

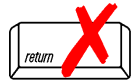


Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 9 – Enforcement Order
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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:

SHUTESBURY
 Conservation Commission (Issuing Authority)

8/12/2022
 Date

To:

Town of Shutesbury
 Name of Violator
1 Cooleyville Road, Shutesbury, MA 01072
 Address

1. Location of Violation:

Property Owner (if different)

66 Leverett Road
 Street Address

Shutesbury

City/Town

O

Assessors Map/Plat Number

MA

Zip Code

32

Parcel/Lot Number

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

The property was subject to a Determination of Applicability issued by the Shutesbury Conservation Commission (SCC) on July 22, 2021. In its Request for Determination of Applicability, filed on July 7, 2021, the Town of Shutesbury sought to demolish and remove a concrete block garage that was partially in the Buffer Zone of a Protected Resource Area. At the time of the application, the Commission was unaware that the Town had obtained a professional wetlands delineation in 2018 which would have been considered current had it been included in the permit application. A June 15, 2021 site visit conducted by the Commission found the project area to be within a Protected Resource Area.

On June 7, 2022, the SCC received a complaint from Michael Hootstein (Legacy Environment Group) about alleged wetlands violations by the Town, including that the Town "dredged/removed/filled resources at 66 Leverett Rd in August 2021, and thereby altered: 1) Isolated Land Subject to Flooding (ILSF); 2) Isolated Vegetated Wetlands (IVW); and 3) the 100 foot Buffer Zone." Mr. Hootstein's complaint alleged

that the unpermitted work involved the area of the demolished 3-car garage and another site to the south of the garage where debris had reportedly been excavated in August of 2021.

On June 12, 2022, the SCC conducted a site visit of the northern portion of the property where evidence of filling and grading in the area where the garage had been demolished was observed. An area was observed to the south of the garage area where there was evidence of recent work having been done.

At a July 28, 2022 SCC meeting, Town Administrator Rebecca Torres informed the SCC that she had authorized the Shutesbury Highway Department to bring in loam to the garage location to “stabilize it” sometime in 2021 after the issuance of the Determination by the SCC. Ms. Torres informed the SCC that a wetlands delineation of the property had been completed.

On August 2, 2022, Mr. Michael Hootstein filed a supplement to his initial complaint in which he shared a 2019 Conway School of Design Feasibility Study for the property which described possible Protected Resource Areas.

On August 4, 2022, Ms. Torres provided the SCC with a copy of a wetlands delineation report completed by Wendell Wetland Services, dated November 4, 2018 which delineated a portion of the northern portion of the property. This report identified a “wet meadow” contiguous to a wooded swamp wetland to the west of the property. A Bordering Vegetated Wetland as defined by 310 CMR 10.55 was identified in this area.

On August 8, 2022, the SCC received email communications from Amanda Alix indicating that she visited Lot O-32 on August 6, 2022 and observed that the property had been recently mowed, including what she alleged was a previously delineated wetland near Leverett Road. Ms. Alix raised concerns that the mowing might adversely affect Protected Resource Areas during a period designated as Significant Drought.

The area subject to these activities was found to be a Protected Resource Area by the SCC in its issuance of the 7/22/2021 Determination of Applicability. The Applicant had the burden of proof to demonstrate in its 2021 Request for Determination of Applicability that the proposed activities would not adversely affect Protected Resource Areas under the Wetlands Protection Act and the Shutesbury General Wetlands Protection Bylaw. The Shutesbury General Wetlands Protection Bylaw treats the 100-foot Buffer Zone as a Protected Resource Area.

Filling with loam in the 100-foot Buffer Zone of a Bordering Vegetated Wetland without authorization from the SCC constitutes unpermitted work under the Wetlands Protection Act and Shutesbury General Wetlands Protection Act.

Mowing a Bordering Vegetated Wetland without authorization from the SCC may constitute an alteration of a Protected Resource Area under the Wetlands Protection Act and the Shutesbury General Wetlands Protection Bylaw. The SCC reserves judgment on this complaint pending further investigation.

Given that the site had been previously professionally delineated as a Protected Resource Area within three years of submitting the Request for Determination of Applicability, the Applicant should reasonably have understood that the observed work was in a Protected Resource Area and should have obtained SCC authorization prior to the work.



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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).

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:

Town of Shutesbury
Name

July 22, 2021
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):

The observed work activities were not included in the Request for Determination of Applicability and were not approved by the SCC in the Determination of Applicability.

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.



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A restoration plan shall be filed with the issuing authority on or before _____
Date

for the following:

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

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:

See Attachment for requirements of Enforcement Order.

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:

Conservation Commission, concom@shutesbury.org

Name



Massachusetts Department of Environmental Protection
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DEP File Number: _____

 Phone Number
 Tuesdays/Thursdays, 10 am - 1 pm
 Hours/Days Available

Issued by:
 Shutesbury Conservation Commission
 Conservation Commission

Conservation Commission signatures required on following page.

