

Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2270

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RECEIVED
 TOWN CLERK OF MARION, MA
 2017 SEP 27 A 10:30

SEP 25 2017

Michael Popitz, M.D.
c/o Stevie Carvalho, E.I.T.
Farland Corp.
41 County Street
New Bedford, Massachusetts 02740

RE: MARION – Wetlands
File No. SE 41-1264
Superseding Order of
Conditions

Dear Mr. Carvalho:

Following an in-depth review of the above-referenced file, and in accordance with Massachusetts General Laws, Chapter 131, Section 40, the Department of Environmental Protection has issued the enclosed Superseding Order of Conditions (SOC). The SOC affirms the Marion Conservation Commission's Order denying the proposed project within an Area Subject to Protection Under the Act.

The proposed project as described in the Notice of Intent consists of the construction of a new driveway with associated filling and grading. As shown on the site plan, the Applicant currently has an existing driveway through the Bordering Vegetated Wetland (BVW) on the adjacent property. Resource areas impacted by the project include Riverfront Area, BVW, and Land Subject to Coastal Storm Flowage. The alternatives analysis considered not building the driveway, acquiring additional land, and constructing a shared driveway. In the alternatives analysis the project is described as providing access to the upland portion of the subject property for the future development of a single family dwelling. The alternatives analysis, prepared to address both BVW and Riverfront Area, concluded that the project as proposed was the best alternative because widening of the existing driveway would require more work within the Riverfront Area than the proposed driveway, a Spécial Permit from the Marion Planning Board, and the creation of an access easement plan. However neither the Notice of Intent, nor the revised plan shows a proposed dwelling that would be serviced by the proposed driveway, and it has not been demonstrated that any such a house could be built. The site plan shows only a proposed driveway, and a BVW replication area.

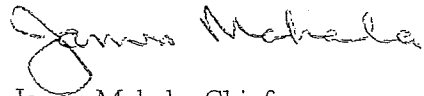
The alternative analysis does not adequately evaluate practicable alternatives as defined at 310 CMR 10.58(4). The applicant owns an alternative means of access to the upland portion of the property and the alternatives analysis fails to identify the minimum width and length of the shared driveway alternative. Instead the alternatives analysis identifies an alternative that impacts BVW and further fragments a wetland system to gain access to the same portion of the property currently served by the existing driveway. 310 CMR 10.55(4) states that the issuing

authority may issue an Order of Conditions permitting work, and shall consider among other things, the extent to which adverse impacts can be avoided and minimized. The project has not adequately shown how impacts can be avoided or minimized.

In the opinion of the Department, the reasons given here are sufficient to justify the enclosed Superseding Order of Conditions. However, the Department reserves the right, should there be further proceedings in this matter, to raise additional issues and present further evidence as may be appropriate.

If you have any questions regarding this SOC, or require further assistance, please contact Mark Bartow at (508) 946-2746.

Very truly yours,



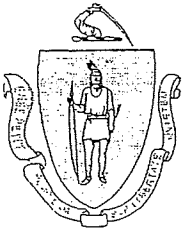
James Mahala, Chief
Wetlands and Waterways Program
Bureau of Water Resources

mb/dg/jm

Enclosure

CERTIFIED MAIL # 7012 1640 0001 4831 3423

cc: Marion Conservation Commission



DEP File Number:

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

SE 41-1264

A. General Information

From:

Massachusetts Department of Environmental Protection
Issuing Authority

This issuance is for:

Superseding Order of Conditions – Affirmation Denial

To: **Applicant:**

Property Owner (if different from applicant):

Michael Popitz, M.D.
Name
64 Indian Cove Road
Mailing Address
Marion MA 02738
City/Town State Zip Code

Name

Mailing Address

City/Town State Zip Code

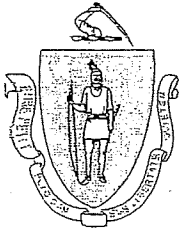
1. **Project Location:**

Indian Cove Road
Street Address
18
Assessors Map/Plat Number

Marion
City/Town
123
Parcel/Lot Number

2. **General Description of Project:**

Construction of a new driveway with associated grading.



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

DEP File Number:

SE 41-1264

3. Final Plans and Other Documents (if different from those listed in Order of Conditions):

Site Plan	1/17/17 revised 7/20/17.
Title	Date
Christian Albert Farland, C.E.	
Signed and Stamped by	

B. Findings

The Department hereby finds that the project, as proposed, is denied.

In accordance with 310 CMR 10.05(7)(i), this Superseding Order of Conditions affirms the Order of Conditions issued by the Marion Conservation Commission on April 11, 2017. The Order of Conditions is attached and is incorporated by reference. Additionally, the Department finds that the proposed project fails to meet the performance standards for Riverfront Area found at 310 CMR 10.58(4)(c). The alternatives analysis fails to prove there are no practicable and substantially equivalent alternatives.

The Department makes no findings pursuant to a municipal bylaw or ordinance.

C. Issuance

Issued by: Massachusetts Department of Environmental Protection

Signature: James Mahala
 James Mahala, Chief, Wetlands & Waterways Program
 Bureau of Water Resources

Date of Issuance: SEP 25 2017
 Certified Mail # 7012 1640 0001 4831 3423

mb/dg/jm

D. Appeal Rights and Time Limits

The applicant, the landowner, any person aggrieved by the Superseding Order, Determination or other Reviewable Decision as defined at 310 CMR 10.04, who previously participated in the proceedings leading to this Reviewable Decision, the conservation commission, or any ten (10) residents of the city or town where the land is located if at least one resident was previously a participant in the permit proceeding, are hereby notified of their right to appeal this Reviewable Decision pursuant to M.G.L. c.30A, § 10, provided the request is made by certified mail or hand delivery to the Department, along with the appropriate filing fee and a MassDEP Fee Transmittal Form within ten (10) business days of the date of issuance of this Superseding Order or Determination, and addressed to:

Case Administrator
Office of Appeals and Dispute Resolution
Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the request (hereinafter also referred to as Appeal Notice) shall at the same time be sent by certified mail or hand delivery to the Conservation Commission, the applicant, the person that requested the Superseding Order or Determination, and the issuing office of the MassDEP at:

MassDEP
20 Riverside Drive
Lakeville, MA 02347

In the event that a ten resident group requested the Superseding Order or Determination, the Appeal Notice shall be served on the designated representative of the ten resident group, whose name and contact information is included in this Reviewable Decision (when relevant).

Contents of Appeal Notice

An Appeal Notice shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6) and 310 CMR 10.05(7)(j), and shall contain the following information:

- (a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;
- (b) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative; if a ten residents group, the same information for the group's designated representative;
- (c) if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;
- (d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceeding that led to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;
- (e) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;

- (f) a clear and concise statement of the alleged errors contained in the Department's decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c.131, § 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision, and the relief sought, including any specific desired changes to the Department's decision;
- (g) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;
- (h) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and
- (i) if asserting a matter that is Major and Complex, as defined at 310 CMR 10.04, a statement requesting that the Presiding Officer make a designation of Major and Complex, with specific reasons supporting the request.

Filing Fee and Address

A copy of the Appeal Notice along with a MassDEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.