



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Bethany A. Card
Secretary

Martin Suuberg
Commissioner

17 November 2022

Cricket Lane LLC
92 Middlesex Road, Unit #2
Tyngsboro, MA

RE: WETLANDS/NEWBURY
DEP File #050-1355
55R Pearson Drive
Superseding Order of Conditions

Dear Mr. Erikson,

Following an in-depth review of the file referenced above, and in accordance with Massachusetts General Laws, Chapter 131, Section 40, the Northeast Regional Office of the Massachusetts Department of Environmental Protection, Wetlands Program (MassDEP) is issuing the enclosed Superseding Order of Conditions (SOC) approving this project based upon: 1) information contained in the file to date and plans submitted; 2) information gathered during the site inspection; and 3) reasons MassDEP has deemed necessary to protect the statutory interests identified in the Wetlands Protection Act (the "Act") and Regulations.

The project site is located at 55R Pearson Drive in the Byfield section of Newbury. The site presently is undeveloped and can be characterized as wooded land with rolling topography and wetland resource areas. The parcel is bordered by residential properties located along Pearson Drive to the south, residential properties with large areas of wooded land to the east, and primarily undeveloped land associated with the Martin Burns Wildlife Management Area to the west and north. Access to the property is through an easement over the front portion of 55 Pearson Drive which is an existing lot containing one single family house.

The project proposes to construct twenty-four single family dwellings including six affordable units, paved cul-de-sac roadway, related utility infrastructure, stormwater management systems, and a shared onsite septic system. The proposed roadway will require the filling of approximately 1,730 square feet of Bordering Vegetated Wetlands (BVW) filed as a Limited Project crossing to access an otherwise inaccessible upland area.

On May 14, 2021, a Notice of Intent (NOI) was filed with the Newbury Conservation Commission (the Commission). The public hearing was closed on November 2, 2021, and the Order of Conditions (denial) was issued on November 23, 2021.

On December 3, 2021, you filed an appeal of the OOC based on your belief that the project as proposed met the performance standards for BVW pursuant to 310 CMR 10.55(4).

On February 10, 2022, MassDEP conducted a site visit with you, the Commission's Agent, the Project Engineer, and a group of Newbury citizens and their representative. At the site visit, MassDEP observed the areas where work is proposed adjacent to and within wetland resource areas and discussed the issues raised in the appeal.

MassDEP's review of the file and site visit confirms that the project site contains the following Areas Subject to Protection Under the Act: BVW, Isolated Land Subject to Flooding (ILSF), Bank, and Bordering Land Subject to Flooding (BLSF). The site also contains a certified vernal pool located within the boundaries of the "D-Series" BVW. These areas are significant to the statutory interests listed on the attached form. Work is proposed in the BVW and the 100' Buffer Zone to BVW.

The project proposes approximately 1,730 square feet of permanent fill and approximately 495 square feet of temporary alteration to BVW associated with the limited project roadway crossing. A previous owner of 55 Pearson Drive altered or filled approximately 2,039 square feet of BVW located at the rear of the property between wetland flags E15-E23 and D21. The historic fill was estimated using historical mapping and aerial photographs. The project includes replication of BVW at a 1:1.5 ratio for the total permanent wetland alteration of 1,730 square feet associated with the roadway crossing as well as providing replication of the historic wetland alteration of approximately 2,039 square feet for a total replication area of approximately 5,660 square feet. The wetland replication area will be located north of the E-series wetland. The area of temporary wetland alteration will be restored, seeded, and planted.

In the Denial OOC, the Commission states it has a concern that the proposed drainage swales will be located within 100' of the Certified Vernal Pool. The location of the drainage swales is approximately 95 feet from the vernal pool and are designed to convey sheet flow from the lawn area, away from the vernal pool.

Another reason for denial concerns the proximity of work to the A-Series wetland, the Vernal Pool located within its boundary and discrepancies between a previously issued Order of Resource Area Delineation (ORAD) and the plans submitted with the NOI.

The ORAD issued on October 10, 2019, includes reference to plans dated May 1, 2019, which includes the A-Series wetland. The plans label a portion of the A-Series ILSF as a vernal pool, as well as the vernal pool (certified) within the D-Series wetland. The Commission in its ORAD determined the area within the A-Series ILSF to be a vernal pool. However, documented attempts to certify the area as a vernal pool, including attempts from the Applicant's previous consultant, Norse Environmental Services, and a group of abutters, were all determined by the Natural Heritage and Endangered Species Program, to not contain sufficient information for certification. Due to the lack of current certification of the area as a vernal pool, MassDEP's review is based on the A-Series flagging to contain only ILSF.

