



**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:  
 54-2520

MassDEP File #

eDEP Transaction #  
 Orleans

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: Orleans  
 Conservation Commission

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

3. To: Applicant:  
George Meservey  
 a. First Name b. Last Name  
Town of Orleans  
 c. Organization  
19 School Road  
 d. Mailing Address  
Orleans MA 02653  
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):  
Multiple Property Owners-see page 13  
 a. First Name b. Last Name  
 c. Organization  
 d. Mailing Address  
 e. City/Town f. State g. Zip Code

5. Project Location:  
Orleans  
 a. Street Address b. City/Town  
 c. Assessors Map/Plat Number d. Parcel/Lot Number  
 Latitude and Longitude, if known:  
 d. Latitude 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):

Barnstable see page 13

a. County Barnstable b. Certificate Number (if registered land) see page 13

c. Book Dec 30, 2020 d. Page Mar 02, 2021

7. Dates: a. Date Notice of Intent Filed Dec 30, 2020 b. Date Public Hearing Closed Mar 02, 2021 c. Date of Issuance Mar 02, 2021

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

See attached page 2A.

a. Plan Title See attached page 2A.

b. Prepared By See attached page 2A. c. Signed and Stamped by See attached page 2A.

d. Final Revision Date See attached page 2A. e. Scale See attached page 2A.

f. Additional Plan or Document Title See attached page 2A. g. Date See attached page 2A.

**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.



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**ADDITIONAL PLAN OR DOCUMENT REFERENCES (FROM PAGE 2)**

CSP/SMASST Recommended Treatment Plan Excerpt (Revised Feb 11, 2021)

Project Description by BSC Group (Revised Feb 11, 2021)

Siltation Curtain Details and Equipment Photos (Revised Feb 11, 2021)

Safety Data Sheets for Proposed Treatment Chemicals (Revised Feb 11, 2021)

Executive Summary of Uncle Harvey's Pond Management Plan and Diagnostic Assessment Report Excerpt (Revised Feb 11, 2021)



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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)           <1'            
 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
<input type="checkbox"/> 4. Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
<input checked="" type="checkbox"/> 5. Bordering Vegetated Wetland	<u>95' (pruning)</u> a. square feet	<u>95'</u> b. square feet	c. square feet	d. square feet
<input checked="" type="checkbox"/> 6. Land Under Waterbodies and Waterways	<u>148,104</u> a. square feet	<u>148,104</u> b. square feet	c. square feet	d. square feet
	e. c/y dredged	f. c/y dredged		
<input type="checkbox"/> 7. 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
<input type="checkbox"/> 8. 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
<input type="checkbox"/> 9. 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



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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
<input type="checkbox"/> 10. Designated Port Areas	Indicate size under Land Under the Ocean, below			
<input type="checkbox"/> 11. Land Under the Ocean	_____	_____		
	a. square feet	b. square feet		
	_____	_____		
	c. c/y dredged	d. c/y dredged		
<input type="checkbox"/> 12. Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
<input type="checkbox"/> 13. Coastal Beaches	_____	_____	_____ cu yd	_____ cu yd
	a. square feet	b. square feet	c. nourishment	d. nourishment
<input type="checkbox"/> 14. Coastal Dunes	_____	_____	_____ cu yd	_____ cu yd
	a. square feet	b. square feet	c. nourishment	d. nourishment
<input type="checkbox"/> 15. Coastal Banks	_____	_____		
	a. linear feet	b. linear feet		
<input type="checkbox"/> 16. Rocky Intertidal Shores	_____	_____		
	a. square feet	b. square feet		
<input type="checkbox"/> 17. Salt Marshes	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
<input type="checkbox"/> 18. Land Under Salt Ponds	_____	_____		
	a. square feet	b. square feet		
	_____	_____		
	c. c/y dredged	d. c/y dredged		
<input type="checkbox"/> 19. Land Containing Shellfish	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
<input type="checkbox"/> 20. 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		
<input type="checkbox"/> 21. Land Subject to Coastal Storm Flowage	_____	_____		
	a. square feet	b. square feet		
<input type="checkbox"/> 22. Riverfront Area	_____	_____		
	a. total sq. feet	b. total sq. feet		
Sq ft within 100ft	_____	_____	_____	_____
	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 Mar 02, 2024** 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 54-2520 "
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):

**This Order is subject to: the Findings and Standard Conditions on all Orders, as applicable and the completion of the Acknowledgment of Contractor Form. This Order is also subject to the attached Facts, Findings, and Special Conditions document (5 pgs).**

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 Town of Orleans hereby finds (check one that applies):

Conservation Commission

- 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:

Orleans Wetlands Bylaw/Regulations

Ch 160/196A

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):

**This Order is subject to: the Findings and Standard Conditions on all Orders, as applicable and the completion of the Acknowledgment of Contractor Form. This Order is also subject to the attached Facts, Findings, and Special Conditions document (5 pgs).**



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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.

