review of the OOC under the local Bylaw, and a finding invalidating the Commission’s denial as ultra vires, arbitrary and capricious, as inconsistent with and not supported by substantial evidence in the record, and the result of an error of law.
9. In Count II, Plaintiff seeks Declaratory relief from the Court determining that the provisions of the local Bylaw purporting to regulate piers and other structures wrongfully infringe upon the Plaintiff’s protected right to “wharf” out and have navigational access from its property.

PARTIES

10. The Plaintiff, Megansett by the Bay, LLC, is the owner of the Property at 96 Megansett Road (the “Site”) and has a mailing address of 100 Cape Club Drive, Sharon, MA 02067.
11. The Plaintiff, Cape Club Building, Inc., is the Applicant for the permit and has a mailing address of 25 Tiot Street, Sharon, MA 02067.
12. The Defendant, Town of Bourne Conservation Commission (“Commission”), is the duly constituted body charged with implementing the Town of Bourne Wetland Protection Bylaw (“Bylaw”), Article 3.7, and its Bourne Wetlands Regulations (“BWR”) 1.0.

JURISDICTION

13. The Superior Court has jurisdiction under M.G.L. c. 249, § 4 as this is a case involving a civil action in the nature of certiorari to correct errors in proceedings before a municipal body, where such proceedings are not otherwise reviewable by motion or appeal. The Court may enter judgment quashing or affirming such proceedings or such judgment as justice requires.
14. The Court also has jurisdiction under M.G.L. c. 231A, § 1 to issue Declaratory Judgment and grant equitable relief.
15. The Plaintiffs seek to correct errors in the proceeding before the Bourne Conservation Commission, which errors are contrary to the Bylaw and inconsistent with and contrary to the provisions set forth in the Massachusetts Wetland Protection Act and its implementing regulations that are referenced in and incorporated into the local bylaw and its regulations, as well as inconsistent with and contrary to G.L. c. 91 and its implementing regulations, 310 CMR 9.

16. There is no other appeal or review available to Plaintiffs to challenge the Commission's decision under the Bylaw, and that decision has resulted in substantial injury and manifest injustice to the Plaintiff.

FACTUAL ALLEGATIONS

17. Megansett is the owner of the Site and Cape Club filed a Notice of Intent ("NOI") for the Project as the Applicant.
18. Cape Club filed the NOI on September 21, 2021.
19. The NOI application sought approval for the installation and maintenance of a seasonal walkway, pier, ramp, and float extending from the Site into Squeteague Harbor. The work is proposed adjacent to and within resource areas regulated under the WPA and the Bylaw, including the 100-foot Buffer Zone to a stable, non-eroding Coastal Bank, the 200-foot Riverfront Area associated with the Squeteague Harbor, the 100-foot Buffer Zone to Salt Marsh, the 100-foot Buffer Zone to Coastal Beach, and within Land Subject to Coastal Storm Flowage ("LSCSF").
20. The Site was previously developed as a summer camp running from 1946 to 2008, with several structures, hardscaping, landscaping, and septic, but has been approved for redevelopment as a single-family residence with associated structures in a separate OOC.
21. The Project proposes a seasonal structure in accordance with the Bylaw and BWR, consisting of the following:
- a. 63.5-foot-long, 4-foot-wide walkway extending from a previously approved covered sitting area located at the upland edge of the Salt Marsh over the Salt Marsh and connecting to a

- b. 68.6-foot-long, 4-foot-wide pier extending from the seaward edge of the Salt Marsh into Squeteague Harbor and connecting to a
 - c. 3 feet by 16 feet (48 square foot) ramp connecting to a
 - d. 8 feet by 12 feet (96 square foot) float.
- 22. The engineer designed the pier specifically to meet the objective standards set by the Commission in its local regulations (the “BWR”), with distance setbacks to Salt Marsh, depth of water at the float and other details dictated by the BWR.
- 23. The Commission first opened its review of the NOI on October 7, 2021, and requested a peer review of the Project.
 - a. During the October 7, 2021 hearing, the then-Conservation Agent stated that the width of the waterbody should be measured straight across the channel, rather than at an angle. In addition, the agent referred to the length of the pier as measured from the surveyed mean high-water line in determining whether the pier would exceed the 1/5 limit under BWR Section 1.16(e)2.
- 24. The peer reviewer was retained on or around October 18, 2021.
- 25. The Commission held a site visit on October 25, 2021, and the Applicant’s experts and the peer review consultant performed an additional site visit during that same time period, with revised project materials submitted to the Commission.
- 26. During the November 4, 2021 hearing, the Applicant presented the revised project.
 - a. The revisions included the Applicant’s analysis of the project under BWR Section 1.16(1)(e)2, a provision limiting the length of the pier as compared to the width of the water body. The Applicant defined the width of the waterbody as measured from mean high water line to mean high water line and the length of the pier as extending from the

Mean High Water line to the edge of the proposed float, as specified by Section 1.16(1)(e)(1) based on the October 7, 2021 comments.

27. The Applicant received peer review comments on November 12, 2021 and on December 9, 2021, and responded on November 18, 2021 and on or around December 9, 2021.
- a. The peer review comments included the assertion that the width of the waterbody should be calculated based on BWR Section 1.04 defining “Land Under Water bodies and Waterways” by reference to 310 CMR 10.56(2), which defines the boundary of Land Under Water and Waterways as mean annual low water. The comments requested that the Applicant demonstrate that the pier length was not more than 1/5 of the width of the waterbody from mean low water to mean low water.
 - b. The peer review comments also included reference to whether the proposed pier would be more than 100 feet from a mooring.
28. During the November 18, 2021 hearing, the Applicant discussed how the width of the waterbody was measured from mean high water to mean high water. The peer reviewer reiterated its assertion from the comment letter as to how the width of the waterbody should be determined.
29. During the December 2, 2021 hearing, the parties continued discussing how to apply BWR Section 1.16(e)2 regarding determining the width of the waterbody.
30. After a series of continuances, the next Commission hearing regarding the permit application was held on November 3, 2022.
- a. The Applicant summarized the revisions made based on the July 21, 2022 revisions to BWR Section 1.16, including relocating the proposed pier about 100 feet, to a wider portion of the waterbody.

