



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

May 6, 2022

Joanne Delapa
c/o Delapa Realty Trust
P.O. Box 277
Norwood, MA 02062

RE: WETLANDS/WESTWOOD
DEP File #338-0706
42 Mill Street
Superseding Order of Conditions

Dear Ms. Delapa,

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

The project site is located at 42 Mill Street in Westwood, MA (Map 28, Lot 013). It consists of approximately 4.0 acres of currently undeveloped forested land that was established since 1969. The project site is bordered by residences to the north, east, south, and west. The adjacent lot located to the north, known as lot 2A, is host to a shared common driveway which exists within a Right of Way easement on that property. This shared common driveway will be utilized to access the project site. A perennial stream known as Mill Brook flows onto the property from the north and into Bakers Pond which is centrally located on the project site. Mill Brook then flows out of Bakers Pond in the southwesterly direction off-site. The dwelling is proposed in the only upland area located on the western portion of the project site.

The project as proposed in the Notice of Intent (NOI) filed with the Westwood Conservation Commission (WCC) on June 18, 2020, consists of the construction of a single-family home, bituminous driveway, repaving the existing shared common driveway, lawn, grading, landscaping and installation of water and sewer utilities via directional drilling. In order to install the bituminous driveway, approximately 550 square feet of Bordering Vegetated Wetlands (BVW) will be filled. In order to mitigate for the filling of BVW, the project proposes

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

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to create approximately 700 square feet of BVW. The proposed driveway will result in unquantified amounts of fill in Bordering Land Subject to Flooding (BLSF). In addition, no compensatory flood storage was proposed based on the plan submitted with the NOI. The project site contains approximately 115,054 square feet of Riverfront Area. The proposed project will result in approximately 10,702 square feet of new permanent alteration within the outer riparian zone of the 200-foot Riverfront Area. The proposed project will also result in approximately 4,801 square feet of temporary impacts to the 200-foot Riverfront Area for work associated with re-paving the common driveway. Of the 4,801 square feet of temporary impacts to the 200-foot Riverfront Area, 2,744 square feet will be located in the inner riparian zone and 2,057 square feet will be located in the outer riparian zone.

On December 19, 2016, MassDEP issued a Final Order of Resource Area Delineation (FORAD), DEP File #338-0594, for the project site. The FORAD received an Extension Permit on December 24, 2019, with a new expiration date of December 19, 2022.

On November 18, 2021, the WCC issued an Order of Conditions (OOC) denying the project based on its opinion that the proposed project could not be conditioned to meet the performance standards set forth in the Regulations or the local Bylaw. Specifically, the WCC claims that the project does not meet the performance standards established in 310 CMR 10.55 and 310 CMR 10.58 for BVW and Riverfront Area, respectively.

On December 1, 2021, MassDEP received your appeal of the OOC/Denial for issuance of a Superseding Order of Conditions. The appeal states that it is your opinion the proposed project meets the performance standards established in 310 CMR 10.55 and 310 CMR 10.58. Specifically, you state that the project involves 550 sq. ft. of wetland fill and 700 sq. ft. of wetland replication which is more than the required 1:1 wetland replication requirement established in 310 CMR 10.55(4)(b)(1). Additionally, you state that the WCC incorrectly calculated the amount of impact to the Riverfront Area. You state that in the NOI, you provided the accurate amount of impacts to Riverfront Area based on the location of the Riverfront Area approved under the FORAD and demonstrated how the proposed project meets the performance standards established in 310 CMR 10.58(4).

On January 6, 2022, MassDEP conducted a site visit. In attendance were your representative, a representative from the WCC and their third-party reviewer. At the site visit, MassDEP discussed the project and observed the areas where work is proposed.

MassDEP's review of the file and site visit confirms that the project site contains the following Areas Subject to Protection Under the Act: BVW, Inland Bank, LUW, Riverfront Area associated with Mill Brook, and BLSF. These areas are significant to the statutory interests listed on the attached form. Portions of the proposed project will occur within the 100-foot inner riparian zone and the 200-foot outer riparian zone of the Riverfront Area, BVW, BLSF (*FEMA flood Map 25021C0178E, eff. 7/17/2012*), and associated buffer zones.