3/2/21

1. Date of Issuance

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

7

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 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:

Wm. Kim

by hand delivery on

Date

3/2/21

by certified mail, return receipt requested, on

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 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.



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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.

3/2/21  
 1. Date of Issuance

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

7  
 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:

*Rich C. Kage*

\_\_\_\_\_

\_\_\_\_\_

by hand delivery on  
3/2/21  
 Date

by certified mail, return receipt requested, on  
 \_\_\_\_\_  
 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 appellant.

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3/2/21  
 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.

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 2. Number of Signers

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Signatures:

*W. R. Brink*

by hand delivery on  
3/2/21  
 Date

by certified mail, return receipt requested, on  
 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 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.

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**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:  
54-2520  
 MassDEP File #

eDEP Transaction #  
Orleans  
 City/Town

**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.

3/2/21  
 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.

7  
 2. Number of Signers

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]  
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*Virginia J. Fisher*

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3/2/21  
 Date

by certified mail, return receipt requested, on  
 Date

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**Table of Uncle Harvey's Pond Property Owners**

Map and Parcel	Address of Parcel	Registry of Deeds Information	Owner Name	Owner Mailing Address	Secondary Owner
44/138	75 Pochet Road		Town of Orleans	19 School Road, Orleans, MA 02653	
43/132	71 Pochet Road	14722/169	Betsy S Furtney	PO Box 1136, East Orleans, MA 02643	
43/131	57 Pochet Road	31130/287	Donald McMinn and Harold Lester	3104 Cleveland Ave NW, Washington, DC 20008	
43/130	55 Pochet Road	13198/084	Greg D and Michele Palmer	1901 Indian Head Road, Dayton, OH 45459-1221	
43/129	53 Pochet Road	31094/273	Mary and Jeffrey Heth	PO Box 1341 Orleans, MA 02653	
43/92	0 Harvey's Lane	18787/201	Orleans Conservation Trust	PO Box 1078 East Orleans, MA 02643	
43/91	33 Harvey's Lane	26621/166	Andrew C and Monica Cattano	218 Beach Road, Orleans, MA 02653	
43/73	31 Fisher Way	26594/268	Melissa A Keefe Trustee	PO Box 220, Orleans, MA 02653	Melissa Ann Keefe Trust
43/71	36 Sea Mist Drive	32253/206	John A Piccione and Noreen B Ferrante	231 Ridgeway Road, Weston, MA 02439	
43/70	24 Pleasant View Drive	31061/306	Lorraine E Ackerman TRS	460 Del Pond Dr, Canton, MA 02021	
43/69	25 Pleasant View Drive	29019/279	James F and Nance R Salmon	PO Box 105 East Orleans, MA, 02643	
44/142	17 Uncle Harvey's Way	Certificate #194946	Eleanor G Millard	25 Rocky Pond Road, Boylston, MA 01505	
44/141	15 Uncle Harvey's Way	Certificate #143747	Louis C and Marie E Morongell	15 Uncle Harvey's Way, Orleans, MA 02653	
44/140	11 Uncle Harvey's Way	22703/136	Elizabeth and Stuart Delima EST	PO Box 1524, East Orleans, MA 02643	Elizabeth and Stuart Delima Trust
44/139	1 Uncle Harvey's Way	28447/151	Christopher H Janssen	1 Uncle Harvey's Way, Orleans, MA 02653	



## Town of Orleans Conservation Commission

Town Hall  
19 School Road  
Orleans, Massachusetts 02653-3699  
t: (508) 240-3700 ext 2425  
f: (508) 240-3388

APPLICANT: George Meservey

DEP #: 54-2520

### **Attn: Homeowner and Engineer:**

The Standard Conditions on all Orders issued by the Conservation Commission make it clear that no deviations from the approved Plan are to be permitted without prior Commission approval and that a silt fence on the limit of work must remain securely staked and in **good condition** throughout the project. Failure to comply with these conditions will subject the homeowner and contractors to fines of \$300 per day.