- b. A Commission member then raised questions as to where to measure the width of the waterbody given that the proposed pier did not extend into the waterbody at a 90-degree angle, asking if the waterbody width should be measured at a 90-degree angle from the location where the pier starts or from the location where the pier ends.
- 31. The Applicant submitted an updated narrative on January 11, 2023 for the Project.
- 32. During the January 19, 2023 hearing, the Applicant discussed the revisions made, including measuring the width of the waterbody from mean low water to mean low water so as to address concerns previously raised, demonstrating that the proposed pier does meet the requirements under BWR Section 1.16(e)2. The Applicant also has documented that measurement of the width of the waterbody from Mean Low to Mean Low is consistent with Federal Army Corps of Engineers and MassDEP criteria.
 - a. Commission members noted that the Applicant showed that the project met the 1/5 distance requirement, raising questions about water depth requirements and the distance to mooring requirements.
 - b. The Commission agent clarified during the meeting that the revision measuring the width of waterbody from mean low water to mean low water was done in response to the agent's request to base the measurement on the definition of land under water body.
- 33. After turnover of members in the Commission, the Commission could no longer meet the requirements of the Mullin Rule.
- 34. The Project was re-advertised and abutters re-notified, so that the hearing process could restart on July 20, 2023.

35. The Applicant re-presented the NOI to the Commission on July 20, 2023. The Applicant noted that the pier met the requirement to extend less than $\frac{1}{5}$ the distance of the waterbody, measured from mean low water to mean low water.
36. The Applicant submitted revised plans and materials on August 11, 2023 to respond to the comments raised at the July 20, 2023 hearing.
37. The final hearing was held on August 17, 2023. During the hearing, the Applicant reiterated that the measurement of the waterbody from mean low water to mean low water was done at the direction of the Commission.
- a. The Commission raised the potential for the Applicant to additionally demonstrate that the proposed pier meets the requirement to extend less than $\frac{1}{5}$ of the width of the waterbody with the width calculated based on the narrowest point of the waterbody, not just to demonstrate that the pier meets the requirement as shown on the current plan.
 - b. The Applicant requested the opportunity to respond to the assertions made by the public and to respond to the concerns of the Commission.
38. The Commission closed the hearing on August 17, 2023, and after its August 31, 2023 meeting issued the OOC on September 1, 2023, approving the Project under the WPA, but denying it under the local Bylaw.
39. The OOC found the following proposed resource area impacts:
- a. 4.5 square feet of alteration to Land Under Ocean;
 - b. 3.5 square feet of alteration to Salt Marsh;
 - c. 4.5 square feet of alteration to Land Containing Shellfish;
 - d. 4.5 square feet of alteration to Land Subject to Coastal Storm Flowage; and

- e. 5 total square feet of alteration to Riverfront Area, 2.5 square feet of which is proposed in the Inner Riparian Zone and 2.5 square feet of which is proposed in the Outer Riparian Zone.
- 40. The Commission held that under the Bylaw, the Project would not comply with the requirements of Section 3.7.4.
 - a. The evidence supporting this finding appears primarily based on comments from members of the public asserting that the Project would impair the recreational/commercial use of the Squeteague Harbor waterway.
- 41. The Commission held that under the Bylaw, the Project would not comply with the requirements of BWR Section 1.16(e)16.b, requiring a 100-foot setback from moorings, finding that the Project would affect navigation and therefore adversely affect resource area values.
- 42. The Commission held that under the Bylaw, the Project would not comply with the requirements of BWR Section 1.16(1)(e)2, regarding the length of the pier as compared to the width of the water body.
- 43. This Complaint seeks relief from the Commission's OOC under the Bylaw, on the grounds that the OOC is ultra vires, arbitrary and capricious, an error of law, and an abuse of discretion.
- 44. The Plaintiff seeks relief from the Court as there is no alternative route for relief available under the Bylaw.
- 45. This Complaint is timely filed, within sixty (60) days after the issuance of the OOC.

COUNT I (Certiorari, M.G.L. c. 249, § 4)

**The Commission's Decision is Ultra Vires, Exceeding Its Authority, Not Supported By
Substantial Evidence in the Record, and is Arbitrary, Capricious, and an Abuse of
Discretion**

46. Plaintiff realleges and incorporates herein all allegations made in paragraphs 1 through 45 above.

47. The Project as proposed complies with the WPA and the Bylaw.

48. Bylaw Section 3.7.4 is the Definitions section of the Bylaw, incorporating by reference the definitions contained within the WPA and its Regulations.

- a. Section 3.7.1 defines the wetlands resource values protected under the Bylaw as public and private water supplies, groundwater supplies, flood control, storm damage prevention, pollution prevention, fisheries and shellfisheries, wildlife habitat, erosion and sedimentation control, and recreation and/or commercial uses.
- b. "Adverse effect" is defined as any change in the quality of a wetland resource area that causes a diminishment in its ability to provide the wetland resource values protected by this Bylaw.
- c. "Impair" is defined as to make or cause to become worse; weaken or damage. Projects must be designed so as to not significantly impair the wetland resource areas, buffer zones, and/or the wetland resource values protected under the Bylaw.
- d. "Recreational and/or Commercial Use" is defined as meaning the purposes for which the wetland resource area is used by the public, including navigation, fishing, hunting, shellfishing, swimming, water skiing, diving, walking, etc.