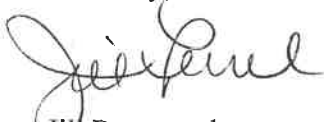
The OOC also claims that the Applicant failed to provide sufficient information to properly review the project due to the Applicant refusal to redesign portions of the project based on the Commission's assumption that the ILSF contained a certified vernal pool. Under the regulatory citation found in 310 CMR 10.05(6)(c), a Conservation Commission must find that the information submitted is not sufficient and must specify in its OOC the information which is lacking and why it is necessary. After reviewing the stated lack of information, it is MassDEP's position that the Applicant provided sufficient information to the Commission to condition the project, since the ILSF does not contain a Certified Vernal Pool. The OOC also states that the Applicant refused to continue the hearing after providing information to the Commission approximately six hours prior to the hearing. The information provided was a response to abutter comments concerning the potential vernal pool and BVW replication. Based on MassDEP's review of the information, it appears that the Applicant had provided sufficient information to the Commission and that the Commission did not vote to deny the OOC until 21 days after the final hearing. Based on the information contained in the record, it is MassDEP's opinion that the Commission had sufficient information to condition the project in accordance with the Act and regulations and therefore, MassDEP does not consider the decision issued by the NCC to qualify as a lack of information denial under 310 CMR 10.05(6)(c).

Based on review of the plans, the information contained in the NOI, and observations made at the site visit, it is MassDEP opinion that the boundary of wetland resource areas have been properly delineated and the BVW replication areas have been properly designed to ensure that the replicated areas will function similar to the area of BVW to be loss. Therefore, it is MassDEP's opinion that the project meets performance standards under 310 CMR 10.55(4) for BVW.

It is MassDEP's position that the enclosed SOC approving the project as conditioned serves to protect the statutory interests identified in the Act, M.G.L., Chapter 131, section 40. However, MassDEP reserves the right, should there be further proceedings in this case, to raise additional issues and present further evidence as may be appropriate. Should you or any concerned party dispute these findings, your attention is directed to the language at the end of the attached Order specifying the rights and procedures for appeal.

Should you have any questions regarding this letter, please contact Kyle Lally at kyle.lally@mass.gov.

Sincerely,



Jill Provencal
Section Chief
Wetlands Program -NERO

cc: Newbury Conservation Commission, 12 Kent Way #101, Byfield, MA 01922

SUPERSEDING ORDER OF CONDITIONS

DEP File #050-1355

20. All work shall conform with the Notice of Intent and attachments, and the following plans, reports, and Special Conditions:

1. Notice of Intent, prepared by Ranger Engineering Group, Inc., submitted on May 14, 2021.
2. Site Plans titled, "40B Comprehensive Permit, The Villages at Cricket Lane Byfield, MA," prepared by Ranger Engineering Group, Inc., revised March 8, 2021, signed and stamped by Benjamin C. Osgood Jr., P.E.

21. This Superseding Order of Conditions (Superseding Order) supersedes all previous Orders issued for this project, DEP File #055-1355. All work shall conform to the Notice of Intent and plans referenced above unless otherwise specified in this Superseding Order. In case of a conflict the Conditions of this SOC shall prevail.

22. A copy of this Superseding Order shall be included in all construction contracts and shall supersede any conflicting requirements.

23. A copy of this Superseding Order as well as the plans and reports referenced in Condition #20 shall be available on site while activities regulated by this Superseding Order are being performed. In addition to the owners, all contractors and subcontractors shall be held responsible for compliance with this Superseding Order.

24. No work shall commence on-site until all appeal periods have elapsed and this Superseding Order has been recorded with the Registry of Deeds and MassDEP has been formally notified via the form provided at the end of this Order.

25. This Superseding Order shall apply to any successor or assigns in interest or control and any other party engaging in activity on the property identified in the Notice of Intent. The applicant shall notify MassDEP in writing within 30 days of all transfers of title of any portion of the property that takes place prior to the issuance of a Certificate of Compliance.

26. Any proposed change in the plans approved under this Superseding Order shall require the applicant to inquire of MassDEP in writing whether the change is substantial enough to require the filing of a new Notice of Intent. A copy shall be sent at the same time to the Newbury Conservation Commission (the Commission). Any errors in the plans or information submitted by the applicant shall be considered changes and the above procedures shall be followed.

