

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
and § 237-1 to § 237-14 Town of Barnstable Code

A. General Information

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



From: Barnstable
1. Conservation Commission

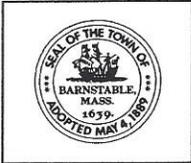
2. This issuance is for (check one): a. Order of Conditions b. Amended Order of Conditions

3. To: Applicant:

_____		Town of Barnstable/MEA Division	
a. First Name	b. Last Name	c. Company	
<u>1189 Phinney's Lane</u>			
d. Mailing Address			
<u>Centerville</u>		<u>MA</u>	<u>02632</u>
e. City/Town		f. State	g. Zip Code

4. Property Owner (if different from applicant):

_____		Town of Barnstable	
a. First Name	b. Last Name	c. Company	
<u>367 Main Street</u>			
d. Mailing Address			
<u>Hyannis</u>		<u>MA</u>	<u>02601</u>
e. City/Town		f. State	g. Zip Code



Project Location:

<u>Sandy Neck Beach</u>		<u>W. Barnstable</u>	
a. Street Address		b. Village	
<u>263</u>		<u>001</u>	
c. Assessors Map Number		d. Parcel Number	
Latitude and Longitude, if known (note: electronic filers will click for GIS locator):		<u>41 deg 44" 19.58" N</u>	<u>70 deg 22' 51.04" W</u>
		e. Latitude	f. Longitude

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

<u>Barnstable</u>		<u>C121665 land plan 14099-A</u>	
a. County		b. Certificate (if registered land)	

c. Book	_____	d. Page	<u>APR 14 2008</u>
7. Dates:	<u>February 29, 2008</u>	<u>April 1, 2008</u>	_____
	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):

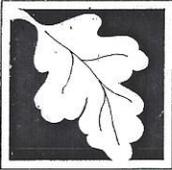
N/A

a. Plan Title

b. Prepared By _____ c. Signed and Stamped by _____

d. Final Revision Date _____ e. Scale _____

f. Additional Plan or Document Title _____ g. Date _____



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

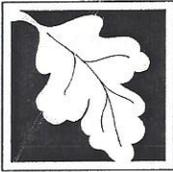
Denied because:

- 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 these interests, 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).**

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

- 3. Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	a. linear feet _____	b. linear feet _____	c. linear feet _____	d. linear feet _____
5. <input type="checkbox"/> Bordering Vegetated Wetland	a. square feet _____	b. square feet _____	c. square feet _____	d. square feet _____
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet _____ e. cu.yd dredged _____	b. square feet _____ f. cu.yd dredged _____	c. square feet _____	d. square feet _____



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Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
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B. Findings (cont.)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
7. <input type="checkbox"/> Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet

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

10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. cu.yd dredged	d. cu.yd dredged		
12. <input checked="" type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input checked="" type="checkbox"/> Coastal Beaches	No alteration			
	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
14. <input checked="" type="checkbox"/> Coastal Dunes	No alteration			
	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
15. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square feet		
	c. cu.yd dredged	d. cu.yd dredged		
19. <input type="checkbox"/> Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	a. cu.yd dredged	b. cu.yd dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		



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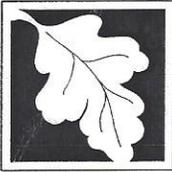
C. General Conditions Under Massachusetts Wetlands Protection Act

(only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. the work is a maintenance dredging project as provided for in the Act; or
 - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. 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.
7. 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.
8. 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 this 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.
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" [or, "MA DEP"]

"File Number SE3- 4713 "



WPA Form 5 – Order of Conditions

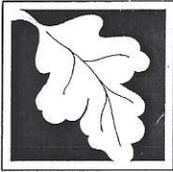
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
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C. General Conditions Under Massachusetts Wetlands Protection Act

10. 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 DEP.
11. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
12. The work shall conform to the plans and special conditions referenced in this order.
13. Any change to the plans identified in Condition #12 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. All work associated with this Order is required to comply with the Massachusetts Stormwater Policy Standards.

Special Conditions:

If you need more space for additional conditions, select box to attach a text document



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Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
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D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? Yes No
2. The Barnstable Conservation Commission hereby finds (check one that applies):
3. that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw specifically:
§ 237-1 to § 237-14 Town of Barnstable Code
a. Municipal Ordinance or Bylaw _____ b. 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.

4. that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:
§ 237-1 to § 237-14 Town of Barnstable Code
a. Municipal Ordinance or Bylaw _____ b. Citation _____

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.