49. The Commission ruled based on public comments and speculation, that a pier extending from a private property owner's shoreline which fully complies with the dimensional requirements of the BWR and which would provide recreational access to the Squeteague Harbor waterway to that property owner, must be denied approval to protect the waterway for its value for public recreational and/or commercial use.
50. BWR Section 1.16(e)16.b requires that no portion of the pier and floats shall be within one hundred (100) feet of a navigation channel or one hundred (100) feet from the location of any mooring anchor to the nearest edge of the float or pier if no float.
51. The Commission found that the Project would not comply with Section 1.16(e)16.b because the proposed float is not located more than 100 feet from all moorings. The Commission found that the closest outhaul mooring is approximately 48.7 feet away, with an additional mooring 90.8 feet away from the proposed edge of the float.
52. Each of the findings above regarding distance to the moorings is a mixed error of fact and law, to wit:
- a. Although local standards may be more stringent than state standards protecting a regulated area, the local standards may not be inconsistent with or contravene a state standard.
 - b. The Property has the right to "wharf" out and to navigate to and from the tidal waters, dating back to the Colonial Ordinances of 1641 and 1647, codified in G.L. c. 91 and its Regulations at 310 CMR 9.00 et seq.
 - c. The state standards call for, where feasible, a setback of 50 feet, 25 feet from each side of a common lot line, between the ends of docks and piers, but impose no setback from a mooring to a fixed pier.

- d. The Project complies with the state standard for safe setbacks, and no special local conditions exist that warrant different standards.
 - e. Under the Bourne Waterways Rules and Regulations, a mooring is defined as “any semi-permanent anchorage installation, consisting of a heavy anchor, a mooring buoy, and a pennant.”
 - f. Under the Bourne Waterways Rules and Regulations, an outhaul mooring is defined differently from a mooring as “a chain, line, or other device by which an object is secured in place seaward of the Mean High Water (MHW) Line.”
 - g. In a hearing conducted by the Commission on a later date, the Chair of the Commission spoke publicly about the history of these regulations, and stated specifically his belief that outhaul moorings are different from moorings and were never intended to have the 100-foot setback from piers applicable to them.
 - h. The Commission, therefore, erroneously based its denial on the lack of 100 foot setback between the pier and the adjacent outhaul mooring.
53. BWR Section 1.16(1)(e)2 requires that no pier shall be allowed where the length of the pier extends more than 1/5 of the way across a waterbody.
54. The Commission found that the Project does not comply with Section 1.16(1)(e)2, based on their assertion that the Applicant must take such measurements from multiple different angles and locations, including from the narrowest section of the waterway at mean low water, to demonstrate compliance with this requirement.
- a. The plain language of the provision is as follows: “Notwithstanding the provisions of BWR 1.16(1)(c)1., no pier shall be allowed where the length of the pier extends more than 1/5 of the way across a waterbody.”

- b. The Applicant initially measured the length of the pier from the Mean High Water line to the edge of the proposed float, as specified by Section 1.16(1)(e)(1), calculated at approximately 62.2 feet from Mean High Water to the edge of the proposed float.
 - c. Pursuant to rules of statutory construction and interpretation, where subsection (e)1 defines pier length as not exceeding one hundred twenty-five (125) feet in length beyond the Mean High Water line, subsection (e)2 should be read in harmony with the prior subsection as calculating the length of the pier across the water body from Mean High Water.
 - d. Notwithstanding the Applicant's above-stated stance, the Applicant performed additional measurements from Mean Low Water, extending perpendicularly across the waterbody from each edge of the proposed float location.
 - e. The shortest measured waterbody width measured from Mean Low Water to Mean Low Water is 227.6 feet.
 - f. The proposed length of the pier as measured from Mean Low Water is 45.5 feet, which is approximately 19.9% or just under 1/5 of the way across Squeteague Harbor.
55. The Applicant demonstrated compliance with the provision even under the Commission's interpretation.
56. After the Applicant demonstrated that compliance, the Commission adjusted its interpretation yet again to require that the compliance be based on measurements of the waterbody width taken at different angles and locations and the pier's compliance with each and every measurement in order to comply with the regulation.
57. The Commission's decision is not based on the substantial evidence in the record demonstrating the Project's compliance with the Bylaw and BWR, it is instead based on

arbitrary and capricious reinterpretations of the meaning and interpretation of the Commission's own rules in an attempt to find the most onerous interpretation possible to block this project.

58. The Commission bowed to public pressure and speculation and the obviously manufactured allegations from the public about impacts to recreational/ commercial uses of Squeteague Harbor, and disregarded without explanation the competent, technical expert evidence presented in support of the project.

59. The Applicant demonstrated with substantial evidence that the Project was designed to comply with the objective Bylaw standards and to protect the wetland resource values, including that the Project met the Commission's shifting interpretations of its standard calculating the distance a proposed pier extends across a waterbody.

60. The Commission ignored the evidence submitted by the Applicant despite not having evidence in the record demonstrating otherwise.

61. The Commission has relied on personal opinion and speculation in issuing the OOC finding that the Project would interfere with the protected wetland resource value of recreation and/or commercial use of Squeteague Harbor.

62. The Commission's re-interpretation of its Bylaw and BWR on several occasions during the hearing process for this application was arbitrary and capricious and intended to ensure that the Applicant could not comply with the requirements of the Bylaw and BWR.

63. The Commission's interpretation of its Bylaw and BWR so as to prohibit the Project is arbitrary and capricious, pretextual, ultra vires, and an error of law.

64. The Commission gave no basis for disregarding the substantial evidence in the record and substituted its own views and arbitrary standards to support its OOC findings.

65. The Commission's OOC is inconsistent with its obligation to make a fact-based ruling guided by the substantive standards of the WPA, its Regulations, and the Bylaw.

66. The Commission's OOC was an error of law under the state statute and state regulatory standards that it incorporated by reference into the Bylaw's review standards.

COUNT II (Declaratory Judgement, M.G.L. c. 231A, § 1)

Where the Bylaw Purports to Protect the Recreational and/or Commercial Uses, Including Navigation, the Provisions of the Bylaw are Inconsistent With the Governing State Statutes and are Preempted by Such Statutes

67. Plaintiff realleges and incorporates herein all allegations made in paragraphs 1 through 66 above.

68. Plaintiff seeks declaratory relief pursuant to M.G.L. c. 231A, § 1.

69. The Commission has used the Bylaw protected interest of "navigation" as a pretext to block navigation from the Plaintiff's property and its exercise of its rights to "wharf" out and navigate to and from its property.

70. The local Bylaw, because it has been used to block navigation by creating unreasonable setbacks to the proposed pier that otherwise meets the national and State standards, is inconsistent with and contrary to a State law standard and therefore beyond the authority of the Town under the Home Rule Amendment.

