



# CITY OF SALEM CONSERVATION COMMISSION

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October 17, 2011

Paul DiBiase  
PO Box 780  
Lynnfield, MA 01940

Re: Amended Order of Conditions—DEP #64-418  
Osborne Hills Subdivision off of Marlborough Road, Salem, Massachusetts

Dear Mr. DiBiase:

Enclosed, please find the amended order of conditions for the above referenced project. **The attached amended order must be recorded at the Essex County Registry of Deeds**, Shetland Park, 45 Congress Street, Suite 4100, Salem, Massachusetts. Once recorded, please return a copy of Page 12 of the amended order, which will indicate to the Commission that the document has been recorded.

Please note that this amendment does not modify the expiration date of the original order.

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

Sincerely,



Tom Devine  
Conservation Agent/ Staff Planner

Enclosures

CC: DEP Northeast Regional Office



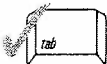
**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 5 – Order of Conditions**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:  
 64-418  
 MassDEP File #  
 eDEP Transaction #  
 Salem  
 City/Town

**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:

a. First Name Osborne Hills Realty Trust b. Last Name \_\_\_\_\_  
 c. Organization PO Box 780  
 d. Mailing Address Lynnfield MA 01940  
 e. City/Town f. State 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:

57 Marlborough Rd. Salem  
 a. Street Address b. City/Town  
9 1  
 c. Assessors Map/Plat Number d. Parcel/Lot Number  
 Latitude and Longitude, if known: 42d30m25s 70d55m34s  
 d. Latitude e. Longitude



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

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 MassDEP File #  
 eDEP Transaction #  
 Salem  
 City/Town

**A. General Information (cont.)**

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):  
 Essex  
 a. County  
 25909  
 c. Book  
 b. Certificate Number (if registered land)  
 312  
 d. Page
7. Dates: 9/30/11 10/13/11 10/17/11  
 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):  
 Definitive Subdivision Plan  
 a. Plan Title  
 Eastern Land Survey Assoc., Inc. Christopher A. Mellom PLS & Clayton A. Morin, PE  
 b. Prepared By  
 5/8/06 1"=40'  
 d. Final Revision Date e. Scale  
 See attached  
 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.  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.



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

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**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	_____ a. linear feet	_____ b. linear feet	_____ c. linear feet	_____ d. linear feet
5. <input checked="" type="checkbox"/> Bordering Vegetated Wetland	3580 _____ a. square feet	3580 _____ b. square feet	5400 _____ c. square feet	5400 _____ d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	_____ a. square feet _____ e. c/y dredged	_____ b. square feet _____ f. c/y dredged	_____ c. square feet	_____ d. square feet
7. <input type="checkbox"/> Bordering Land Subject to Flooding	_____ 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"/> Isolated Land Subject to Flooding	_____ 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"/> Riverfront Area	_____ 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



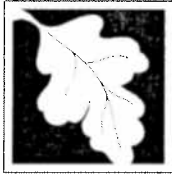
**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 5 – Order of Conditions**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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**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 type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. <sup>cu yd</sup> nourishment	d. <sup>cu yd</sup> nourishment
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. <sup>cu yd</sup> nourishment	d. <sup>cu yd</sup> nourishment
15. <input type="checkbox"/> Coastal Banks	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 type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		



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

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64-418

MassDEP File #

eDEP Transaction #

Salem

City/Town

## B. Findings (cont.)

\* #22. 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.

22.  Restoration/Enhancement \*:

a. square feet of BVW

b. square feet of salt marsh

23.  Stream Crossing(s):

6 (total wetland crossings, including but not limited to streams)

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 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. 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 6/13/2012 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.
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.



**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:  
64-418  
MassDEP File #  
eDEP Transaction #  
Salem  
City/Town

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

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            64-418            "
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.
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.



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

Provided by MassDEP:

64-418

MassDEP File #

eDEP Transaction #

Salem

City/Town

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

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.

**NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS**

19. **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.

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.





