



**Massachusetts Department of Environmental Protection**  
**Bureau of Resource Protection - Wetlands**  
**WPA Form 5 – Order of Conditions**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:  
SE 10-3335  
MassDEP File #

eDEP Transaction #  
Chatham  
City/Town

**A. General Information**

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

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



1. From: Chatham  
Conservation Commission

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

3. To: Applicant:  
Susan B Morgan  
a. First Name b. Last Name

c. Organization  
450 Old Harbor Rd

d. Mailing Address  
Chatham MA 02633  
e. City/Town f. State g. Zip Code

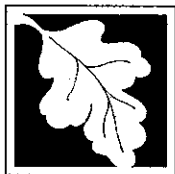
4. Property Owner (if different from applicant):  
a. First Name b. Last Name

same as above  
c. Organization  
d. Mailing Address  
e. City/Town f. State g. Zip Code

5. Project Location:  
450 Old Harbor Road Chatham  
a. Street Address b. City/Town  
16G K4  
c. Assessors Map/Plat Number d. Parcel/Lot Number

Latitude and Longitude, if known: d m s d m s  
d. Latitude e. Longitude

23



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### A. General Information (cont.)

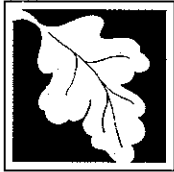
6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):  
Barnstable  
a. County  
26926  
c. Book  
b. Certificate Number (if registered land)  
300  
d. Page
7. Dates: July 27, 2019 November 6, 2019 November 12, 2019  
a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance
8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):  
"Nourishment Plan"  
a. Plan Title  
East-SouthEast, LLC  
b. Prepared By  
Feb 25, 2019 rev Oct 23, 2019  
d. Final Revision Date  
"Nourishment Plan narrative"  
f. Additional Plan or Document Title  
J Thaddeus Eldredge, PLS  
c. Signed and Stamped by  
e. Scale  
October 29, 2019  
g. Date

### B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:
- Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:
- a.  Public Water Supply    b.  Land Containing Shellfish    c.  Prevention of Pollution  
d.  Private Water Supply    e.  Fisheries    f.  Protection of Wildlife Habitat  
g.  Groundwater Supply    h.  Storm Damage Prevention    i.  Flood Control
2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

#### Approved subject to:

- a.  the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



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**B. Findings (cont.)**

Denied because:

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



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

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

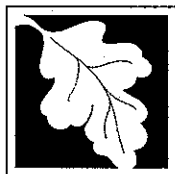
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**B. Findings (cont.)**

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

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. $\frac{\text{cu yd}}{\text{nourishment}}$	d. $\frac{\text{cu yd}}{\text{nourishment}}$
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. $\frac{\text{cu yd}}{\text{nourishment}}$	d. $\frac{\text{cu yd}}{\text{nourishment}}$
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. c/y dredged	d. c/y 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. c/y dredged	b. c/y dredged		
21. <input checked="" type="checkbox"/> Land Subject to Coastal Storm Flowage	2500 a. square feet	2500 b. square feet		
22. <input type="checkbox"/> Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet



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## 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 (BWV) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23.  Restoration/Enhancement \*:

a. square feet of BWV

b. square feet of salt marsh

24.  Stream Crossing(s):

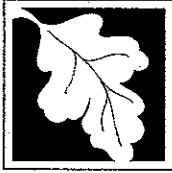
a. number of new stream crossings

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 Nov 12, 2021 unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.



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### C. General Conditions Under Massachusetts Wetlands Protection Act

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

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]  
 "File Number            SE 10-3335 "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.



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

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

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

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



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

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

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

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

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

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

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

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

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





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

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

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

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



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**D. Findings Under Municipal Wetlands Bylaw or Ordinance**

- 1. Is a municipal wetlands bylaw or ordinance applicable?  Yes  No
- 2. The Chatham Conservation Commission hereby finds (check one that applies):

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

1. Municipal Ordinance or Bylaw \_\_\_\_\_ 2. Citation \_\_\_\_\_

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

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

Chatham Wetlands Protection Bylaw Ch 272  
1. Municipal Ordinance or Bylaw \_\_\_\_\_ 2. Citation \_\_\_\_\_

- 3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

See Attached Special Conditions pgs11a-11 *[Signature]*

RE: 45001d Harbor Road



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**E. Signatures**

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

**November 12, 2019**

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.