71. Under the Home Rule Amendment and G.L. c. 43B, Section 13 a municipality shall not enact a local rule that is "inconsistent with the constitution or any laws enacted by the general court."

72. There is actual controversy with respect to which the Plaintiff is entitled to a declaration of its rights against the Commission.

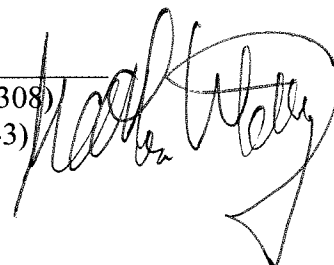
WHEREFORE, the Plaintiff hereby respectfully requests this Court, pursuant to M.G.L. c. 249, § 4 and M.G.L. c. 231A, § 1, to:

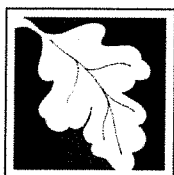
1. Review the record of the proceedings and rule that the Commission's OOC denying the Project was unsupported by substantial evidence in the record and an error of law, and therefore reversed; and
2. Rule that the Commission's OOC was ultra vires, arbitrary and capricious, and therefore unenforceable; and
3. Declare that the Bylaw as it purports to protect and regulate recreational and/or commercial navigation within Commonwealth waters and as it was applied to this proposed pier is not a valid exercise of the Commission's power and thus such provisions are stricken; and
4. Declare that the Plaintiff has complied with all reasonable performance standards under the Bylaw; and
5. Enter judgment reversing the Commission's OOC denial of the Project;
6. Enter judgment issuing an OOC approving the project under the local Bylaw; and
7. For such other and further relief as the Court shall deem, meet and just.

Respectfully submitted,
Plaintiffs Megansett By the Bay, LLC, and
Cape Club Building, Inc.,
By their attorneys,

Dated: October 27, 2023


Matthew Watsky, Esq. (BBO #546308)
Rachel Watsky, Esq. (BBO #704043)
30 Eastbrook Road, Suite 301
Dedham, MA 02026
(781) 329-5009
matt@watskylaw.com
rachel@watskylaw.com





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 Mass DEP:

SE7-2172

MassDEP File #

eDEP Transaction #

Bourne

City/Town

A. General Information (cont.)

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

Barnstable

a. County

34264

c. Book

b. Certificate Number (if registered land)

153

d. Page

7. Dates: 09/12/21 8/17/2023 9/01/2023
a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance

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

Proposed Pier Plan

a. Plan Title

Cape & Islands Engineering, Inc.

b. Prepared By

8/11/2023

d. Final Revision Date

Mark Dibb, P.E. Matthew C. Costa, P.L.S.,
R.S.

1"= 20'

e. Scale

f. Additional Plan or Document Title

g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

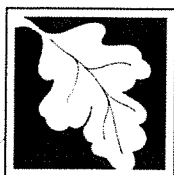
Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act).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

WPA Form 5 – Order of Conditions

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

Provided by Mass DEP:

SE7-2172

MassDEP File #

eDEP Transaction #

Bourne

City/Town

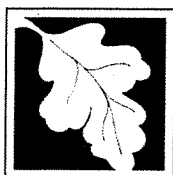
B. Findings (cont.)

Denied because:

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

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

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



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 Mass DEP:

SE7-2172

MassDEP File #

eDEP Transaction #

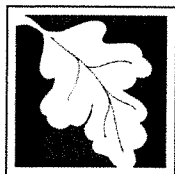
Bourne

City/Town

B. Findings (cont.)

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

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. ☐ Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. ☒ Land Under the Ocean	<u>4.5</u> a. square feet	<u>4.5</u> b. square feet		
	<u> </u> c. c/y dredged	<u> </u> d. c/y dredged		
12. ☐ Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. ☐ Coastal Beaches	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. nourishment	<u> </u> d. nourishment
14. ☐ Coastal Dunes	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. nourishment	<u> </u> d. nourishment
15. ☐ Coastal Banks	<u> </u> a. linear feet	<u> </u> b. linear feet		
16. ☐ Rocky Intertidal Shores	<u> </u> a. square feet	<u> </u> b. square feet		
17. ☒ Salt Marshes	<u>3.5</u> a. square feet	<u>3.5</u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
18. ☐ 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. ☒ Land Containing Shellfish	<u>4.5</u> a. square feet	<u>4.5</u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
20. ☐ 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. ☒ Land Subject to Coastal Storm Flowage	<u>4.5</u> a. square feet	<u>4.5</u> b. square feet		
22. ☒ Riverfront Area	<u>5</u> a. total sq. feet	<u>5</u> b. total sq. feet		
Sq ft within 100 ft	<u>2.5</u> c. square feet	<u>2.5</u> d. square feet	<u> </u> e. square feet	<u> </u> f. square feet
Sq ft between 100-200 ft	<u>2.5</u> g. square feet	<u>2.5</u> h. square feet	<u> </u> i. square feet	<u> </u> j. square feet



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 Mass DEP:

SE7-2172

MassDEP File #

eDEP Transaction #

Bourne

City/Town

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):

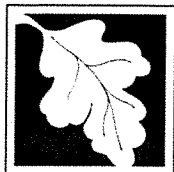
a. number of new stream crossings

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 _____ 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.



**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:

SE7-2172

MassDEP File #

eDEP Transaction #

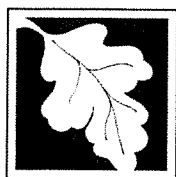
Bourne

City/Town

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 SE7-2172 "
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.



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 Mass DEP:

SE7-2172

MassDEP File #

eDEP Transaction #

Bourne

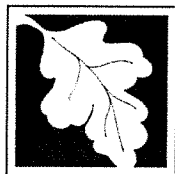
City/Town

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;



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 Mass DEP:
SE7-2172
MassDEP File #

eDEP Transaction #
Bourne
City/Town

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:

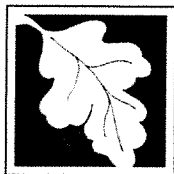
i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and

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.



