





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

Provided by MassDEP:  
050-1368  
MassDEP File #

eDEP Transaction #  
Newbury  
City/Town

### A. General Information (cont.)

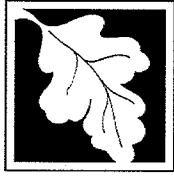
6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):  
Essex South
- |           |  |
|-----------|--|
| a. County | b. Certificate Number (if registered land) |
| 37090     | 591  |
| c. Book   | d. Page                                    |
7. Dates:      9/7/2021      10/19/2021      11/3/2021  
a. Date Notice of Intent Filed      b. Date Public Hearing Closed      c. Date of Issuance
8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):  
Town of Newbury 31 Plum Island Blvd. Newbury, MA
- |                                      |                |                          |
|--------------------------------------|----------------|--------------------------|
| a. Plan Title                        | b. Prepared By | c. Signed and Stamped by |
| Vesta Architecture, LLC              | 10/12/2021     | Rachel Harris            |
| d. Final Revision Date               | e. Scale       |                          |
| Notice of Intent with attachments    | 1/4" = 1.0'    |                          |
| f. Additional Plan or Document Title |                | g. Date                  |
|                                      |                | 8/24/2021                |

### 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 and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the 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 type="checkbox"/> Groundwater Supply             | h. <input checked="" type="checkbox"/> Storm Damage Prevention | i. <input checked="" type="checkbox"/> Flood Control                  |
2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

#### Approved subject to:

- a.  the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission 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.



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

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 \_\_\_\_\_  
 MassDEP File #  
 \_\_\_\_\_  
 eDEP Transaction #  
 Newbuy  
 \_\_\_\_\_  
 City/Town

**B. Findings (cont.)**

Denied because:

- b.  the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c.  the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
- 3.  Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) \_\_\_\_\_ a. linear feet

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

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	_____ a. linear feet	_____ b. linear feet	_____ c. linear feet	_____ d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
	_____ e. c/y dredged	_____ f. c/y dredged		
7. <input type="checkbox"/> Bordering Land Subject to Flooding	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
Cubic Feet Flood Storage	_____ e. cubic feet	_____ f. cubic feet	_____ g. cubic feet	_____ h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	_____ a. square feet	_____ b. square feet		
Cubic Feet Flood Storage	_____ c. cubic feet	_____ d. cubic feet	_____ e. cubic feet	_____ f. cubic feet
9. <input type="checkbox"/> Riverfront Area	_____ a. total sq. feet	_____ b. total sq. feet		
Sq ft within 100 ft	_____ c. square feet	_____ d. square feet	_____ e. square feet	_____ f. square feet
Sq ft between 100-200 ft	_____ g. square feet	_____ h. square feet	_____ i. square feet	_____ j. square feet



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**Bureau of Resource Protection - Wetlands**  
**WPA Form 5 – Order of Conditions**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:  
 050-1368  
 MassDEP File #  
 eDEP Transaction #  
 Newbuy  
 City/Town

**B. Findings (cont.)**

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

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	_____	_____		
	a. square feet	b. square feet		
	_____	_____		
	c. c/y dredged	d. c/y dredged		
12. <input checked="" type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input checked="" type="checkbox"/> Coastal Beaches	300		cu yd	cu yd
	a. square feet	b. square feet	c. nourishment	d. nourishment
14. <input type="checkbox"/> Coastal Dunes	_____	_____	cu yd	cu yd
	a. square feet	b. square feet	c. nourishment	d. nourishment
15. <input type="checkbox"/> Coastal Banks	_____	_____		
	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	_____	_____		
	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	_____	_____		
	a. square feet	b. square feet		
	_____	_____		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
20. <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			
	_____	_____		
	a. c/y dredged	b. c/y dredged		
21. <input checked="" type="checkbox"/> Land Subject to Coastal Storm Flowage	300			
	a. square feet	b. square feet		
22. <input type="checkbox"/> Riverfront Area	_____	_____		
	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	_____	_____	_____	_____
	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	_____	_____	_____	_____
	g. square feet	h. square feet	i. square feet	j. square feet



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 5 – Order of Conditions**  
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050-1368  
MassDEP File #

eDEP Transaction #  
Newbury  
City/Town

## B. Findings (cont.)

\* #23. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23.  Restoration/Enhancement \*:

a. square feet of BVW

b. square feet of salt marsh

24.  Stream Crossing(s):

a. number of new stream crossings

b. number of replacement stream crossings

## C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are 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.
  - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
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. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on 11/3/24 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.



