



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:
 85-768
 Provided by DEP

A. General Information

From:

ACTON
 Conservation Commission

This issuance is for (check one):

- Order of Conditions
 Amended Order of Conditions

To: Applicant:

Martin & Jo Ellen Hirsch
 Name
39 Arlington Street
 Mailing Address
Acton MA 01720
 City/Town State Zip Code

Property Owner (if different from applicant):

Applicant & Thomas P. Benton
 Name
35 Arlington Street
 Mailing Address
Acton, MA 01720
 City/Town State Zip Code

1. Project Location:

35 & 39 Arlington Street Acton
 Street Address City/Town
D-3 22-3 & 22-5
 Assessors Map/Plat Number Parcel/Lot Number

2. Property recorded at the Registry of Deeds for:

Middlesex South 13875 & 13032 198 & 474
 County Book Page

Certificate (if registered land)

3. Dates:

November 9, 2001 November 28, 2001 November 28, 2001
 Date Notice of Intent Filed Date Public Hearing Closed Date of Issuance

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

NOI Plan Oct. 25, 2001
 Title Date

5. Final Plans and Documents Signed and Stamped by:

Joseph March, Civil #40472
 Name

6. Total Fee:

\$ 55
 (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 type="checkbox"/> Private Water Supply | <input type="checkbox"/> Fisheries | <input checked="" type="checkbox"/> Protection of Wildlife Habitat |
| <input 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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DEP File Number:

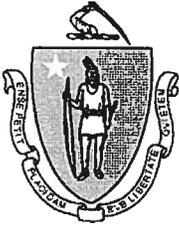
85-768

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 85-768 "
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):

Findings as to municipal bylaw or ordinance

Furthermore, the _____ 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.



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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.

Date November 28, 2001

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:

Bob J. Egan _____
Terence Martland _____
[Signature] _____
[Signature] _____
[Signature] _____
[Signature] _____

On 28th Day Of November 2001 Month and Year

before me personally appeared

Matthew Liebman

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.

[Signature] Notary Public
 March 1, 2002
 My Commission Expires

This Order is issued to the applicant as follows:

- by hand delivery on _____ by certified mail, return receipt requested, on _____

Date _____ Date _____



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

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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.

ACTON

Conservation Commission

DEP File No. 85-768
Applicant: M. & J. Hirsch



**Order of Conditions
Wetlands Protection Bylaw
Chapter F**

From the ACTON CONSERVATION COMMISSION Issuing Authority

To Martin & Jo Ellen Hirsch Applicant & Thomas P. Benton
(Name of person making request) (Name of property owner)

Address 39 Arlington Street, Acton, MA 01720 Address 35 Arlington Street, Acton, MA 01720

This Order is issued and delivered as follows:

- by hand delivery to person making request on _____ (date)
- by certified mail, return receipt requested on _____ (date)

This project is located at 35 & 39 Arlington Street, Acton

The property is recorded at the Registry of Middlesex South

Book 13875 & 13032 Page 198 & 474

Certificate (if registered) _____

The Notice of Intent for this project was filed on November 9, 2001 (date)

The public hearing was closed on November 28, 2001 (date)

Findings

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

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

Total filing fee submitted under Acton Wetlands Protection Bylaw \$ 11.00

Therefore, the ACTON CONSERVATION COMMISSION hereby finds that the following conditions are necessary, in accordance with the Performance Standards set forth in the regulations, to protect those interests checked above. The ACTON CONSERVATION COMMISSION orders that all the work shall be performed in accordance with the said conditions and with the Notice of Intent references above. To the extent that the following conditions modify or differ from the plans, specifications or other proposals submitted with the Notice of Intent, the conditions shall control.

General Conditions

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - (a) the work is a maintenance dredging project as provided for in the Act; or
 - (b) the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.
7. No work shall be undertaken until all administrative appeal periods from this Order have elapsed or, if such an appeal has been filed, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Final order has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Final order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the ACTON CONSERVATION COMMISSION on the form at the end of this Order prior to the commencement of the work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in the size bearing the words, "Massachusetts Department of Environmental Protection, File Number 85-768 .
10. Where the Department of Environmental Protection is requested to make a determination and to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.
11. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.

