



Commonwealth of Massachusetts

DEP File No.

25-2167

(To be approved by DEP)

City/Town

FALMOUTH

Applicant

OPET / Town of Falmouth

SECTION XV

Order of Conditions
Massachusetts Wetlands Protection Act
G.L. c. 131, §40

From TOWN OF FALMOUTH WETLANDS PROTECTION BYLAW AND TOWN OF FALMOUTH CONSERVATION COMMISSION Issuing Authority

To OPET / Town of Falmouth (Name of Applicant) Town of Falmouth (Name of property owner)

Address 59 Town Hall Square, Falmouth, MA 02540 Address SAME

This Order is issued and delivered as follows:

- by hand delivery to applicant or representative on (date)
by certified mail, return receipt requested on Tuesday, February 11, 1997 (date)

This project is located at Corner of Oyster Pond and Surf Drive, Falmouth

The property is recorded at the Registry of BARNSTABLE COUNTY

Book Page

Certificate (if registered)

The Notice of Intent for this project was filed on December 24, 1996 (date)

The public hearing was closed on January 22, 1997 (date)

Findings

The FALMOUTH CONSERVATION COMMISSION has reviewed the above-referenced Notice of Intent and plans and has held a public hearing on the project. Based on the information available to the COMMISSION at this time, the COMMISSION has determined that the area on which the proposed work is to be done is significant to the following interests in accordance with the Presumptions of Significance set forth in the regulations for each Area Subject to Protection Under the Act (check as appropriate):

- Public water supply
Private water supply
Ground water supply
Flood control
Storm damage prevention
Prevention of pollution
Land containing shellfish
Fisheries
Protection of wildlife habitat

Total Filing Fee Submitted Exempt State Share Exempt
City/Town Share Exempt (1/2 fee in excess of \$25)
Total Refund Due \$ City/Town Portion \$ State Portion \$
(1/2 total) (1/2 total)

Therefore, the FALMOUTH CONSERVATION COMMISSION hereby finds that the following conditions are necessary, in accordance with the Performance Standards set forth in the regulations, to protect those interests checked above. The CONSERVATION COMMISSION orders that all work shall be performed in accordance with said 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.

General Conditions

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. This 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, by-laws 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 and both that date and the special circumstances warranting the extended time period are set forth in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.
7. 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 proceedings before the Department have been completed.
8. No work shall be undertaken until the Final Order 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 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 to be done. The recording information shall be submitted to the COMMISSION on the form at the end of this Order prior to commencement of the work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words, "Massachusetts Department of Environmental Protection,
File Number 25-2167
10. Where the Department of Environmental Protection is requested to make a determination and to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.
11. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
12. The work shall conform to the following plans and special conditions:

STANDARD CONDITIONS

Permission is given to construct a fish weir to allow passage of fish and control saltwater

- A. exchange, in the Trunk River between Oyster Pond and Vineyard Sound, in Land Under Salt Ponds and Land Under Anadromous/Catadromous Fish Runs, corner of Oyster Pond Road and Surf Drive (Assessor Map 50 06 020 OA2), Falmouth, according to the plan by Warwick and Associates, Inc. dated 10/4/96 and as revised and referenced in this Order.

This Order applies to the Mass. General Laws, Chapter 131, sec. 40, and to the Wetland Protection By-law of the Town of Falmouth.