The purpose of this notice is to make sure that you, any subsequent owners, all engineers and all contractors are made aware of these conditions. The property owner will bear the ultimate responsibility for compliance, so please be sure that any deviations from approved Plans are brought to the attention of the Conservation Commission before any work commences.

Accordingly, your contractor(s) should read the statement below and return a signed copy of this notice to the Orleans Conservation Commission at the address shown above before any work on this project is undertaken.

### **Acknowledgment of Contractor(s):**

I have read the attached Order of Conditions and noted Standard Condition #6, "No deviations from the Plan approved herein or from these Orders are permitted without prior Commission approval" and #9, "A continuous securely staked fabric sedimentation barrier or other erosion control measures shall be installed along this work limit or the access route as shown on the Plan."

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

Date: \_\_\_\_\_

**FINDINGS AND STANDARD CONDITIONS ON ALL ORDERS, AS APPLICABLE**  
**In accordance with M.G.L. Chapter 131, Section 40 and the Orleans Wetlands Protection Bylaw, Ch160**

**DEP #:** 54-2520

**Applicant:** George Meservey

The Commission finds that, the Applicant, through the Public Hearing, has presented to the Commission clear and convincing evidence and was able to demonstrate that all State and Local Wetland Interests will be protected, the Commission hereby approves the project with the issuance of this Order and all of its protective Conditions.

**1. Preface:** Failure to comply with all conditions of this Order of Conditions may result in the following: Stop Work Order, Fines, or the inability to obtain a Certificate of Compliance.

**2. Recording:** No work shall be undertaken until the Order has been recorded in compliance with General Condition #9 (page 6) of this Order and proof of such recording has been submitted to this Commission.

**3. Acknowledgement of Contractor:** No work may proceed until the Commission is provided with an executed Acknowledgement of Contractor form proving that these Orders have been reviewed and received by such Contractor and that the Contractor understands the Order and all Conditions. The Contractor shall furnish any sub-contractor with a copy of this Order. The approved Contractor must monitor their work throughout the project to ensure its success and establishment. If he/she is unable to continue with the project, the new contractor must meet with the Conservation Commission or their Administrator for approval before commencing work under the Order.

**4. Other Permits:** No work may proceed until the Applicant has received all other permits required by law, (i.e. building permit, Board of Health, Planning Board, Board of Appeals, Army Corps of Engineers, etc.)

**5. Appeals:** No work shall be undertaken until all administrative appeal periods from this Order have elapsed or, if such an appeal has been filed, until all appeal proceedings have been completed.

**6. Transfer of Ownership:** If the Applicant transfers the interests authorized herein by conveyance of realty, the deed shall reference this Order and the terms and Conditions specified herein, and this Order shall be recorded along with the deed.

**7. Term:** *This Order is valid for three (3) years.* Application for an Extension must be submitted, *in writing, thirty (30) days prior to the date of its expiration.*

**8. Certificate of Compliance:** *Upon completion of the work permitted by this Order, or the expiration of this Order, a Certificate of Compliance shall be requested from the Commission in writing.* Where a project has been completed in accordance with plans stamped by a professional engineer, architect, or other qualified professional, a written statement by such professional certifying compliance with the plans and Orders, shall accompany the request for the Certificate of Compliance. Please note the request should accompany the appropriate completed DEP form and Town of Orleans fee.

**9. Approved Plans:** *A copy of this Order of Conditions and all approved plans shall be kept on site at all times during construction.* All contractors and sub-contractors retained during construction must be provided with a copy of this Order and subsequent plans by the Applicant and should be prepared to produce the Order along with approved plans and supporting documents, upon request of the Conservation Commission. *No deviations from the plans are allowed herein without prior Commission approval.* All notes on the approved plans herein are adopted as additional conditions of this Order unless otherwise stated, except that where the Commission's Orders are more restrictive, they shall apply.

**10. DEP Signage:** A visible sign shall be displayed at the site, not less than two (2) square feet or more than three (3) square feet in size bearing the words "Massachusetts Department of Environmental Protection SE 54-" or "MA DEP SE 54-". Said sign is to remain in place until a Certificate of Compliance has been issued.