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

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64-418  
MassDEP File #  
eDEP Transaction #  
Salem  
City/Town

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

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

Provided by MassDEP:  
 64-418  
 MassDEP File # \_\_\_\_\_  
 eDEP Transaction # \_\_\_\_\_  
 Salem  
 City/Town

**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 attached**

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 Bureau of Resource Protection - Wetlands  
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 64-418  
 MassDEP File #  
 eDEP Transaction #  
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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):
- See attached



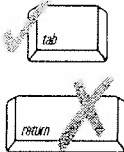
**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 5 – Order of Conditions**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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MassDEP File #  
 64-418  
 eDEP Transaction #  
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 City/Town

**E. Signatures**

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



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.

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

2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy must be mailed, hand delivered or filed electronically at the same time with the appropriate MassDEP Regional Office.

Signatures:

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*

by hand delivery on

by certified mail, return receipt requested, on

Date

Date

10-17-11

**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 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.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
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Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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64-418

MassDEP File #

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Salem

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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.

Salem

Conservation Commission

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

To:

Salem

Conservation Commission

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

57 Marlborough Rd.

Project Location

64-418

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



**SALEM CONSERVATION COMMISSION**  
**Amended Order of Conditions**  
**DEP FILE #64-418**  
**Osborne Hills Subdivision**  
**City of Salem, Massachusetts**

October 17, 2011

**ADDITIONAL FINDINGS**

Based on the Estimated Habitats or Rare Wildlife and Certified Vernal Pools Map (October 1, 2008) 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 contains any vernal pools.

This Order is issued under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40 and the City of Salem Wetlands Protection and Conservation Ordinance, Salem Code Chapter 50.

This Order permits the construction of roadways, utility connections, stormwater management facilities, filling of 3,580 square feet of BVW and the replication of 5,400 square feet of BVW for a 129-lot residential cluster subdivision. This Order does not permit the construction of any homes. A total of six jurisdictional wetlands will be crossed using a combination of span bridges (2) and arch culverts (4). Approximately 93 acres of the total 162-acre project site will be protected as open space with a low impact public accessible trail network designed for passive recreational use. The trail network shall cross jurisdictional wetlands in five (5) locations; three of the five locations will require footbridges. All of the trail crossings have been designed and approved as a Limited Project provision of WPA (310 CMR 10.53(3)(j)).

This Order, as **amended November 16, 2006**, permits the following alteration in the phasing plan of the construction: Phase 1 and Phase 2 will be worked on and completed, upon completion the applicant shall follow the instructions outlined under the *After Construction* section of this Order of Conditions. The Commission or its Agent shall inspect the site to determine compliance with Phase One and Phase Two approved items. The applicant shall not commence with any other work until a Partial Certificate of Compliance has been issued. A second alteration is that Phases 3, 4, and 5 shall be worked on, upon approval of work completed under Phases 1 and 2, and upon completion the applicant shall follow the instructions outlined under the *After Construction* section of this Order of Conditions in order to receive a Partial Certificate of Compliance. Phases 6, 7, 8, 9, and 10 remain as separate Phases that have to be completed per the instructions outlined under the *After Construction* section of this Order of Conditions and Partial Certificates of Compliance issued before work can occur within another phase. All phases will be completed per the Order of Conditions issued herein.

This Order, as **amended October 17, 2011**, permits modification of the stormwater facilities per revised plan, which includes "Buffer Zone Restoration Notes" and "Plant List", dated September 29, 2011.

**GENERAL CONDITIONS**

1. This Order of Conditions must be recorded in its entirety (**all 8 pages**) 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 34, Section 34-1 – 34-13.
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, a sign shall be displayed showing **DEP File #64-418**, and 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) Sewer Extension Permit from the DEP Division of Water Pollution Control under G. L. Ch. 21A ss7 and 314 CMR 7.00. Any Board of Health permit for septic system design for any portion of the septic system within 100 feet of wetlands shall be submitted to the Commission prior to construction initiation.
  - (4) 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***

**1. Definitive Subdivision Plans Osborne Hills 2. Stormwater Management Plan 3. Wetland Replication Plan**

*(Title)*

May 8, 2006, November 2005, April 12, 2006 (respectively)

*(Dated)*

Christopher R. Mello & Clayton A. Morin (Eastern Land Survey Associates, Inc.)

