

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LEVERETT SALTONSTALL BUILDING
100 CAMBRIDGE STREET, BOSTON 02202
BARNSTABLE, SS

ORDER UNDER M.G.L., C. 130, S.105

1. The Commissioner of Environmental Management, acting pursuant to M.G.L. c.130, s.105, for the purposes of promoting the public safety, health and welfare, and protecting public and private property, wildlife and marine fisheries, hereby adopts this Order regulating and restricting coastal wetlands in the Town of Falmouth, County of Barnstable, Commonwealth of Massachusetts, as delineated on plans entitled "Commonwealth of Massachusetts, Department of Environmental Management, Wetlands Restriction Program, Plan of Wetlands," Plans G-34; H-142, H-143; H-144; H-145; H-146; H-147; H-148; H-149; H-150, J-7 * ,adopted October 7, 1980.

The plans and list of assessed owners of the land so affected are incorporated herein and recorded herewith.

2. This Order does not grant any property rights; it does not authorize any person to trespass or injure the property of another; it does not excuse any person from complying with other applicable laws, regulations, by-laws or ordinances.
3. The following activities and uses are allowed on land and waters affected by this Order provided the proposed activity or use has received approval as required by M.G.L. c. 131, s.40 as most recently amended at the time the proposed work is to be undertaken:
 - A. The cultivation and harvesting of shellfish and worms and the excavation and construction of areas for the cultivation and harvesting of shellfish and other marine food. Salt marsh haying, dune or marsh grass planting, and the harvesting of marine algae.
 - B. The use or improvement of land or water for commercial agricultural purposes; provided that any subsequent non-agricultural use of land which was altered for agricultural purposes at a time when said land was subject to this Order may be regulated, restricted or prohibited in accordance with any conditions stated herein. Agricultural Purposes shall be defined as using land or water for one or more of the following purposes: raising, breeding or production of a specified type of animal or plant life, including but not limited to,

*Plans (contd.)

J-12; J-13; K-190; K-191; K-192; L-216; L-217.

B. (Continued)

dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, fish, bees, fur bearing animals, and fruits, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, ornamental plants, trees, forest products, nursery or green house products, or sod.

C. Structures related to passive outdoor recreation activities; provided that such structures do not substantially alter existing patterns of tidal flow, obstruct the movement of sediment or alter the natural contour of the coastal wetland.

D. The installation of floats, provided they are located below mean low water and are other wise approved under all applicable municipal, state and federal laws; construction and maintenance of boat launching ramps except on dunes, salt marsh areas or productive shellfish tidal flats as identified by the Division of Marine Fisheries or the local Shellfish Department, and only where such launching ramps will have no effect on adjacent property or downcoast areas.

E. The construction and maintenance of temporary structures such as: catwalks, wharves, piers, decks, boathouses, boat shelters, fences, wildlife management shelters, foot bridges, observation decks and shelters; provided that such structures are constructed on pilings do not destroy the existing vegetation, substantially alter existing patterns of tidal flow obstruct the movement of sediment or alter the natural contour of the coastal wetland.

F. Excavation for wildlife management impoundment; provided that no fill or other material shall be placed upon the area except as may be necessary to construct the retention structure and provide access thereto, and to provide bank stabilization.

G. Beach nourishment except on salt marsh areas or productive shellfish tidal flats as identified by the Division of Marine Fisheries or the local Shellfish Department; dune nourishment; bank and dune stabilization and coastal engineering structures which are other wise approved under all applicable municipal, state and federal laws, and only where such structures will have no adverse effects on adjacent property or downcoast areas.

H. Maintenance dredging of existing channels and marine facilities; provided that such maintenance dredging shall not increase the scope of the initial dredge area. Expansion dredging of existing channels or marine facilities; provided that such dredging is other wise approved under all applicable municipal, state and federal laws, and does not substantially alter existing patterns of tidal flow, or obstruct the movement of sediment Said expansion dredging shall not be allowed in salt marsh areas or in productive shell-fish tidal flats as identified by the Division of Marine Fisheries or the local Shellfish Department. Dredged spoil from maintenance or expansion dredging projects allowed under this section shall not be disposed of on any wetland restricted under this Order except that clean spoil may be used for the purposes of beach nourishment under section G. of this Order.

I. Dredging and/or construction for a boat channel of a size limited to single family use and which is otherwise approved under all applicable municipal, state and federal laws. Said dredging and/or construction shall be accomplished without dredging in salt marsh areas or productive shellfish tidal flats as identified by the Division of Marine Fisheries or the local Shellfish Department. In addition,

such dredging shall not substantially alter existing patterns of tidal flow or obstruct the movement of sediment.