27. Members and agents of MassDEP and the Commission shall have the right to enter and inspect the premises to evaluate compliance with the conditions contained in this Superseding Order and may require the submittal of any data deemed necessary by MassDEP for that evaluation.

28. Prior to the start of work, the applicant shall obtain all other permits, variances and approvals required by federal, state, or local regulations, and shall submit proof of such approvals to MassDEP and the Commission.

29. Prior to the start of work, the applicant shall submit final construction plans stamped by a Massachusetts registered professional engineer to MassDEP and the Commission. Any deviations from the plans referenced in this SOC must be noted.

30. The applicant shall retain a wetland specialist who will serve as the project's Environmental Monitor (EM). This person shall be competent in wetland ecology, soil science and have a minimum of five (5) years of experience in wetland replication. Prior to the pre-construction meeting, the applicant shall provide MassDEP and the Commission with the name(s), address(es) and telephone number(s) of the EM and their alternate including their qualifications and contact information for MassDEP's approval. The EM or their backup shall be available on a 24-hour basis.

31. The EM shall be responsible for overseeing all activities within Bordering Vegetated Wetlands (BVW), and the 100-foot Buffer Zone on the project site, including, but not limited to: construction of the driveway in the BVW, creation of the replication areas; and regular inspections and replacement of erosion and sedimentation controls.

32. Permanent impacts to BVW (approximately 1,730 sf) will be replicated in accordance with the plan titled, "40B Comprehensive Permit, The Villages at Cricket Lane Byfield, MA," revised March 8, 2021, including approximately 5,660 sf of wetland replication. Activities involving construction in and replication of these impacted areas, including but not limited to: inspecting and confirming site flagging prior to and after alteration; identifying appropriate organic soils to be placed in the replicated areas; overseeding final grading of the areas; inspecting final elevations and confirming ground water elevations; obtaining plantings, maintaining the specified wetlands plants; and monitoring and reporting on the replication areas shall be overseen by the EM. An annual evaluation of the extent and type of the replicated area of BVW shall be submitted no later than October 1 of each year. Reports shall be sent to this office until the BVW replication becomes revegetated with 75% indigenous species according to the plan and for at least two years following the completion of the work. These reports shall include sufficient photographs to determine restoration or replication has occurred in accordance with the approved plans. If replication does not meet the criteria for success, submission of reports shall continue annually until such time replication meets the criteria.

33. The EM shall request a site visit with MassDEP when the BVW replication and restoration areas are at final grade, but prior to planting. Planting shall not proceed without the written permission of MassDEP. The EM shall notify MassDEP and the HCC, in writing, at the following times:

- a. At the start of filling the BVW that will be permanently altered;
- b. At the start of the excavation of the BVW replication area;
- c. When final grades within the BVW replication and restoration areas are established, but prior to planting; and

d. When planting is complete.

34. Planting of the wetland replication and restoration areas shall not take place between November 15th and May 1st. If seasonal conditions do not permit planting, it shall be done as soon as weather conditions are appropriate.

35. If monitoring data indicates that the BVW replication and restoration areas are failing, a corrective plan shall be submitted to MassDEP for review and approval. Upon approval, the corrective plan shall be implemented under the direct supervision of the EM or other wetland scientist.

36. Hydric soils excavated from the area of the proposed driveway shall not be reused in the wetland replication areas due to the existing seed bank of invasive species. The excavated soils shall be disposed of offsite in a proper landfill.

37. Prior to the commencement of any activity on the site, the applicant shall provide MassDEP and the Commission with the name, address, and contact information (phone numbers and email) of the person(s) designated to ensure that the conditions of this SOC are being met by all work on the site, including but not limited to ensuring that all sedimentation and erosion controls are functioning properly. An emergency telephone number shall also be provided. The applicant is responsible for updating this information if it changes during the course of the project.

38. On a monthly basis while work is occurring on site, the applicant shall submit a written report to MassDEP and the Commission from a Professional Engineer or EM certifying that 1) they have inspected the site on at least a weekly basis; 2) that all work is being performed in compliance with this SOC or noting where deviations have occurred; 3) actions and recommendations to correct any problems; and 4) the dates of site inspections.