**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:

SE7-2172

MassDEP File #

eDEP Transaction #

Bourne

City/Town

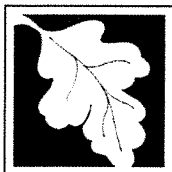
C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

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

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

See attached text

- 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.



**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:

SE7-2172

MassDEP File #

eDEP Transaction #

Bourne

City/Town

D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? ☒ Yes ☐ No
2. The Bourne 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:

Bourne Wetland Protection Bylaw

Article 3.7

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 reason for denial.

Applicant's Name: Cape Club Building, Inc.
Address: 96 Megansett Road

DEP # SE7-2172
Bourne #:

This Order of Conditions is being issued under the State Wetlands Protection Act only and is based upon strict accordance with the information submitted in the Notice of Intent filed on 09/12/21 and the Plan of Record tile: PIER AND DREDGE PLAN dated 09/14/21 REV. 8/11/2023 and stamped by Mark Dibb.

In addition to the GENERAL CONDITIONS referenced in the Order of Conditions, the Commission has found it necessary to impose the following Special Conditions pursuant to M.G.L. Ch. 131, s.40.

THE SPECIAL CONDITIONS AND BYLAW CONDITIONS CHECKED BELOW APPLY TO YOUR PROPOSAL. NOTE THAT THE ABOVE LISTED GENERAL CONDITIONS ARE AUTOMATICALLY PART OF THIS ORDER OF CONDITIONS.

SPECIAL CONDITIONS Pursuant to M.G.L. C. 131, s. 40.

*** (Pre-Construction) ***

- ☒ 1. This Order of Conditions shall apply to any successor in interest or successor in control of the property.
- ☒ 2. NO WORK SHALL BEGIN until General Condition #9 has been complied with. The Commission must be in receipt of the Registry information certificate BEFORE work begins. An Enforcement Order will be issued if work is prematurely begun without compliance with this condition.
- ☒ 3. ALL CONSTRUCTION MUST COMPLY WITH THE ABOVE-REFERENCED PLANS AND THE CONDITIONS OF THIS ORDER. ANY CHANGES INTENDED TO BE MADE IN THE PLANS OR IN THE WORK, SHALL REQUIRE THE APPLICANT TO FILE A NEW NOTICE OF INTENT, OR TO INQUIRE OF THE COMMISSION IN WRITING WHETHER THE CHANGE IS SUBSTANTIAL ENOUGH TO REQUIRE A NEW FILING. NO CHANGE IN PLAN OR WORK, UNDER THIS FILING IS PERMISSIBLE WITHOUT A NEW NOTICE OF INTENT, OR PERMISSION FROM THE COMMISSION. FAILURE TO COMPLY WITH THIS CONDITION WILL RESULT IN THE ORDER OF CONDITIONS (PERMIT) BEING REVOKED.
- ☐ 4. The Plan of Record shall be in full compliance with Appendix G of 780 CMR Massachusetts State Building Code and the requirements the Federal Emergency Management Agency (FEMA). Specific design requirements for construction in flood zones (A, A1-A30, AE, AC, AH, V1-V30, and VE) shall be determined by the Town of Bourne Building Inspector. The final foundation design APPROVED by the Building Inspector shall automatically become a part of the Plan of Record. Noncompliance with any of the requirements of Appendix G of 780 CMR or those of the Building Inspector shall constitute a violation of the Order of Conditions and will be grounds for Enforcement Action and/or the non-issuance of the Certificate of Compliance. Upon requesting a Certificate of Compliance the applicant must present PROOF that his/her project has been designed according to the Plan of Record and to the satisfaction of the Building Inspector.
- ☐ 5. Prior to the installation of the subsurface sewage disposal system, you are advised of the necessity to comply with, or receive a variance from, the local Board of Health Regulations & Bylaws and obtain a valid health permit. The Order of Conditions re-emphasizes this requirement and prohibits any construction prior to obtaining a Board of Health permit. A leaching facility must be 150' from any wetland resource area (including the top of the coastal bank) unless a variance or other approval has been granted by the Board of Health.
- ☐ 6. Since the building was or is to be constructed after August 10, 1978, and is or will be within 100' of the top of an eroding coastal bank, (310 CMR, 10.30), this Order and the Certificate of Compliance incorporate 310 CMR 10.30(5) which states: "no coastal engineering structure, such as a bulkhead, revetment, or seawall shall be permitted on an eroding bank at any time in the future to protect the project allowed by this Order of Conditions."

- ☒ 7. The applicant as a condition of this Order, grants to the Commission members, and agents of the Commission the right to enter, inspect, and sample the premises to evaluate compliance with the conditions and performance standards stated in this Order, the Act, and 310 CMR 10.00 and the Town of Bourne Wetlands Protection Bylaw Article 3.7, and may require the submittal of any data deemed necessary by the Commission for that evaluation.
- ☒ 8. An on-site pre-construction inspection meeting must be held between the Bourne Conservation Commission and/or agent, the contractor responsible for implementing the project, and if applicable, the outside consultant/representative responsible for permitting. The Bourne Conservation Commission must be contacted in writing at least two weeks prior to the scheduled meeting. All erosion controls must be installed at the location of the project prior to the pre-construction meeting, unless otherwise agreed upon by the applicant and the Bourne Conservation Commission.
- ☒ 9. The landowner and/or his contractor will notify the Commission in writing 5 days prior to the start of work. The letter shall state the name, address, telephone number (business & home phone) of the project supervisor who will be responsible for insuring on-site compliance with this Order. All sedimentation/erosion control devices shall be installed BEFORE the start of work.
- ☒ 10. This document shall be included in all construction contracts and subcontracts dealing with the work proposed and shall supersede other contract requirements.
- ☐ 11. No underground petroleum product storage tanks are allowed within 100' of any wetland or within any velocity (V) floodzone as indicated on the most recent FEMA floodzone maps.