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- B. 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 proceedings before the Department have been completed.
- C. The applicant shall use all means to effectively prevent erosion into the Wetland or other Resource Area and to encourage the growth of protective vegetation on ground draining into the Wetlands or other Resource Areas.
- D. It is the applicant's responsibility to provide all contractors with a copy of this Order and to ensure that all workers are informed of the Conditions of this Order before they begin work at the site.
- E. This Order of Conditions will not be fully complied with unless and until a duly executed Certificate of Compliance is recorded or registered, as appropriate in Barnstable Registry of Deeds. If this Order is based on a professionally rendered drawing then a letter from an engineer or architect certifying full compliance must accompany a Request for Compliance.
- F. The Conservation Administrator shall be notified 10 days prior to the start of work at the site and all work conditioned by this Order shall be done under his supervision. The Conservation Administrator has the authority to issue an Enforcement Order if work does not comply with the terms or intent of these conditions. No work may begin until all permits, approvals and variances have been granted by the issuing authority.
- G. By the acceptance and recording of this Order, the applicant hereby grants the Commission and its duly authorized agents the right to enter onto the land governed by this order to examine the project and ensure compliance. Such visitation shall be made in a reasonable manner.
- H. The determinations of the Falmouth Conservation Commission are made solely to determine issues arising under the Massachusetts Wetlands Protection Act and the Town of Falmouth Wetlands Protection By-Law, and are therefore concerned exclusively with the question whether any proposed activity will have an adverse effect on Wetlands Protection interests listed in the applicable statutes, regulations, by-laws and rules. Nothing contained in this determination is intended in any way to grant to any person any title, easement or other interest in lands, public or private, and the Falmouth Conservation Commission is without legal authority to make any grant of title, easement or other property interest, or to make any determination of property interests. See Tidley v. D.E.O.E. 10 Mass. App. 623 (1980).

Plans

Title	Date	Signed and Stamped By	On File with
Site Plan for Proposed	7/30/96	Wm. M. Warwick & Associates	Conservation
Weir at Oyster Pond Road	REVISED	213 Old Main Road	Commission
Falmouth, Mass.	10/4/96	N. Falmouth, MA	

Special Conditions (Use additional paper if necessary)

BACKGROUND:

Please see attached Project Description, from the Notice of Intent application.

SPECIAL CONDITIONS:

1. All work is to be done according to the plan by Warwick and Associates, Inc. dated 7/30/96 and revised 10/4/96, and according to the narrative Project Description in the Notice of Intent.

(Leave Space Blank)

Project Description

A fish weir is proposed for the Trunk River between Oyster Pond and Vineyard Sound, located in Falmouth, Massachusetts. The height-adjustable weir will be 5 feet wide with an elevation of +1.5 feet NGVD, designed to allow the passage of anadromous fish at all tide stages. The purpose of the weir is to limit salt water exchange with Vineyard Sound, and to help return the pond to pre-1980s ecological stability. The weir is needed to offset changes in flow characteristics of the Trunk River which resulted from the bicycle path and a culvert construction project on Oyster Pond Road in the late 1980s. Additional detail regarding the design and hydrodynamic properties of the estuarine system can be found in the attached report entitled "Hydrodynamic Study and Weir Design Oyster Pond, MA" prepared by Aubrey Consulting, Inc. (ACI) in September 1996.

The project will be constructed by the Falmouth Department of Public Works using the following construction sequencing:

- block both the Oyster Pond and the Trunk River ends of the channel using a siltation fence or screen material;
- install coffer dams inside the silt fence on both the Oyster Pond and the Trunk River ends of the channel;
- pump water out of the remaining channel area with discharge directed back into Oyster Pond;
- using an excavator located in parking lot, dig out the channel bottom and channel sides to required dimensions of weir structure - all excavated material to be placed on coffer dams or in parking lot;
- place pre-cast concrete weir structure in place in the channel;
- back-fill around structure using material previously excavated;
- remove coffer dams;
- remove siltation fence or screen material.

The boards in the fish weir will be maintained by the Falmouth Department of Public Works twice yearly on Feb. 1 and June 1. On Feb. 1 the 5 foot wide weir boards will be replaced with 1 foot wide sections. The elevation of the 1 foot weir sections allowing water to flow to and from Oyster Pond will be maintained at the design level of +1.5 ft NGVD. This design will provide a more constricted passage for fish during the spawning season and has been endorsed by the Falmouth Shellfish Warden. On June 1, the 1 foot weir sections will be replaced with the 5 foot wide sections allowing a greater flow of water into and out of Oyster Pond.

