

Form 5



Commonwealth of Massachusetts

DEP File No.

SE 69-210

(To be provided by DEP)

City/Town

SEEKONK

Applicant

Galleria Mall Realty Trust

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

From Department of Environmental Protection

To Galleria Mall Realty Trust Home Depot U.S.A., Inc.

(Name of Applicant)

(Name of property owner)

c/o Home Depot, USA, Inc.

2727 Paces Ferry Road, 7th Floor

Address 6 New England Exec. Park
Burlington, MA 01803

Address Atlanta, Georgia 30339

This Order is issued and delivered as follows:

- by hand delivery to applicant or representative on (date)
by certified mail, return receipt requested on December 11, 1990 (date)

This project is located at Highland Avenue (Route 6), Assessors Plat 8, Lots 22, 37, 107 & 108, Seekonk, Massachusetts

The property is recorded at the Registry of Bristol

Book Page

Certificate (if registered)

The Notice of Intent for this project was filed on October 23, 1989 (date)

The public hearing was closed on December 27, 1989 (date)

Findings

The Department 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 Department at this time, the Department 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 \$1,050.00 State Share \$512.50
City/Town Share \$537.50 (1/2 fee in excess of \$25)
Total Refund Due \$ 0 City/Town Portion \$ 0 State Portion \$ 0
(1/2 total) (1/2 total)

Effective 11/10/89

Therefore, the Department 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 Department 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 Department 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 SE 69-210
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:

Plans:

Title	Dated	Signed and Stamped by:	On File with:
<u>THE HOME DEPOT 9/90</u> <u>SEEKONK,</u> <u>MASSACHUSETTS</u> <u>SHEETS 1-11</u>		<u>Laszlo S. Siegmund, PE</u>	<u>Department of</u> <u>Environmental Protection</u>

Special Conditions (Use additional paper if necessary)

1. Prior to the commencement of construction, General Condition No. 8, above, must be complied with.
2. All construction must comply with the above-referenced plans and the conditions of this Order. For any proposed change in the approved plans or in the work, the applicant shall file a new Notice of Intent or inquire, in writing, of the Department whether the change is substantial enough to require a new Notice of Intent. No change in plan, under this filing, is permissible without prior written approval from the Department allowing this change.
3. It is the responsibility of the applicant, owner and/or successor(s) to ensure that all conditions of this Order are complied with. The project engineer and contractors are to be provided with a copy of this Order and referenced documents before commencement of construction.
4. Members and agents of the local Conservation Commission and the Department shall have the right to enter and inspect the property at all reasonable times to evaluate compliance with the conditions stated in this Superseding Order, and may require the submittal of any data deemed necessary by this Department for that submittal.

SEE ATTACHED SHEETS

.....
(Leave Space Blank)

Issued by the Department of Environmental Protection

Signature Elizabeth A. Kouloheras
Elizabeth A. Kouloheras, Chief, Wetlands Section

On this 14th day of December, 1990, before me personally appeared Elizabeth A. Kouloheras 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.

Jeanne E. Jurney Sept. 21, 1995
Notary Public My commission expires
K/LCL/jt

The applicant, the owner, any person aggrieved by the Superseding Order, any owner of land abutting the land upon which the proposed work is to be done, or any ten persons pursuant to G.L. c. 30A §10A, are hereby notified of their right to request an adjudicatory hearing pursuant to G.L. c. 30A, §10, 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 10.03(7), within ten days from the date of issuance of this Superseding Order, and is addressed to: Docket Clerk, Office of General Counsel, Department of Environmental Protection, One Winter Street, Boston, MA 02108. A copy of the request shall at the same time be sent by certified mail or hand delivery to the conservation commission, the applicant, and any other party.

A Notice of Claim for an Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(8), and shall contain the following information:

- (a) the DEP Wetlands File Number, name of the applicant and address of the project;
- (b) the complete name, address and telephone number of the party filing the request, and, if represented by counsel, the name and address of the attorney;
- (c) the names and addresses of all other parties, if known;
- (d) a clear and concise statement of (1) the facts which are grounds for the proceeding, (2) the objections to this Superseding Order, including specifically the manner in which it is alleged to be inconsistent with the Department's Wetlands Regulations (310 CMR 10.00) and does not contribute to the protection of the interests identified in the Act, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the Superseding Order;
- (e) a statement that a copy of the request has been sent to the applicant, the conservation commission and each other party or representative of such party, if known.