Pursuant to 310 CMR 10.58(4)(d)1 the issuing authority may allow the alteration of up to 5000 square feet or 10% of the 200-foot riverfront area within the lot, whichever is greater, on a lot recorded on or before October 6, 1997 or lots recorded after October 6, 1997. The project site

contains approximately 115,054 square feet of Riverfront Area. The proposed project will result in approximately 10,702 square feet of new permanent alteration within the 200-foot Riverfront Area. The permanent impacts to Riverfront Area are less than 10% (11,505 square feet) of the total square footage of Riverfront Area on the parcel. The proposed project will also result in approximately 4,801 square feet of temporary impacts to the 200-foot Riverfront Area associated with re-paving the common driveway.

To access the only buildable upland area on the project site from the common shared driveway, an individual driveway is proposed to be constructed that involves crossing an existing area of BVW and BLSF. A 12" reinforced concrete pipe will be placed at the crossing to maintain a hydrologic connection between two areas of BVW. As stated in the NOI the proposed crossing will result in approximately 550 square feet of BVW fill with 700 square feet of BVW replication. In accordance with 310 CMR 10.55(4)(b) the issuing authority may permit work that will result in the loss of up to 5000 square feet of BVW when the replacement area to be created equals that of the area to be lost. As currently proposed, the project will create an additional 150 square feet of BVW which exceeds the minimum 1:1 replication ratio.

Upon review of plan Sheet 1 of 3 entitled, "Proposed Site Plan of Land Lot 2B- Mill Street Westwood, Massachusetts," prepared by GLM Engineering Consultants, Inc., dated November 2, 2018, and revised July 3, 2021, no amount of alteration in BLSF for portions of the proposed individual driveway or amount of compensatory flood storage was shown. Therefore, on January 11, 2022, MassDEP issued an information request letter asking you to quantify impacts to BLSF and the amount of compensatory flood storage to be provided in accordance with performance standards under 310 CMR 10.57(4).

On February 8, 2022, your representative submitted a response to MassDEP's request by providing a response letter and a revised plan set (3) with a revision date of January 31, 2022. The revised plans show the location and amount of fill to be placed in BLSF and the location and amount of compensatory flood storage to be provided. As stated in the response approximately 285 cubic feet of fill will be placed in BLSF between elevations 193.5-194, for portions of the proposed driveway. Approximately 380 cubic feet of compensatory flood storage will be provided between elevations 193.5-194, a net incremental increase of 95 cubic feet of compensatory flood storage. On February 23, 2022, MassDEP requested you to provide a cut and fill table as requested in the January 11, 2022 information request letter. On February 25, 2022, your representative submitted a BLSF cut/fill chart.

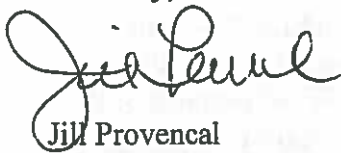
On March 7, 2022, MassDEP issued another information request letter requesting you to clarify the floodplain elevations shown on the project plans as it appeared to be inconsistent with the topography on the property.

On March 14, 2022, your representative submitted a response to MassDEP addressing the noted concerns with a new revised plan set with a revision date of March 8, 2022. Your representative corrected the floodplain previously listed as Zone A instead of the correct Zone AE with a BFE of 190', 191', and 194'.

Based on the information and plans contained in the file, information gathered at the site inspection, and consideration of all issues raised through the appeal, it is MassDEP's opinion that the project as currently proposed meets performance standards under 310 CMR 10.55(4), 310 CMR 10.57(4)(a), and 310 CMR 10.58(4), for BVW, BLSF and Riverfront Area, respectively. It is MassDEP's opinion that the enclosed SOC approving this project serves to protect the interests of the Act and Regulations. Please be advised that it is MassDEP's responsibility to address only those interests identified in the Act. However, MassDEP reserves the right, should there be further proceedings in this case, to raise additional issues and present further evidence as may be appropriate. Should you or any concerned party dispute these findings, your attention is directed to the language at the end of the attached Superseding Order specifying the rights and procedures for appeal.

