



# CITY OF SALEM CONSERVATION COMMISSION

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December 17, 2018

Maura Murphy  
South Harbor Holdings, LLC  
P.O. Box 829  
Salem, MA 01970

**Re: Order of Conditions—DEP #64-659—283-285 Derby Street**

Dear Ms. Murphy,

Enclosed, please find the Order of Conditions for the above-referenced project. Following the 10-business-day appeal period, this document and attachments must be recorded at the South Essex County Registry of Deeds (Shetland Park 45 Congress Street, Suite 4100 Salem, MA). Once recorded, please return a copy of Page 12 of the Order, which will indicate to the Commission that the document has been recorded.

As indicated in the Order, prior to any work commencing:

1. this **Order must be recorded**,
2. a sign shall be displayed showing **DEP File # 64-659** within public view, and
3. contact me at least **one week prior to any activity** to schedule a pre-construction meeting to review the Order with your hired contractor.

If you have any further questions, please feel free to contact me at 978-619-5685.

Sincerely,

Darya Mattes  
Conservation Agent

Enclosures

cc: DEP Northeast Regional Office  
Susan St. Pierre, Susan St. Pierre Consulting Services



**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 #

64-659

eDEP Transaction #

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## A. General Information

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

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



1. From: Salem  
 Conservation Commission

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

3. To: Applicant:

Maura

a. First Name

Murphy

b. Last Name

South Harbor Holdings, LLC

c. Organization

PO Box 829

d. Mailing Address

Salem

e. City/Town

MA

f. State

01970

g. Zip Code

4. Property Owner (if different from applicant):

a. First Name

b. Last Name

c. Organization

d. Mailing Address

e. City/Town

f. State

g. Zip Code

5. Project Location:

283 and 285 Derby Street

a. Street Address

Salem

b. City/Town

34

c. Assessors Map/Plat Number

0443

d. Parcel/Lot Number

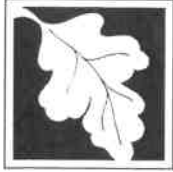
Latitude and Longitude, if known:

42d31m10s

d. Latitude

-70d53m.32s

e. Longitude



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## A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):  
**Essex**
- |             |  |
|-------------|--|
| a. County   | b. Certificate Number (if registered land) |
| 14221/14166 | 237/215                                    |
| c. Book     | d. Page                                    |
7. Dates:
- |                                |                               |                     |
|--------------------------------|-------------------------------|---------------------|
| 11/9/18                        | 12/13/18                      | 12/17/18            |
| 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):  
**Proposed Derby Street Harborwalk Project**
- |                          |                                      |
|--------------------------|--------------------------------------|
| a. Plan Title            | b. Prepared By                       |
| GeoEnvironmental Inc.    | Anders B. Bjarngard                  |
| c. Signed and Stamped by | d. Final Revision Date               |
| November, 2018           | 1"=10'                               |
| e. Scale                 | f. Additional Plan or Document Title |
|                          | g. Date                              |

## B. Findings

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

### Approved subject to:

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



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## B. Findings (cont.)

### Denied because:

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

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

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	<u>                    </u> a. linear feet	<u>                    </u> b. linear feet	<u>                    </u> c. linear feet	<u>                    </u> d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. square feet	<u>                    </u> d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. square feet	<u>                    </u> d. square feet
	<u>                    </u> e. c/y dredged	<u>                    </u> f. c/y dredged		
7. <input type="checkbox"/> Bordering Land Subject to Flooding	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. square feet	<u>                    </u> d. square feet
Cubic Feet Flood Storage	<u>                    </u> e. cubic feet	<u>                    </u> f. cubic feet	<u>                    </u> g. cubic feet	<u>                    </u> h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	<u>                    </u> a. square feet	<u>                    </u> b. square feet		
Cubic Feet Flood Storage	<u>                    </u> c. cubic feet	<u>                    </u> d. cubic feet	<u>                    </u> e. cubic feet	<u>                    </u> f. cubic feet
9. <input type="checkbox"/> Riverfront Area	<u>                    </u> a. total sq. feet	<u>                    </u> b. total sq. feet		
Sq ft within 100 ft	<u>                    </u> c. square feet	<u>                    </u> d. square feet	<u>                    </u> e. square feet	<u>                    </u> f. square feet
Sq ft between 100-200 ft	<u>                    </u> g. square feet	<u>                    </u> h. square feet	<u>                    </u> i. square feet	<u>                    </u> j. square feet