*** (Construction) ***

- ☒ 12. The project engineer and contractors (and all subcontractors) must be informed of the conditions of this Order. A copy of this Order of Conditions must be available at all times at the construction site for reference. The Applicant is held responsible for compliance with this Order of Conditions.
- ☐ 13. Whatever erosion control measures are indicated on the plan, they shall consist of at least a double row of staked hay-bales and these must be maintained throughout the construction period. It is the applicant's responsibility to take additional appropriate measures to control sedimentation/erosion into the wetland areas.
- ☐ 14. The Applicant must employ and maintain suitable erosion control measures such as staked hay bales, siltation curtains, bark mulch, jute netting, etc. as shown on the Plan of Record and/or addressed in the Notice of Intent. This siltation control shall be maintained until all disturbed areas are successfully revegetated. Additional erosion controls shall be kept on-site in order to respond to unforeseen circumstances.
- ☐ 15. The applicant, owner, successors or assignees shall be responsible for maintaining any on-site drainage structures and out falls, assuring the lasting integrity of vegetative cover on the site and site activities so as to prevent erosion, siltation, sedimentation, chemical contamination or other detrimental impact to the on-site wetland resource area(s) and/or off-site wetland resource area(s). The maintenance activities specified in this Order shall not expire with the issuance of the Certificate of Compliance and shall continue in perpetuity. It is the responsibility of the property owner of record to see that maintenance conditions are complied with as required by this Order.
- ☐ 16. Gutters, downspouts and drywell must be installed to collect all roof runoff.
- ☐ 17. All drainage must be directed into a leaching type catch basin before being discharged towards or into any wetland or surface water body. All catch basins must incorporate measures to insure the removal of pollutants such as oil and gas and must provide for adequate sediment retention. The basins and oil absorbent material shall be regularly cleaned and maintained.

- ☒ 18. Any refuse material generated through the project construction will be removed to an approved landfill, and in no case will these materials be allowed to be buried or disposed of on site or on abutting property. REMOVAL MUST BE DONE WEEKLY DURING THE CONSTRUCTION PHASE OF THE PROJECT. REFUSE MUST NOT BE ALLOWED TO ENTER ANY WETLAND AREAS.
- ☒ 19. Used petroleum products from the operation or maintenance of construction equipment and construction debris shall be collected weekly and disposed of off-site at an approved landfill. No on-site disposal is permitted.
- ☒ 20. Only rubber tired or tracked vehicles utilizing swamp mats/planks will be permitted to traverse the following resource areas: beaches, dunes, and saltmarshes.
- ☐ 21. Use of heavy equipment shall be confined to inside the limit of work as shown on the Plan of Record. All work shall be accomplished from the UPLAND side of the limit of work line.
- ☐ 22. The use of heavy equipment upon the saltmarsh, dunes or coastal beach is PROHIBITED. All work within these resource areas must be done by hand or with suitable equipment approved by the Commission
- ☐ 23. The proposed stairs shall be elevated __ feet above the existing grade. All pilings should be supported by SONO tube footings. Excavated materials shall be removed from the coastal bank.
- ☐ 24. Driveway must be constructed out of pervious material in perpetuity.
- ☐ 25. A landscaping plan including the size, quantity, species and location of plantings including square footage of lawn, mulch, etc. must be submitted and approved by the Conservation Agent and/or the Commission prior to receiving the occupancy permit.
- ☐ 26. All vegetation must be predominantly native and non-invasive. All plants must be allowed to grow to maturity before pruning. All plantings will be monitored for a minimum of two growing seasons and any plants that do not survive must be replaced.

*** (Post Construction) ***

- ☒ 27. Upon completion of your project you must apply for a Certificate of Compliance. This Order will not be considered complied with until the Certificate of Compliance has been requested, granted and RECORDED at the Registry of Deeds in Barnstable. To insure timely issuance of the Certificate of Compliance you must request the Certificate within 30 days of the completion of your project.
- ☒ 28. Prior to the issuance of a Certificate of Compliance, the project engineer or consultant shall certify that the project has been completed in compliance with this Order and the original Plan of Record. Any variations from the approved plan should be clearly noted and reasons given to justify the noncompliance. (see Bylaw condition/requirement also)
- ☒ 29. An as-built plan, signed and stamped by a registered professional engineer or land surveyor in the Commonwealth of Massachusetts shall be submitted to the Commission at the same time as a written request for a Certificate of Compliance and shall specify how the completed plan differs from that shown on the plans referred to in the Order of Conditions. The as-built plan shall include, but not be limited to the following:

All pipe/culvert inverts for inflow and outfalls, pipe slope, size and composition; location

of other drainage structures; limits of fill or alteration; location of any structure and pavement within 100' of any wetland resource area (including the top of the coastal bank); the edge of each wetland resource area; the grade contours within 100' of the wetland resource areas

SPECIAL CONDITIONS pursuant to the Bourne Wetland Protection By-Law Article 3.7

- ☐ 1. The total lawn area for this lot shall not exceed ____ s.f. Lawn fertilizer is a known source of nitrogen loading, which causes pollution of coastal waters. Phosphates are known causes of freshwater eutrophication.
- ☐ 2. All new habitable buildings, and accessories thereto, shall be setback at least fifty (50) feet from any wetland resource area as per Article 3.7 Town of Bourne Wetlands Protection By-Laws unless the Commission has specifically approved a lesser setback distance.
- ☐ 3. A Minimum distance of 5 feet of natural vegetation (buffer zone) must be maintained between any resource area and altered area unless a greater buffer is specified under a previous Order .
- ☐ 4. No clear-cutting of standing trees, brush, or surface vegetation is allowed outside of the approved limit of work as shown on the approved Plan of Record. Any additional vista pruning or vegetation removal not identified on the Plan of Record will require additional coordination and/or filing with the Conservation Commission.
- ☐ 5. All excavation will immediately halt if any historical or archeological artifacts are uncovered and the Applicant will report this information immediately to the Commission, the Town of Bourne Historical Commission and the Massachusetts Historical Commission. Failure to report this information will be grounds to revoke this permit.
- ☐ 6. During construction for this project, an on-site foreman, directing engineer or designated construction manager and the excavating contractor shall have a copy of this Order at the site, shall familiarize him or herself with the conditions of this permit, and shall adhere to said conditions.
- ☐ 7. To insure timely issuance of the Certificate of Compliance, requests should be made within 30 days of the completion of the project.
- ☐ 8. In order to determine whether or not the Order of Conditions (OOC) has been properly complied with, the Commission requires that you provide a copy of the foundation As-built. This is necessary to determine if you have complied with your original Plan of Record and Notice of Intent prior to the Commission issuing the Certificate of Compliance.
- ☐ 9. The installation of a garbage grinder is strictly PROHIBITED under this Order of Conditions and it is recommended that the applicant have the Septic System serviced (checked & pumped if necessary) every two years. This condition shall continue in perpetuity.
- ☐ 10. This Order of Conditions (OOC) is not valid until the applicant applies for and receives a Section 10 and/or Section 404 Permit from the United States Army Corps of Engineers for the proposed project.
- ☐ 11. This Order of Conditions (OOC) is not valid until the applicant applies for and receives a Water Quality Certificate from the DEP Division of Water Pollution Control relative to 401
- ☐ 12. This Order of Conditions (OOC) is not valid until the applicant applies for and receives a License from the DEP Division of Wetlands and Waterways relative to Chapter 91, The Public Waterfront Act & its regulations at 310 CMR 9.00.