Should you have any questions regarding this letter, please contact Tyler Ferrick at Tyler.Ferrick@mass.gov.

Sincerely,



Jill Provencal
Section Chief
Wetlands Program - NERO

cc: Westwood Conservation Commission, 50 Carby Street, Westwood, MA 02090
Tim McGuire, Goddard Consulting, 291 Main Street, Suite 8, Northborough, MA 01532
Brian Donahoe, Goldman Environmental Consultants, 60 Brooks Drive, Braintree, MA 02184



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

MassDEP File #

338-0706

A. General Information

1. From: Northeast Regional Office
Massachusetts Department of Environmental Protection (MassDEP/the Department)
2. This issuance is for (check one):
 a. Superseding Order of Conditions
 b. Amended Superseding Order of Conditions
3. To: Applicant:
- | | | |
|----------------------------|---------------|--------------|
| <u>Joanne</u> | <u>Delapa</u> | |
| a. First Name | b. Last Name | |
| <u>Delapa Realty Trust</u> | | |
| c. Organization | | |
| <u>P.O. Box 277</u> | | |
| d. Mailing Address Line 1 | | |
| <u>Norwood</u> | <u>MA</u> | <u>02062</u> |
| e. City/Town | f. State | g. Zip Code |
4. Property Owner (if different from applicant):
- | | | |
|---------------------------|--------------|--------------|
| <u>Salvatore</u> | <u>Vinci</u> | |
| a. First Name | b. Last Name | |
| <u></u> | | |
| c. Organization | | |
| <u>67 Hazelwood Drive</u> | | |
| d. Mailing Address Line 1 | | |
| <u>Norwood</u> | <u>MA</u> | <u>02062</u> |
| e. City/Town | f. State | g. Zip Code |
5. Project Location:
- | | |
|------------------------------|----------------------|
| <u>42 Mill Street</u> | <u>Westwood</u> |
| a. Street Address | b. City/Town |
| <u>28</u> | <u>013</u> |
| c. Assessors Map/Plat Number | d. Parcel/Lot Number |
| <u>42.208931</u> | <u>-71.240302</u> |
| e. Latitude | f. Latitude |
- Latitude and Longitude, if known:



A. General Information (cont'd)

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

<u>Norfolk</u>		
a. County		b. Certificate (if registered land)
<u>37467</u>		<u>20</u>
c. Book		d. Page

7. Dates:	<u>7/13/2020</u>	<u>11/18/2021</u>	<u>1/6/2022</u>
	a. Date NOI Received	b. Date Local Order Issued	c. Date of SOC Site Visit

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

<u>Proposed Site Plan of Land Lot 2B-Mill Street Westwood, Massachusetts</u>		
a. Plan Title		
<u>GLM Engineering Consultants, Inc.</u>	<u>Joyce E Hastings, PLS & Robert S Truax, PE</u>	
b. Prepared By	c. Signed and Stamped By	
<u>3/8/2022</u>	<u>1 inch = 30 feet</u>	
d. Final Revision Date	e. Scale	
<u>Wetland Replication Plan</u>		<u>3/19/2021</u>
f. Additional Plan or Document Title		g. Date

B. Findings

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

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

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

Approved subject to:

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



B. Findings (cont'd)

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

3. Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available) 0
a. linear feet

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	<u> </u> a. linear feet	<u> </u> b. linear feet	<u> </u> c. linear feet	<u> </u> d. linear feet
5. <input checked="" type="checkbox"/> Bordering Vegetated Wetland	<u>550</u> a. square feet	<u>550</u> b. square feet	<u>700</u> c. square feet	<u>700</u> d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
	<u> </u> e. c/y dredged	<u> </u> f. c/y dredged		
7. <input checked="" type="checkbox"/> Bordering Land Subject to Flooding Cubic Feet Flood Storage	<u>285</u> a. square feet <u> </u> e. cubic feet	<u>285</u> b. square feet <u> </u> f. cubic feet	<u>380</u> c. square feet <u> </u> g. cubic feet	<u>380</u> d. square feet <u> </u> h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding Cubic Feet Flood Storage	<u> </u> a. square feet <u> </u> c. cubic feet	<u> </u> b. square feet <u> </u> d. cubic feet	<u> </u> e. cubic feet	<u> </u> f. cubic feet
9. <input checked="" type="checkbox"/> Riverfront area	<u>15,503</u> a. total sq. feet <u>2,744</u> c. square feet <u>12,759</u> g. square feet	<u>15,503</u> b. total sq. feet <u>2,744</u> d. square feet <u>12,759</u> h. square feet	<u> </u> e. square feet <u> </u> i. square feet	<u> </u> f. square feet <u> </u> j. square feet