**4 of 7**  
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:

*Janet Wh*  
*[Signature]*  
*[Signature]*  
*[Signature]*

*Roberto Ball*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

by hand delivery on  
**November 12, 2019**

by certified mail, return receipt requested, on

Date

Date

**F. Appeals**

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request 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.



SE 10-3335  
CWP-19-022N

File Number

**TOWN OF CHATHAM CONSERVATION COMMISSION**

Findings on Application filed under the  
**Chatham Wetlands Protection Bylaw, Chapter 272**

Issuance Date

**APPLICANT:**

**ADDRESS:** Susan B Morgan  
450 Old Harbor Road  
Chatham MA 02633  
**OWNER:** (If other than applicant)  
**ADDRESS:**

November 12, 2019

**LOCATION of WORK: 450 Old Harbor Road Assessors' Map 16G Parcel K4**

Property recorded at the Registry of Deeds or Land Court in Barnstable County:

_____	<b>26926</b>	<b>300</b>
certificate (if registered land)	plan book	page

After public hearing in accordance with the Open Meeting Law (MGL Ch 39, s23B) closed on **November 6, 2016** the Chatham Conservation Commission, in accordance with the Town of Chatham Wetlands Protection Bylaw (Ch 272) finds:

**XX Permit is granted;** work may proceed subject to the attached Special Conditions.

**Permit is denied;** see attached explanation.

Chatham Conservation Commission:

\_\_\_\_\_  
*[Signature]*  
 \_\_\_\_\_  
*[Signature]*  
 \_\_\_\_\_  
*Robert D. [Signature]*  
 \_\_\_\_\_  
*Robert O. Balls*

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

signed by 4 of 7 Commissioners

**Town of Chatham – Order of Conditions**  
**Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40**  
**Town of Chatham Wetlands Bylaw C. 272 and Regulations**  
**450 Old Harbor Road, SE 10-3335, CWP 19-022N**

**Property:** 450 Old Harbor Road

**Map { 16G } and Parcel { K4 }**

**Owner/Applicant:** Susan B. Morgan

**Owner's Representative:** East-Southeast, LLC, J. Thaddeus Eldredge

**DEP File No.:** SE 10-3335

**CWP No.:** CWP 19-022N

**Project Type:** Beach nourishment in accordance with expired Orders of Conditions SE 10-2247 and SE 10-2611

**SUPPORTING DOCUMENTS**

Through the Public Hearing process, plans, work protocols, and expert testimony were submitted. The following list of documents reflects the project as reviewed by the Commission and represents the project that seeks an Order of Conditions under the Massachusetts Wetlands Protection (310 CMR 10.00) and Town of Chatham Wetlands Protection Regulations. The following materials are hereby made a part of this Order:

- Letter of Transmittal, dated February 25, 2019
- Wetlands Protection Act (WPA) Form 3 – Notice of Intent (NOI) and NOI Wetland Fee Transmittal Form, dated 02/26/2019
- NOI Checklist
- Check for State and Local Filing Fees
- Site Access Authorization Form
- Certified Abutters List and Map from the Chatham Assessor's Office
- Abutter Notification Letter and Mail Receipts
- Property description
- Wetland Delineation Information
- Project description
- Performance standards
- Nourishment Plan, with original filing dated 2/25/19, revised 4/15/19, 7/17/19, 10/8/19, 10/29/19
- Construction Protocol
- Variance Request and Alternatives Analysis
- Maps: USGS Locus Map, DEM Map, NHESP Map, FEMA Flood Insurance Rate Map (FIRM)
- Plan titled: *"Nourishment Plan for property located at 450 Old Harbor Road, Chatham, MA, prepared for Susan Morgan, prepared by East-Southeast, LLC, dated 2/25/19,*

