



CITY OF SALEM CONSERVATION COMMISSION

April 13, 2012

Eric Palm
Den II Realty Trust
61-Rear Jefferson Avenue
Salem, MA 01970

Tina Bourdreau
Real Estate Representative
National Grid
40 Sylvan Road
Waltham, MA 02451

Dear Mr. Palm and Ms. Bourdreau:

Please find the attached enforcement order addressing the wetlands violation at 185 Jefferson Avenue in Salem. The Massachusetts Wetlands Protection Act (M.G.L.ch.131§40), its associated regulations (310 CMR 10.00), and Salem's Wetland Protection and Conservation Ordinance (ch. 50) state that wetlands may not be altered, dredged, filled, or removed without a valid order of conditions from the local Conservation Commission. Any violation of the act or the ordinance may result in enforcement action including up to a \$200 fine per day, per violation. Furthermore, the responsible party may be required to restore any unlawfully altered wetlands.

FINDINGS

On March 6, 2012 the Conservation Agent, in the presence of Eric and Darren Palm, verified that an area subject to the Wetlands Projection Act and Salem's wetlands protection ordinance, located on the portion of 185 Jefferson Avenue that abuts 61 Jefferson Avenue, had been unlawfully filled. Between the March 22 and April 12 Conservation Commission meetings, members of the commission visited the site individually to verify the presence of fill.

Eric Palm appeared at the April 12 commission meeting with his hired wetlands consultant, John Dick of Hancock Associates. Mr. Dick presented a plan dated April 27, 1997 titled "Wetlands Map", showing surveyed elevations on the subject property and confirmed that significant fill had since been placed on the site.

Although the commission finds the owners of 61 Jefferson Avenue, Eric and Darren Palm, to be responsible for the unlawful fill, this enforcement order is issued jointly to National Grid, owner of 185 Jefferson where the fill is located. The commission expects National Grid to provide reasonable access for the assessment and restoration of the altered area and to take appropriate steps to secure the property to prevent future unlawful activity.

REQUIRED ACTIONS

In order to address the unlawful fill, the commission issues the attached enforcement order. The following actions are required as part of said order:

1. Within seven (7) business days of the issuance of this order, all vehicles, equipment, and other stored materials shall be removed from the area of alteration.
2. Within seven (7) business days of the issuance of this order, a visible barrier shall be installed to demarcate the property line between 61 and 185 Jefferson Avenue.
3. Current grades and the horizontal extent of the area of alteration shall be surveyed and presented to the commission on an existing conditions plan by April 26, 2012.
4. In order to determine whether bordering vegetated wetlands are present, a detailed assessment of vegetation, including no fewer than three (3) transects, shall be conducted in the area beyond the fill, by April 26, 2012.
5. A detailed plan for the restoration of the area of alteration shall be submitted to the commission for review and approval by April 16, 2012.

Upon approval of a restoration plan, the commission may issue a new or amended enforcement order requiring implementation of the plan, installation of security fencing, and submittal of an after-the-fact notice of intent.

Please do not hesitate to contact me with any questions.

Sincerely,



Tom Devine
Conservation Agent, Staff Planner

Enclosure

CC:

Mass DEP Northeast Regional Office
John Dick, Hancock Associates
Beth Rennard, City Solicitor
Attorney Joseph Correnti



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 9 – Enforcement Order
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: _____

A. Violation Information

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



This Enforcement Order is issued by:

Salem
 Conservation Commission (Issuing Authority)

4-13-2012
 Date

To:

Eric and Darren Palm, DEN II Realty Trust and National Grid
 Name of Violator
 61 R Jefferson Avenue, Salem, MA and 40 Sylvan Road, Waltham, MA, respectively
 Address

1. Location of Violation:

National Grid
 Property Owner (if different)
 185 Jefferson Avenue
 Street Address
 Salem, MA
 City/Town
 24
 Assessors Map/Plat Number

01970
 Zip Code
 116
 Parcel/Lot Number

2. Extent and Type of Activity (if more space is required, please attach a separate sheet):

See attached

B. Findings

The Issuing Authority has determined that the activity described above is in a resource area and/or buffer zone and is in violation of the Wetlands Protection Act (M.G.L. c. 131, § 40) and its Regulations (310 CMR 10.00), because:

- the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone without approval from the issuing authority (i.e., a valid Order of Conditions or Negative Determination).



WPA Form 9 – Enforcement Order

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

B. Findings (cont.)

the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone in violation of an issuing authority approval (i.e., valid Order of Conditions or Negative Determination of Applicability) issued to:

Name _____ Dated _____

File Number _____ Condition number(s) _____

The Order of Conditions expired on (date): _____ Date _____

The activity violates provisions of the Certificate of Compliance.

The activity is outside the areas subject to protection under MGL c.131 s.40 and the buffer zone, but has altered an area subject to MGL c.131 s.40.

Other (specify):

C. Order

The issuing authority hereby orders the following (check all that apply):

- The property owner, his agents, permittees, and all others shall immediately cease and desist from any activity affecting the Buffer Zone and/or resource areas.
- Resource area alterations resulting from said activity shall be corrected and the resource areas returned to their original condition.

A restoration plan shall be filed with the issuing authority on or before 4-26-2012
Date

for the following:

See attached

The restoration shall be completed in accordance with the conditions and timetable established by the issuing authority.



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 9 – Enforcement Order
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: _____

C. Order (cont.)

Complete the attached Notice of Intent (NOI). The NOI shall be filed with the Issuing Authority on or before:

Date _____

for the following:

No further work shall be performed until a public hearing has been held and an Order of Conditions has been issued to regulate said work.

The property owner shall take the following action (e.g., erosion/sedimentation controls) to prevent further violations of the Act:

Failure to comply with this Order may constitute grounds for additional legal action. Massachusetts General Laws Chapter 131, Section 40 provides: "Whoever violates any provision of this section (a) shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than two years, or both, such fine and imprisonment; or (b) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation". Each day or portion thereof of continuing violation shall constitute a separate offense.

D. Appeals/Signatures

An Enforcement Order issued by a Conservation Commission cannot be appealed to the Department of Environmental Protection, but may be filed in Superior Court.

Questions regarding this Enforcement Order should be directed to:

Tom Devine

Name

978-619-5685

Phone Number

Monday-Wednesday 8am to 4pm; Thursday 8am to 7pm; Friday 8am to 12 noon

Hours/Days Available

Issued by:

Salem

Conservation Commission

Conservation Commission signatures required on following page.



WPA Form 9 – Enforcement Order

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

D. Appeals/Signatures (cont.)

In a situation regarding immediate action, an Enforcement Order may be signed by a single member or agent of the Commission and ratified by majority of the members at the next scheduled meeting of the Commission.

Signatures:

[Handwritten signature]

[Handwritten signature]

7010 2780 0002 0162 1521 — National Grid
7010 2780 0002 0162 1607 — Eric Palm
Signature of delivery person or certified mail number