

310 CMR 10.99

DEP File No.

SE53-282

(To be provided by DEP)

Form 5

City/Town Oak BluffsApplicant Mass HighwayCommonwealth
of Massachusetts

AMENDED
Order of Conditions
Massachusetts Wetlands Protection Act
G.L. c. 131, §40
and Oak Bluffs General Wetlands Bylaw

From Oak Bluffs Conservation Commission Issuing Authority
To Bernard McCourt, Mass Highway Mass. Depart. Enviromental Mgmt.
(Name of Applicant) (Name of property owner)
Dis. 5; 1000 County St. Div. Waterways, 100 Cambridge St.
Address Taunton, MA 02780 Address Boston, MA 02202

This Order is issued and delivered as follows:

☐ by hand delivery to applicant or representative on _____ (date)☒ by certified mail, return receipt requested on 3/6/97 (date)This project is located at M / P Sylvia State Beach/Sengekontacket Pond

The property is recorded at the Registry of Deeds, Dukes County
Book 596 Page 066

Certificate (if registered) _____ Original: 6/11/96

The Notice of Intent for this project was filed on _____ (date)

The public hearing was closed on 2/26/97 Req. to Amend: 2/18/97 (date)

Findings

The OBCC has reviewed the above-referenced Notice of Intent and plans and has held a public hearing on the project. Based on the information available to the OBCC at this time, the OBCC has determined that the area on which the proposed work is to be done is significant to the following interests in accordance with the Presumptions of Significance set forth in the regulations for each Area Subject to Protection Under the Act (check as appropriate):

<input type="checkbox"/> Public water supply	<input checked="" type="checkbox"/> Flood Control	<input checked="" type="checkbox"/> Land containing shellfish
<input type="checkbox"/> Private water supply	<input checked="" type="checkbox"/> Storm damage prevention	<input checked="" type="checkbox"/> Fisheries
<input type="checkbox"/> Ground water supply	<input checked="" type="checkbox"/> Prevention of pollution	<input checked="" type="checkbox"/> Protection of Wildlife Habitat
	<input checked="" type="checkbox"/> Wildlife	<input checked="" type="checkbox"/> Recreation

Total Filing Fee Submitted \$1899.00 State Share \$937.00
(1/2 fee in excess of \$25)

City/Town Share \$962.00

Total Refund Due \$ N/A City/Town Portion \$ N/A State Portion \$ N/A
(1/2 total) (1/2 total)

Posted: 3/6/97

cc: Town Clerk

Therefore, the OBCC hereby finds that the following conditions are necessary, in accordance with the Performance standards set forth in the regulations, to protect those interests checked above. The OBCC orders that all work shall be performed in accordance with said 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.

General Conditions

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, by-laws 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 and both that date and the special circumstances warranting the extended time period are set forth in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill, containing 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.
7. 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 proceedings before the Department have been completed.
8. No work shall be undertaken until the Final Order 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 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 to be done. The recording information shall be submitted to the OBCC on the form at the end of this Order prior to commencement of the work.
9. 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,
File Number SE53-282"
10. Where the Department of Environmental Protection is requested to make a determination and to issue a Superseding order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.

11. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.

12. The work shall conform to the following plans and special conditions:

Plans:

Title	Dated	Signed and Stamped by:	On File with:
Mass Highway	7/9/96	_____	OBCC
Plans 1-12	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Special Conditions (Use additional paper if necessary)

1. The applicant and the applicant's agent(s) shall adhere to General Conditions 1-12 of this permit.

2. Members and agents of the Conservation Commission shall have the right to enter and inspect the premises to evaluate and ensure compliance with the conditions and performance standards stated in this Order, the Act, and 310 CMR 10.00, and may acquire any information, measurements, photographs, observations, and/or materials or may require the submittal of any data or information deemed necessary by this Commission for that evaluation.

3. Any change made or intended to be made in the plans shall require the applicant to file a new Notice of Intent, or inquire of the Conservation Commission in writing whether the change is substantial enough to require a new filing.

4. Special Conditions include the following on page 5-3B.

(Leave Space Blank)

5. The Conservation Commission reserves the right to impose additional conditions on portions of this project or this site to mitigate any actual or potential impacts resulting from the work herein permitted.

6. The applicant shall implement and maintain appropriate and adequate erosion control measures throughout the construction process. Any additional erosion and sedimentation control measures deemed necessary by the Commission shall be instituted by the applicant.