J. The construction and maintenance of driveway or roadway of minimum legal and practical width where reasonable alternative means of access from a public way to unrestricted land of the same owner is unavailable. Such driveway or roadway shall be constructed in a manner which does not substantially alter existing patterns of tidal flow, obstruct the movement of sediment or alter the natural contour of the coastal wetland.

K. The enlargement to minimum legal and practical width and the maintenance of existing raised roadways.

L. The operation and maintenance of existing underground septic systems; the installation, operation, and maintenance of underground and overhead utilities limited to electrical, communication, sewer, potable water and gas lines; provided, in all of the above, the surface vegetation and contour of the coastal wetland is restored substantially to its original condition.

M. The installation and maintenance of underground conduits or other related structures associated with intakes and outfalls of any permitted and licensed electric facility in beaches, dunes and tidal flats not containing productive shellfish beds as identified by the Division of Marine Fisheries or the local Shellfish Department; provided that such structures do not destroy the existing vegetation, substantially alter existing patterns of tidal flow, obstruct the movement of sediment or alter the natural contour of the coastal wetland.

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4. The following activities and uses are prohibited on land and waters affected by this Order, except those activities and uses needed to accomplish the above permitted uses:

A. Filling, placing or dumping on said coastal wetlands any soil, loam, peat, sand, gravel, rock, or other mineral or chemical substance, refuse, trash, rubbish, debris or dredged material.

B. Draining, excavating or dredging said coastal wetlands or removing therefrom any soil, loam, peat, sand, gravel, rock, or other mineral substance.

C. Discharging hazardous substances, including but not limited to, heavy metals, pesticides or petroleum products from a power plant or other industrial source, or primary or secondary effluent from a sewage treatment facility.

D. Constructing habitable dwellings, commercial structures, and any accessory structures thereto, including parking lots.

E. In addition, no person shall perform any act or use any coastal wetland in a manner which would destroy the natural vegetation of the coastal wetland, substantially alter existing patterns of tidal flow, obstruct the movement of sediment or alter the natural contour of the coastal wetland.

5. As used herein, the word "person" shall include any individual, group of individuals, corporations, societies, associations, partnerships, governments and subdivisions and authorities thereof, except

where exempted by statute.

6. The coastal wetlands, including banks, marshes, swamps, meadows, flats or other low land subject to tidal action or coastal storm flowage, and the contiguous lands that may be included in this Order are further described as follows:

Coastal Beach: unconsolidated sediment subject to wave, tidal and coastal storm action which forms the gently sloping shore of a body of salt water. Coastal beaches extend from the mean low water line landward to the dune line or coastal bankline, whichever is closest to the ocean, or to the seaward edge of existing man-made structures, when these structures replace one of the above lines.

Coastal Dune: any hill, mound or ridge of sand landward of a coastal beach deposited by wind action or storm overwash. Coastal dune shall also mean sand deposited by artificial means and serving the purpose of storm damage protection or flood control.

Salt Marsh: a coastal wetland subject to periodic tidal action and characterized by plants that are well adapted to or prefer living in saline soils. Dominant plants within salt marshes may include salt meadow cord grass (*Spartina patens*) and/or salt marsh cord grass (*Spartina alterniflora*). A salt marsh may contain tidal creeks and ditches.

Salt Pond: a shallow enclosed or semi-enclosed body of saline water that may be partially or totally restricted by barrier beach formation. Salt ponds may receive freshwater from small streams emptying into their upper reaches and/or springs in the pond itself.

Sea Cliff or Coastal Bank: the seaward face or side of any elevated landform other than a dune and which lies at the landward edge of a coastal beach, land subject to tidal action, or other wetland.

Tidal Flat: any area of land exposed at low tide which is composed of mud or sand and which is generally unvegetated.

7. Any person may request the Department of Environmental Management or its successor to conduct a review to determine if this Order has been violated. Upon receipt of the request, the Department shall conduct an on-site inspection and shall take such corrective measures as are warranted.
8. Any person who has an ownership interest in land affected by this Order, any lessee holding a lease of twenty five years length or more, and any mortgagor who has an interest in land

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affected by this Order may request that the Department of Environmental Management or its successor conduct a review to determine whether change has occurred in land restricted under this Order. If the Commissioner determines, following examination, that significant change has occurred, the Department shall adopt an Amending, Modifying or Repealing Order or shall correct the Order.

- 9 Any person having an ownership interest, any lessee holding a lease of twenty-five years length or

more and any mortgagor having an interest may, within ninety (90) days after receiving. Notice of this Order, petition the Superior Court to determine whether this Order so restricts the use of his property as to deprive him of the practical uses thereof and is therefore an unreasonable exercise of the police power because the Order constitutes the equivalent of a taking without compensation.

WITNESS my hand and seal this 7th day of October, 1980

Richard E. Kendall, Commissioner

APPROVED: BOARD OF ENVIRONMENTAL MANAGEMENT

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK SS 7 October 1980