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**B. Findings (cont.)**

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

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input checked="" type="checkbox"/> Coastal Beaches	16	16	cu yd	cu yd
	a. square feet	b. square feet	c. nourishment	d. nourishment
14. <input type="checkbox"/> Coastal Dunes			cu yd	cu yd
	a. square feet	b. square feet	c. nourishment	d. nourishment
15. <input checked="" type="checkbox"/> Coastal Banks	138	138		
	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores				
	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes				
	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds				
	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish				
	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	a. c/y dredged	b. c/y dredged		
21. <input checked="" type="checkbox"/> Land Subject to Coastal Storm Flowage	1355	1355		
	a. square feet	b. square feet		
22. <input checked="" type="checkbox"/> Riverfront Area	1355	1355		
	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	1355	1355		
	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft				
	g. square feet	h. square feet	i. square feet	j. square feet



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## B. Findings (cont.)

\* #23. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23.  Restoration/Enhancement \*:

a. square feet of BVW

b. square feet of salt marsh

24.  Stream Crossing(s):

a. number of new stream crossings

b. number of replacement stream crossings

## C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - a. The work is a maintenance dredging project as provided for in the Act; or
  - b. The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
  - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on 12/17/21 unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.



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

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

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]  
 "File Number            64-659            "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.



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

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

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

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





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

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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

1. Municipal Ordinance or Bylaw

2. Citation

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

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

Wetlands Protection and Conservation Ordinance

c. 50

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):

Attached conditions are issued under the Wetlands Protection Act and are sufficient for compliance with the local ordinance

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### E. Signatures

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

1. Date of Issuance

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

2. Number of Signers

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.

Signatures:

*[Handwritten signature]*  
*[Handwritten signature]*  
*[Handwritten signature]*

*[Handwritten signature]*  
*[Handwritten signature]*

by hand delivery on

by certified mail, return receipt requested, on

12/17/18

Date

Date

### F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellants.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

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



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### G. Recording Information

Prior to commencement of work, 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.

Conservation Commission

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

To:

Conservation Commission

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

Project Location

MassDEP File Number

Has been recorded at the Registry of Deeds of:

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



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**Request for Departmental Action Fee**  
**Transmittal Form**

DEP File Number:

Provided by DEP

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

## A. Request Information

### 1. Location of Project

a. Street Address

b. City/Town, Zip

c. Check number

d. Fee amount

### 2. Person or party making request (if appropriate, name the citizen group's representative):

Name

Mailing Address

City/Town

State

Zip Code

Phone Number

Fax Number (if applicable)

### 3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Name

Mailing Address

City/Town

State

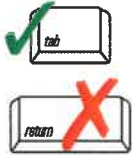
Zip Code

Phone Number

Fax Number (if applicable)

### 4. DEP File Number:

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



## B. Instructions

### 1. When the Departmental action request is for (check one):

- Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)
- Superseding Determination of Applicability – Fee: \$120
- Superseding Order of Resource Area Delineation – Fee: \$120



**Massachusetts Department of Environmental Protection**  
Bureau of Resource Protection - Wetlands

DEP File Number:

**Request for Departmental Action Fee  
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Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

**B. Instructions (cont.)**

Send this form and check or money order, payable to the *Commonwealth of Massachusetts*, to:

Department of Environmental Protection  
Box 4062  
Boston, MA 02211

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.
3. Send a **copy** of this form and a **copy** of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office (see <http://www.mass.gov/eea/agencies/massdep/about/contacts/>).
4. 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.



**SALEM CONSERVATION COMMISSION**  
**DEP FILE #64-659**  
**Construction of Harborwalk**  
**283-285 Derby Street**  
**City of Salem, Massachusetts**

**ADDITIONAL FINDINGS**

Based on the Estimated Habitats of Rare Wildlife and Certified Vernal Pools Map (12/17/18, online) from Natural Heritage & Endangered Species Program (NHESP) of the Massachusetts Division of Fisheries and Wildlife, it has been determined that this project does not occur near any habitat of state-listed rare wildlife species nor contain any vernal pools.

This Order permits the construction of a pile-supported Harborwalk, seawall repairs, grading to create an outdoor dining area, and catch basin retrofits per 11/8/18 Notice of Intent, approved plans listed below, and these conditions.