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*revised 4/5/19, 7/7/19, 10/23/19 , scale 1" =40', stamped by a Professional Land Surveyor"*

- Conditional Consent by Abutting Owners to Beach Nourishment Plan, dated 4/22/19, unsigned
- Letter from Thadd Eldredge of East-Southeast, LLC proposing a condition from the neighbors, in packet received on 7/17/19
- Letter from Thadd Eldredge of East-Southeast, LLC, dated 7/22/19
- Email from an Abutter, Michael J. Reilly, dated 3/13/19, 3/28/19, 4/22/19, 6/4/19, 7/19/19, 7/21/19, 7/28/19

**HEARING INFORMATION:**

The Applicant submitted a Notice of Intent (NOI) that was received by the Conservation Division on February 25, 2019. The Conservation Commission held public hearings on March 13, 2019, March 27, 2019, April 24, 2019, May 8, 2019, May 22, 2019, June 26, 2019, July 10, 2019, July 31, 2019, September 11, 2019, September 25, 2019, and October 23, 2019 to review the proposed Notice of Intent. Numerous requests for continuances were received for the project. A draft Order of Conditions was reviewed at the Work Session on November 6, 2019.

**RESOURCE AREAS:**

The following Resource Areas are associated with the project site:

<b>Resource Areas: Areas subject to protection under M.G.L. c. 131, § 40</b>	<b>310 CMR 10.00: Wetland Protection, promulgated by MA Dept of Environmental Protection</b>	<b>Chatham Wetlands Protection Regulations (CWPR)</b>
Land Under the Ocean	310 CMR 10.25 (2)	CWPR 2.01 (2)
Coastal Beaches	310 CMR 10.27 (2)	CWPR 2.02 (2)
Coastal Dunes	310 CMR 10.28 (2)	CWPR 2.03 (2)
Land Containing Shellfish/Shellfish and Shellfish Habitat	310 CMR 10.34 (2)	CWPR 2.08 (2)
Land Subject to Coastal Storm Flowage (LSCSF) (2,500 square feet of proposed alternation)	310 CMR 10.04	CWPR 2.10 (2)(a)
Adjacent Upland Resource Area		CWPR 4.01 (2)

**Other Important Adjacent Resource Areas:**

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- A portion of the site is subject to a Wetlands Restriction Order under the Inland Wetlands Regulation Act or the Coastal Wetlands Regulation Act.

**PROPERTY AND PROJECT DESCRIPTION:**

*Project History:*

In 2006 and 2009, the owner of the property, David Morgan, engaged the services of Coastal Engineering Company, Inc. to permit and oversee the reconstruction and expansion of the bulkhead protecting the residence at 450 Old Harbor Road. The construction of the bulkhead was completed; however, Mr. Morgan passed away shortly thereafter leaving the property to Susan Morgan. Unfortunately, Mrs. Morgan was unaware of the ongoing requirements of the Orders of Conditions associated with the reconstruction of the bulkhead, SE 10-2247 and SE 10-2611. After the Conservation Agent sent Enforcement Letters to Mrs. Morgan, she is aware of these requirements and is now proceeding with the completion of the nourishment plan.

*Property Description:*

The property is located on Chatham Harbor at the toe of an extremely steep slope. Most of the property is in Land Subject to Coastal Zone Flowage, Velocity Zone EL 15. The eastern side of the property fronts Chatham Harbor which contains Coastal Beach, Salt Marsh, Tidal Flats and Land Under the Ocean. All work is proposed above mean high water, over Coastal Beach and within Land Subject to Coastal Storm Flowage.

*Project Description:*

The proposed project is to create and implement the Nourishment Plan as required by the 2006 Order of Conditions.

