



**WPA Form 5 – Order of Conditions**

85-1027

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

**A. General Information**

1. From: ACTON  
Conservation Commission

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

3. To: Applicant:

Mark Starr  
a. First Name b. Last Name  
Red Acre Development  
c. Organization  
PO Box 992  
d. Mailing Address  
Acton MA 01720  
e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

Jeanne Potter  
a. First Name b. Last Name  
c. Organization  
99 Parker Street  
d. Mailing Address  
Acton MA 01720  
e. City/Town f. State g. Zip Code

5. Project Location:

99 Parker Street ACTON  
a. Street Address b. City/Town  
I-3 8  
c. Assessors Map/Plat Number d. Parcel/Lot Number  
Latitude and Longitude, if known: 42.4554 -71.4361  
e. Latitude f. Longitude

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

MIDDLESEX SOUTH  
a. County b. Certificate Number (if registered land)  
24587 369  
c. Book d. Page

7. Dates: August 11, 2009  
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):

Site Plan Set (Sheets 1 – 7)  
a. Plan Title  
Meridian Associates Mark Beaudry, Civil PE 38189  
b. Prepared By c. Signed and Stamped by  
See plans  
d. Final Revision Date e. Scale

f. Additional Plan or Document Title g. Date



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## B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- a.  Public Water Supply
- b.  Land Containing Shellfish
- c.  Prevention of Pollution
- d.  Private Water Supply
- e.  Fisheries
- f.  Protection of Wildlife Habitat
- g.  Groundwater Supply
- h.  Storm Damage Prevention
- i.  Flood Control

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

**Approved subject to:**

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

**Denied because:**

- b.  the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect these interests, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c.  the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**

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

3. <input checked="" type="checkbox"/> Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available)				0'
				a. linear feet
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		



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**B. Findings (cont.)**

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

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

10. <input type="checkbox"/> <b>Designated Port Areas</b>	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> <b>Land Under the Ocean</b>	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> <b>Barrier Beaches</b>	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> <b>Coastal Beaches</b>	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
14. <input type="checkbox"/> <b>Coastal Dunes</b>	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
15. <input type="checkbox"/> <b>Coastal Banks</b>	a. linear feet	b. linear feet		
16. <input type="checkbox"/> <b>Rocky Intertidal Shores</b>	a. square feet	b. square feet		
17. <input type="checkbox"/> <b>Salt Marshes</b>	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> <b>Land Under Salt Ponds</b>	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> <b>Land Containing Shellfish</b>	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> <b>Fish Runs</b>	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 type="checkbox"/> <b>Land Subject to Coastal Storm Flowage</b>	a. square feet	b. square feet		



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

(only applicable to approved projects)

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

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]

"File Number 85-1027"



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

10. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
11. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
12. The work shall conform to the plans and special conditions referenced in this order.
13. Any change to the plans identified in Condition #12 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
14. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
15. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
16. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
17. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

#### NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

18. 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 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.



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

- 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;
  - 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 BMPs 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, and 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):

**SEE PAGE 12 OF 12 OF THIS DOCUMENT FOR SPECIAL CONDITIONS REQUIRED BY THE  
ACTON CONSERVATION COMMISSION.**

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

- 1. Is a municipal wetlands bylaw or ordinance applicable?  Yes  No
- 2. The ACTON 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:
 

<u>TOWN OF ACTON WETLAND PROTECTION BYLAW</u>	<u>CHAPTER F</u>
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.



**D. Findings Under Municipal Wetlands Bylaw or Ordinance (cont.)**

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

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 DECISION ISSUED BY THE ACTON BOARD OF APPEALS (CHAPTER 40B PROJECT).

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Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

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MassDEP File Number:

85-1027

**E. Issuance**

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

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

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, if not filing electronically, and the property owner, if different from applicant.

9-2-2009

1. Date of Issuance

FIVE

2. Number of Signers

Signatures:

Terrence Mailland  
William Foberg  
Erin Portant  
And Kludner

[Signature]  
[Signature]  
[Signature]

**Notary Acknowledgement**

Commonwealth of Massachusetts County of

MIDDLESEX SOUTH

On this

Second

Day

of

September

Month

2009

Year

Before me, the undersigned Notary Public, personally appeared

Terrence Mailland  
Name of Document Signer

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

**KNOWN TO ME**

Description of evidence of identification

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

As member of

ACTON  
City/Town

Conservation Commission

Andrea H. Ristine  
Signature of Notary Public

Andrea Ristine  
Printed Name of Notary Public

February 25, 2016  
My Commission Expires (Date)

Place notary seal and/or any stamp above

This Order is issued to the applicant as follows:

by hand delivery on

9/3/09 [Signature]  
Date

by certified mail, return receipt requested, on

Date



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

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.

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



**G. Recording Information**

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

ACTON  
 Conservation Commission

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

To:

ACTON  
 Conservation Commission

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

99 PARKER STREET  
 Project Location

85-1027  
 MassDEP File Number

Has been recorded at the Registry of Deeds of:

MIDDLESEX SOUTH  
 County

Book

Page

for:

Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant



## **H. Special Conditions:**

1. The Applicant shall use only sand without chemical additives for ice-control within the 50-foot wetlands buffer.
2. The Applicant shall install guardrails or other suitable barriers to prevent the plowing of snow into natural wetlands, pocket wetlands and rain gardens:
  - a) Along the northerly side of the proposed driveway for Unit 1, and continuing along the northerly side of the proposed roadway to the wetland-crossing guardrail.
  - b) Along the westerly side of the proposed driveway for Unit 3, and continuing along the southerly side of the proposed roadway to the wetland-crossing guardrail.
  - c) Along the boundary between the proposed rain garden in the northwesterly corner of the property, and the proposed turnaround space to the northeast of Unit 5.
3. The Applicant shall install at 40-foot intervals 6-inch-by-6-inch wooden posts bearing signs identifying the adjacent areas as "Protected Wetland Buffer Area" (see enclosed photocopied sample), and shall include in the Operation and Maintenance Plan provisions for the permanent maintenance of the posts and signs:
  - a) Along the northerly boundary of the proposed lawn area behind Unit 1.
  - b) Along the southerly boundary of the proposed lawn area behind Units 2 and 3.
  - c) Along the southerly boundary of the proposed lawn area to the south of Unit 4.
  - d) Along the northerly boundary of the proposed lawn area behind Unit 5.
4. The Applicant shall include in the Operation and Maintenance Plan provisions for controlling invasive plants in the proposed rain gardens.
5. The Applicant shall submit for the review and approval of the Commission the proposed condominium association agreement, bylaws and other proposed condominium documents that address, among other things, the maintenance of the proposed pocket wetlands and rain gardens, and the protected status of the wetlands, and proposed pocket wetlands and rain gardens.

<END>