*** (Docks, Piers, Floats, Dredging, etc.) ***

- ☐ 13. Post dredging soundings shall be made by the project engineer and submitted to the Con-Com for review.
- ☐ 14. The structure shall be continuously maintained in a manner that will insure safe use and shall be subject to inspection by the Harbormaster at anytime.
- ☐ 15. The public shall not be hindered from free access over or under the proposed structure for the purposes of fishing or fowling between the tide lines.
- ☐ 16. The structure shall be subject to annual review and approval by the Harbormaster in accordance with M.G.L. Chapter 91, Section 10A and/or current Town of Bourne Waterways Regulations.
- ☐ 17. No ramps, floats or other parts of the proposed structure are to be stored upon the saltmarsh, coastal dune, coastal bank or any other wetland resource area except the floodzone. All floats and other seasonal structures must be removed from the waterways from October 15 to April 1st and stored in a suitable UPLAND AREA.
- ☐ 18. Any changes in the configuration of the proposed structure would require an additional filing with the Commission and/or approval of the Harbormaster.
- ☐ 19. Any shellfish that must be relocated as a result of the proposed construction will be done at the applicant's expense and under the direction of the Department of Natural Resources (Shellfish Warden)
- ☐ 20. Should the proposed float(s) and/or other parts of the proposed structure break loose it will be the responsibility of the applicant to recover same and repair any damage to property of other parties that occurred due to the loose structure.
- ☐ 21. If it should be determined at a later date that this structure is an interference to navigation, the applicant will be required to down size the structure accordingly under the direction of the Harbormaster.
- ☐ 22. Piles must be driven, not jetted into the substrate.
- ☐ 23. Only non-leaching CCA treated lumber/piles or galvanized steel piles will be permitted for use on structures that will be placed into the water. No creosote is allowed.
- ☐ 24. Deck spacing must be spaced at 3/4 - 1" apart to allow for light penetration to the vegetation below the decking.
- ☐ 25. If ice damage or extreme weather conditions cause piling(s) to be damaged, an RDA must be filed to restore the stability, safety and function of the structure. The Conservation Commission may use discretion for cases that may disturb the wetland resource areas to a point that may require the filing of a Notice of Intent.

ADDITIONAL SPECIAL CONDITIONS pursuant to the Bourne Wetland Protection By-Law Article 3.7

General condition Number(s), Special Condition Number(s), Bylaw Conditions Number(s) above shall continue in perpetuity beyond the limitations of this Order and with the sale of the property to others.

The Applicant is reminded of his/her right to Appeal this Order or any part herein. This Appeal must be a dual appeal to both DEP within 10 days and to Superior Court pursuant to M.G.L c. 249 s. 4 within 60 calendar days of the issuance of this Order of Conditions.

96 Megansett Rd, Bourne MA
File Number SE7-2172

Reason for Denial under Bourne Wetland Protection Bylaw Article 3.7

The application for a walkway, dock, ramp and float system at 96 Megansett Rd, Bourne MA (map 54, parcel 15) was originally filed with the Bourne Conservation Commission (BCC) by Cape and Islands Engineering on behalf Cape Club Building, Inc. on September 21, 2021. Due to BCC turnover and failure to meet the requirements of the Mullin Rule Statute, MGL C. 39 s. 23D, the project was re-advertised and abutters were re-notified in order to restart the hearing process on July 20, 2023. The hearing was opened and the applicant presented on July 20, 2023 and August 17, 2023. The hearing was closed and a vote was taken on August 17, 2023. A vote was taken to move the draft denial under Article 3.7 and the Bourne Wetlands Regulations to the final and thus issue a denial Order of Conditions on August 31, 2023.

The BCC voted unanimously (6-0-0) to approve the proposed project (file number SE7-2172) under the Massachusetts Wetlands Protection Act, MGL C. 131, s. 40 and issue an Order of Conditions.

The BCC voted unanimously (6-0-0) to issue a denial under the local Bourne Wetland Protection Bylaw, Article 3.7. The reasons for the denial are based on noncompliance with the local Bylaw (BL 3.7) and the Bourne Wetlands Regulations (BWR 1.00). The specific reasons for denial are listed below:

Failure to design the project in a manner that protects one or more of the wetland resource values listed in BL Section 3.7.4.

The BCC determined that the applicant failed to meet the “Burden of Proof” as defined in BWR 1.03(1)(a) and 1.03(1)(b) and did not properly demonstrate that the proposed project area does not play a role in the protection of any wetland resource values or that the proposed work would contribute to the protection of the *wetland resource values*. Instead, the BCC determined that the project would likely have an adverse effect and/or a cumulative adverse effect upon the wetland resource values protected under BL 3.7.

Many public comments, both verbal and written, addressed the adverse effect this proposed dock would have on the *wetland resource value* of “Recreational and/or Commercial Use” of the various wetland resource areas impacted by the project. BL section 3.7.4 (i) states “recreational and/or commercial use means, but is not limited to, the purposes for which the Wetland Resource Area are used by the public such as navigation, fishing, hunting, shellfishing, water skiing, diving, walking, etc. A project must be designed so as to not impair the ability of the Wetland Resource Area to provide for these public recreational and/or commercial uses.”