**FINDINGS:**

Following review of the Application and Supporting Documents referenced above that describe the proposed Project and the information provided at the public hearings held on the application, the Conservation Commission finds that:

1. The proposed project is in or within 100 feet of Coastal Beach, Coastal Dune, Land Subject to Coastal Storm Flowage, Shellfish Habitat and Land Under the Ocean, thus the Performance Standards for these Resource Areas apply to the proposed work.
2. Coastal Dune is located within 100 feet of the subject property, but not on the property itself.

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3. The property is a pre-1978 dwelling and it is protected with a bulkhead, a coastal engineering structure. Permission to replace a pre-existing bulkhead and construct an extension was granted in 2006 (SE 10-2247), permission to expand and stabilize the bulkhead was granted in 2010 (SE 10-2611).
4. Stone riprap was placed on the seaward of the bulkhead at some point before 2006. Since then, the applicant has attempted to maintain the riprap by placing hardscaping debris that are too small and inadequate to function as riprap. These materials have tended to migrate from the riprap to the beach of the abutting property to the south.
5. There has been accelerated erosion on the eastern shoreline of Chatham since the 2007 breach in North Beach.
6. On the north side of the property, the beach has accreted due to depositions trapped by the bulkhead. On the south side of the property, the beach has eroded due to littoral starvation.
7. The purpose of this project is to deposit sacrificial sand which will be allowed to erode away over time and act as a sediment source to downdrift beaches.
8. The proposed placement of compatible sand will not: reduce the ability of the land to absorb or contain floodwaters; reduce the ability of the land to buffer more inland areas from flooding and water damage; cause or create the likelihood of, damage to other structures on land within the flood plain as debris (collateral damage); cause ground, surface or saltate pollution triggered by coastal storm flowage; or reduce the ability of the resource to serve as a wildlife habitat and migration corridor.
9. Shellfish habitat is located seaward of the proposed project. The nourishment is expected to augment the existing tidal flats and maintain the coastal beach system.
10. It remains unclear if the existing bulkhead that was installed in 2006 and expanded in 2009 needs a Chapter 91 License. The project description for the nourishment activities states that the Representative has sought guidance from MassDEP.
11. Property owner to the south of the subject property expressed concern about potential impact to their property but was agreeable to the project as proposed due to the commitment to nourish the beach on both properties as needed.
12. A variance is requested for work within the 0' – 50' AURA (the No Disturb Zone). The proposed Project qualifies for a variance from the Chatham bylaw pursuant to Part IV, Section 4.03, as the applicant has (a) proposed mitigation that will enhance and contribute to the protection of the resource areas; (b) demonstrated that there are no reasonable alternatives to the work proposed, and (c) demonstrated, and the Commission finds, that, as conditioned herein, there will be no adverse impact from the project. Accordingly, the Commission grants the variance.



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**DECISION:** The Commission **APPROVES** the Project and finds the project as described in the Supporting Documents can be permitted subject to the following Special, General, and Standard Conditions which protect the interests identified in the Chatham Wetland Bylaw c. 272 and Regulations and Massachusetts Wetland Protection Act M.G.L. c. 131 § 40 and the Regulations 310 CMR 10.00 (inclusive). The Supporting Documents and Findings are hereby incorporated by reference and made a part of this Order. To the extent that these conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

**SPECIAL CONDITIONS:**

1. All of the Construction Notes on the Plan and Construction Protocols contained in the Applicant's Narrative are hereby incorporated by reference and made a part of this Order of Conditions.
2. Sand nourishment shall consist of clean and compatible sand and follow the guidelines outlined in the "Beach Nourishment: MassDEP's Guide to Best Management Practices for Projects in Massachusetts, March 2007." Compatible sand shall be placed on the subject property when the trigger points are hit (see Special Conditions #15-16). This condition shall be recorded as an ongoing condition on the Certificate of Compliance.
3. There shall be no damage to the salt marsh. This condition shall be recorded as an ongoing condition on the Certificate of Compliance.
4. A Chapter 91 License for the bulkhead shall be applied for during the 3-year duration of this Order of Conditions. If a Chapter 91 license is not required, then written documentation from MassDEP stating that fact shall be submitted to the Conservation Division.
5. Access to abutting properties for the purposes of placing sand nourishment shall be received in writing prior to any nourishment activities.
6. Bricks, cement pieces and other construction debris shall be removed from the Resource Areas and the Adjacent Upland Resource Area. This condition shall be recorded as an ongoing condition on the Certificate of Compliance.
7. Stones that are native or natural to the Coastal Beach Resource Area shall remain in the Resource Area. This condition shall be recorded as an ongoing condition on the Certificate of Compliance.
8. In the event that the riprap needs to be maintained with additional material, a qualified contractor or professional shall perform that work. This condition shall be recorded as an ongoing condition on the Certificate of Compliance.