Failure to submit all necessary information may result in a dismissal by the Department of the Notice of Claim for an Adjudicatory Hearing.

Detach on dotted line and submit to the _____ prior to commencement of work.

To _____ Issuing Authority

Please be advised that the Order of Conditions for the project at _____

File Number _____ has been recorded at the Registry of _____ and

has been noted in the chain of title of the affected property in accordance with General Condition B 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 _____ Applicant

Superseding Order of Conditions for Galleria Mall Realty Trust,
File No. SE 69-210

Special Conditions continued:

5. Prior to construction, the above-referenced revised plan shall be submitted to the Town of Seekonk Conservation Commission if it has not already been submitted.
6. Prior to any earth moving activity, a staked hay bale filter (end to end) or filter fabric fencing shall be placed along the limit of activity between all disturbed areas and the wetlands as shown on the above-referenced plans. These erosion and siltation controls shall be maintained in proper functioning condition until all disturbed areas have been stabilized, or a determination by the Department that the control measures are no longer necessary.
7. The line of staked hay bales shall constitute a limit of work line. No work shall be permitted on the down slope side of this line.
8. All debris, fill and excavated material shall be stockpiled outside the 100-foot buffer zone to the bordering vegetated wetlands. At no time shall any debris or other material be buried or disposed of within that line marked on the plan as wetland, other than that fill which is allowed by this Order and as shown on the above-referenced plans.
9. Prior to any bordering vegetated wetland filling as proposed, the area for wetlands compensation/replacement shall be excavated to approximately eighteen inches (18") below the proposed final grade of 11.50'.
10. Top soil containing root biomass and seed source shall be removed to a depth of approximately eighteen inches (18") from the areas of bordering vegetated wetland proposed to be filled and shall be stockpiled outside of wetland resource areas, and outside the 100-foot buffer zone to wetlands. Appropriate siltation control measures shall be implemented to prevent the erosion of stockpiled materials, and siltation into buffer zones and/or wetland resource areas.
11. Stockpiled topsoil excavated from the area of proposed wetland filling (described in Special Condition #10) shall be used to bring the final elevation of the proposed wetland replication area to elevation \pm 11.50 feet, within one week of removal of said topsoil from the proposed wetland filling area.

Special Conditions continued:

12. Measures shall be taken as necessary to prevent dessication of the stockpiled topsoil.
13. In order to ensure that wetland filling does not exceed the proposed 4,250 square feet, the flags and stakes delineating the wetland resource area shall remain in place until the issuance of a Certificate of Compliance.
14. The wetland replication area shall be located between the Department's Flag numbers 11 and 7, as shown on the plan of record, and shall be a minimum of 4,250 square feet.
15. The proposed replacement area shall meet or exceed those General Performance Standards outlined in 310 CMR 10.55(4)(b)1-7 of the Wetlands Protection Act Regulations. Should the replacement area fail to meet any of these standards, the Department may require those measures necessary to achieve compliance. Additional measures as described in the Sanford Ecological Services Report, dated October 1990, and submitted as attachment "K" with the revised Notice of Intent for the project, shall also be implemented to ensure the success of the replication. Where conflicts may exist between the report and this Order, the requirements of the Order shall be binding.
16. In areas where riprap slopes are proposed, filter fabric shall be placed between the riprap and the underlying substrate. Said riprap slopes are depicted in the cross-section marked "SLOPE TREATMENT" on page 3 of the above-referenced plan.
17. All catch basins shall be equipped with oil and gasoline trap-type gravity separators and shall be maintained and cleaned, as necessary, to ensure proper functioning.
18. Upon completion of the project, the applicant shall submit with their request for a Certificate of Compliance an "as-built" plan and an affidavit prepared by a Professional Engineer or Land Surveyor registered in the Commonwealth of Massachusetts, stating that the site has been developed in accordance with the requirements of the Superseding Order of Conditions and the referenced site plan. Any differences between the project "as proposed" and "as-built" shall be noted in said affidavit. At a minimum the following information shall be certified and shown on the "as-built" plan:
 1. Area (square feet) of wetland filling that has occurred;
 2. Area (square feet) of wetland replication provided;
 3. The presence of oil and gas separators on catch basins;
 4. The volume of the retention basin "as-built".

*Note:
- not all
have
separators
per
as-built*

Special Conditions Continued:

19. This Order shall apply to any successor in interest of the property described in the Notice of Intent and accompanying plans.