**11. Silt Fence:** If need is determined by the Commission, a continuous, securely staked fabric sedimentation barrier or other erosion control measures shall be installed along the Limit of Work and/or the access route as shown on the approved plan. ***Five (5) days prior to construction, notice shall be given to the Conservation office that all sedimentation controls or other markings required by these Orders are in place and ready for inspection by the Conservation Administrator.*** Properly installed sedimentation controls shall remain in place and be maintained throughout construction until the site is stabilized with vegetation and its removal has been permitted by the Commission or its Administrator.

Additional erosion control measures may be required during construction activity, if needed, at the Commission or its Administrator's discretion.

**12. Limit of Work:** The Limit of Work as shown on the plan shall be clearly marked by stakes or by installation of a sedimentation barrier/silt fence, and be inspected and approved by the Commission or its Administrator prior to commencement of construction, and shall remain in place and in good order until all disturbed areas have been revegetated. ***No work shall take place within the buffer zone or resource area outside the Limit of Work as marked on the plan without further approval by the Commission or its Administrator.***

**13. Excavated Materials:** All excess excavated materials shall be stockpiled per approved plan and as far from the resource area as possible. Excess materials shall be removed from the site upon completion of grading/construction. In no event shall excavated materials or additional materials brought on the site be stock piled less than 25' from the edge of a wetland or resource area unless approved by the Commission for special purposes.

**14. Fertilizer Use:** No fertilizer is permitted within 100' of a Resource Area per Town of Orleans General By-Law Chapter 103. If lawn and/or shrub fertilizers are used, in accordance with the exemptions allowed under Chapter 103, extreme care must be exercised to avoid contamination into the wetlands or groundwater.

**15. Roof Runoff:** Gutters and downspouts to drywells, or stone trenches at the roof drip line, are to be utilized to contain roof runoff. Drywell capacity should be able to accommodate a 2" rainfall in a 24-hour period. The size and location of the drywells shall be identified on the plan.

**16. Vegetation Mitigation:** All areas disturbed during construction are to be revegetated with suitable native plant materials according to the approved plans. Revegetation shall commence immediately upon completion of construction, unless otherwise addressed by an approved land management or landscape plan, and is to be completed by the beginning of the first growing season following completion of construction. Planting plans must be completed as part of this Order. Plants will be placed to ensure good coverage for the type and size of plant. More plants may be required than are shown on the planting plan and plants installed will be maintained and replaced until they have survived. Said vegetation and plants shall be successfully established, through multiple growing seasons, before a Certificate of Compliance can be granted.

**17. Right of Entry:** The Conservation Commission and/or its Administrator shall have the right of entry, during the period of the open Order, to inspect the property to determine and evaluate compliance with the provisions of this Order.

**18. Violations:** Failure to comply with any Conditions set forth herein shall be deemed a violation and good cause, after notice and an opportunity to be heard, to revoke or modify this Order, to impose fines of up to \$300 per day per violation, to impose a stop work Order, or to require mitigation or such other measures as are legally justified. ***Owners, contractors, and sub-contractors will be liable for any violation of these Orders.***

***In issuing these Orders, the Commission has relied on the information and data provided by the Applicant. If, subsequent to the issuance of this Order, such information and data prove to be false, incomplete, or inaccurate, this Order may be modified or revoked in whole or in part and the Commission may institute appropriate legal proceedings.***

## FACTS

The applicant submitted a Notice of Intent (NOI) that was received by the Conservation Office on 12/30/2020. The Notice of Intent was filed for the Proposed Alum Treatment of Uncle Harvey's Pond (UHP). Work will occur within Land Under Waterbodies and Waterways and a Bordering Vegetated Wetland. The Public Hearing was advertised on 1/8/2021 and opened 1/19/2021. The Conservation Commission held the initial public hearing on 1/19/2021 and held 1 continued Public Hearing on 2/16/2021 when the Public Hearing was closed (vote 7-0-0).

The following documents reflect the final project as reviewed by the Commission and represent the project that seeks an Order of Conditions under the Massachusetts Wetlands Protection Act and the Orleans Wetlands Bylaw:

1. BSC Group: Uncle Harveys Pond Notice of Intent application dated 12/30/2020 containing the following:
  - a. BSC Cover Letter
  - b. MA DEP Form 3
  - c. Property Owner Affidavits
  - d. Project Description
  - e. Related Maps figures and photographs
2. BSC Group: Uncle Harveys Pond Notice of Intent application dated 12/30/2020 Revised 2/11/2021 containing the following additional information:
  - a. Revised Project Description and Project Narrative
  - b. Executive Summary of Uncle Harveys Pond Management Plan and Diagnostic Assessment Report Excerpt
  - c. CSP/SMASST Recommended Treatment Plan Excerpt
  - d. Siltation Curtain Details and Equipment Photos
  - e. Safety Data Sheets for Proposed Treatment Chemicals