*(Signed and Stamped by)*

City of Salem Conservation Commission

*(On file with)*

***Final Approved Plans (2011 revision)***

Revision Plan, Osborn Hills, Salem, Massachusetts, Plan & Profile – Stormwater Facilities, Amanda Way to Open Space C

*(Title)*

September 29, 2011

*(Dated)*

Christopher R. Mello & Clayton A. Morin (Eastern Land Survey Associates, Inc.)

*(Signed and Stamped by)*

City of Salem Conservation Commission

*(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. **Condition #52** as indicated shall continue in force beyond the Certificate of Compliance, in perpetuity, and shall be referenced to in all future deeds to this property.
18. Approved wetland resource alteration and replication shall be performed according to the “Alteration and Replication of Vegetated Wetland” conditions of this Order.





### PRIOR TO CONSTRUCTION

19. Prior to the commencement of any activity on this site, the applicant or current landowner shall designate a **qualified representative**, who shall inspect and direct the maintenance of all erosion and sedimentation control measures on site and ensure compliance with this Order of Conditions. Contact information for the qualified representative shall be forwarded to the commission.
20. **Prior to the commencement of any activity on this site other than activities listed above, there shall be a Pre-Construction Meeting** between the project supervisor, the contractor responsible for the work, and a member of the Conservation Commission or its Administrator 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 Commission Agent at (978) 745-9595 ext 311 at least forty-eight (48) hours prior to any activity to arrange for the pre-construction meeting.
21. 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.**
22. 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.
23. There shall be forty (40) hay bales and wooden stakes under cover on the site to be used only for emergency erosion control.

### EROSION CONTROL

24. Appropriate erosion control devices shall be in place prior to the beginning of any phase of construction, and shall be maintained during construction in the wetland areas and buffer zones. The erosion control specifications provided in the Notice of Intent and the erosion control provision in the Order will be the minimum standards for this project; the Commission may require additional measures.
25. 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.
26. 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.
27. The area of construction shall remain in a stable condition at the close of each construction day.
28. 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 hay bale sediment traps, silt filter bags or other means approved by the Commission or its Administrator.
29. 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.
30. 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

31. 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.
32. No alteration or activity shall occur beyond the limit of work as defined by the siltation barriers shown on the approved plan(s).
33. All waste products, grubbed stumps, slash; construction materials, etc. shall be deposited at least 100 feet from wetland resource areas and 200 feet from rivers.
34. 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.
35. 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.
36. Immediately following drainage structure installation all inlets shall be protected by silt fence, haybale barriers and/or silt bags to filter silt from stormwater before it enters the drainage system.
37. There shall be no pumping of water from wetland resource areas.
38. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders or any other components shall be fixed immediately.
39. During construction, all drainage structures shall be inspected regularly and cleaned as necessary.
40. 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.

#### ALTERATION AND REPLICATION OF VEGETATED WETLAND

41. Prior to the Pre-Construction Meeting and commencement of any activity on this site, the applicant or current landowner shall provide the Commission with the name of a qualified **“Wetlands Specialist”** experienced in wetland replication who **shall be present on site to direct and supervise the replication work.**
42. Prior to the Pre-Construction Meeting and commencement of any activity on this site, the borders of both the wetland resource area(s) to be altered and the replication area(s) shall be clearly delineated by grade stakes set in place by field survey.
43. Prior to any alteration of wetland resource area, the wetland replication area(s) shall be constructed per the approved wetland replication site plan and wetland replication methodology. The wetland replication area shall be excavated in the location and to the size and elevation indicated on the approved wetland replication site plan.
44. Following construction of the wetland alteration and replication areas and prior to any other work on site, the Wetlands Specialist shall certify in writing to the Commission that all the wetland alteration and replication work has been performed in compliance with the Order of Conditions.



