

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

DEP File Number:

197-382

Provided by DEP

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:

LEICESTER

Conservation Commission

This issuance is for (check one):

☒ Order of Conditions

☐ Amended Order of Conditions

To: Applicant:

Paul Dufresne

Name

47 Fairview Drive

Mailing Address

Leicester

MA

01524

City/Town

State

Zip Code

Property Owner (if different from applicant):

Paul & Susan Dufresne

Name

same

Mailing Address

City/Town

State

Zip Code

1. Project Location:

47 Fairview Drive

Street Address

Leicester

City/Town

Map 41-A

Assessors Map/Plat Number

A-24

Parcel/Lot Number

2. Property recorded at the Registry of Deeds for:

Worcester

County

17359

Book

330

Page

Certificate (if registered land)

3. Dates:

September 15, 2004

Date Notice of Intent Filed

October 14, 2004

Date Public Hearing Closed

November 2, 2004

Date of Issuance

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

Title

Date

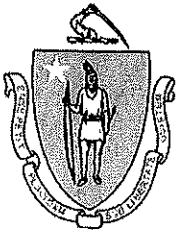
5. Final Plans and Documents Signed and Stamped by:

Name

6. Total Fee:

\$55.00

(from Appendix B: Wetland Fee Transmittal Form)



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B. Findings

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:

- | | | |
|--|---|---|
| <input type="checkbox"/> Public Water Supply | <input type="checkbox"/> Land Containing Shellfish | <input checked="" type="checkbox"/> Prevention of Pollution |
| <input checked="" type="checkbox"/> Private Water Supply | <input type="checkbox"/> Fisheries | <input type="checkbox"/> Protection of Wildlife Habitat |
| <input checked="" type="checkbox"/> Groundwater Supply | <input checked="" type="checkbox"/> Storm Damage Prevention | <input type="checkbox"/> Flood Control |

Furthermore, this Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

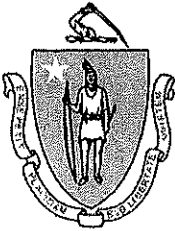
- ☒ the following conditions which are necessary, in accordance with the performance standards set forth in the wetlands regulations, to protect those interests checked above. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following 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:

- ☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations to protect those interests checked above. 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.
- ☐ 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).

General Conditions (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.



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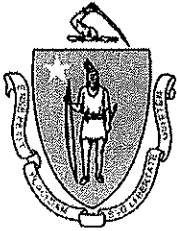
197-382

Provided by DEP

B. Findings (cont.)

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 _____"
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.



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B. Findings (cont.)

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.

Special Conditions (use additional paper, if necessary):

See Attached Orders of Conditions

Findings as to municipal bylaw or ordinance

Furthermore, the Leicester hereby finds (check one that applies):
Conservation Commission

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

Name

Municipal Ordinance or Bylaw

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.

- ☐ that the following additional conditions are necessary to comply with a municipal ordinance or bylaw, specifically:

Name

Municipal Ordinance or Bylaw

The Commission orders that all work shall be performed in accordance with the said additional 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.

LEICESTER CONSERVATION COMMISSION

ORDERS AND CONDITIONS

I. GENERAL

1. These ORDERS AND CONDITIONS consists of ____ paragraphs and the Plan submitted by the applicant. All references to the Plan shall mean the Plan submitted by the applicant and modifications list thereon as approved by the Leicester Conservation Commission.
2. The Leicester Conservation Commission, herein after referred to as the LCC, approved this Notice of Intent with the following conditions:
3. This document in its entirety, (and the plan(s) approved or disapproved by this order), which consists of ____ pages starting with page number 5-1 and ending with page 5-____, shall be recorded at the Registry of Deeds, immediately following the 10 day appeal period, which commences upon the date of issuance, and before all or any part of the site is sold and/or work commenced. Proof of said recording must be returned to the LCC before any work shall commence or sale finalized. Failure to comply with this Order of Conditions shall be automatically invalidate this permit.
4. This Order shall apply to any successor in control or successor in interest of the property described in the Notice of Intent and accompanying plan(s). In the event this land or any part thereof changes ownership before or during construction, the current owner shall notify the new owner, prior to the transfer of ownership, by registered mail, of this Order and shall forward proof of this notification to the LCC.
5. This Order covers only the work and work area described in the Notice of Intent and plan(s) listed on page 5-3A/B. Any work or alteration, within 50 feet of any resource area elsewhere on the property or any subdivided lot is not allowed under this Order.
6. This Order applies too only the roadways and related drainage structures and embankments. Work on any subdivided portion of the property which has not been included in the Notice of Intent or accompanying plan(s) listed on page 5-3A of this Order, has not been included in this Order of Conditions. Therefore, lots _____ shall require at least a Determination of Applicability from the LCC or the Department (DEP) before work shall commence within any wetland resource area or buffer zone.
7. The applicant, property owner or any person who purchases, inherits, or otherwise acquires real estate, upon which work has been done in violation of this order, shall forthwith comply with this Order or restore such real estate to its original condition.