- c. The special conditions relating to municipal ordinance or bylaw are as follows:

See pp. 6.1 - 6.8

If you need more space for additional conditions, select box to attach a text document

SE3-4713

ORDER OF CONDITIONS GOVERNING RECREATIONAL VEHICLE USE
AT SANDY NECK

Findings:

1. Proposed vehicle use at Sandy Neck is required to meet several stringent performance standards of the Wetlands Protection Act Regulations:

1.1 No short or long term adverse effect on the habitat of a local population of a state listed wildlife species.

The state-listed wildlife species occurring at Sandy Neck are:

<u>Species</u>	<u>Status</u>
Diamond terrapin	Threatened
Least tern	Special concern
Common tern	Special concern
Piping plover	Threatened
Roseate tern	Endangered

1.2 Since in an ACEC area, no adverse effect is permitted any regulatory interest found significant by the issuing authority.

2. Among other interests, the Conservation Commission finds Sandy Neck significant to storm damage prevention, flood control, historic (Ch. 237 only) and protection of wildlife habitat.

3. In addition to regulation under the MA Wetlands Protection Act and Town Code Ch. 237-Wetlands, vehicle use at Sandy Neck is also regulated under the MA Endangered Species Act and the Federal Endangered Species Act.

3.1 This Order of Conditions incorporates the State Endangered Species Act requirements as special conditions, but does not include all aspects of the Federal requirements. The Town is advised to observe the Federal requirements as well so that potential violations of the Federal Endangered Species Act may be avoided.

4. In addition to providing breeding, nesting and feeding habitat for state and federal listed species, Sandy Neck is an important provider of feeding and resting habitat for great numbers of migratory birds along the Atlantic flyway. This is particularly the case at the eastern portion of Sandy Neck.

5. The following special conditions achieve, in the perspective of the Conservation Commission, a way to meet the pertinent performance standards while allowing recreational vehicle use to continue at Sandy Neck.

Definitions

Recreational vehicles – vehicles possessing a valid ORV sticker issued by MEA and which provide a means of access for camping, beach going, fishing and other recreational pursuits on Sandy Neck. Recreational vehicles are non-essential vehicles on Sandy Neck.

Special Conditions of Approval:

1. This Order of Conditions shall be recorded at the Registry of Deeds within two weeks of issuance.
2. On beaches where off-road vehicles are driven, all areas of habitat suitable for nesting by piping plovers or terns, as determined by the Division of Fisheries and Wildlife (hereafter the 'Division'), shall be identified and delineated with posts, warning signs, and/or symbolic fencing on or before April 1. Delineations shall be expanded to include nesting territories that become established as determined by the applicant or the Division. Areas of suitable nesting habitat for all species of terns shall be so identified and delineated on or before May 15, and shall be expanded as nesting territories become established as determined by the applicant or the Division. All vehicular access into or through delineated nesting habitat shall be prohibited, although vehicles may pass by such areas while birds are incubating. Fenced habitat areas shall be expanded, and travel corridors moved, narrowed, or temporarily closed, if incubating plovers or terns are disturbed by passing vehicles, or if disturbance is anticipated because of unusual tides or expected increases in vehicle traffic during weekends, holidays, or

special events.

2.1 The Park Manager shall provide a minimum 15 ft. protective buffer staked from the toe of all dunes along the Beach Trail where vehicles pass. Discretion by the Park Manager is allowed in prescribing a reduced buffer width where beach conditions create a narrow pass, as in the portion of the Beach Trail between the Access Trail and Trail 1.

2.2 The annual location of symbolic fencing (set on or by 1 April) shall be moved further seaward later in the spring or early summer if the applicant or the Division determines that areas of suitable nesting habitat for piping plovers or terns have become significantly wider as a result of natural processes of beach accretion.

2.3 Area of dune, beach, or intertidal habitat used as nursery areas by unfledged or recently fledged tern chicks, as identified by the Division of Fisheries and Wildlife, shall be delineated with symbolic fencing no later than June 21. All access by vehicles into posted tern nursery areas shall be prohibited while unfledged or recently fledged tern chicks are present in those areas, until it is determined that use of nursery areas by young terns has ended, i.e. young terns are no longer being fed by adult terns.

2.4 Vehicles shall not travel or park upon dune or beach vegetation on the Beach

Trail.

3. Sections of beaches where unfledged plover chicks are present shall be temporarily closed to recreational vehicles. Closure to recreational vehicles shall begin as soon as hatching begins and shall continue until plover and tern chicks have fledged. For purposes of off-road vehicle management, plovers are considered fledged at 35 days of age or when observed in flight, whichever occurs first. Terns are considered fledged when they are capable of flight. For unfledged plovers, recreational vehicles shall be excluded from all areas of dune, beach, and intertidal habitat within 100 yards of either side of a line drawn through the nest site perpendicular to the long axis of the beach. For unfledged terns, recreational vehicles shall be excluded from all areas of dune, beach, and intertidal habitat within 100 yards of either side of lines drawn through the outermost nests in the colony and perpendicular to the long axis of the beach.

