



COMMUNITY DEVELOPMENT

BUILDING
PLANNING
ZONING
CONSERVATION

VIA Certified Mail – 7005 3110 0002 5855 3083

May 3, 2006

Mr. Myron Gildesgame
Department of Conservation and Recreation
251 Causeway Street
Boston, MA 02114

Dear Mr. Gildesgame:

Enclosed please find the Order of Conditions issued by the Natick Conservation Commission at their meeting April 26, 2006 for DEP file #233-600. Also enclosed is the Notice of Intent that was denied by the Commission for DEP file #233-601.

Project Location: Lake Cochituate, Natick, MA

Chapter 131 Section 40 of the Massachusetts General Laws requires that this Order of Conditions be recorded in the Registry of Deeds for the District in which the land is located before any work commences. A copy of such recording, showing Book and Page number, is to be furnished to the Natick Conservation Commission.

Work may not begin until the petitioner has duly recorded the Order of Conditions and until the ten (10) day period for appeals has elapsed. Work may also not begin until after all agreements or covenants as required by this Order of Conditions have been received and approved by the Natick Conservation Commission.

Any site work being done which is subject to the Order of Conditions shall display a sign, clearly visible from a traveled way, of not less than two (2) square feet or more than three (3) square feet in area, bearing the words "Massachusetts Department of Environmental Protection File No. 233-600".

Sincerely,

TOWN OF NATICK

Bob Bois
Conservation Agent

Cc Mass DEP

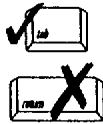


Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:
 233-601

A. General Information

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



From: Natick
 1. Conservation Commission

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

3. To: Applicant:

Myron Gildesgame Department of Conservation and Recreation
 a. First Name b. Last Name c. Company
Off. of Wter Resorce, 251 Causeway
 d. Mailing Address
Boston MA 02114
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

a. First Name b. Last Name c. Company
 d. Mailing Address
 e. City/Town f. State g. Zip Code

5. Project Location:

Lake Cochituate Natick
 a. Street Address b. City/Town
N/A N/A
 c. Assessors Map/Plat Number d. Parcel/Lot Number
Latitude and Longitude, if known (note: electronic filers will click for GIS locator): 42.30 71.37
 e. Latitude f. Longitude

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

Middlesex N/A
 a. County b. Certificate (if registered land)
N/A N/A
 c. Book d. Page

7. Dates: December 22, 2005 April 26, 2006 May 2, 2006
 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):

a. Plan Title
 b. Prepared By c. Signed and Stamped by
 d. Final Revision Date e. Scale
 f. Additional Plan or Document Title g. Date

9. Total WPA Fee Paid: \$500 \$237.50 \$262.50
 a. Total Fee Paid b. State Fee Paid c. City/Town Fee Paid



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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:

- 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:

- 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.**

- 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)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
3. <input type="checkbox"/> Bank	a. linear feet _____	b. linear feet _____	c. linear feet _____	d. linear feet _____
4. <input type="checkbox"/> Bordering Vegetated Wetland	a. square feet _____	b. square feet _____	c. square feet _____	d. square feet _____
5. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet _____ e. cu.yd dredged _____	b. square feet _____ f. cu.yd dredged _____	c. square feet _____	d. square feet _____



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, "MA DEP"]

"File Number 233-601"



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

DEP File Number:

233-601

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 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.
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:

If you need more space for additional conditions, select box to attach a text document

No work shall be performed on this project.



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D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Furthermore, the Natick hereby finds (check one that applies):
Conservation Commission

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

Wetlands Protection Bylaw

Section 2

a. Municipal Ordinance or Bylaw

b. 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.

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

a. Municipal Ordinance or Bylaw

b. Citation

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.

c. The special conditions relating to municipal ordinance or bylaw are as follows:

No work shall be performed on this project.

If you need more space for additional conditions, select box to attach a text document



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233-601

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.