7. Prior to construction, the Commission shall be notified in writing as to the approximate date of the commencement of work.

8. Pursuant to General Condition #8, the Order of Conditions must be registered in the Dukes County Registry of Deeds prior to the commencement of work. The Conservation Commission hereby orders that it be recorded in the Registry and notice filed with the Commission no later than four (4) weeks from the date of this Order (_____). Failure to comply with this order shall be deemed cause to revoke this Order of Conditions.

9. This amended Order allows an extension of the project deadline to May 17, 1997 provided that the following restrictions are observed per DFW Natural Heritage & Endangered Species Program:

a. A trained plover monitor must be hired and assigned to monitor the beach. The site must be monitored a minimum of 3 times/week starting March 16 and daily from April 15 onward. The monitor must keep Mass Highway and NHESP informed of plover activity in the project area (i.e. when and where territories and nest are established).

b. The slurry line and all ancillary equipment must be broken down and completely removed from plover habitat no later than April 20, except in areas within 500 feet of the temporary adjustable wooden groins (very narrow part of the beach) and along the road within 50 feet of the edge of the pavement (marginal habitat due to proximity of road).

c. Work can continue after April 20 provided that activity on the beach must be confined to areas within 500 feet of the temporary adjustable wooden groins and within 50 feet of the edge of the pavement.

d. If at any time the monitor locates a nest between the road and slurry line, Mass Highway and the NHESP must be notified immediately and arrangements made to remove or relocate the slurry line before the estimated date of hatch.

e. If at any time the monitor locates a nest within 300 feet of the slurry line, Mass Highway and the NHESP must be notified immediately and appropriate steps taken to avoid disturbing incubating birds.

f. All slurry line and ancillary equipment must be broken down and completely off the beach no later than May 17, 1997 (date after which chicks would be expected to hatch).

10. The following Special Conditions from the original Order of Conditions are still applicable:

a. All work shall be carried out in accordance with the plans dated 7/9/96.

b. Dredging shall be coordinated with tides and weather to prevent turbidity.

c. No dredging or other work shall be done between March 15 (extended to May 17 per amended OC) and Labor Day, annually, to avoid interference with fisheries and wildlife habitat.

d. Any disturbed beach areas must be regraded and restored following construction, including replanting of American beach grass within existing grassed areas only, with no expansion of planted areas of beach.

e. Upon completion of groin construction, dredging and beach nourishment, a beach maintenance and monitoring program must be initiated and carried out for a minimum three year period as outlined in the Memorandum of Understanding for this project, including maintenance dredging required to supply beach renourishment if needed. The Commission shall review and approve the maintenance and monitoring program.

f. A grain size compatible to the beach material existing at that time must be used for renourishment in the future.

g. Due to special circumstances, particularly the critical public safety aspect of this project and the lengthy permitting process, this Order of Conditions shall be valid for a five year period from the date of issuance (8/7/96).

Issued By Oak Bluffs Conservation Commission

Signature(s) PA SRR

William M. Stevens
Jy Broadwell

Theresa Zinn

9/
This order must be signed by a majority of the Conservation Commission.

On this 28th day of February 1997, before me

On this 20 day of June, 1964,
personally appeared J. Boardman, to me known to be the

personally appeared J. DeLoe
person described in and who executed the foregoing instrument and acknowledged
that he/she executed the same as his/her free act and deed.

Delia A. Moore
Notary Public

8/99
My commission expires

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the Department of Environmental Protection to issue a Superseding Order, providing the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee and Fee Transmittal Form as provided in 310 CMR 10.03(7), within ten days from the date of issuance of this determination. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and the applicant.

Detach on dotted line and submit to the OBCC prior to commencement of work.

To Oak Bluffs Conservation Commission Issuing Authority

To Oak Bluffs Conservation Commission.
 Please be advised that the Order of Conditions for the project at M / P State Beach/Sengekon.
Beach, Duker Cty and

Please be advised that the Order of Conditions for the property Deeds, Dukes Ctry and File Number SE53-282 has been recorded at the Registry of Deeds, Dukes Ctry and with General Condition 8 on

File Number SE53-1000 has been recorded by the _____
has been noted in the chain of title of the affected property in accordance with General Condition 8 on

_____, 19____.

If recorded land, the instrument number which identifies this transaction is

If registered land, the document number which identifies this transaction is

If registered land, the document number which identifies _____ Applicant: _____

Signature _____