**GENERAL CONDITIONS**

1. This Order of Conditions must be recorded in its entirety (**including all 5 pages of Special Conditions**) at the Essex County Registry of Deeds or the Land Court for the district in which the land is located, after the expiration of the 10-day appeal period and within 30 days of the issuance. **A copy of the recording information must be submitted to the Salem Conservation Commission before any work approved in this Order commences.**
2. Approval of this application does not constitute compliance with any law or regulation other than M.G.L Chapter 131, Section 40, Wetlands Regulations 310 CMR 10.00 and the City of Salem Wetlands Protection Ordinance, Salem Code Chapter 50.
3. All work shall be performed in accordance with this Order of Conditions and approved site plan(s). No alteration of wetland resource areas or associated buffer zones, other than that approved in this Order, shall occur on this property without prior approval from the Commission.
4. Prior to any work commencing on site, a DEP Sign showing **DEP File #64-659** must be installed at the entrance to the site and seen from the public way, but not placed on a living tree.
5. No work approved in this Order may commence until the ten (10) day appeal period has lapsed from the date of the issuance of this Order.
6. With respect to this Order, the Commission designates the Conservation Agent as its agent with powers to act on its behalf in administering and enforcing this Order.
7. The Commission or its Agent, officers, or employees shall have the right to enter and inspect the property at any time for compliance with the conditions of this Order, the Wetlands Protection Act MGL Chapter 131, Section 40, the Wetlands Regulations 310 CMR 10.00, and shall have the right to require any data or documentation that it deems necessary for that evaluation.
8. The term "Applicant" as used in this Order of Conditions shall refer to the owner, any successor in interest or successor in control of the property referenced in the Notice of intent, supporting documents





and this Order of Conditions. The Commission shall be notified in writing within 30 days of all transfers of title of any portion of the property that takes place prior to issuance of the Certificate of Compliance.

- 9. It is the responsibility of the applicant to procure all other applicable federal, state and local permits and approvals associated with this project. These permits may include but are not necessarily limited to the following:
  - (1) Section 404 of the Federal Water Pollution Control Act (P.L. 92-500, 86 stat. 816), U.S. Army Corps of Engineers.
  - (2) Water Quality Certification in accordance with the Federal Water Pollution Control under authority of sec. 27(5) of Chapter 21 of the Massachusetts General Laws as codified in 314 CMR 9.00.
  - (3) Design Requirements for Construction in Floodplains under the State Building Code (780 CMR 744.).
- 10. If there are conflicting conditions within this Order, the stricter condition(s) shall rule.
- 11. All work shall be performed so as to ensure that there will be no sedimentation into wetlands and surface waters during construction or after completion of the project.
- 12. The Commission or its Agent shall have the discretion to modify the erosion/siltation control methods and boundary during construction if necessary.
- 13. The Commission reserves the right to impose additional conditions on portions of this project or this site to mitigate any actual or potential impacts resulting from the work herein permitted.
- 14. The work shall conform to the following attached plans and special conditions:

***Final Approved Plans***  
**Proposed Derby Street Harborwalk Project**

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*(Title)*  
 November 2018

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*(Dated)*  
 Anders B. Bjarngard

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*(Signed and Stamped by)*  
 City of Salem Conservation Commission

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*(On file with)*

- 15. Any proposed changes in the approved plan(s) or any deviation in construction from the approved plan(s) shall require the applicant to file a Notice of Project Change with the Commission. The Notice shall be accompanied by a written inquiry prior to their implementation in the field, as to whether the change(s) is substantial enough to require filing a new Notice of Intent or a request to correct or amend this Order of Conditions. A copy of such request shall at the same time be sent to the Department of Environmental Protection.
- 16. In conjunction with the sale of this property or any portion thereof before a Certificate of Compliance has been issued, the applicant or current landowner shall submit to the Commission a statement signed by the buyer that he/she is aware of an outstanding Order of Conditions on the property and has received a copy of the Order of Conditions.



17. [Reserved].

#### PRIOR TO CONSTRUCTION

18. **Prior to the commencement of any activity on this site other than activities listed above, there must be a Pre-Construction Meeting** on site between the project supervisor, the contractor responsible for the work, and the Conservation Agent and/or a member of the Conservation Commission to ensure that the requirements of the Order of Conditions are understood. The staked erosion control line shall be adjusted, if necessary, during the pre-construction meeting. **Please contact the Conservation Agent at (978) 619-5685 at least forty-eight (48) hours prior to construction to arrange for the Pre-Construction Meeting.**
19. Prior to the pre-construction meeting and commencement of any activity on this site, sedimentation and erosion control barriers shall be installed as shown on the approval plan(s) and detail drawings. The Commission and/or its Agent **shall inspect and approve such installation at the pre-construction meeting.**
20. No clearing of vegetation, including trees, or disturbance of soil shall occur prior to the pre-construction meeting. Minimal disturbance of shrubs and herbaceous plants shall be allowed prior to the pre-construction meeting if absolutely necessary in order to place erosion control stakes where required.
21. There shall be adequate additional erosion and sediment controls stored onsite for emergency purposes.