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9. Construction or household materials now stored outdoors onsite in the beach coastal zone or land subject to coastal flowage at 450 Old Harbor Road, such as bricks, cinder blocks, door frames, windows, lumber, shingles, equipment, appliances, indoor furniture, mattresses, debris and the like, other than typical personal and seasonal outdoor residential items and working personal vehicles parked in the designated driveway, shall be removed from the site and prohibited going forward. This condition shall be recorded as an ongoing condition on the Certificate of Compliance.
10. The Conservation Agent has the right to exercise his/her professional judgment to determine if he/she will issue enforcement on the subject property. If the Agent determines not to issue enforcement on the property, he/she will bring the issue to the Conservation Commission for further discussion and a vote on whether to proceed with enforcement.
11. There shall be no fencing, matting or other engineered structures to hold the sand nourishment in place. This condition shall be recorded as an ongoing condition on the Certificate of Compliance.
12. Machinery and materials access shall be from the north side within the easement for work on the north side. It shall be over the lawn for work on the south side. No removal of vegetation is proposed. Temporary protective matting can be placed during work. Any damage or impact to the Resource Areas and buffer zones from the machinery shall be repaired immediately. This condition shall be recorded as an ongoing condition on the Certificate of Compliance.
13. A professional land surveyor or engineer shall submit photos of the Coastal Dune, Coastal Beach, Salt Marsh and Shellfish Habitat before and after the nourishment activities. These photos shall be submitted to the Conservation Agent with a written description of the following: how much sand was placed (i.e. nourishment volumes), the source of the sand, a statement of sand compatibility citing the MassDEPs guidance for beach nourishment, any impacts or benefits to the Resource Areas, and recent beach elevation profiles.
14. The annual report outlined in the Revised Nourishment Plan shall also be submitted to the Conservation Division.
15. At the Conservation Agents' or Conservation Commission's discretion, a survey of the area shall be performed and a comparison to the previous survey shall be completed to determine the volumes of change. A digital elevation model shall be provided to the Conservation Agent and Commission to provide to a new consultant should the consultant change.
16. The triggers for nourishment are as follows:

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- a. The top of the anchor wale of the northern bulkhead jog is at elevation 8.1 and the bottom is at elevation 7.4. The trigger for nourishment shall be when any part of the bottom of the wale is exposed.
  - b. The bottom of the wooden cap of the westerly end of the southern bulkhead jog is at elevation 6.6. The trigger for nourishment to restore sand in accordance with the nourishment plans will be when the sand is 12 inches below the bottom of the cap at the westerly end.
  - c. Horizontally along the westerly end of the southern bulkhead jog the cap is composed of a section of lumber that is approximately six feet in length. The trigger for nourishment shall be when the nourished sand erodes to a point behind this joint.
17. When the landmarks described above in Special Condition #15 are triggered, the applicant shall nourish immediately regardless of the time since the previous nourishment. The owner of 450 Old Harbor Road can nourish before the erosion exposes the trigger points. This condition shall be recorded on the Certificate of Compliance as an ongoing requirement.
  18. Documentation of a commitment to protect the immediate southern neighbor from negative impact by the project, shall be written and signed by the applicant. The maintenance plan shall include provisions for monitoring. The monitoring shall include the submission of photographs of the project site on an annual or semi-annual basis, taken from the same vantage point, et. and shall permit an inspection of the site by the Agent/Commission for the purposes of determining conditions and the need for nourishment. The details of this maintenance plan shall be considered an ongoing condition and will be referenced on the Certificate of Compliance as such, thereby binding any future property owner to ongoing maintenance.
  19. As the 2009 Maintenance Plan (part of SE 10-2247) and the current October 29, 2019 Nourishment Plan may not be appropriate in the future due to changes in site conditions, the Commission reserves the right in the future to require that a hearing be held, at the applicant's expense. This would be done for the purpose of determining whether conditions on the site have changed substantially, particularly in relation to the change in mean high water elevation or other. The Commission may determine that the maintenance plan is to be modified as necessary to protect the interests of the Act. This condition shall be recorded on the Certificate of Compliance as an ongoing requirement.
  20. If, after consulting with qualified coastal engineers or coastal geologists, the Commission finds that the bulkhead or its extensions have caused or accelerated erosion on the site or on nearby properties, it may order the applicant to either nourish