Wetland Resource Areas are defined in BL section 3.7.4 and BWR 1.02 “Areas of Jurisdiction (Resource Areas),” section (1)(a-i).

Several members of the public testified (verbally or via email) with specific examples of how the dock design and location would “impair” the recreational and/or commercial use of the Commonwealth Tidelands within the Squeteague Harbor waterbody. Several comments highlighted the narrowness of the waterbody, particularly due to the existence of a substantial

sand bar and its proximity to the proposed location of the float, and how that would negatively impact navigation and recreation within the waterbody. Abutters sent in evidence that the float is proposed in the deepest section of the waterbody, significantly impacting navigation in the harbor especially at low tide. Examples of recreation and navigation that were brought up during the public hearing include the Cataumet Club sailing program, commercial kayak tours, fly fishing, striped bass sport fishing, and shellfishing.

Approximately 40% of the entire elevated walkway, ramp and float system is proposed within publicly protected Commonwealth Tidelands and thus not located on the private property at 96 Megansett Road, Bourne MA.

Failure to meet BWR 1.16(1)(e)16.b - 100' mooring setback.

The proposed float is not located the requisite distance (100') from all moorings. The float is proposed at 48.7' from the closest mooring and 90.8' from another mooring. BWR 1.16(1)(e)16.b specifies the required setback of "100' from the location of any mooring anchor to the nearest edge of the float, or pier if no float." The BL contains no provisions for a waiver or variance from the BWR. The "hardship" referenced at BWR 1.04 applies to a "particular piece of property" and not to property within the Commonwealth Tidelands, as is the case here. It was determined that this proposed project would affect navigation and, therefore, have a cumulative adverse effect on the wetland resource value of "Recreational and/or Commercial Use," as referenced under BWR 1.16(1)(a).

Failure to meet BWR 1.16(1)(e)2- the pier length across a water body.

BWR 1.16 (1)(e)2. states, "no pier shall be allowed where the length of the pier extends more than 1/5 of the way across the waterbody." Several Commissioners and members of the public believe this requirement has not been met with the current plan design. The applicant only demonstrates compliance in one direction across the waterbody and does not take into consideration the many other angles that should be measured. The applicant must take into consideration the narrowest section at mean low water. In that situation, the proposed dock exceeds 1/5 of the waterbody. It was determined that this proposed project would affect navigation and, therefore, have a cumulative adverse effect on the wetland resource value of "Recreational and/or Commercial Use," as referenced under BWR 1.16(1)(a).

Appeals:

The procedure for appealing this decision is outlined in the BL section 3.7.10 and BWR 1.10 (a) and (b).

Bourne Wetlands Protection Bylaw (BL) and Bourne Wetland Regulations (BWR):

The Bourne Wetland Protection Bylaw (BL) was initially passed at the Annual Town Meeting on May 11, 1987 (Article 58) and updated through May 2023 (Articles 14 and 15).

The Bourne Wetland Regulations (BWR) were issued on August 31, 2000, and last revised on June 15, 2023.



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:

SE7-2172

MassDEP File #

eDEP Transaction #

Bourne

City/Town

E. Signatures

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

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

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

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

9/01/2023

1. Date of Issuance

6

2. Number of Signers

Robert M. Gray

Signature

Sarah Butler

Signature

Ann Guller

Signature

Melvin P. Adams

Signature

Gary Belmer

Signature

P.S. Szwed

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

Signature

ROBERT M. GRAY

Printed Name

SARAH BUTLER

Printed Name

Susan T. Weston

Printed Name

MELVIN P. ADAMS

Printed Name

Gary Belmer

Printed Name

P.S. SZWED

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

Printed Name

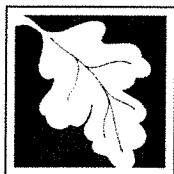
☐ by hand delivery on

Date

☒ by certified mail, return receipt requested, on

Date

9/01/2023



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 Mass DEP:

SE7-2172

MassDEP File #

eDEP Transaction #

Bourne

City/Town

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.



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 Mass DEP:

SE7-2172

MassDEP File #

eDEP Transaction #

Bourne

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.

Bourne

Conservation Commission

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

To:

Bourne

Conservation Commission

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

96 Megansett Road

Project Location

SE7-2172

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

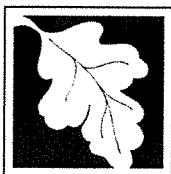
If recorded land, the instrument number identifying this transaction is:

Instrument Number

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

Document Number

Signature of Applicant



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

DEP File Number: _____

**Request for Departmental Action Fee
Transmittal Form**

Provided by DEP _____

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

A. Request Information

1. Location of Project

a. Street Address _____

b. City/Town, Zip _____

c. Check number _____

d. Fee amount _____

2. Person or party making request (if appropriate, name the citizen group's representative):

Name _____

Mailing Address _____

City/Town _____

State _____

Zip Code _____

Phone Number _____

Fax Number (if applicable) _____

3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Name _____

Mailing Address _____

City/Town _____

State _____

Zip Code _____

Phone Number _____

Fax Number (if applicable) _____

4. DEP File Number: _____

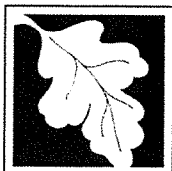
B. Instructions

1. When the Departmental action request is for (check one):

- ☐ Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)
- ☐ Superseding Determination of Applicability – Fee: \$120
- ☐ Superseding Order of Resource Area Delineation – Fee: \$120

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





Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
Request for Departmental Action Fee
Transmittal Form

DEP File Number:

Provided by DEP

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

B. Instructions (cont.)

Send this form and check or money order, payable to the *Commonwealth of Massachusetts*, to:

Department of Environmental Protection
Box 4062
Boston, MA 02211

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.
3. Send a **copy** of this form and a **copy** of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office (see <https://www.mass.gov/service-details/massdep-regional-offices-by-community>).
4. 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.