39. Prior to the commencement of work, the applicant shall arrange a pre-construction meeting between the project supervisor, the contractor responsible for the work, the EM, a representative of the Commission and a representative of MassDEP to ensure that the requirements of the Superseding Order are understood. Arrangements for the meeting shall be made at least two (2) weeks in advance.

40. Prior to the start of work, the applicant shall submit a construction sequence and schedule to MassDEP and the Commission for approval by MassDEP. The construction sequence shall address initial site preparation, identification of stockpiling and staging areas; erosion controls; parking of construction vehicles; and seasonal considerations. A plan showing the location of construction-related activities shall be included.

41. The applicant shall notify MassDEP and the Commission at least two business days prior to the start of work.

42. Construction refuse, and debris shall be contained within a dumpster and shall be disposed of promptly and in a legal manner.

43. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland resource area.

44. The applicant shall immediately control any erosion problems that occur on the site and shall also immediately notify MassDEP and the Commission. MassDEP reserves the right to require additional erosion and/or damage prevention controls it may deem necessary.

45. During work on this project, there shall be no discharge or spillage of fuel, oil, or other pollutants, including sediments, onto any part of the site. The applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident, or vandalism.

46. If the property is sold at any time before the issuance of a Certificate of Compliance, the applicant shall notify MassDEP and the Commission and shall provide the new owner's name and address. This applicant shall be responsible for providing the new owner with a copy of this Superseding Order.

47. Upon completion of the project, the applicant shall request a Certificate of Compliance from the MassDEP and shall submit the following information with the request:

a) A written statement by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts certifying compliance with the approved plans referenced above and this Superseding Order and setting forth deviations, if any exist;

b) An as-built site plan prepared by a land surveyor or professional engineer registered in the Commonwealth of Massachusetts showing location and dimensions of the boardwalks. The plan shall include the date(s) of the survey.

c) An as-built plan prepared by a registered land surveyor or registered professional engineer of the BVW replication and restoration areas with topography shown in one (1) foot contours. These plans shall include wetland flags, a notation of the amount of BVW replicated; at least three (3) photographs of each area with the date(s) they were taken; and the date(s) of survey. The plan shall be accompanied by a final report by the EM describing the condition of the BVW replication and restoration areas, including a list of the surviving plants (with the quantity of each species), relative health of the plantings and soil profiles

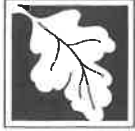


Massachusetts Department of Environmental Protection
 Bureau of Water Resources – Wetlands Program
Superseding Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #
050-1355

A. General Information

1. From: Northeast Regional Office
 Massachusetts Department of Environmental Protection (MassDEP/the Department)
2. This issuance is for (check one):
 a. Superseding Order of Conditions
 b. Amended Superseding Order of Conditions
3. To: Applicant:
- | | | |
|---------------------------|----------------|--------------|
| <u>Walter</u> | <u>Eriksen</u> | |
| a. First Name | b. Last Name | |
| <u>Cricket Lane, LLC</u> | | |
| c. Organization | | |
| <u>92 Middlesex Road</u> | | |
| d. Mailing Address Line 1 | | |
| <u>Tyngsboro</u> | <u>MA</u> | <u>01879</u> |
| e. City/Town | f. State | g. Zip Code |
4. Property Owner (if different from applicant):
- | | | |
|----------------------------|----------------------------|--------------|
| <u>Byfield Estates LLC</u> | <u>Byfield Estates LLC</u> | |
| a. First Name | b. Last Name | |
| c. Organization | | |
| <u>2 Dearborn Way</u> | | |
| d. Mailing Address Line 1 | | |
| <u>Middleton</u> | <u>MA</u> | <u>01949</u> |
| e. City/Town | f. State | g. Zip Code |
5. Project Location:
- | | |
|-----------------------------------|-------------------------|
| <u>55 Pearson Drive</u> | <u>Newbury</u> |
| a. Street Address | b. City/Town |
| <u>R20</u> | <u>75</u> |
| c. Assessors Map/Plat Number | d. Parcel/Lot Number |
| <u>42d45m35.4s</u> | <u>--70d55m46.3s</u> |
| Latitude and Longitude, if known: | e. Latitude f. Latitude |



A. General Information (cont'd)

6. Property recorded at the Registry of Deeds (attach additional information if more than one parcel):

<u>Essex</u>		
a. County	<u>36692</u>	b. Certificate (if registered land) <u>493</u>
c. Book		d. Page