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the beaches using clean sand of similar or larger grain size with an amount of material equal to the engineers/geologists calculation of the loss caused by the structure or take other action. The Commission may order re-nourishment as necessary. This condition shall be recorded on the Certificate of Compliance as an ongoing requirement.

**STANDARD CONDITIONS**

These general conditions supplement the above Special Conditions as they relate to steps necessary for the protection of the Resource Areas both during the project and after project completion, and to provide documentation necessary to confirm that the project has been completed as permitted.

**A. Pre-construction**

1. Avoid and minimize all activities involved with this project shall be conducted in a manner that avoids alteration to vegetation, beach and bank and, where it is unavoidable, the alteration shall be minimized.
2. The project shall be implemented only by a qualified consultant / contractor who, on the basis of his/her qualifications, expertise, and documented experience in such projects, is found acceptable to the Agent/Commission. The Commission reserves the right to interview the prospective contractor / consultant prior to making its determination.
3. Prior to any site disturbance, the limit of work and foundation stakes for the project shall be refreshed as necessary by the surveyor/engineer to reflect the approved plan. The engineer shall submit a memo to the Commission stating that this has been done.
4. Prior to any site disturbance, a pre-construction meeting will be held with the responsible contractor, engineer, applicant and Commission/Agent to review the Order of Conditions and the work protocol. *Please call for an appointment at least one week in advance.*
5. The applicant shall secure a Massachusetts registered professional engineer or land surveyor to act as clerk of the works to be approved or designated by the Commission. The engineer will supervise the contractor and will inspect the site regularly whenever construction in or within 100feet to the wetland is in progress. The engineer or land surveyor will be onsite during and after storm events so as to take responsibility for the proper functioning of drainage and erosion control systems for the project.
6. Prior to any site disturbance and to the pre-construction meeting, all sedimentation controls (i.e. straw bales at the work limit) shall be in place and ready for inspection at the time notice is sent. Once notified, the Commission/Agent may conduct a pre-

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- construction inspection of the site and instruct the applicant of any preliminary modifications necessary for compliance with the Order of Conditions.
7. Prior to any work commencing, a sign shall be visibly displayed on the site showing the DEP or local file number and shall remain so until the issuance of a Certificate of Compliance. A copy of this Order of Conditions shall be retained on the site and visibly displayed until a Certificate of Compliance has been obtained and recorded.
  8. Notice of work start and completion shall be given to the Commission in writing. The applicant shall advise the Commission of the name(s) and telephone number(s) of the person(s) responsible on site for compliance with this Order.
  9. Prior to any work commencing, the contractor(s) shall sign and submit the signed form acknowledging their understanding of this Order of Conditions to the Conservation Commission for the record.
  10. *DISCLAIMER CONDITION:* By issuing this permit, the Commission in no way makes a determination of property rights or the legal ability of the applicant to undertake this project. In all cases, the applicant proceeds with the project at his/her own peril in this regard.

