



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WESTERN REGIONAL OFFICE

436 Dwight Street • Springfield, Massachusetts 01103 • (413) 784-1100

DEVAL L. PATRICK
Governor

IAN A. BOWLES
Secretary

TIMOTHY P. MURRAY
Lieutenant Governor

LAURIE BURT
Commissioner

Mark Webber
Town Administrator
Town of West Stockbridge
9 Main Street, Town Hall, 2nd Floor
West Stockbridge, MA 01266

April 7, 2009

RE: DEP Wetlands File #331-87
Request for Superseding Order of Conditions
Card Pond, West Stockbridge

Dear Mr. Webber:

The Massachusetts Department of Environmental Protection (hereinafter the Department) has completed its review per 310 CMR 10.05(7) for the above-referenced project. Based on its review of the denial Order of Conditions issued by the West Stockbridge Conservation Commission (WSCC) and the information on file, the Department is unable to process this appeal and must issue the attached Denial Superseding Order of Conditions (SOC). The Department is of the opinion that the WSCC Denial is essentially a denial under 310 CMR 10.05(7)(h), that the information submitted is not adequate to describe the site, the work, or the effect of the work on the interests identified in the Massachusetts Wetlands Protection Act [the "Act"], MGL c. 131, § 40.

The appeal letter from the West Stockbridge Board of Selectmen lists four statements out of the WSCC Order and comments on each. Statement #1 indicates that the Commission questioned whether the proposed herbicide treatment is the best method of control. The applicant's comment states that they reviewed all the different options and dismissed them for various reasons. However, the file does not include additional information providing detailed analysis of alternatives for Card Pond. Statement #2 is regarding the lack of a long term management plan for Card Pond. The responding comment is that the applicant is willing to submit a "five year management plan" after receiving an Order of Conditions approving the project. Based on these statements and responses supplied by the applicant, the Department has determined that the applicant failed to provide information requested by the WSCC that was necessary for its review. The Department finds that the information submitted is inadequate to describe the site, the work, or the effect of the work on the interests identified in the Act [the "Act"], MGL c. 131, § 40. This SOC **affirms** the Denial Order of Conditions issued by the WSCC, per the Department's

authority at 310 CMR 10.05(7)(k). Said Order is attached hereto and forms an inseparable part of this SOC.

The Department is interested in providing the necessary outreach and guidance to the Board of Selectmen toward developing a Notice of Intent that can be permitted under the Massachusetts Wetlands Protection Act, MGL c. 131, § 40 for this project. At a time that is convenient to the town the Department is willing to conduct training in this area. If this is of interest to the town, please do not hesitate to contact Mark Stinson at 413-755-2257 to arrange this assistance.

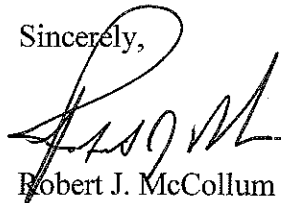
The findings attached to the SOC list the deficiencies that should be addressed in a new Notice of Intent filing, after the necessary baseline data has been collected for Card Pond.

The resource areas specified within the SOC have been determined to be significant to the following statutory "interests" of the Act: public and private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, and protection of fisheries and wildlife habitat.

The reasons given here and in the findings section of the Denial SOC are sufficient to justify this decision. However, the Department reserves the right, should there be further proceedings in this matter, to raise additional issues and present further evidence as may be appropriate.

If you have any questions or need additional information, please contact Karen Hirschberg at (413) 755-2240.

Sincerely,



Robert J. McCollum
Wetlands Program Chief

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Certified Mail #7007 0710 0003 2182 5650

cc West Stockbridge Conservation Commission
Certified Mail #7007 0710 0003 2182 55667

Lee Lyman, President
Lycott Environmental
600 Charlton Street
Southbridge MA 01550 (electronically)

Thomas W. French, PhD., Assistant Director
Massachusetts Natural Heritage and Endangered Species Program
Massachusetts Division of Fisheries and Wildlife
1 Rabbit Hill Road
Westborough, MA 01581 (electronically)

Order of Conditions for DEP Wetlands File # 331-87

Findings:

- The activity, as defined at 310 CMR 10.04 Activity, described within the Notice of Intent would occur within the following jurisdictional resource area: Land Under Water Bodies and Waterways (LUWW) [as defined at 310 CMR 10.56(2)] associated with Card Pond, a “lake” per 310 CMR 10.04 Lake. Alteration of LUWW would occur within 9 acres +/- of said resource area;
- The Department has determined that Bank (Inland) [see 310 CMR 10.54(2)], Bordering Vegetated Wetland [see 310 CMR 10.55(2)], and Bordering Land Subject to Flooding [see 310 CMR 10.57(2)(a)] occur on and adjacent to the site in question, the boundaries of which have not been determined by the West Stockbridge Conservation Commission in this Order;
- The Department has determined that the resource area(s) (as defined at 310 CMR 10.04 Resource Area) at the subject Site are “significant to the protection of wildlife habitat”. This project, as proposed within the Notice of Intent, exceeds the threshold for alteration of “significant wildlife habitat” according to the General Performance Standards at 310 CMR 10.56(4)(a)4. The Notice of Intent does not include a wildlife habitat evaluation, prepared by an individual with the requisite qualifications described at 310 CMR 10.60(1)(b), and prepared by reference to 310 CMR 10.60(2)(b), and the Department’s *Massachusetts Wildlife Habitat Protection Guidance for Inland Wetlands* (MassDEP March 2006); **and** also does not include a wildlife habitat restoration/replication plan prepared by that same individual per the General Performance Standard at 310 CMR 10.60(3);
- The Department has determined that the “wildlife habitat protection zones” demarcated on the plan(s) of record do not comply with the General Performance Standards at 310 CMR 10.60(1);
- The Department has conducted a review of the Order of Conditions prohibiting work issued pursuant to 310 CMR 10.05(6)(c), which finds that the information submitted by the applicant is not sufficient;
- Based on its review, the Department has determined that insufficient information was submitted to the Commission as requested to enable it to issue an Order of Conditions that conditions proposed work to adequately protect the “interests” of the Act;
- The Department is therefore required under 310 CMR 10.05(7)(h) to affirm the denial Order of Conditions and instruct the Applicant to refile with the Commission and include the appropriate information;
- The Department has determined that the project, as proposed in the Notice of Intent and supplemental information, does not meet the General Performance Standards at 310 CMR 10.56(4)(a) and (c) and is denied by this Order;
- The Department has determined that one of the “target species” is Eurasian water milfoil (*Myriophyllum spicatum*) and that this species is not indigenous to Berkshire County, Massachusetts, and is considered to be noxious and invasive. The extent of this invasive species must be documented with detailed vegetation surveys with a sufficient number of plots to establish pre-herbicide application baseline data, before a control plan is proposed;
- The Department has determined that one of the “target species” is curly pondweed (*Potamogeton crispus*) and that this species is not indigenous to Berkshire County, Massachusetts, and is considered to be noxious and invasive. The extent of this invasive

species must be documented with detailed vegetation surveys with a sufficient number of plots to establish pre-herbicide application baseline data, before a control plan is proposed;

- The Department has determined that one of the “target species” is floating pondweed (*Potamogeton natans*) and that this species is indigenous to Berkshire County, Massachusetts, and has not been documented to be noxious and invasive in Card Pond. The Notice of Intent does not include site specific information documenting that *Potamogeton natans* constitutes a nuisance and that it has caused a quantifiable impairment to one (1) or more of the interests identified in the Act in this water body;
- The Department has determined that one of the “target species” is leafy pondweed (*Potamogeton foliosus*) and that this species is indigenous to Berkshire County, Massachusetts, and has not been documented to be noxious and invasive in Card Pond. The Notice of Intent does not include site specific information documenting *Potamogeton foliosus* constitutes a nuisance and that it has caused a quantifiable impairment to one (1) or more of the interests identified in the Act in this water body;
- The Department has determined that one of the “target species” is common reed (*Phragmites australis*) and that this species is not indigenous to Berkshire County, Massachusetts, and is considered to be noxious and invasive. However, the Notice of Intent does not provide detailed information for the proposed treatment of *Phragmites australis* and also for alternative treatment methods, such that the practicability of alternatives can be evaluated;
- The Lake Management Plan submitted is lacking baseline information necessary to evaluate needs for management. The proposed herbicide treatment is a short term solution and will not address the management needs of Card Pond on a long term basis. Herbicide treatment should only be approved as part of a comprehensive Lake Management Plan that includes not only short term but also long term management methods;
- One of the management problems discussed in the Notice of Intent is water quality. A Lake Management Plan should include water quality data, information on the history and sources of water quality degradation, maps of the contributing watersheds, topography, mapped soils, surficial geology, land uses, zoning and other information to identify existing pollution inputs to the water body. The plan should also provide a water budget and a nutrient budget for the water body. It is essential to review past and current watershed management practices, assess the effect of these practices on water quality, and evaluate alternative watershed management practices to improve water quality through source control.



