



# TOWN OF CHILMARK

CHILMARK, MASSACHUSETTS

[www.chilmarkma.gov](http://www.chilmarkma.gov)

Conservation Commission

Kara Shemeth,

Conservation Agent

kshemeth@chilmarkma.gov

**TOWN OFFICES:**

Beetlebung Corner  
401 Middle Road  
Post Office Box 119  
Chilmark, MA 02535  
508-645-2104  
508-645-2100 FAX

To: Vineyard Land Surveying

From: Kara E Shemeth, Conservation Agent

Date: July 28, 2022

Subject: SE12-891 - Order of Conditions – Approval

This Order of Conditions is a legal document, please read it carefully and contact the Chilmark Conservation Agent if you have any questions.

The following **MUST** be done prior to the start of work:

1. The Order of Conditions must be recorded at the Dukes County Registry of Deeds (Condition #9). Please e-mail the Conservation Agent with the recording information. The appeal period will expire at the end of the day on **August 11, 2022**. *MA General*
2. A DEP sign with the appropriate file # (SE12-891) shall be displayed at site (MA General Condition #10).
3. An onsite conference between the Conservation Agent and the contractor must take place prior to work beginning (Condition #8).
4. Notification must be given to the Conservation Agent when work is scheduled to take place (Condition #9).
5. The conditions must be adhered to throughout the project.

Please note that any change in the project that deviates from the approved plan requires that the applicant contact the Conservation Commission in writing to determine if the change is significant enough to warrant a new public hearing.

Thank you for your attention to the conditions and best of luck with your project.

Kara E. Shemeth

Chilmark Conservation Agent

**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:

MassDEP File #:012-0891

eDEP Transaction #:1384543

City/Town:CHILMARK

**A. General Information**

1. Conservation Commission CHILMARK  
2. Issuance a.  OOC b.  Amended OOC

3. Applicant Details  
a. First Name b. Last Name  
c. Organization RMJ DOCK, LLC  
d. Mailing Address P.O. BOX 421 C/O VLS  
e. City/Town WEST TISBURY f. State MA g. Zip Code

4. Property Owner  
a. First Name DONALD b. Last Name SMITH  
c. Organization  
d. Mailing Address PO BOX 238  
e. City/Town CHILMARK f. State MA g. Zip Code 02535

5. Project Location  
a. Street Address 16 HARBOR HILL ROAD  
b. City/Town CHILMARK c. Zip Code 02535  
d. Assessors Map/Plat# 27.1 e. Parcel/Lot# 104  
f. Latitude 41.35186N g. Longitude 70.76552W

6. Property recorded at the Registry of Deed for:  
a. County b. Certificate c. Book d. Page  
DUKES 1216 262

7. Dates  
a. Date NOI Filed : 6/14/2022 b. Date Public Hearing Closed: 7/19/2022 c. Date Of Issuance: 7/28/2022

8. Final Approved Plans and Other Documents  
a. Plan Title: b. Plan Prepared by: c. Plan Signed/Stamped by: d. Revised Final Date: e. Scale:  
SITE PLAN IN  
CHILMARK,  
MASS. PREPARED REID G. SILVA, PLS REID G. SILVA, PLS 5/31/22 1:5  
FOR RMJ DOCK,  
LLC

**B. Findings**

1. Findings pursuant to the Massachusetts Wetlands Protection Act  
Following the review of the 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. <input type="checkbox"/> Public Water Supply  | b. <input type="checkbox"/> Land Containing Shellfish | c. <input type="checkbox"/> Prevention of Pollution        |
| d. <input type="checkbox"/> Private Water Supply | e. <input type="checkbox"/> Fisheries                 | f. <input type="checkbox"/> Protection of Wildlife Habitat |

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g. Ground Water Supply       h. Storm Damage Prevention       i. Flood Control

2. Commission hereby finds the project, as proposed, is:

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 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 interests of the Act, 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 310CMR10.02(1)(a). \_\_\_\_\_ a. linear feet

**Inland Resource Area Impacts:(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		

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Cubic Feet Flood Storage	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
9. <input type="checkbox"/> Riverfront Area	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
Sq ft within 100 ft	a. total sq. feet	b. total sq. feet		
	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
Sq ft between 100-200 ft	c. square feet	d. square feet	e. square feet	f. square feet
	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	g. square feet	h. square feet	i. square feet	j. square feet
	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

**Coastal Resource Area Impacts:**

Resource Area	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	<u>                    </u>	<u>                    </u>		
	a. square feet	b. square feet		
	<u>                    </u>	<u>                    </u>		
	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	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	a. square feet	b. square feet	c. c/y nourishment	d. c/y nourishment
14. <input type="checkbox"/> Coastal Dunes	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	a. square feet	b. square feet	c. c/y nourishment	d. c/y nourishment
15. <input checked="" type="checkbox"/> Coastal Banks	<u>                    </u>	<u>                    </u>		
	4			
	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	<u>                    </u>	<u>                    </u>		
	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	<u>                    </u>	<u>                    </u>		
	a. square feet	b. square feet		
	<u>                    </u>	<u>                    </u>		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	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			
	<u>                    </u>	<u>                    </u>		
	c. c/y dredged	d. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	<u>                    </u>	<u>                    </u>		
	a. square feet	b. square feet		

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22.