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

Provided by MassDEP:

050-1368

MassDEP File #

eDEP Transaction #

Newbury

City/Town

### C. General Conditions Under Massachusetts Wetlands Protection Act

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 Conservation Commission 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, "MassDEP"]  
 "File Number            050-1368 "
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 MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
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 Conservation Commission 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.



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

Provided by MassDEP:  
050-1368  
MassDEP File #  
eDEP Transaction #  
Newbury  
City/Town

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

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 Conservation Commission.
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 Conservation Commission, 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.
19. The work associated with this Order (the "Project")
- (1)  is subject to the Massachusetts Stormwater Standards
- (2)  is NOT 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.
- 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;



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

Provided by MassDEP:  
050-1368  
MassDEP File #

eDEP Transaction #  
Newbuy  
City/Town

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

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 18(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 BMP 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, 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 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(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.





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

Provided by MassDEP:  
 050-1368  
 \_\_\_\_\_  
 MassDEP File #  
 \_\_\_\_\_  
 eDEP Transaction #  
 Newbuy  
 \_\_\_\_\_  
 City/Town

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

- 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 (if you need more space for additional conditions, please attach a text document):

**See Attachement "A" Special Conditions**

20. For Test Projects subject to 310 CMR 10.05(11), the applicant shall also implement the monitoring plan and the restoration plan submitted with the Notice of Intent. If the conservation commission or Department determines that the Test Project threatens the public health, safety or the environment, the applicant shall implement the removal plan submitted with the Notice of Intent or modify the project as directed by the conservation commission or the Department.



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

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 050-1368  
 \_\_\_\_\_  
 MassDEP File #  
 \_\_\_\_\_  
 eDEP Transaction #  
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 \_\_\_\_\_  
 City/Town

**D. Findings Under Municipal Wetlands Bylaw or Ordinance**

1. Is a municipal wetlands bylaw or ordinance applicable?  Yes  No
2. The Town of Newbury hereby finds (check one that applies):  
Conservation Commission

a.  that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw	2. Citation
---------------------------------	-------------

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

b.  that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

<u>Town of Newbury Wetlands Bylaw</u>	<u>Chapter 95</u>
1. Municipal Ordinance or Bylaw	2. Citation

3. The Commission orders that all work shall be performed in accordance with the following 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.

The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

The project as presented complies with the Town of Newbury Wetlands Bylaw.



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

Provided by MassDEP:

050-1368  
MassDEP File #

eDEP Transaction #

Newbury  
City/Town

**E. Signatures**

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

11/3/2021  
1. Date of Issuance

Please indicate the number of members who will sign this form. This Order must be signed by a majority of the Conservation Commission.

6  
2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

[Signature]  
Signature

T. BRADLEY DUFFIN  
Printed Name

[Signature]  
Signature

DANIEL STREETER  
Printed Name

[Signature]  
Signature

MARY RIMMEN  
Printed Name

[Signature]  
Signature

Peter Rice  
Printed Name

[Signature]  
Signature

Benjamin Gehagan  
Printed Name

[Signature]  
Signature

Brian Callera  
Printed Name

Signature

Printed Name

Signature

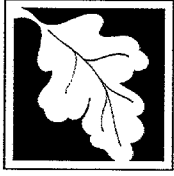
Printed Name

by hand delivery on

by certified mail, return receipt requested, on

11/3/2021  
Date

Date



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

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 050-1368  
 MassDEP File #

eDEP Transaction #  
 Newbury  
 City/Town

## F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.



**Massachusetts Department of Environmental Protection**  
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**WPA Form 5 – Order of Conditions**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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 MassDEP File #  
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 City/Town

**G. Recording Information**

Prior to commencement of work, this 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 Conservation Commission listed below.