5-2-06
 1. Date of Issuance

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

5
 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 Signatures]

Notary Acknowledgement

Commonwealth of Massachusetts County of

Middlesex

On this 26th Day of

April 2006
 Month Year

Before me, the undersigned Notary Public, personally appeared

Matthew Gardner
 Name of Document Signer

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

Description of evidence of identification

Driver's License

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

Natick
 City/Town

Conservation Commission

KERRY A. GRAVELINE
 Notary Public
 My Commission Expires
 September 1, 2006

Kerry A. Graveline
 Signature of Notary Public
Kerry A. Graveline
 Printed Name of Notary Public
Sept 1, 2006
 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

by certified mail, return receipt requested, on

Date

Date



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

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

DEP File Number:

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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 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 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.

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 Page 7 of this form 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 _____

DEP 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 _____

**Natick Conservation Commission Reasons for the Denial of the Notice
of Intent for the Control of Nuisance Aquatic Vegetation with
Herbicides in Lake Cochituate DEP file number 233-601.**

The Natick Conservation Commission denies the Herbicide Treatment NOI for Lake Cochituate (DEP file number 233-601) without prejudice for the following reasons:

1. A limited project filing under a 310 CMR 15.53(4) **must** demonstrate that the project will improve the natural capacity of the Lake and protect some or all the interests of the Wetlands Protection Act ("the" Act). Those interests are listed in the Act and the applicant **did not** demonstrate protection of at least two of those interests – Protection of a Groundwater Supply and Protection of a Public and Private Water Supply. In fact, written testimony submitted during the public hearing for the Herbicide NOI showed that the herbicide treatment of the Lake will, in all likelihood, impact the groundwater flowing beneath the Lake and, in all likelihood, will impact the Springvale ground water well field, one of the town of Natick's Public Water Supplies.

In addition, the Department of Environmental Protection Office of Research and Standards submitted written testimony raising a possible health concern in drinking water with a repeat application of at least one of the herbicides considered for treatment in South Pond – fluridone. Finally, the Natick Board of Health opposed the Herbicide NOI expressing their concern over drinking water health issues with the use of herbicide treatment in the Lake and, the Natick Board of Selectmen, in its capacity as Natick Water Commissioners, also opposed the Herbicide NOI expressing their concern with the lack of options to treat the potential herbicide contamination at the Springvale Water Treatment Plant.

2. For the reasons stated in item one above, the proposed herbicide treatment does not meet at least one of the performance standards for Land Under Water Bodies and Waterways (LUWW) for limited projects under 310 CMR 10.56(4). The Herbicide Treatment NOI will likely **impair** the ground water quality performance standard for a limited project LUWW to the point where it will likely impact the town of Natick's drinking water supply.
3. Under 310 CMR 10.05(6) c, the Natick Conservation Commission finds the following:
 - The applicant **did not** submit an adequate site specific description of the work planned and a site specific description of impacts and to resources that reflect actual, as opposed to generic, site conditions. The applicant relied heavily on a Generic Environmental Impact Report completed to meet requirements of the Massachusetts Environmental Policy Act and not

the site specific requirements of the Wetland Protection Act and the requirements for Limited Projects under 310 CMR 10.53(4). The Natick Conservation Commission received much written testimony on the lack of site specific detail in the applicants Herbicide NOI.

- An adequate evaluation of alternatives was not completed as a Limited Project. At least two positive testimonies were presented at the public hearing by technical experts for non-chemical treatment options (weevils and circulators) and were dismissed by the applicant during the combined Physical and Biological NOI (DEP file number 233-600) and Herbicide NOI (DEP file number 233-601). As stated earlier, much of the testimony submitted by the applicant relied on the Eutrophication and Aquatic Plant Management in Massachusetts, final Generic Environmental Impact Report dated 2004 and not Lake Cochituate specific information. The possible success of non-chemical control options was not fully evaluated in either NOI precluding a fair comparison of alternatives. Also, the applicant's failure to address site specific characteristics, like local geology, prevents an adequate evaluation of alternatives.

Finally, the applicant may propose alternative projects or improvements to the plan to use herbicides in Lake Cochituate in a new NOI filing with the Natick Conservation Commission with the exception of the use of the herbicide fluridone.