Leicester Conservation Commission Orders Of Conditions

II. GENERAL (Continued)

8. Any request for an extension or a Certificate of Compliance of this Order of Conditions shall be submitted by Certified Mail at least thirty (30) days prior to the expiration date. The expiration date is three years from the date of issuance.

9. Any proposed changes in the plans approved under this Order must be submitted to the LCC for approval prior to implementation. One of the following responses will be made:

- A. If the LCC finds, by majority vote, said changes to be insignificant to the interests of the Act and/or the Town of Leicester Wetland Bylaws, then the LCC will so notify the Applicant in writing.
- B. If the LCC finds, by majority vote, said changes to be significant and/or deviate from the original plans, Notice of intent, or this Order of Conditions, and that the interests of the Act and/or the Leicester Wetland Bylaws would be best served by the issuance of additional conditions, the LCC will conduct another public hearing within 21 days, advertised at the applicant's expense, in order to take testimony from all interested parties. Within 21 days of the close of the public hearing, the LCC will issue an Amended Order of Conditions. No work shall be undertaken until the Amended Order of Conditions has been recorded at the Registry of Deeds and until all administrative appeal periods from the Amended Order of Conditions have elapsed.

10. Members of the LCC shall have the right to enter and inspect the property to evaluate and ensure compliance with the performance standards and conditions stated in this Order and may require the submittal of any data or information deemed necessary for said evaluation.

11. The applicant or his successor shall submit to the LCC the name, address, business and home phone number of the project supervisor who will be responsible for insuring compliance with this Order and his/her alternate.

III. PROFESSIONALS AND REPORTING

12. Prior to commencing work the applicant or his/her representative shall supply to the LCC in writing notice that such work is to begin and the date thereof.

13. The applicant and/or property owner(s) will assign an **ENGINEER** to supervise this project and make progress reports every other month to the LCC until completion.

14. The applicant shall submit an "As-built" plan and/or report to the LCC upon completion of this project. The plan and/or report shall be signed by a **ENGINEER** who shall certify that the work has been done in accordance with the approved plan(s) and this Order. This plan and/or report must be submitted prior to the issuance of a Certificate of Compliance.

15. The applicant or property owner shall submit an "As-built" plan to the LCC upon completion of this project. A wetland specialist, who shall certify that the replication work has been done in accordance with 310 CMR 10.55 (4)(B), shall sign the plan. This plan must be submitted to the LCC prior to the issuance of a Certification of Compliance.

The remainder of this page is blank

Leicester Conservation Commission Orders Of Conditions

IV. LANDSCAPING, GRADING, SIDE SLOPES, DRAINAGE

16. All exposed slopes shall receive a minimum of 3 inches of topsoil and (some ground cover, grass or other). Mulch of hay of at least 3 inches in depth shall be placed on newly seeded slopes an/or earth capable of eroding into any area of statutory interest.

17. All altered slopes within the 50 foot buffer zone(s), shall be no steeper than 3 horizontal to 1 vertical. Any slope greater than said 3 to 1, shall be stabilized by methods approved the USDA Soil Conservation Service and submitted to the LCC.

18. As long as construction occurs which may cause siltation in road-ways, all catch basins must have hay bale barriers preventing siltation to enter and must be maintained until all disturbed areas of concern have been stabilized.

V. SEDIMENTATION SILTATION CONTROL

19. As soon as possible during construction, all disturbed upland areas shall be brought to final finished grade. Bare ground that cannot be permanently stabilized within 30 days shall be stabilized by temporary measures.

20. Adequate erosion and sedimentation control measures shall be implemented and maintained in effect throughout the entire construction phase, and until the site has become stabilized with an adequate vegetative cover.

21. Hay bales and/or siltation fencing must be in place and property staked prior to any work on the site. A **double row** of firmly staked hay bales placed end to end is useful to prevent erosion of disturbed soil and to serve as a visible physical barrier denoting the limit of work. A row of hay bales shall be placed **ON AREA AS DEPICTED ON PLAN**. This hay bale barrier shall be maintained until the disturbed area has been permanently stabilized.

22. The applicant or his successor shall have on site at the start of any soil disturbance, removal, or stockpiling, a minimum of 25 hay bales and sufficient stakes for installation. Said hay bales shall be used for the control of erosion.

23. The border of the resource areas on the site shall be clearly marked in the field by stakes placed at 10 foot intervals. A continuous construction barrier shall be established between all construction areas (including replication/restoration areas) and wetland resource areas. Said barrier shall consist of hay bales dike or a properly installed silt fence. Workers are to be informed that no construction activity is to occur beyond this line.

V. SEDIMENTATION SILTATION CONTROL - Continued

24. The driveway(s) on lot(s) must be provided with a row of hay bales to prevent sedimentation and siltation at (side(s), base, etc.). This should be accomplished at the end of each workday. Hay bales should be on-site for this purpose.
25. All construction shall be done in a manner to minimize siltation effects.
26. There shall be no disturbance of wetlands past the stabilization line.