Town of Newbury  
 Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

Town of Newbury  
 Conservation Commission

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

31 Plum Island Boulevard                      050-1368  
 Project Location                                      MassDEP File Number

Has been recorded at the Registry of Deeds of:

Essex South  
 County    Book    Page

for: Town of Newbury  
 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:

November 3, 2021  
 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



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**Request for Departmental Action Fee**  
**Transmittal Form**

DEP File Number:

050-1368

Provided by DEP

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

### A. Request Information

#### 1. Location of Project

31 Plum Island Boulevard

a. Street Address

Newbury

b. City/Town, Zip

c. Check number

d. Fee amount

#### 2. Person or party making request (if appropriate, name the citizen group's representative):

Name

Mailing Address

City/Town

State

Zip Code

Phone Number

Fax Number (if applicable)

#### 3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Name

Mailing Address

City/Town

State

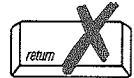
Zip Code

Phone Number

Fax Number (if applicable)

#### 4. DEP File Number:

**Important:**  
 When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



### B. Instructions

#### 1. When the Departmental action request is for (check one):

- Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)
- Superseding Determination of Applicability – Fee: \$120
- Superseding Order of Resource Area Delineation – Fee: \$120



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**Request for Departmental Action Fee  
Transmittal Form**

DEP File Number:

050-1368

Provided by DEP

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

**B. Instructions (cont.)**

Send this form and check or money order, payable to the *Commonwealth of Massachusetts*, to:

Department of Environmental Protection  
Box 4062  
Boston, MA 02211

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.
3. Send a **copy** of this form and a **copy** of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office (see <https://www.mass.gov/service-details/masdep-regional-offices-by-community>).
4. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

**ATTACHMENT A**  
**SPECIAL CONDITIONS**  
**Order of Conditions –**  
**31 Plum Island Boulevard, Newbury**  
**Tracy Blais, Town of Newbury**  
**DEP File # 050-1368**

Under the Order of Conditions (“the Order”) issued under MassDEP File Number 050-1368, the Newbury Conservation Commission (“the Commission”) hereby finds that in addition to the preceding General Conditions #1-20, the following Special Conditions are necessary in accordance with the Performance Standards set forth in the regulations to protect the interests checked above for this project. Any violation of these Conditions will make the Applicant subject to an Enforcement Order.

This Order of Conditions addresses proposed work to convert an existing single-family home into a Municipal Bathhouse, including interior improvements and removal of a concrete entry and reconfiguring with an ADA accessible ramp and deck.

The Newbury Conservation Commission (NCC) makes the following findings:  
The property contains Barrier Beach and Land Subject to Coastal Storm Flowage.

Unless extended this Order of Conditions (OOC) DEP # 50-1368 will expire on  
November 3, 2024.

The Commission orders that all work shall be performed in accordance with said conditions and with the referenced Notice of Intent and all other relevant documents listed below in Condition 22. 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 prevail.

**GENERAL CONDITIONS (CONTINUED)**

Please review the preceding General Conditions 1-20 on the DEP WPA Form 5, particularly Condition 1.

21. All work must be in compliance with the Newbury Wetland Protection Bylaw, Regulations, and Policies.



22. The work shall conform to the following plans and documents, unless otherwise specified in this Order:

a. WPA Form 3

Notice of Intent:

Submitted for: Tracy Blais, Town of Newbury  
12 Kent Way  
Newbury, MA 01922

Prepared by: Samantha Holt, Town of Newbury  
12 Kent Way  
Newbury, MA 01922  
Dated: August 24, 2021

b. Site Plan:

Entitled: Site Redevelopment  
31 Plum Island Boulevard  
Newbury Massachusetts

Prepared by: Oak Consulting Group  
PO Box 1123  
Newburyport, MA 01950  
Scale 1"=5', Sean P. Malone  
dated 11-4-2020 last revised 10-12-2021

c. Architectural Plan:

Entitled: Town of Newbury  
31 Plum Island Boulevard, Newbury MA

Prepared by : Rachel Harris  
Vesta Architecture LLC  
195 Market Square  
Amesbury, MA 01913  
dated 10-12-2021

**23. The approved wetland boundaries pertaining to this Order are only valid for this particular project, and not for any future projects.**

24. The Commission reserves the right to require additional conditions if deemed necessary to protect the resource areas and interests as defined in MGL Chapter 131 Section 40 (310 CMR 10.00) with proper notification of all parties.

25. Any violation of these conditions will make the Applicant subject to an Enforcement Order.

26. Members and agents of the Newbury Conservation Commission (hereafter NCC), shall have the right to enter and inspect the premises to evaluate compliance with these conditions and to require submittal of any data deemed necessary by the Commission for that evaluation.

**27. The Applicant, contractor, or site engineer responsible for the project's completion shall have on site at all times a copy of this Order of Conditions**, including all referenced documents, while activities regulated by this Order are being performed.

28. No equipment is to enter or cross wetland resource areas at any time unless the location of the disturbance is marked on the plans referenced in this Order and is within the limit of work shown on the plan.

29. Any change in the plans approved under this OOC, including those due for review by other boards or resulting from the aforementioned conditions, must be submitted to the Commission in writing for approval prior to implementation. The Commission will then decide whether the change is substantial enough to require a new Notice of Intent filing or a request for an amendment to this OCC. Any errors found in the plans or information submitted by the Applicant shall be considered as changes.
30. If any unforeseen problem occurs during the Project which affects any of the seven statutory interests of the Massachusetts Wetlands Protection Act and/or the Newbury Wetland Protection Bylaw and Regulations, the Applicant shall notify the Conservation Commission and an immediate meeting shall be held between the Commission, the Applicant, the Applicant's representative and/or engineer/contractor, and other concerned parties to determine the corrective measures agreed upon. In the event of a dispute amongst the participants of any meeting, the Commission's view shall prevail.
31. Upon completion of this project [or within one year of the issuance of an occupancy permit] the owner or his designee shall submit the following to the Conservation Commission to receive a Certificate of Compliance per Condition 12:
  - a. A **written request** from the Applicant/Property Owner or his designee for a Certificate of Compliance (WPA Form 8A) for DEP File # **050-1368**.
  - b. A written statement from a registered professional engineer of the Commonwealth of Massachusetts certifying that the work has been completed in compliance with this Order of Conditions and the approved plans referenced herein (or approved revisions). Any discrepancies shall be noted. If the work completed differs significantly from the work proposed in the Notice of Intent and approved by the Commission, the Commission may require the Applicant implement measures necessary to comply with this Order.
  - c. An as-built topographic plan signed and stamped by a registered professional land surveyor of the Commonwealth of Massachusetts, showing post-construction conditions for the public record. This plan will include as-built elevations of all drainage ways constructed within 100 feet of any wetland or 200 feet of a perennial stream, distances to all structures and elevations within 100 feet of wetlands and 200 feet of perennial streams. The as-built plan must show all wetland resource area boundaries with associated buffer zones and any No Cut/No Disturbance Zones taken from the plan(s) approved in this OOC. The as-built plan must show elevations of all filled, altered, or replicated wetlands. This as-built plan **MAY/MAY NOT** be the originally submitted final approved site plan with changes highlighted and explained.
32. No driveway, footing, or roof drain with an above-ground or subsurface discharge, nor any garage floor drain, deck, addition, shed, or pool, shall be installed within the 100-foot buffer zone or the 200-foot riverfront protection area without prior written approval by the Conservation Commission, unless depicted on the approved design plans referenced herein.
33. No proposed earthen embankment in the buffer zone shall have a slope steeper than 3H:1V, (or as shown on the project site plans approved by the NCC as referenced herein) without prior written approval of the Commission.