Land Under Salt Ponds

The proposed project will have a positive impact on land under salt ponds by improving water quality within Oyster Pond. Data collected from the Pond since the 1980s indicates that the Pond is suffering from eutrophication and large fluctuations in salinity. Documented changes in the Pond as a result of these factors include the loss of white perch and a disappearance of aquatic plants such as water lilies. While the loss of specific animal species can be linked to over-fertilization or eutrophication of pond waters, the changes in aquatic plant communities are more consistent with salinity imbalances.

In an effort to address the fluctuations in salinity, this project is proposing the installation of a fish weir which will inhibit tidal exchange between Vineyard Sound and Oyster Pond for all but the higher Spring tide conditions. The intent of this structure is to stabilize the salinity conditions within the Pond and maintain a long-term average value between 2 and 4 ppt. The performance standards for Land Under Salt Ponds state that there shall be no adverse effects on marine fisheries or wildlife habitat due to alterations of water circulation, alterations in the distribution of sediment grain size and topography, modifications in the flow of fresh and/or salt water, alterations in the productivity of plants, and alterations in water quality. This project has been designed to improve marine fisheries and wildlife habitat by adjusting the fresh/salt water balance in the Pond, and by improving water quality through increasing the dissolved oxygen concentrations.

Fish Runs

The proposed project will have a positive impact on the fish run to Oyster Pond. The performance standards for fish runs state that there shall be no adverse effect on anadromous or catadromous fish runs by impeding or obstructing the migration of the fish, changing the volume or rate of flow of water, or by impairing the capacity of spawning or nursery habitats. The project will improve the nursery habitat for spawning fish as it is designed to improve the water quality within Oyster Pond and stabilize the salinity fluctuations. Additionally, during the period February to June, a narrower opening will be created at the fish weir. This will create a more restricted cross-section and greater flow rates through the weir to facilitate the migration of fish.

Fish migration at the project site is currently impeded much of the year, as the inlet at the Trunk River, which connects the project site to Vineyard Sound, is blocked by sediment. Depending on the size and configuration of this shoal, fish are currently restricted from inland migration during some or all of the tidal cycle. A maintenance dredging program at this site is being addressed under a separate Notice of Intent filing, and will help to alleviate blockage of the fish run.

Coastal Banks

The edges of the channel at the project site are the only coastal banks within the study area. These banks are serving the interests of flood control and storm damage protection, and are not acting as a sediment source. The proposed project will have no adverse impacts on the stability of the channel banks. Following construction, the banks will be restored their pre-existing condition.

Signature(s) Allen J. Jordan Thomas J. Peter
Maureen Harlow Hester
Eric Houghlin

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

On this 5th day of February 19 97 before me personally appeared FALMOUTH CONSERVATION COMMISSION, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

James Page Notary Public
10/16/98 My commission expires

The applicant, the owner, any person approved by this Order, any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the Department of Environmental Protection to issue a Superseding Order, providing the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee and Fee Transmittal Form as provided in 310 CMR 10.02(7), within ten days from the date of issuance of this Determination. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and the applicant.

Board of Selectmen
D E P
Town Clerk
DNR

Town of Falmouth
Aubrey Consulting, Inc.

Detach on dotted line and submit to the TOWN OF FALMOUTH prior to commencement of work.

To TOWN OF FALMOUTH CONSERVATION COMMISSION Issuing Authority

Please be advised that the Order of Conditions for the project at Corner of Oyster Pond Rd. & Surf Dr., Falm.

is a number has been recorded at the Registry of BARNSTABLE COUNTY and

has been noted in the chain of title of the affected property in accordance with General Condition 8 on 19

If recorded land, the instrument number which identifies this transaction is

If registered land, the document number which identifies this transaction is

Signature Approver