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

MassDEP File Number:
331-0087

A. General Information

1. From: Western Regional Office of the Department of Environmental Protection (the Department)

2. This issuance is for (check one): a. Superseding Order of Conditions
 b. Amended Superseding Order of Conditions

3. To: Applicant:

Mark Webber
 a. First Name b. Last Name

Town of West Stockbridge
 c. Organization

Town Hall, 9 Main Street, 2nd Floor
 d. Mailing Address

West Stockbridge MA 01266
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

Same
 a. First Name b. Last Name

c. Organization

d. Mailing Address

e. City/Town f. State g. Zip Code

5. Project Location:

Great Barrington Road, Card Pond Great Barrington
 a. Street Address b. City/Town

c. Assessors Map/Plat Number d. Parcel/Lot Number

Latitude and Longitude, if known:
 e. Latitude f. Longitude

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

Berkshire South District
 a. County b. Certificate Number (if registered land)

c. Book d. Page

7. Dates: October 27, 2008 November 25, 2008 N/A
 a. Date Notice of Intent Filed b. Date local Order of Conditions Issued c. Date of site meeting

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

None
 a. Plan Title

b. Prepared By c. Signed and Stamped by

d. Final Revision Date e. Scale

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, the Order of Conditions, and information submitted with the request for the Superseding Order of Conditions, 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. Public Water Supply
- b. Land Containing Shellfish
- c. Prevention of Pollution
- d. Private Water Supply
- e. Fisheries
- f. Protection of Wildlife Habitat
- g. Groundwater Supply
- h. Storm Damage Prevention
- i. Flood Control

2. The Department hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

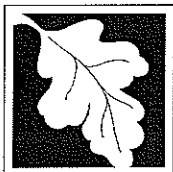
- a. the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. The Department orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special 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.

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 these interests, 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).**

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)				
				a. linear feet
				Permitted Replacement
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		



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

MassDEP File Number:

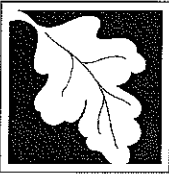
331-0087

B. Findings (cont.)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
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

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

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 type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
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 type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		



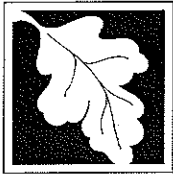
C. General Conditions Under Massachusetts Wetlands Protection Act

(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. 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.
7. 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.
8. 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 this 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.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]

"File Number N/A DENIED "



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

MassDEP File Number:

331-0087

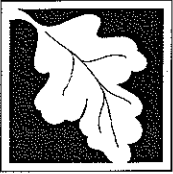
C. General Conditions Under Massachusetts Wetlands Protection Act

10. 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.
11. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to The Department, and a copy thereof to the Conservation Commission.
12. The work shall conform to the plans and special conditions referenced in this order.
13. Any change to the plans identified in Condition #12 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.
14. 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.
15. 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.
16. 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.
17. 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 and the Conservation Commission, which reserve 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.
18. **The work associated with this Order is (1) is not (2) subject to the Massachusetts Stormwater Policy Standards. If the work is subject to the Stormwater Policy, the following conditions apply to this work and are incorporated into this Order:**
 - a) No work, including site preparation, land disturbance, construction and redevelopment, shall commence unless and until the construction period pollution prevention and erosion and sedimentation control plan required by Stormwater Standard 8 is approved in writing by the issuing authority. Until the site is fully stabilized, construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan, and if applicable, the Stormwater Pollution Plan required by the National Discharge Elimination System Construction General Permit.