7. Dates: 5/14/2021 11/23/2021 2/22/2022
 a. Date NOI Received b. Date Local Order Issued c. Date of SOC Site Visit

8. Final Approved Plans and Other Documents (attach additional plans or document references):

<u>40B Comprehensive Permit The Villages at Cricket Lane Byfield MA</u>		
a. Plan Title		
<u>Ranger Engineering Group, Inc.</u>	<u>Benjamin C. Osgood Jr.</u>	
b. Prepared By	c. Signed and Stamped By	
<u>3/8/2021</u>	<u>varies</u>	
d. Final Revision Date	e. Scale	
<u>Notice of Intent and all attachments</u>		<u>5/10/2021</u>
f. Additional Plan or Document Title		g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act - Following the review of the above-referenced Notice of Intent and based on the information provided in this application, the Department finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- | | | |
|--|--|---|
| a. <input checked="" type="checkbox"/> Public Water Supply | b. <input type="checkbox"/> Land Containing Shellfish | c. <input checked="" type="checkbox"/> Prevention of Pollution |
| d. <input type="checkbox"/> Private Water Supply | e. <input type="checkbox"/> Fisheries | f. <input checked="" type="checkbox"/> Protection of Wildlife Habitat |
| g. <input checked="" type="checkbox"/> Groundwater Supply | h. <input checked="" type="checkbox"/> Storm Damage Prevention | i. <input checked="" type="checkbox"/> Flood Control |

2. This Department hereby finds the project, as proposed, is (check one):

Approved subject to:

- a. the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. The Department orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



B. Findings (cont'd)

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

3. <input type="checkbox"/> Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available)					<u> </u> a. linear feet
	Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input checked="" type="checkbox"/> Bank		<u>20</u>	<u>20</u>	<u>20</u>	<u>20</u>
		a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input checked="" type="checkbox"/> Bordering Vegetated Wetland		<u>4,624</u>	<u>4,624</u>	<u>5,660</u>	<u>5,660</u>
		a. square feet	b. square feet	c. square feet	d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways		<u> </u>	<u> </u>	<u> </u>	<u> </u>
		a. square feet	b. square feet	c. square feet	d. square feet
		<u> </u>	<u> </u>		
		e. c/y dredged	f. c/y dredged		
7. <input type="checkbox"/> Bordering Land Subject to Flooding Cubic Feet Flood Storage		<u> </u>	<u> </u>	<u> </u>	<u> </u>
		a. square feet	b. square feet	c. square feet	d. square feet
		<u> </u>	<u> </u>	<u> </u>	<u> </u>
		e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding Cubic Feet Flood Storage		<u> </u>	<u> </u>	<u> </u>	<u> </u>
		a. square feet	b. square feet		
		<u> </u>	<u> </u>	<u> </u>	<u> </u>
		c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront area		<u> </u>	<u> </u>	<u> </u>	<u> </u>
	Sq feet within 100 feet	a. total sq. feet	b. total sq. feet		
		<u> </u>	<u> </u>	<u> </u>	<u> </u>
	Sq feet between 100-200 feet	c. square feet	d. square feet	e. square feet	f. square feet
		<u> </u>	<u> </u>	<u> </u>	<u> </u>
		g. square feet	h. square feet	i. square feet	j. square feet

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

10. <input type="checkbox"/> Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available)					<u> </u> a. linear feet
11. <input type="checkbox"/> Designated Port Areas - Indicate size under Land Under the Ocean, below					
		Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
12. <input type="checkbox"/> Land Under the Ocean		<u> </u>	<u> </u>		
		a. square feet	b. square feet		
		<u> </u>	<u> </u>		
		c. c/y dredged	d. c/y dredged		
13. <input type="checkbox"/> Barrier Beaches - Indicate size under Coastal Beaches and/or Coastal Dunes below.					