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:

_____ Signature	Miriam DeFant Printed Name
_____ Signature	Mary David Printed Name
_____ Signature	Robin Harrington Printed Name
_____ Signature	Beth Willson Printed Name
_____ Signature	_____ Printed Name
_____ Signature	_____ Printed Name
_____ Signature	_____ Printed Name
_____ Signature	_____ Printed Name

Approved 8/11/2022

Signature of delivery person or certified mail number

CERTIFICATE OF VOTE AUTHORIZING SIGNATURES PURSUANT TO M.G.L. c.110G

On May 14, 2020, the Shutesbury Conservation Commission met in open session through publicly accessible video-conference software, pursuant to the "Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20," issued by Governor Charles D. Baker on March 12, 2020. At this duly held meeting, the following action was taken:

Motion: Shutesbury Conservation Commission hereby recognizes and accepts the provisions of M.G.L. c.110G regarding electronic signatures and that its members will henceforth execute documents either with electronic signatures or with wet ink signatures and that both will carry the same legal weight and effect. Motion was seconded.

Roll Call vote:

Commissioner Penny Jaques: aye
Commissioner Russ Mizula: aye
Commissioner Robin Harrington: aye
Commissioner Liam Cregan: aye
Vote was Unanimous

The above is a true and accurate account of the proceedings of the Conservation Commission.

Title/Signature: Alice P. Jaques Date: 20 May, 2020

Commonwealth of Massachusetts
County of Franklin, ss.

On this 20 of May, 2020, before me, personally appeared Alice P. Jaques, Chair of said Conservation Commission, as aforesaid, and proved to me through satisfactory evidence of identification, which was Personally Known to me to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of the Town of Shutesbury.

Susan Mosher
Notary Public

My Commission Expires: 4/1/2022

Certified by Town/City Clerk:

Susan Mosher Date: May 20, 2020
Susan Mosher



Shutesbury Conservation Commission

Attachment to 8/12/2022 Enforcement Order WPA Form 9

66 Leverett Road/Lot O-32-Town of Shutesbury

Issuance Date: August 12, 2022

Enforcement Order Requirements

1. This Enforcement Order is issued under the jurisdiction of the Wetlands Protection Act and the Shutesbury General Protection Bylaw.
2. The Shutesbury Conservation Commission (SCC) shall not require restoration of the site of the demolished garage because it finds that restoration does not serve the Interests of the Wetlands Protection Act and the Shutesbury General Protection Bylaw.
3. The Shutesbury General Protection Bylaw treats the 100-foot Buffer Zone of jurisdictional wetlands as a Protected Resource Area.
4. The landowners shall allow the SCC or its agent to enter and inspect the property and the activity that are subjects of this Enforcement Order at all reasonable times, with or without probable cause or prior notice, for the limited purpose of evaluating compliance with this Enforcement Order and only until all requirements of the Enforcement Order have been satisfied.
5. The landowners shall cease and desist from any further ground disturbance or activities that remove, fill, dredge, or alter wetland Resource Areas, including the 100-foot Buffer Zone of any wetland Resource Areas that are protected by the WPA or Shutesbury General Wetlands Protection Bylaw. Activities that remove, fill, dredge, or alter wetland resource areas are defined broadly in the Wetland Regulations (310 CMR 10.00). The SCC has jurisdiction over: "... any form of draining, dumping, dredging, damming, discharging, excavating, filling or grading; the erection, reconstruction or expansion of any buildings or structures; the driving of pilings, the construction or improvement of roads and other ways; the changing of run-off characteristics; the intercepting or diverging of ground or surface water; the installation of drainage, sewage and water systems; the discharging of pollutants; the destruction of plant life; and any other changing of the physical characteristics of land." (310 CMR 10.04)
6. The landowners shall submit to the SCC a wetlands delineation site plan for the entire property prepared by a qualified wetlands professional. Wetlands boundaries and Buffer Zones shall be identified on the site plan and flagged on the site. Delineations shall be conducted based upon assessment of vegetation and hydrology as exhibited by soils per CMR 310 10.55. This delineation and supporting data shall be reviewed by the SCC and shall be subject to SCC approval. The delineation shall be submitted no later than the end of business on Thursday, September 1, 2022. The SCC shall conduct a site visit once the landowners inform it that the flagging is in place. The results of this delineation will be reviewed at the Thursday, September 8, 2022, meeting of the SCC.

7. No further work on the property, including any further assessments for 21E reporting to the Massachusetts Department of Environmental Protection shall be permitted until the SCC approves the boundaries of the Protected Resource Areas in the wetlands delineation.
8. The SCC reserves the right to require that the landowners submit a Request for Determination of Applicability or Notice of Intent for future work.
9. Any future mowing in a Protected Resource Area must be reviewed under an application before the SCC.
10. The complainants have alleged that the landowners failed to remove the floor drain of the three-car garage according to the Regulations contained in 310 CMR 27.00 (Underground Injection Control Regulations). The SCC defers to the Massachusetts Department of Environmental Protection for investigation of this matter. At present, the SCC does not have credible evidence of a point source discharge of pollutants into a Protected Resource Area. If credible evidence is produced at a future time that demonstrates that any activities resulted in a point source discharge of pollutants to a Protected Resource Area, the SCC shall review this evidence and consider further action.
11. The SCC requires that the landowners continue sharing any relevant information in a timely manner, related to the SCC jurisdiction on this property.