34. Failure of the Applicant to comply with one or more individual conditions set forth in this OOC **does not exonerate the Property Owner, successor in control, or successor in interest** of the property described in the Notice of Intent in meeting or complying with the remaining conditions in this OOC.

### **PRIOR TO CONSTRUCTION**

Please note General Conditions 8, 9, and 10.

35. Prior to the commencement of any work on the site, the Applicant shall submit in writing to the Commission the names, addresses, and telephone numbers (both business and 24-hour emergency numbers) of the person(s) responsible on-site for compliance with this Order and his/her alternate. The Applicant shall also notify the Commission in writing of any changes to this information.
36. The Applicant or designee shall report in writing (via e-mail or US mail service) to the Newbury Conservation Commission prior to the commencement of construction, every 30 days during construction, and for as long thereafter as the ground remains unstable, as well as upon completion of the project until such time as the CoC is issued for the project. These reports shall include an update on the status of the erosion controls, what work within 100 feet of wetlands or within 200 feet of perennial streams has been completed to date, and what work is proposed for the next month.
37. **If applicable, Prior to the commencement of work on this site, the Applicant shall submit proof of filing with the United States Environmental Protection Agency (EPA), and activation of, a "Notice of Intent (NOi) for Storm Water Discharges Associated with CONSTRUCTION ACTIVITY Under a NPDES General Permit"** under the National Pollutant Discharge Elimination System (NPDES) Program. Submitted with this proof shall be a copy of the Storm Water Pollution Prevention Plan (SWPPP) prepared for this project including an electronic PDF file.
38. Prior to the commencement of any work on site, the Property Owner or his designee **shall submit for approval by the NCC/staff a detailed Construction Sequence** with a timetable and details, including if applicable the **construction of compensation and detention areas and wetlands replication and/or restoration areas**, to be completed before other work begins on site.
39. Prior to commencement of any work on site, the wetland boundaries shall be clearly marked and/or repaired with flags/stakes so that said areas are clearly distinguishable, and shall be confirmed by the Commission or its agent. **The Applicant shall maintain wetland flagging until the Certificate of Compliance is issued.**
40. Prior to the commencement of any work on site, all erosion and sedimentation control measures shall be installed for inspection and approval by the Commission or its agent. **The Commission must be notified at least 7 days prior to the commencement of work for such inspection.**
41. A Pre-construction meeting shall be held, between the Applicant and their designated Project Superintendent and Site Contractor with the NCC or its agent to review the proposed work and measures designed to mitigate any impact on the wetlands, and to ensure that all conditions of the OOC are understood.

42. **Any fill brought on site must be clean, debris-free, and devoid of invasive plants or their parts or seeds.**
43. **All construction vehicles must be cleaned of accumulated soil or plant matter from other sites prior to entering the site, through washing, brooming, or another method approved in advance by the NCC.**
44. It is the Applicant's responsibility to **ensure that the work to be performed hereunder will be properly supervised** by the design engineer and the wetlands biologist, or by persons of equivalent qualifications. Upon written request by the NCC/staff, within fourteen (14) days of the receipt of the request, the Applicant shall submit a report from the design engineer or wetlands biologist, or other qualified person, describing the project's compliance with this OCC, and addressing any other concerns identified in the request relative to compliance to the Wetlands Protection Bylaw and the Wetlands Protection Act
45. Every attempt to **prevent invasive plant species** from entering the site shall be taken. This is especially important in the drainage basins and wetland replication areas. **Machinery** that has been working where purple loosestrife, Japanese Knotweed, or common reed (Phragmites) occur **shall be cleaned of plant parts and soil before entering the construction site.** The basins and restoration/replication area shall be checked monthly during the first growing season for evidence of invasive plant species. Purple loosestrife and common reed **shall be removed by hand immediately.** If the infestation cannot be controlled by hand removal, the NCC/staff shall request the contractor and Property Owner to submit an action plan to the NCC for approval.
46. **No additional clearing or grading** in the 100' Buffer Zone to wetlands, other than what is shown on the approved plans, may be done without written approval of the NCC/staff.
47. Natural areas within the designated work area, that are not part of the explicit scope of work, are not to be used for parking of any vehicles, storing of any materials, or are otherwise allowed to be impaired by approved activities. Placing of temporary fences, approved by the NCC or its agent, around such areas to prevent accidental impairment is encouraged.
48. The Applicant/Responsible Party **shall ensure a hazardous materials spill containment kit is maintained on site at all times** throughout construction. The kit **shall be appropriately sized** for the cumulative volumetric capacity of hazardous fluids contained by on-site equipment.
49. At the commencement of work, and again prior to the roadway and stormwater facility completion, the Applicant **shall collect and remove by hand all trash, compost, and loose man-made debris** from the site's resource areas and buffer zones.
50. **No clearing of vegetation, including trees, or disturbance of soil shall occur prior to the Pre-Construction Meeting.** Minimal disturbance of shrubs and herbaceous plants may be allowed prior to the Pre-Activity Meeting if absolutely necessary in order to place erosion control marker-stakes and to establish stakes designating the "limit of work" where required.