45. If the wetland replication area does not exhibit at least fifty (50%) percent coverage of indigenous wetland indicator species by the end of the first growing season, the applicant shall supplement the plantings with indigenous wetland indicator species obtained via transplantation from adjacent wetland areas or from a nursery specializing in the propagation of wetland plants.
46. The Wetland Specialist shall monitor the soil horizons and depths, plant community composition and structure, and hydrology of the wetland replication area. **Monitoring inspections shall occur in June and September for two complete growing seasons following completion of construction. Copies of the documentation for each monitoring inspection shall be submitted to the Commission immediately following each inspection. Monitoring shall continue beyond that date if the wetland replication area does not exhibit at least seventy-five (75%) percent coverage of indigenous wetland indicator species at the end of the second complete growing season.**
47. In the event that the wetland replication area does not meet the Performance Standard for wetland replication as set forth in Section 10.55(4)(b)(1-7) of the Massachusetts Wetlands Protection Act Regulations, the Wetland Specialist shall submit a wetland replication Contingency Plan in writing to the Commission. The Contingency Plan shall describe proposed measures (such as additional plantings and/or changes in grading) designed to bring the replication area into compliance with said regulations. The Contingency Plan shall not be implemented until it has been reviewed and approved by the Commission or its Administrator.

#### AFTER CONSTRUCTION

48. Upon completion of construction and final soil stabilization of the entire subdivisions (all ten phases), 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;
    - (e) Wetland resource replication areas constructed under this Order.
  - (4) A letter from a qualified **Wetlands Specialist** certifying compliance with the wetland replication requirements set forth below under Wetland Alteration.



49. 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.
50. 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.
51. 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 Administrator has authorized their removal.

#### PERPETUAL CONDITIONS

52. All drainage structures/detention basins shall be maintained as outlined in the approved Stormwater Management Plan (*dated November 2005*), and shall be the responsibility of the applicant/property owner.

#### ADDITIONAL CONDITIONS (PHASE ONE)

53. The approved erosion control measures shall also delineate the limit of work line, except in approved wetland filling and replication areas.
54. Any dewatering activities on the project site in which water will be released to wetland resource areas shall make use of a settling basin or similar device to remove sediment before water is discharged.
55. Upon completion of Phase One of the Osborne Hills Subdivision Phasing Plan, the applicant shall Request a Partial Certificate of Compliance and submit the required documentation as outlined above in the After Construction Section of this Order. The Commission or its Agent shall inspect the site to determine compliance with Phase One approved items. The applicant shall not commence with any other work until a Partial Certificate of Compliance has been issued. If items have been satisfactorily completed the applicant shall submit Phase Two items outlined in the approved "*Individual Phase Pre-construction Conference Document*" for review and approval. At the Commission's discretion, it can Amend the Order of Conditions to issue additional conditions it feels is necessary for Phase Two of the project. No work shall commence on site until the Commission has reviewed /approved the next Phase Items and issued a Notice to Proceed or issued an Amended Order of Conditions for Phase Two. Same shall be true for Phase Three – Phase Ten.

#### AMENDED CONDITIONS

56. Condition 55 has been altered, combining Phases One and Two and Phases Three, Four, and Five. The Amended Condition reads as follows:

Upon the completion of Phases One and Two of the Osborne Hills Subdivision Phasing Plan, the applicant shall Request a Partial Certificate of Compliance and submit the required documentation as outlined above in the *After Construction* Section of this Order. The Commission or its Agent shall inspect the site to determine compliance with Phase One and Two approved items. The applicant shall not commence with any other work until a Partial Certificate of Compliance has been issued. If items have been satisfactorily completed the applicant shall submit Phase Three, Four and Five items outlined in the approved "*Individual Phase Pre-construction Conference Document*" for review and approval. At the Commission's discretion, it can Amend the Order of Conditions to issue additional conditions it



feels is necessary for Phase Three, Four, and Five of the project. No work shall commence on site until the Commission has reviewed /approved the next Phase Items and issued a Notice to Proceed or issued an Amended Order of Conditions for Phases Three, Four, and Five. Phases Six, Seven, Eight, Nine, and Ten each stand alone as separate phases and work cannot proceed in any of the phases until the required documentation as outlined above in the *After Construction* Section of this Order has been submitted for the previous phase, the Commission or its Agent has inspected the site and determined compliance with the approved items for the phase, a partial certificate of Compliance has been issued for the previous phase, and an "*Individual Phase Pre-construction Conference Document*" has been submitted for review and approval by the Commission or its Agent.