Restoration/Enhancement (For Approvals Only)

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 & d or B.17.c & d above, please entered the additional amount here.

\_\_\_\_\_ a. square feet of BVW

\_\_\_\_\_ b. square feet of Salt Marsh

23.

Streams Crossing(s)

If the project involves Stream Crossings, please enter the number of new stream crossings/number of replacement stream crossings.

\_\_\_\_\_ 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.
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. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not exceed the issuance date of the original Final Order of Conditions.
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.
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..

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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 : "012-0891"

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 Mass DEP.
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.
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.

**NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS**

19. The work associated with this Order (the "Project") is (1)  is not (2)  subject to the Massachusetts Stormwater Standards. If the work is subject to 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 Pollutant Discharge Elimination System Construction General Permit as required by Stormwater Standard 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

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- 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; *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 19(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 Pollutant 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 19(f) through 19(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 19(f) through 19(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.
  - 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

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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:**

SEE ATTACHED



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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 Conservation Commission hereby (check one that applies):

a.  DENIES the proposed work which 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 or Conditions is issued. Which are necessary to comply with a municipal ordinance or bylaw:

b.  APPROVES the proposed work, subject to the following additional conditions.

1. Municipal Ordinance or Bylaw CHILMARK  
WETLANDS  
PROTECTION  
BYLAWS

2. Citation 1.02 \_\_\_\_\_

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:  
SEE ATTACHED

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**E. Signatures**

This Order is valid for three years from the date of issuance, unless otherwise specified pursuant to General Condition #4. If this is an Amended Order of Conditions, the Amended Order expires on the same date as the original Order of Conditions.

7/28/2022

1. Date of Original Order

Please indicate the number of members who will sign this form. This Order must be signed by a majority of the Conservation Commission.

7 6

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:

Joan Malkin

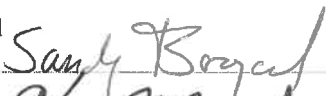


Candy Shweder

Pamela Goff



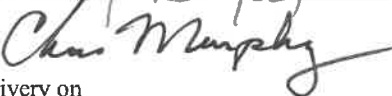
Sandy Broyard



Russell Maloney



Chris Murphy



Sarah Khedouri



by hand delivery on

by certified mail, return receipt requested, on

Date

8/2/22

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 appellent.

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



## **CHILMARK CONSERVATION COMMISSION**

SE12-891 - Special Conditions - July 28, 2022  
RMJ Dock, LLC – 16 Harbor Hill Road (AP 27.1-104)

### **Synopsis**

This Order of Conditions allows the applicant to construct and maintain a set of stairs on a Coastal Bank to access an existing pier and boathouse.

The Conservation Commission determined that the project would not have an adverse impact on the stability of the coastal bank (section 2.05(2) (B) or the movement of sediment by wave action (section 2.05(4)B).

The application was approved at the July 19<sup>th</sup>, 2022 hearing of the Chilmark Conservation Commission with 5 "Yes" votes, 1 "No" and 1 abstention.

### **Conditions**

1. A copy of this Order and plan shall be available on site for the duration of construction.
2. Per the General Conditions under Massachusetts Wetlands Protection Act (C. 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. The stairs are to be constructed using butterfly brackets to secure the posts to the ground.
4. Only hand tools are permitted in the construction and maintenance of the stairs.
5. The stairs are to be +/- 12" above grade
6. For the purposes of construction, the vegetation is allowed to be cut 5' x 21' in the location of the stairs, by hand, and in a manner that allows for regrowth ie no pulling of roots.
7. No materials are to be left on site.
8. An on-site meeting between the Conservation Agent and the Contractor is to take place prior to work beginning.
9. Notification is to be given to the Conservation Agent when work is scheduled to begin.
10. Any major rebuilding or replacement of the stairs is subject to the review and approval of the Chilmark Conservation Commission and may require a new Notice of Intent.
11. Subject to condition #10, this Order allows for the ongoing, regular maintenance of the stairs to ensure safety and the maintenance pruning, by hand, 1' on either side of the stairs. This condition does not expire with the Order of Conditions or the issuance of a Certificate of Compliance as long as the conditions are properly adhered to. Notice is to be given to the Conservation Agent when repairs are to take place.