#### EROSION CONTROL

22. Appropriate erosion control devices shall be in place prior to the beginning of any phase of construction, and shall be maintained during construction in any wetland resource area and/or buffer zones. The erosion control measures shown on the approval plan(s) and provisions in the Order will be the minimum standards for this project; the Commission or its Agent may require additional measures.
23. All debris, fill and excavated material shall be stockpiled a location far enough away from the wetland resource areas to prevent sediment from entering wetland resource areas.
24. Erosion and sedimentation control devices shall be inspected after each storm event and repaired or replaced as necessary. Any accumulated silt adjacent to the barriers shall be removed.
25. The area of construction shall remain in a stable condition at the close of each construction day.
26. Any de-watering of trenches or other excavation required during construction shall be conducted so as to prevent siltation of wetland resource areas. All discharge from de-watering activities shall be filtered through straw bale sediment traps, silt filter bags or other means approved by the Commission or its Administrator.
27. Within thirty (30) days of completion of construction on any given portion of the project, all disturbed areas in the completed portion of the site shall be permanently stabilized with rapidly growing vegetative cover, using sufficient top soil to assure long-term stabilization of disturbed areas.
28. If soils are to be disturbed for longer than two (2) months, a temporary cover of rye or other grass should be established to prevent erosion and sedimentation. If the season is not appropriate for plant growth, exposed surface shall be stabilized by other appropriate erosion control measures, firmly anchored, to prevent soils from being washed by rain or flooding.



### DURING CONSTRUCTION

29. A copy of this Order of Conditions and the plan(s) approved in this Order shall be available on site at all times when work is in progress.
30. No alteration or activity shall occur beyond the limit of work as defined by the siltation barriers shown on the approved plan(s).
31. Cement trucks shall not be washed out in any wetland resource or buffer zone area, nor into any drainage system. Any deposit of cement or concrete products into a buffer zone or wetland resource area shall be immediately removed.
32. All exposed sub-soils shall be covered by a minimum of three (3) inches of quality screened loam topsoil prior to seeding and final stabilization.
33. Immediately following drainage structure installation all inlets shall be protected by silt fence, strawbale barriers and/or silt bags to filter silt from stormwater before it enters the drainage system.
34. There shall be no pumping of water from wetland resource areas.
35. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders or any other components shall be fixed immediately.
36. During construction, all drainage structures shall be inspected regularly and cleaned as necessary.
37. The applicant is hereby notified that failure to comply with all requirements herein may result in the issuance of enforcement actions by the Conservation Commission including, but not limited to, civil administrative penalties under M.G.L Chapter 21A, section 16.

### AFTER CONSTRUCTION

38. Upon completion of construction and final soil stabilization, the applicant shall submit the following to the Conservation Commission to request a Certificate of Compliance (COC):
  - (1) A Completed Request for a Certificate of Compliance form (WPA Form 8A or other form if required by the Conservation Commission at the time of request).
  - (2) A letter from a Registered Professional Engineer certifying compliance of the property with this Order of Conditions.
  - (3) An "As-Built" plan signed and stamped by a Registered Professional Engineer or Land Surveyor showing post-construction conditions within all areas under the jurisdiction of the Massachusetts Wetlands Protection Act. This plan shall include at a minimum:
    - (a) All wetland resource area boundaries with associated buffer zones and regulatory setback areas taken from the plan(s) approved in this Order of Conditions;
    - (b) Locations and elevations of all stormwater management conveyances, structures and best management designs, including foundation drains, constructed under this Order within any wetland resource area or buffer zone;
    - (c) Distances from any structures constructed under this Order to wetland resource areas - "structures" include, but are not limited to, all buildings, septic system components, wells, utility lines, fences, retaining walls, and roads/driveways;
    - (d) A line delineating the limit of work - "work" includes any filling, excavating and/or disturbance of soils or vegetation approved under this Order;



39. When issued, the Certificate of Compliance must be recorded at the Essex County Registry of Deeds and a copy of the recording submitted to the Salem Conservation Commission.
40. If the completed work differs from that in the original plans and conditions, the report must specify how the work differs; at which time the applicant shall first request a modification to the Order. Only upon review and approval by the Commission, may the applicant request in writing a Certificate of Compliance as described above.
41. Erosion control devices shall remain in place and properly functioning until all exposed soils have been stabilized with final vegetative cover and the Conservation Commission and/or its Agent has authorized their removal.

#### **ADDITIONAL CONDITIONS**

42. Work on this project will include removal of visible debris in the river west of the Congress Street Bridge and up to the western edge of the project site before and during construction.