The following written correspondence was received by the Conservation Department, circulated to the Conservation Commission, and made publicly available for the record through the Commission packet material (both online and in hard copy):

1. Letter to Commission from C. Whiting Rice dated 1/19/21
2. Email to Commission from Betsy Furtney dated 1/19/21
3. Email to Commission from Lou Morongell dated 1/26/21
4. Letter to Commission from C. Whiting Rice dated 2/8/21

The Notice of Intent (NOI) applied for work on the 15 parcels that make up Uncle Harveys Pond. Notice and Legal Advertisement covered the 15 properties that make up the entire pond. At the time of the application, 13 property owners had agreed to the proposed work (see property owner affidavits).

## FINDINGS:

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- A. The Commission finds that proposed Alum Treatment of Uncle Harvey's Pond will occur in **Land Under Waterbodies and Waterways** accessed by crossing over a **Bordering Vegetated Wetland**, Resource Areas as defined in 310 CMR 10.56 and 10.55. These Resource Areas are also defined in the Orleans Wetlands Bylaw (160-2) and regulated in Orleans Wetlands Regulations (196A).
- B. The Commission finds that the applicant has met the Performance Standards for **Bordering Vegetated Wetland, and Land Under Waterbodies and Waterways**. In addition, the applicant has offered to **Avoid, Minimize and Mitigate** impacts, as detailed in the BSC Group Project Description narrative dated 2/11/21, to **Land Under Waterbodies and Waterways** and the **Bordering Vegetated Wetland** by way of the following proposed actions:
1. **No Removal of BVW Vegetation:** The proposed access over 95 sq ft of BVW vegetation will only require pruning of select vegetation. Vegetation should regenerate within one growing season making for minimal temporary impacts and providing for **No Alteration**.
  2. **Water Quality Improvement:** The alum application for Uncle Harvey's Pond is to achieve a desired total phosphorus level in the pond of 10µg/L. This was recommended by the UHP Report and backed by region-based recommendations by the EPA in order to greatly improve the overall water quality within UHP and reduce harmful algal blooms. This will have a positive benefit on **Protection of Groundwater Supply**, a Wetland Interest. While 13 of the 15 pond owners have signed on to this work it is understood that greater benefit can be achieved through treating the whole pond.
  3. **Water Quality Monitoring:** The proposed Alum Treatment may temporarily alter the pH of the pond. To prevent toxic conditions, pH data will be collected throughout the duration of the alum application by the applicator from a secondary boat that will solely focus on sampling during the treatment activities. This active monitoring will have a positive benefit on **Protection of Wildlife Habitat**, a Wetland Interest.
- C. In summary, the Commission finds that, the Applicant, through the Public Hearing, has presented to the Commission clear and convincing evidence and was able to demonstrate that all State and Local Wetland Interests will be protected. Furthermore, with the additional mitigation detailed above, the Commission finds that the proposed Alum Treatment of Uncle Harvey's Pond will not Adversely Effect the Interests protected by the Wetlands Protection Act or Orleans Wetlands Bylaw. Specifically, the Commission hereby approves the project with the following Special Conditions:

## SPECIAL CONDITIONS:

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1. The applicant shall abide by all representations made in the February 11, 2021 Notice of Intent and Project Description.
2. **Preconstruction:** A pre-construction meeting shall occur, between the contractor and the Conservation Administrator, to review any pruning necessary to BVW vegetation to facilitate access. Pruning will be conducted as to only have temporary impacts to BVW vegetation. After the Alum treatment is concluded, the BVW shall be inspected to ensure no restorative actions are needed. If damage occurs it shall be restored.
3. **Containment:** In areas where treatment is not approved by property owners, a floating siltation curtain will be installed roughly 10', at a minimum, outside of the boundary of the property for the duration of the alum treatment in a configuration designed to exclude properties not consenting to participate in the alum treatment on their property. The siltation curtain would be installed prior to the start of work and monitored twice daily from the start of treatment until the curtain is removed. The curtain will be tethered to a stake on shore or to a tree trunk with no ground disturbance. The curtain installation will begin and end at approximately the 5-foot water depth mark and will not continue onshore, to allow wildlife and fish migration to occur. The curtain will be secured to the pond bottom as is typical in practice by way of weighted chain (inside the curtain) and concrete blocks. While the curtain is in place, it shall be monitored twice a day to ensure it remains in place. If found out of place, it shall be immediately adjusted. Upon project completion, the curtain will remain in place for a minimum of two weeks to ensure all alum has had the opportunity to precipitate to the bottom and settle. Dissolved aluminum levels will be sampled weekly until the pre-treatment aluminum levels have been restored. The curtain will be removed following the confirmed achievement of these levels.
4. **Containment Modification:** If additional property owner affidavits are supplied prior to treatment, treatment can extend onto those properties with this Order. Special Condition #3 above will not be necessary in the event all 15 properties in the Notice of Intent sign the affidavit. If property owner affidavits are withdrawn, work will not occur on those properties and containment shall be modified to ensure this.
5. **Staging Areas:** The material staging location will be determined by the tractor trailer operator in consultation with the Conservation Administrator. The trailer will not be left on