51. To ensure the accuracy of the tree cutting, the NCC/staff **recommends implementing a two color system for marking the limit of work line.** The trees on the edge of the limit of work line to be cut should be sprayed with orange marking paint on the stump and then at breast height. The trees on the other side of the limit of work line NOT to be cut should have yellow caution tape tied around the trunk to provide a visual distinction to inform the tree clearing firm to reduce the possibility of excessive clearing.

### **SEDIMENT AND EROSION CONTROLS**

Please note General Condition 18.

52. Soil erosion and deposition into wetland resource areas shall be prevented at all time by effective control methods. The Applicant shall implement the methods indicated in the referenced Notice of Intent and as specified below:
  - a. The *minimum* required erosion control barriers shall consist of a staked filter sock, straw wattle with appropriate diameter (10" minimum), as inspected and approved by the Commission or its agent before work commences. To minimize wildlife entanglement and plastic debris pollution, choose temporary erosion and sediment control products that either do not contain netting, or that contain netting manufactured from 100% biodegradable non-plastic materials such as jute or sisal fiber. Degradable, photodegradable, UV-degradable, oxo-degradable, or oxo-biodegradable plastic netting (including polypropylene, nylon, polyethylene, and polyester) are not acceptable alternatives. Natural materials sourced from outside the U.S. are also unacceptable, due to the risk of importing exotic invasive pests. Netting used in these products should have a loose-weave wildlife-safe design with movable joints between the horizontal and vertical twines, allowing the twines to move independently and thus reducing the potential for wildlife entanglement. Avoid the use of silt fences reinforced with metal or plastic mesh. When no longer required, temporary erosion and sediment control products should be promptly removed.
  - b. The use of haybales is strictly prohibited for erosion control, unless specifically allowed by the Commission (as shown on the project site plans approved by the NCC as referenced herein)
  - c. Erosion control measures shall be installed and maintained in accordance with U.S. Natural Resources Conservation Service recommended methods.
  - d. The limit of work shall be the erosion control barriers beyond which no work shall occur. Erosion control barriers shall not be placed within 25 feet of the wetland boundary, (or as shown on the project site plans approved by the NCC as referenced herein) without written permission of the Commission.
  - e. The Commission may require the Applicant to employ additional erosion and/or damage prevention measures as it deems necessary.
  - f. Erosion controls shall be inspected weekly and immediately following storm events. Damaged or non-functioning erosion control devices shall be maintained, reinforced, or replaced as necessary.