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

10. Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available)
a. linear feet

11. Designated Port Areas - Indicate size under Land Under the Ocean, below

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
12. <input type="checkbox"/> Land Under the Ocean	<u> </u> a. square feet <u> </u> c. c/y dredged	<u> </u> b. square feet <u> </u> d. c/y dredged		

13. Barrier Beaches - Indicate size under Coastal Beaches and/or Coastal Dunes below.



B. Findings (cont'd)

14. Coastal Beaches
 a. square feet b. square feet c. c/y nourish. d. c/y nourish.
15. Coastal Dunes
 a. square feet b. square feet c. c/y nourish. d. c/y nourish.
16. Coastal Banks
 a. linear feet b. linear feet
17. Rocky Intertidal Shores
 a. square feet b. square feet
18. Salt Marshes
 a. square feet b. square feet c. square feet d. square feet
19. Land Under Salt Ponds
 a. square feet b. square feet
 c. c/y dredged d. c/y dredged
20. Land Containing Shellfish
 a. square feet b. square feet c. square feet d. square feet
21. 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
22. Land Subject to Coastal Storm Flowage
 a. square feet b. square feet
23. Riverfront area
 a. total sq. feet b. total sq. feet
 Sq feet within 100 feet
 c. square feet d. square feet e. square f. square feet
 Sq feet between 100-200 feet
 g. square feet h. square feet i. square feet j. square feet

C. General Conditions Under Massachusetts Wetlands Protection Act

Brief Project Description of Permitted Activities:

Construction of a single-family home and appurtenant amenities. A shared common driveway exists adjacent to the site in which will be used as the primary access drive to the residence with an individual driveway constructed off the shared common driveway to give access to the residence. The private driveway will result in 550 sq. ft. of BVW fill. A 700 sq. ft. wetland replication area is proposed which will result in a net increase of 150 sq. ft. of BVW onsite. The wetland crossing will also result in 285 cubic feet of fill in BLSF (EI. 193.5-194). Construction of a 380 cubic foot compensatory flood storage area is proposed which is a net incremental increase of 95 cubic feet of compensatory flood storage. Total Riverfront Area onsite is 115,054 square feet. The existing common drive being repaved equates to 4,801 sq. ft. of temporary impacts to Riverfront Area. New permanent impacts to the Riverfront Area as a result of this project amounts to 10,702 sq. ft.



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

(only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. the work is a maintenance dredging project as provided for in the Act; or
 - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended Superseding Order of Conditions, this Amended Superseding Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Superseding Order will expire on _____ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Department on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,
"Massachusetts Department of Environmental Protection" [or, "MA DEP"]
"File Number 338-0706"



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

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

NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

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

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



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

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



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

Special Conditions (See attached sheet(s) or below for additional Special Conditions numbered 20 through 63).

See special conditions attached.

D. Findings Under Municipal Wetlands Bylaw or Ordinance



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

E. Issuance

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

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

Northeast Regional Office

MassDEP Regional Office

Jill Provencal

Wetland Section Chief Signature

Jill Provencal

Wetland Section Chief Printed Name

Date

5.6.22

This Order is issued to the applicant as follows:

by Hand delivery on

by certified mail on:

Date

5/6/2022

Date

F. Appeal Rights and Time Limits

The applicant, the landowner, the conservation commission, any person aggrieved by the Superseding Order, Determination or other Reviewable Decision as defined at 310 CMR 10.04, who previously participated in the proceedings leading to this Reviewable Decision, the conservation commission, or any ten (10) residents of the city or town where the land is located if at least one resident was previously a participant in the permit proceeding, are hereby notified of their right to appeal this Reviewable Decision pursuant to M.G.L. c.30A, § 10, provided the request is made by certified mail or hand delivery to the Department, along with the appropriate filing fee and a MassDEP Fee Transmittal Form within ten (10) business days of the date of issuance of this Superseding Order or Determination, and addressed to:

Case Administrator
Office of Appeals and Dispute Resolution
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the request (hereinafter also referred to as Appeal Notice) shall at the same time be sent by certified mail or hand delivery to the Conservation Commission, the applicant, the person that requested the Superseding Order or Determination, and the issuing office of the MassDEP at:

MassDEP – Northeast Region
Wetlands Program
205B Lowell Street
Wilmington, MA 01887

In the event that a ten-resident group requested the Superseding Order or Determination, the Appeal Notice shall be served on the designated representative of the ten resident group, whose name and contact information is included in this Reviewable Decision (when relevant).

Contents of Appeal Notice

An Appeal Notice shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6) and 310 CMR 10.05(7)(j), and shall contain the following information:

- a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;
- b) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative; if a ten residents group, the same information for the group's designated representative;
- c) if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;

F. Appeal Rights and Time Limits (cont.)

- d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceeding that lead to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;
- e) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;
- f) a clear and concise statement of the alleged errors contained in the Department's decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c.131, § 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision, and the relief sought, including any specific desired changes to the Department's decision;
- g) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;
- h) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and
- i) if asserting a matter that is Major and Complex, as defined at 310 CMR 10.04(1), a statement requesting that the Presiding Officer make a designation of Major and Complex, with specific reasons supporting the request.

Filing Fee and Address

A copy of the Appeal Notice along with a MassDEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

G. Recording Information

This Superseding Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Department.

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

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

Project Location (Street and Town) MassDEP File Number

Has been recorded at the Registry of Deeds of:

County Book Page

For: Property Owner

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

Book Page

In accordance with the Order of Conditions issued on:

Date

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

Instrument Number

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

Document Number Signature of Applicant

SUPERSEDING ORDER OF CONDITIONS

SPECIAL CONDITIONS

42 Mill Street, Westwood

DEP File No. 338-0706

20. All work shall conform to the Notice of Intent, plans, reports and special conditions:
 - a. Supplemental Information to Notice of Intent for the Westwood Conservation Commission dated June 18, 2020, and revised October 8, 2021.
 - b. Plan set entitled, "Proposed Site Plan of Land Lot 2B- Mill Street Westwood, Massachusetts," consisting of 3 sheets dated November 2, 2018, with a final revision date of March 8, 2022, prepared by GLM Engineering Consultants, Inc., and stamped and signed by Joyce E. Hastings, P.L.S. and Robert S. Truax, P.E.
 - c. Wetland Replication Plan prepared by Goddard Consulting, LLC. and dated 3/19/2021.
21. This Superseding Order of Conditions (Superseding Order) supersedes all previous Orders issued for the project, DEP File #338-0706. All work shall conform to the plans and documentation referenced above unless otherwise specified in the Superseding Order. In case of a conflict, the conditions of this Superseding Order shall prevail.
22. A copy of this Superseding Order shall be included in all construction contracts and shall supersede any conflicting requirements.
23. A copy of this Superseding Order as well as the plans and reports referenced in Special Condition No. 20 shall be available on site while activities regulated by this Superseding Order are being performed. In addition to the owners, all contractors and subcontractors shall be held responsible for compliance with this Superseding Order.
24. No work shall commence on-site until all appeal periods have elapsed and this Superseding Order has been recorded with the Registry of Deeds and MassDEP has been formally notified via the form provided at the end of this Superseding Order.
25. This Superseding Order shall apply to any successor or assigns in interest or control and any other party engaging in activity on the property identified in the Notice of Intent. The applicant shall notify MassDEP in writing within 30 days of all transfers of title of any portion of property that takes place prior to the issuance of a Certificate of Compliance.
26. Any proposed or executed change in the plans approved under this Superseding Order shall require the applicant to inquire of MassDEP in writing whether the change is substantial enough to require a new filing. A copy shall be sent at the same time to the

WCC. Any errors in the plans or information submitted by the applicant shall be considered changes and the above procedures shall be followed.