the road overnight. The truck and application vehicle will both have spill containment kits on site. For loading and refills, the solution will be pumped from the tanker truck into the storage tanks on board the vessel. In the event that the application boat cannot get close enough to the shoreline for the transfer of the mixture, temporary floating docks can be used to allow deeper water loading to occur. Any mixing of the treatment solution will occur over spill pads. Any necessary washing of tools or equipment will be conducted over a container, which will be removed from the site.

6. **Pre-Application Monitoring:** Pre-application aluminum levels of the water column will be determined by sampling at the surface, mid, and bottom depths at approximate mid-points of the application area. This sampling and reporting shall be done by the applicator/contractor and results provided to the Town and Conservation Department.
7. **Application:** The application of Alum in Uncle Harveys Pond shall be allowed to occur between March 1 and May 31 OR between September 1 and October 31. Application of Alum outside these Time of Year Restrictions is not allowed with this Order.
8. **Application Monitoring:** Treatment floc shall be monitored through visual observations made by the applicators and the accompanying sampling vessel. If floc drift is occurring outside the intended treatment area (i.e. outside of the curtain, if applicable) alum application shall cease immediately. Treatment shall only resume once it's ensured that floc will not migrate outside of the intended treatment area. As part of the application monitoring, a regular visual inspection (3-4 times daily) of fish condition (e.g., fish kills, behavioral changes/surfacing etc.) will be made of the area being treated and of the shoreline area downwind of the treatment area. Treatment shall cease if there is observed mortality of fish in excess of 10 fish total, on any given day. In such an event, no further work will be conducted without consultation of the Conservation Commission. During the application phase, pH and alkalinity shall be measured in the target application area and at a nearby (non-treatment) control area prior to the start of treatment, again in the middle of the day and at the end of treatment on that day. More frequent measurements shall be made if there is any visual evidence of adverse reaction from biota (e.g., fish kills, behavioral changes, etc.) Treatment shall cease if the pH is measured outside the range of 6.6-8.3, until the pH returns to 6.7. Comparison shall be made with the control area pH. Treatment shall not proceed if water temperature falls below 40°F or wind speed exceeds 10 mph.
9. **Post-application Monitoring:** After treatment, the applicant will monitor Uncle Harvey's Pond, at least twice a year, for aluminum levels, temperature, oxygen, pH, alkalinity,

conductivity, total and dissolved phosphorus, nitrogen, and secchi transparency. This should be ongoing for two years following the application. This sampling will be required to be done by the Town/applicant.

10. **Reporting:** A 6 month and 12-month report is required to be submitted, within 60 days after those time periods have lapsed, to the Orleans Conservation Commission. Reports should include, at a minimum, a summary of all of the required monitoring both detailed above and offered in the Notice of Intent. Reports should also include a summary of past closures for cyanobacteria, as well as a summary of any cyanobacteria blooms or pond closures since the alum treatment.
11. **Sampling Station Buoy.** The town/applicant will install a sampling station buoy prior to alum application and to remain in place for the duration of the monitoring period to prevent disturbance to the bottom during sampling or monitoring activities and to ensure samples are taken at the same location ongoing.
12. **Signage.** The town/applicant will post a sign at each public access point and notify all owner/abutters that the *Pond has been treated with Alum. Please do not use anchors or disturb the bottom sediments.*
13. **60 Day Reporting Requirement.** The applicant will provide a post application report that includes but is not limited to, observations during application, data recorded, any fish observations etc..