- g. Any failure of erosion control measures resulting in deposition of soils into the wetland resource area(s) shall be **immediately** reported to the Conservation Commission office at (978) 465-0862 extension 310.
  - h. The Applicant shall take immediate steps to control any erosion that occurs on site that impacts areas under jurisdiction of the Wetlands Protection Act and the Newbury Wetlands Bylaw and Regulations.
  - i. Any sedimentation that occurs outside of the erosion control barriers shall be immediately removed using hand tools. The cause of the erosion/sedimentation shall be immediately addressed.
  - j. All accumulated sediment shall be removed from the face of the erosion control barriers using hand tools (e.g. shovels, rakes, and wheelbarrows) whenever the level of sediment is within six (6) inches of the top of the barrier.
  - k. The Applicant shall maintain a reserve of the approved erosion control materials equal to at least 10% of the maximum length of erosion control materials used on site during the duration of the project, with stakes, to be used for emergency repairs. These materials are not to be used for daily maintenance of erosion controls.
  - l. Soil, sediment, debris, or other material removed during maintenance or repair of erosion control barriers, or remediation of erosion damage, shall be disposed of outside the wetlands or riverfront buffer zone.
  - m. The Applicant shall regularly inspect (weekly and immediately following any storm event greater than 1” of rainfall within a 24 hour period) all stabilized areas for erosion, wash-out, rills, or other damage. Any noted damage shall be immediately repaired using the original stabilization method or other Natural Resources Conservation Service accepted methods.
53. **Erosion control devices and wetland flags shall remain in place until all disturbed surfaces have been permanently stabilized and a Certificate of Compliance is issued by the Commission.** The erosion control devices can only be removed once the Applicant has submitted a Request for Certificate of Compliance AND the NCC and/or its agent has conducted a site visit and granted permission to do so. The biodegradable erosion controls may be broken up and spread on site, but not within any wetland resource area(s) or Conservation Easement. Any non-biodegradable material used within the erosion controls must be removed and discarded off-site. The erosion control devices must be removed prior to final issuance of the Certificate of Compliance.

#### **SOIL STOCKPILES AND FILL STORAGE**

- 54. At no time shall debris or other material be buried or disposed of within the buffer zone, other than that fill which is allowed by this Order and as shown on the referenced plans.
- 55. Stockpiled earth and other materials **shall be located on the upland side of the temporary erosion control or limit-of-work line and shall have erosion control set at the base for a minimum of 67% of its circumference, or otherwise be stabilized** to prevent erosion into wetland resource areas and/or prevent any runoff off-site. If stockpiles sprout invasive plant species, the NCC/staff may direct that appropriate control methods be employed to combat the

invasive plants. In the case of Riverfront Resource areas, stockpiled earth and other materials shall be piled outside the 200-foot Outer Riparian Zone.

56. All fill, stumps, brush, logs, rubbish, construction debris, excavated materials, construction equipment and vehicles, and construction materials (i.e. gravel, bentonite, etc.), if permitted to be stored on-site, shall be stored in a designated location approved by the Commission.
57. Any soil stockpiles that will remain on site for longer than two weeks must either be fully covered with an impermeable material, or seeded with a short-lived (incapable of reseeding) annual herbaceous cover crop.

### **STORMWATER MANAGEMENT**

58. There shall be no direct discharge of stormwater runoff into streams or other wetland resource areas. Runoff from the site shall be directed overland to maximize groundwater recharge and cleansing of the runoff through contact with natural soils and vegetation. Discharges from the perimeter drains shall be at least 25 feet from any wetland resource area (or as shown on the project site plans approved by the NCC as referenced herein).
59. The Applicant or his designee shall report any runoff problems/concerns immediately to the Newbury Conservation Commission office at (978) 465-0862 extension 310.

### **OTHER CONDITIONS**

60. **This OCC of Conditions applies only to proposed dwelling construction, driveway, utilities and restoration areas, any other proposed work shall apply for amended or separate permits.**
61. The Commission designates the “limit of work” under this Order as the erosion control barriers and the limit of work line as depicted on the project site plans approved by the NCC as referenced herein.
62. No work or alteration, including but not limited to removal of any standing or fallen trees or vegetation, except as approved by the Commission and shown on the approved plan(s), shall be conducted within any wetland resource area or any area outside the limit of work under this Order.
63. No vehicles or equipment are to enter or cross a wetland resource area at any time, unless the location of the disturbance is marked on the plan(s) referenced in this Order and is within the limit of work shown on the plan(s).
64. Any runoff resulting from washing of vehicles or equipment shall neither be directed to, nor dumped into, any on-site drainage system or wetland resource area. Runoff shall be managed in accordance with the stormwater management plan developed for this project.
65. Equipment fuel storage, refueling, and lubrication operations shall be situated in an upland area outside the buffer zone. The Commission shall be notified immediately of any leakage of contaminants from this area and all fueling operations shall be suspended.