VII. POLLUTION CONTROL

27. The completion of this project shall not increase the level of pollution in the area. There shall be no discharge of gasoline or oil from any docks associated with this project.
28. All materials to be removed from the site shall comply with the State and Federal Statutes.
29. Any on-site dumpsters or excavated stockpiled material shall not be located within 50 feet of the wetland and/or resource area.
30. Materials and equipment shall be stored in a manner and location, which will minimize the compacting of soils and the concentration of run-off. Refueling of vehicles shall be in an area outside the buffer zone. If a spill occurs contaminated soils shall be removed according to guidelines established by the DEP Division of Hazardous Waste.

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VIII. FILLING AND EXCAVATION REQUIREMENTS

31. SEPTIC SYSTEMS: Whether from on site or off site sources, any fill used in connection with this project shall be clean fill as defined in Title 5 of the State Environmental Code. Acceptable fill:

Fill material shall be clean, coarse, washed sand or other clean, granular material essentially free of clay, fines, dust, organic matter, large stones, masonry, stones, frozen clumps of earth, wood, tree branches, and water material, and shall have a percolation rate of less than 2 minutes per inch before and after placement. Before the fill is put in place, all trees, brush, and stumps shall be removed from the area to be filled. Topsoil, peat, and other impervious material shall be removed from all areas beneath the area to be filled by this Order. (310 CMR 15:02(17)).

32. During clearing operations, trees adjacent to wetlands should be felled away from the wetland and should be removed from the buffer zone. No stockpiling of erodable materials may occur within fifty (50) feet of any resource area. Work should proceed carefully, but as fast as possible, in order that the altered site adjacent to the wetland is stabilized as promptly as possible.

33. All waste projects, grubbed stumps, slash, construction materials, etc., shall be deposited at an approved landfill and shall not be in any manner incorporated into the project site with the exception of the reduction of stumps and slash to mulch.

34. Any stockpiling of topsoil shall be conducted outside of any resource area and stabilized.

35. No boxes, pallets, trees or brush cuttings, dredged materials; trash or construction debris shall be placed on any wetland resource areas.

36. No filling of any land beyond the limits or above the grades shown on plans referenced on page 5-3 ____ of this Order is authorized.

The remainder of this page is blank.

Leicester Conservation Commission Orders Of Conditions

IX. SPECIAL CONDITIONS

37. A strip of thick brushy vegetation along the edge of a wetland is valuable to wildlife, increases absorption of rain and reduces erosion. No cutting or removal of vegetation is permitted in this strip.

38. The protection of trees and vegetation are important to allow slow percolation of rainwater into the ground and to reduce erosion. No cutting of trees and/or vegetation is permitted within the buffer zone except as defined in these conditions.

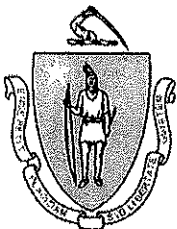
39. A Board of Health permit for septic system design, must be submitted to the LCC prior to any construction within 50 of any wetland resource area (on or off site)

ADDITIONAL CONDITIONS:

ANY CHANGE IN SIZE OR DIMENSION FROM THE PLAN SUBMITTED FOR THESE ORDERS OF CONDITIONS, APPLICANT MUST RETURN TO LCC FOR APPROVAL.

40. The use of heavy equipment upon any wetland is prohibited. All work within these resource areas must be done by hand or with suitable equipment approved by the LCC.

THE END



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

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B. Findings (cont.)

Additional conditions relating to municipal ordinance or bylaw:

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

October 14, 2004

Date

This Order must be signed by a majority of the Conservation Commission. The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office (see Appendix A) and the property owner (if different from applicant).

Signatures:

Dianna Proucher
Jmy Latta
Ashley Day
Stephen M. Pardo

On 14th

Day

Of October, 2004

Month and Year

before me personally appeared

Dianna Proucher

to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

Notary Public

November 19, 2010

My Commission Expires

This Order is issued to the applicant as follows:

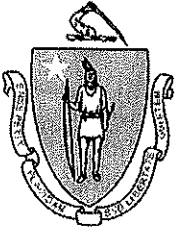
☐ by hand delivery on

Date

☒ by certified mail, return receipt requested, on

November 2, 2004

Date



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

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C. 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 Appendix E: 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.

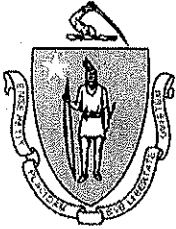
The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act, (M.G.L. c. 131, § 40) and is inconsistent with the wetlands regulations (310 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.

D. 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 Form 5 shall be submitted to the Conservation Commission listed below.

LEICESTER

Conservation Commission



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D. Recording Information (cont.)

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

To:

LEICESTER
Conservation Commission

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

47 Fairview Drive
Project Location

197-382
DEP File Number

Has been recorded at the Registry of Deeds of:

Worcester
County

17359
Book

330
Page

for:

Paul & Susan Dufresne
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:

November 2, 2004
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