4. If plover nests are discovered with incomplete clutches (< 4 eggs), recreational vehicle restrictions shall begin on the 26th day after the last egg is laid and full-time incubation begins. This assumes an average incubation period of 27 days, and provides a 1-day margin of error. If nests are discovered with complete clutches (4 eggs), thus precluding prediction of hatch date, either of 2 options shall be implemented. Either off-road vehicle restrictions shall begin on May 19 (the earliest recorded hatching date for Massachusetts), or the nest shall be monitored twice per day, before 0600 and after 1900

hours, from a distance with a spotting scope or binoculars, beginning on May 19, and closure to all but essential vehicles shall begin immediately when hatching begins. If nests with complete clutches are discovered after May 19, vehicle restrictions shall begin immediately unless nests are checked each day before 0600 hours and after 1900 hours. On beaches where nesting terns are present, vehicle restrictions shall ensue as soon as hatching begins.

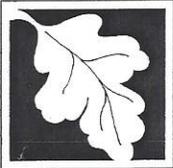
5. Closure to recreational vehicles shall begin at least five days prior to the anticipated hatching date of plover nests if ruts are present that are deep enough to restrict movements of chicks or if vehicle impacts on wrack have been so severe that wrack must be allowed to accumulate naturally prior to hatching. If a plover nest is found with a complete clutch, precluding estimation of hatching date, and availability of wrack has been significantly reduced by vehicle passage, or deep ruts created that could reasonably be expected to impede chick movements, that section of beach shall be closed to all recreational vehicles immediately.
6. Restrictions currently in force which prohibit recreational vehicle use on tidal flats, in proximity to foredunes, on the Marsh Trail and Connector Trails (excluding the Access Trail) and on Beach Point shall remain in force.
7. Eastern Closure Point on the Beach Trail

- 7.1 Recreational vehicle use east of Trail 6 and west of the swale-tidal flat shall be specially reserved for fishing access only, at the discretion of the Park Manager. Overnight camping or general recreation shall not occur in the 'reserved for fishing' area. The Trail 6 closure point for all other east-bound recreational vehicles shall be clearly demarcated in the field and maintained and enforced year-round by the Town.
- 7.2 No vehicle shall remain east of Trail 6 for more than 1 complete tidal cycle.
- 7.3 The 'reserved for fishing' access area shall be symbolically fenced on the south and east sides prior to its opening.
8. The Town shall provide a written summary of the past vehicle season (including all data collected on state-listed species, enforcement, plover monitoring effort, compliance in the new 'reserved for fishing' area, etc.) to the Conservation Division and the Commission for of its meeting November. The Park Manager shall attend this annual discussion.
9. This Order anticipates that a concerted effort be extended by the Town in the monitoring and protection of piping plover, tern and diamondback terrapin habitats. The Town shall continue to provide an adequate monitoring program as a requisite to continued

recreational vehicle use at Sandy Neck.

10. The Conservation Commission herein incorporates the provisions of any future Section Ten permit that may be granted for Sandy Neck.

11. A Certificate of Compliance shall be requested upon expiration of this Order of Conditions.



WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
and § 237-1 to § 237-14 Town of Barnstable Code

E. Issuance

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

APR 14 2008

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

1. Date of Issuance

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

2. Number of Signers

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

Signatures:

[Signature]
Louise R. Foster
[Signature]
Jat Linsey
[Signature]

[Signature]
Dennis R. Houle

Notary Acknowledgement

Commonwealth of Massachusetts County of

Barnstable

On this 14th Day of

April 2008
Month Year

Before me, the undersigned Notary Public, personally appeared

Dennis R. Houle
Name of Document Signer

proved to me through satisfactory evidence of identification, which was/were

Description of evidence of identification

Business acquaintance

to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

As member of Barnstable City/Town Conservation Commission

Claudette Bookbinder
Signature of Notary Public

Printed Name of Notary Public CLAUDETTE BOOKBINDER
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires (Date) 11/21/08

Place notary seal and/or any stamp above

This Order is issued to the applicant as follows:

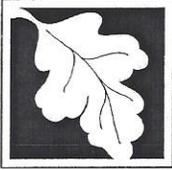
by hand delivery on

by certified mail, return receipt requested, on

APR 14 2008

Date Name Signature

Date



WPA Form 5 – Order of Conditions

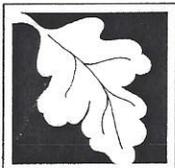
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
and § 237-1 to § 237-14 Town of Barnstable Code

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 DEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request of Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant. Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order or Determination, or providing written information to the Department prior to issuance of a Superseding Order or Determination.

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.

Section G, Recording Information is available on the following page.



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G. Recording Information

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 Page 7 of this form shall be submitted to the Conservation Commission listed below.

Barnstable
Conservation Commission

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

To:

Barnstable
Conservation Commission

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

Sandy Neck Beach, W. Barnstable, MA
Project Location

SE3- 4713
DEP 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