

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:

SE49-597

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:

New Bedford
 Conservation Commission (Issuing Authority)

5/23/14
 Date

To:

Baywatch Realty Trust c/o Ken Steen
 Name of Violator
3 Ledgewood Blvd., Dartmouth MA 02747
 Address

1. Location of Violation:

Ana Reis Trustee of Bismark Meadows Realty Trust (Lot 511) Louie G. and Amy Rezendes (Lot 505).
 Property Owner (if different)
Bismark Meadows Rd (Lot 511). 67 Bismark Meadows Rd. (Lot 505).
 Street Address
New Bedford 02745
 City/Town Zip Code
Map 136 Lots 505 & 511
 Assessors Map/Plat Number Parcel/Lot Number

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

Non compliance with Condition number 12 of the Order of Conditions which states "the work shall conform to the plans and special conditions referenced in this Order" Specifically, the detention pond has not been constructed in compliance with the approved plans as documented in the attached correspondence from Nitsch Engineering to the Conservation Commission dated 3/3/2104.

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).



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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:

<u>Baywatch Realty Trust</u>	<u>5/25/07</u>
Name	Dated
<u>SE49-597</u>	<u>12</u>
File Number	Condition number(s)

The Order of Conditions expired on (date): expires on May 25, 2014.
 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):

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.
- 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:

The detention pond shall be reconstructed in compliance with the approved plans. Erosion controls shall be installed and inspected by the Conservation Agent prior to work start up. A stamped as-built drawing and a certification by a registered professional engineer of the detention pond shall be submitted to the Conservation Commission demonstrating compliance with the approved plans. A Certificate of Compliance is to be issued by the Conservation Commission upon satisfactory completion of the work. All of these items are to be completed by June 23, 2014.

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:

Sarah Porter, Conservation Agent

Name

508-991-6188

Phone Number

Monday through Friday 8:00 AM to 4:00 PM

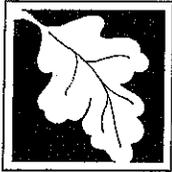
Hours/Days Available

Issued by:

New Bedford

Conservation Commission

Conservation Commission signatures required on following page.



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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:

Sarah Porta, Conservation Agent

7012 2210 0000 4392 2768
Signature of delivery person or certified mail number



Nitsch Engineering

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Boston, MA 02108-1928
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F: 617-338-6472

www.nitscheng.com

March 3, 2014

Mr. Kenneth Motta
Chairman
New Bedford Conservation Commission
New Bedford City Hall
133 William Street
New Bedford, MA 02744

RE: Nitsch Project #9972
Bismark Meadows Subdivision
Review Letter
New Bedford, MA

Dear Mr. Motta:

This letter is in regard to the Bismark Meadows Subdivision residential subdivision project located off of Bismark Street in New Bedford, Massachusetts. Nitsch Engineering has reviewed the following revised items submitted as part of the proposed project:

- Plan entitled, "Road As-Built Plan of Bismark Meadows Road and Bismark Street, New Bedford, Massachusetts," prepared by Existing Grade, Inc., dated December 23, 2013.

This plan was compared with the documents that were prepared and reviewed when the project was submitted to the Conservation Commission in 2007. These documents include:

- Plans entitled, "Definitive Plan of Land for Bismark Meadows, New Bedford, Massachusetts," prepared by Atlantic Design Engineers, dated December 29, 2006 and revised through April 30, 2007;
- Review letter prepared by BSC Group, Inc., dated March 26, 2007;
- Review letter prepared by BSC Group, Inc., dated May 4, 2007;
- Report entitled, "Stormwater Drainage Analysis, Bismark Meadows, New Bedford, Massachusetts," prepared by Atlantic Design Engineers, dated October 1, 1998;
- Report entitled, "Addendum #1 to the Stormwater Drainage Analysis, Bismark Meadows, New Bedford, Massachusetts," prepared by Atlantic Design Engineers, dated April 20, 2007; and
- Report entitled, "Addendum #2 to the Stormwater Drainage Analysis, Bismark Meadows, New Bedford, Massachusetts," prepared by Atlantic Design Engineers, dated May 1, 2007.

Nitsch Engineering has reviewed the recently submitted As-Built Plan for consistency with the Design Documents that were submitted during the approvals process. We have the following comments:

1. The approved plans showed a bottom of basin elevation of 122.8. This elevation was based on a seasonal high groundwater elevation of 120.84. The bottom of the constructed basin is shown as elevation 122. Therefore, the constructed detention basin has a separation to groundwater of 1.2 feet.
2. The As-Built Plan shows standing water in the detention basin up to approximately the basin outlet elevation of 122.6. Therefore, the effective storage in the detention basin begins at elevation 122.6.
3. The approved plans showed the top of the sediment forebay to be built to elevation 126. This is consistent with the calculations submitted as part of Addendum #2 to the Stormwater Drainage Analysis. The As-Built Plan shows the top of the forebay elevation as less than 126. The highest contour is at elevation 124. Since there are no spot grades on the As-Built Plan, and the plans contain 2-foot contours, it is unclear what the actual top of the sediment forebay is which determines the volume of the forebay. The forebay is required to have a volume of 3,342 cubic feet, per Addendum #2. We have digitized the areas shown on the As-Built Plans. Between elevation 122.6 and 124, there is a volume of approximately 1,128 cubic feet.
4. The approved Design Plans show the top of the detention basin elevation at 128.1. The 128 contour does not connect on itself, implying that the actual storage in the detention basin ends at an elevation less than 128. The emergency spillway is shown on the As-Built Plans at elevation 126.5. Therefore, the effective

Mr. Kenneth Motta: Nitsch Project #9972
March 3, 2014
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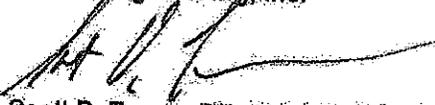
storage in the detention basin ends at elevation 126.5. The design elevation of the emergency spillway is as at 127.10.

5. The approved design calculations show detention basin storage of 12,447 cubic feet. Nitsch Engineering digitized the detention basin areas from the As-Built Plans between elevation 122.6 and 126.5, and calculated storage volumes based on these elevations. We calculated the storage to be 9,366 cubic feet, which is approximately 25% less than the approved plans.
6. We recommend the Applicant supplement the As-Built Survey with both 1-foot contours and spot elevations to understand better the storage volume of the sediment forebay and detention basin. The Applicant should also provide storage volumes based on the As-Built Survey information.

If you have any questions, please call us at 617-338-0063.

Very truly yours,

Nitsch Engineering, Inc.



Scott D. Turner, PE, AICP, LEED AP ND
Director of Planning

SDT/fmk