66. Pumps, generators, or other stationary equipment containing fuel, oil, hydraulic fluid, or other potential contaminants shall not be stored or operated within the resource area or buffer zone without written approval of the Commission. Equipment shall be located in a containment area on an impervious barrier. The barrier shall be of light color to allow observation of any liquid spillage. If spillage is observed, the equipment shall be taken out of service immediately and repaired or replaced.
67. All vegetative debris, all uprooted stumps, brush cuttings, and other debris shall be removed from the site, including existing and construction debris. The Applicant or his designee shall be responsible for removing and disposing of such materials and surplus soils promptly and properly to an off-site disposal area which complies with all federal, state, and local requirements and regulations. Records as to the destination of all materials, including stumps, brush, and excess fill, shall be kept and supplied to the Commission if requested.
68. Non-organic fertilizers, pesticides, and herbicides shall not be used within 100 feet of a wetland resource area or within 200 feet of a perennial stream. Organic fertilizers used within 100 feet of a wetland resource area or within 200 feet of a perennial stream shall be slow-release.
69. No underground storage of fuels is allowed within 100 feet of wetland resource areas or within 200 feet of a perennial stream.
70. The Conservation Commission shall be notified in writing when any maintenance functions that may impact wetlands are to be performed, such as but not limited to replacing leach fields, repairing drains, road maintenance/repaving, and cleaning of stormwater appurtenances.
71. Snow shall not be plowed into any resource area or the adjacent salt marsh areas.
72. No plants listed on the latest Massachusetts DAR Prohibited Plant List (available at [http://www.mass.gov/agr/farmproducts/Prohibited\\_Plant\\_Index2.htm](http://www.mass.gov/agr/farmproducts/Prohibited_Plant_Index2.htm)), the Massachusetts Invasive Plant Advisory Group's Invasive, Likely Invasive, Potentially Invasive, or Not Currently Meeting Criteria lists (<http://www.massnrc.org/mipag/index.htm>), the Connecticut Invasive Plant Working Group's Invasive and Potentially Invasive plant list ([http://cipwg.uconn.edu/invasive\\_plant\\_list/](http://cipwg.uconn.edu/invasive_plant_list/)), the Rhode Island Natural History Survey Invasive Species List ([http://rinhs.org/wp-content/uploads/2011/10/Rhode-Island-Invasive-Species\\_2013\\_b.pdf](http://rinhs.org/wp-content/uploads/2011/10/Rhode-Island-Invasive-Species_2013_b.pdf)), New York's Prohibited & Regulated Invasive Species List ([http://www.dec.ny.gov/docs/lands\\_forests\\_pdf/islist.pdf](http://www.dec.ny.gov/docs/lands_forests_pdf/islist.pdf)), Vermont's Noxious Weed List (<http://www.vtinvasives.org/plants/plant-quarantine-rule>), New Hampshire's Prohibited Invasive Species List (<http://agriculture.nh.gov/publications-forms/documents/prohibited-invasive-species.pdf>), and Maine's Noxious Weed List (<http://www.invasive.org/species/list.cfm?id=48>), may be brought onto or planted anywhere on the property. If at any point these hyperlinks are out of date, this Condition must still be observed, with the updated links and lists.
73. **Prior to the issuance of the Certificate of Compliance, all disturbed areas shall be stabilized to the satisfaction of the Commission.**
74. **No work shall commence on this project until a building permit has been issued by the appropriate issuing authority.**