**** PLEASE READ THE FOLLOWING GENERAL CONDITIONS REQUIRED BY THE
TOWN OF ACTON WETLANDS BYLAW ****

12. No work shall be undertaken until the Order of Conditions has been reviewed and is clearly understood by the Contractor or his agent. It is the Applicant's responsibility to see that the Contractor clearly understands all items herein.
13. This Order of Conditions shall apply to any successor in interest or successor in control.
14. Members and agents of the Conservation Commission shall have the right to enter and inspect the premises to evaluate compliance with the Order and to require the submittal of any data deemed necessary by the Commission for that evaluations.

15. All drainage facilities and related structures and equipment shall be continually operated and maintained so as to comply with this Order of Conditions. The operation and maintenance of the facilities and structures shall be on-going and will not expire at the end of one year or with the issuance of the Certificate of Compliance.
16. Any change made, or intended to be made, in the plans shall require the applicant to file a new Notice of Intent, or to inquire of the Commission, in writing, whether the change is substantial enough to require a new filing.
17. The Conservation Commission shall have the right to file this Order of Conditions in the Registry of Deeds should the applicant fail to do so within 60 days.
18. Accepted engineering and construction standards and procedures shall be followed in the completion of this project.
19. The Commission shall be notified in writing 10 days prior to the commencement of any site work. Failure to so notify the Commission shall result in the issuance of an Enforcement Order.
20. The Petitioner is advised that this Order in no way absolves him of responsibility to other property owners upon whose land he discharges water directly or indirectly.
21. Erosion control measures consisting of staked haybales unless otherwise approved by the Commission shall be installed during the first phase of construction and the Commission shall be notified of their placement and no work shall begin before inspection by the Commission.
22. Any materials collected by the erosion control measures shall be removed and properly disposed of.
23. All work shall be completed as quickly as possible to minimize the duration of exposure of disturbed areas. If work is suspended for a significant period of time (i.e. as during winter months), then temporary stabilization methods must be employed and maintained during the period of inactivity.
24. No salt or other deicing chemicals shall be used on roadways and parking areas on the site.
25. This order applies only to the work described in the Notice of Intent and shown on the plans referenced in Condition 12. A Determination of Applicability Form must be filed for any additional work on site in areas governed by the Town of Acton Wetlands Protection Bylaw.
26. All disturbed areas shall be topsoiled six inches and seeded.
27. Violation of any condition of this Order may result in the issuance of an Enforcement Order. Such Enforcement Order, if issued, will require the immediate cessation of all work until a hearing is held; such hearing will be held not more than 10 days from the issuance of the Enforcement Order.
28. The work authorized hereunder by the Acton Wetlands Protection Bylaw shall be completed within three years from the date of this Order unless the Order is renewed prior to expiration.
29. A twenty-five (25) foot setback of natural vegetation shall be maintained up-gradient from the wetland.
30. No construction, either temporary or permanent shall occur within forty (40) feet of the edge of wetlands. This shall include driveways; roadways; residential, commercial or industrial structures, etc.
31. There shall be no use of fertilizers, pesticides, herbicides or chemicals of any kind within the forty (40) foot no construction zone.
32. There shall be no underground storage of gasoline, oil or other fuels or hazardous materials within the one-hundred (100) foot buffer zone.
33. The Commission reserves the right to impose additional conditions to mitigate any actual or potential impacts resulting from the permitted work.
34. The work shall conform to the following plans and special conditions:

Plans:

Title	Dated	Signed and Stamped by:	on file with:
NOI Plan	10/25/01	Joseph March, Civil #40472	Acton Conservation
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Special Conditions (Use additional paper if necessary)

(Leave Space Blank)

Issued by the ACTON Conservation Commission

Signature(s) Brian J. Elmer
Sergeant Montland
[Signature] [Signature]
[Signature]

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

On this 28th day of November, 2001, before me personally appeared Matthew Liebman, 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.

Andrew Mackenzie
Notary Public

March 1, 2002
My Commission Expires

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

Detach on dotted line and submit to the **ACTON CONSERVATION COMMISSION** prior to commencement of work.

To ACTON CONSERVATION COMMISSION Issuing Authority

Please be advised that the Order of Conditions for the project at 35 & 39 Arlington Street, Acton

File Number 85-768 has been recorded at the Registry of Middlesex South and

has been noted in the chain of title of the affected property in accordance with General Condition 8 on 19 .

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

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

Signature _____ Applicant