**B. Excavation and Site Disturbance**

1. Any excavated material to be stored for backfilling or later grading will be stockpiled outside the Resource Area.
2. All excavated material not needed for backfill or new contours will be removed from the site.
3. Debris, including litter, shall be picked up daily. No debris of any sort will be left on the site. Debris shall be disposed of in a covered dumpster.
4. The granting of this permit does not obviate the applicant's need to gain proper permission from any abutter whose property is to be used for access.
5. Washing of equipment/tools shall be done OFF-SITE or handled in a manner approved by the Agent, however in no cases shall concrete or masonry debris be left on the site.
6. There shall be no discharge or spillage of fuel, oil or other pollutants on to any part of this site. The applicant shall take all reasonable precautions to prevent the release of pollutants through ignorance, accident or vandalism.

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**C. Drainage and Re-Vegetation**

1. Grading shall be accomplished so that runoff shall not be directed to the property of others without mitigation as described in the project plans. This project shall not increase runoff, nor cause flood or storm damage to abutters, other property owners or the wetland resource area.
2. Disturbed areas shall be revegetated with native flora of proven value to local wildlife.
3. Invasive plant species, as may appear on the current list of the Chatham Conservation Commission, shall not be planted on the site.
4. No herbicides or pesticides shall be used in the AURA to the wetland resource area. This condition shall remain in force permanently and shall be recorded as such on the Certificate of Compliance.
5. *Dumping Prohibited:* There shall be no dumping of leaves, grass clippings, brush, or other debris within the wetland or on the bank or within the buffer zone to the wetland resource area.

**D. GENERAL**

1. This Order of Conditions is subject to the applicant obtaining all applicable local and state permits.
2. The applicant shall furnish the contractor with a copy of this Order. The applicant shall assure that all contractors, subcontractors and other personnel performing the permitted work are fully aware of the permit's terms and conditions. Thereafter, the contractor will be held jointly liable for any violation of this Order resulting from failure to comply with its conditions.
3. Any further construction or site alteration beyond the work limit within 100 feet of the resource area is subject to prior approval by the Conservation Commission.
4. The Commission, its employees and agents shall have the right of entry to inspect for compliance with the terms of this Order until a Certificate of Compliance has been obtained and recorded at the Barnstable Registry of Deeds. Commission members or their agent 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.
5. This Order of Conditions is valid for three years under the local Wetlands Protection By-Law and three years under MGL Ch. 131, s 40. Application for an extension shall be submitted in writing to the Conservation Commission at least thirty days prior to the expiration date.

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6. The Commission reserves the right to amend this Order of Conditions prior to completion of construction, after a legally advertised public hearing, if plans or circumstances are changed or if new conditions or information so warrant.
7. Upon completion of the project the applicant shall submit a written request for a Certificate of Compliance to the Commission.
8. The request for a Certificate of Compliance shall include:
  - a. A written statement from a Massachusetts registered professional engineer certifying that the work has been conducted as shown on the plan and documents referenced above, as conditioned by the Commission.
  - b. A topographic map, including final contours, shall be prepared and signed and stamped by a Massachusetts registered professional engineer or land surveyor for the file.
9. This Order of Conditions shall be deemed not to have been complied with until the applicant has obtained a Certificate of Compliance and it has been recorded in the Barnstable County Registry of Deeds.
10. Under no conditions will the operation of equipment, stockpiling of soil, cutting, clearing or pruning of trees, shrubs or ground cover or other site disturbance take place on the wetland side of the no-work line without prior consent of the Commission.
11. The “applicant” as used in this Order of Conditions shall refer to the owner, any successor in interest or successor in control of the property referenced in the Notice of Intent, supporting documents and this Order of Conditions. The Commission shall be notified in writing within 30 days of all transfers of title of any portion of property that take place prior to issuance of a Certificate of Compliance.
12. The Approved Plan for this Order of Conditions does not constitute specific acceptance of the boundaries of resource areas for any work not described in item 6 of the corresponding Notice of Intent. For any such work not described as per the provisions above, the Commission may require new plans and/or delineation of resource areas, as it deems appropriate.
13. Failure to comply with the above conditions shall be cause to revoke this permit and/or issue fines.