B. Findings (cont'd)

- | | | | | |
|--|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| 14. <input type="checkbox"/> Coastal Beaches | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | a. square feet | b. square feet | c. c/y nourish. | d. c/y nourish. |
| 15. <input type="checkbox"/> Coastal Dunes | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | a. square feet | b. square feet | c. c/y nourish. | d. c/y nourish. |
| 16. <input type="checkbox"/> Coastal Banks | <u> </u> | <u> </u> | | |
| | a. linear feet | b. linear feet | | |
| 17. <input type="checkbox"/> Rocky Intertidal Shores | <u> </u> | <u> </u> | | |
| | a. square feet | b. square feet | | |
| 18. <input type="checkbox"/> Salt Marshes | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | a. square feet | b. square feet | c. square feet | d. square feet |
| 19. <input type="checkbox"/> Land Under Salt Ponds | <u> </u> | <u> </u> | | |
| | a. square feet | b. square feet | | |
| | <u> </u> | <u> </u> | | |
| | c. c/y dredged | d. c/y dredged | | |
| 20. <input type="checkbox"/> Land Containing Shellfish | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | a. square feet | b. square feet | c. square feet | d. square feet |
| 21. <input type="checkbox"/> Fish Runs - Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above | <u> </u> | <u> </u> | | |
| | a. c/y dredged | b. c/y dredged | | |
| 22. <input type="checkbox"/> Land Subject to Coastal Storm Flowage | <u> </u> | <u> </u> | | |
| | a. square feet | b. square feet | | |
| 23. <input type="checkbox"/> Riverfront area | <u> </u> | <u> </u> | | |
| | a. total sq. feet | b. total sq. feet | | |
| Sq feet within 100 feet | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | c. square feet | d. square feet | e. square | f. square feet |
| Sq feet between 100-200 feet | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | g. square feet | h. square feet | i. square feet | j. square feet |

C. General Conditions Under Massachusetts Wetlands Protection Act

Brief Project Description of Permitted Activities:

Construction of a 40B housing development with approximately 4,624 sf of BVW impacts



C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

(only applicable to approved projects)

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. The 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, bylaws, 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. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition 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. If this Order constitutes an Amended Superseding Order of Conditions, this Amended Superseding Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Superseding Order will expire on _____ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain 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.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then 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 the 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 done. The recording information shall be submitted to the Department on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. 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" [or, "MA DEP"]

"File Number 050-1355"



C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before DEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Department of Environmental Protection.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Department in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Department.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Department, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

19. **The work associated with this Order (the “Project”) is (1) is not (2) subject to the Massachusetts Stormwater Standards. If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:**
 - a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.

C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)



- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
- i.* all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
 - ii.* as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
 - iii.* any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;
 - iv.* all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
 - v.* any vegetation associated with post-construction BMPs is suitably established to withstand erosion.
- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 19(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMPs Operation and Maintenance Plan ("O&M Plan") and certifying the following: *i.*) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and *ii.*) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, and acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 19(f) through 19(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 19(f) through 19(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.

C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)



Massachusetts Department of Environmental Protection
 Bureau of Water Resources – Wetlands Program
Superseding Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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- g) The responsible party shall:
 1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
 2. Make the maintenance log available to MassDEP and the Conservation Commission (“Commission”) upon request; and
 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (See attached sheet(s) or below for additional Special Conditions numbered 20 through 47).

D. Findings Under Municipal Wetlands Bylaw or Ordinance



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To the extent that the Order is based on a municipal bylaw or ordinance, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no jurisdiction to supersede the local by-law order.

E. Issuance

This Order is valid for three years from the date of issuance, unless otherwise specified as a special condition pursuant to General Conditions # 4 or # 6.

Issued by: **Massachusetts Department of Environmental Protection:**

Northeast Regional Office

MassDEP Regional Office

Jill Provencal
 Wetland Section Chief Signature

Jill Provencal

Wetland Section Chief Printed Name

11/17/2022

Date

This Order is issued to the applicant as follows:

by Hand delivery on

by certified mail on:

Date

Date

11/17/22

F. Appeal Rights and Time Limits



Massachusetts Department of Environmental Protection
Bureau of Water Resources – Wetlands Program
Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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The applicant, the landowner, the conservation commission, 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
Department of 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 – Northeast Region
Wetlands Program
205B Lowell Street
Wilmington, MA 01887

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;

F. Appeal Rights and Time Limits (cont.)



Massachusetts Department of Environmental Protection
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- d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceeding that lead 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(1), 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.



G. Recording Information

This Superseding Order of Conditions must be 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 subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Department.

To: Massachusetts Department of Environmental Protection Northeast Regional Office
 Issuing Authority
205B Lowell Street, Wilmington, MA 01887
 MassDEP Regional Office Address

Please be advised that the Order of Conditions for the Project at:

Project Location (Street and Town) MassDEP File Number

Has been recorded at the Registry of Deeds of:

County Book Page

For: Property Owner

and has been noted in the chain of title of the affected property in:

Book Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant