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

- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs until written approval is received from the issuing authority. To request written approval, the following must be submitted: illicit discharge compliance statement required by Stormwater Standard 10 and as-built plans signed and stamped by a registered professional engineer certifying the site is fully stabilized; all construction period stormwater BMPs and any illicit discharges to the stormwater management system have been removed; and all post-construction stormwater BMPs were installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure they are not damaged and will function properly.
- c) Prior to requesting a Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall submit to the issuing authority an Operation and Maintenance (O & M) Compliance Statement for the Stormwater BMPs. This Statement shall identify the responsible party for implementing the Operation and Maintenance Plan and also state that: 1. "Future responsible parties shall be notified in writing of their continuing legal responsibility to operate and maintain the stormwater management BMPs and implement the Pollution Prevention Plan; and 2. The Operation and Maintenance Plan for the stormwater BMPs is complete and will be implemented upon receipt of the Certificate."
- 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 Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the issuing authority shall presume that the responsible party for maintaining each BMP is the landowner of the property on which the BMP is located. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement 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 Operation and Maintenance Plan section of the approved Stormwater Report, and the Massachusetts Stormwater Handbook.
- g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three years including inspections, repairs, replacement and disposal (for disposal the log shall indicate the type of material and the disposal location);
 2. Make this log available to MassDEP and the Conservation Commission upon request; and
 3. Allow members and agents of the MassDEP and the Conservation Commission to enter and inspect the premises to evaluate and ensure that the responsible party complies with the Operation and Maintenance requirements for each BMP set forth in the Operations and Maintenance Plan approved by the issuing authority.
- h) All sediments 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.



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

j) The stormwater management system approved in the Final Order of Conditions shall not be changed without the prior written approval of the issuing authority. Areas designated as qualifying pervious areas for purpose of the Low Impact Site Design Credit shall not be altered without the prior written approval of the issuing authority.

k) Access for maintenance of stormwater BMPs shall not be obstructed or blocked. Any fencing constructed around stormwater BMPs shall include access gates. Fence(s) shall be at least six inches above grade to allow for wildlife passage.

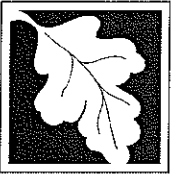
Brief Project Description of Permitted Activities:

Project Denied

Special Conditions (See the attached sheet(s) for additional conditions numbered 20 through N/A).

D. Findings Under Municipal Wetlands Bylaw or Ordinance

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.



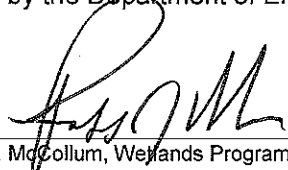
Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5A – Superseding Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File Number:
331-0087

E. Issuance

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

Issued by the Department of Environmental Protection:


 Robert J. McCollum, Wetlands Program Chief Date 4/7/09

Notary Acknowledgment

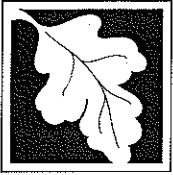
Commonwealth of Massachusetts County of Hampden

On this 7th of April 2009
 Day Month Year

before me, the undersigned Notary Public, personally appeared

Robert J. McCollum Proved to me through satisfactory evidence of identification, which
 Name of Document Signer
 was/were personal acquaintance to be the person whose name is signed on the
 Description of evidence of identification
 preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its
 stated purpose.

 Signature of Notary Public
 Karen Hirschberg
 Printed Name of Notary Public
 July 2, 2010
 My Commission Expires (Date)



F. Appeals

Appeal Rights and Time Limits

The applicant, the landowner, 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:

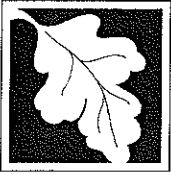
Wetlands Program
Department of Environmental Protection
436 Dwight Street
Springfield MA 01103-1361

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;
- (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;



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

MassDEP File Number:

331-0087

F. Appeals (cont.)

- (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.

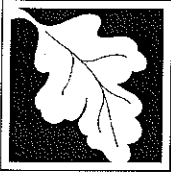
Filing Fee and Address

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.

Section G, Recording Information is available on the following page.



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

MassDEP File Number:
331-0087

G. Recording Information

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 Page 7 of this form shall be submitted to the DEP Regional Office listed below

Western Regional Office of the Department of Environmental Protection

Photocopy or Detach this page, have stamped by the Registry of Deeds and submit to the Department.

 To: Department of Environmental Protection
 Wetlands Program
 436 Dwight Street
 Springfield, MA 01103-1361

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

 Project Location

 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