27. Members and agents of MassDEP and the WCC shall have the right to enter and inspect the premises to evaluate compliance with the conditions contained in this Superseding Order and may require the submittal of any data deemed necessary by MassDEP for that evaluation.
28. The applicant shall retain a wetland scientist who will serve as the project's Environmental Monitor (EM). This person shall be competent in wetland ecology, soil science and have a minimum of five (5) years of experience in wetland crossings and replication, as well as expertise with erosion control and general construction practices. Prior to the pre-construction meeting, the applicant shall provide MassDEP, and a copy sent to the WCC with the name(s), address(es) and telephone number(s) of EM and their alternate including their qualifications and contact information for MassDEP's approval. The EM or their backup shall be available on a 24-hour basis.
29. The EM shall be responsible for overseeing all activities within Bordering Vegetated Wetlands (BVW), Bordering Land Subject to Flooding (BLSF) and Riverfront Area, and the 100-foot Buffer Zone on the project site, including, but not limited to: the installation of the driveway crossing, installation of the culvert, utilities, construction of the BVW replication area, construction of the BLSF compensatory flood storage area, and regular inspections and replacement of erosion control devices.
30. The EM shall oversee all activities involving preparation and construction of the BVW replication area. The EM shall be responsible for all aspects of these activities, including but not limited to: ensuring all wetland flagging is maintained prior to and after the alteration of BVW; filling of the BVW; identifying appropriate organic soils to be replaced into the replicated wetland area; final grading of the BVW replication area; plantings; transportation of soils and plant material; and submitting monitoring reports.
31. The EM shall oversee the activities involving preparation and construction of the compensatory flood storage area. The EM shall ensure the compensatory flood storage area is graded to the appropriate elevations and that the soils are stabilized following its completion.
32. The EM shall monitor the site during and/or immediately after precipitation events of 0.5" or greater in a 24-hour period, or immediately after a winter snowmelt. The EM shall have the authority to modify existing erosion and sedimentation controls or require additional controls if they deem it necessary. The EM shall have the authority to stop construction for erosion control purposes and shall immediately notify MassDEP and the WCC if any discharges to a wetland resource area occur.
33. Prior to the pre-construction meeting, the applicant shall provide MassDEP with a contact list containing the telephone number, address and email for the project supervisor, site contractor(s) and EM, as well as their back-up contact(s).

34. Prior to the pre-construction meeting, the applicant shall submit an overall construction schedule to MassDEP with a copy provided to the WCC.
35. Prior to the start of work on site, except for the installation of erosion controls, there shall be a pre-construction meeting between the applicant, the project supervisor, the contractor(s) performing the work, the EM, a representative from the WCC and MassDEP to ensure the requirements of the Superseding Order are understood. Arrangements for the meeting shall be with made with MassDEP at least two (2) weeks prior to any activity.
36. There shall be no alteration of BVW, except for the **permanent alteration of approximately 550 square feet** allowed under this Superseding Order for the installation of a crossing related to the proposed driveway, as shown on Plan Sheet 1 of 3 entitled, "Proposed Site plan of Land Lot 2B- Mill Street Westwood, Massachusetts," as referenced in Special Condition No. 20. The impacts to BVW will be replicated in an area adjacent to the wetland crossing which is specified on the approved plan. Approximately 700 square feet of BVW replication shall be constructed.
37. No more than **approximately 285 cubic feet of fill in BLSF may be permanently altered** under this Superseding Order for the installation of a crossing related to the proposed driveway, as shown on Plan Sheet 1 of 3 entitled, "Proposed Site plan of Land Lot 2B- Mill Street Westwood, Massachusetts," as referenced in Special Condition No. 20. Approximately 380 cubic feet of compensatory flood storage will be created.
38. No more than **approximately 10,702 square feet of permanent impacts and 4,801 square feet of temporary impacts** to Riverfront Area is allowed under this Superseding Order of Conditions for the entirety of the proposed project, as shown on Plan Sheet 1 of 3 entitled, "Proposed Site plan of Land Lot 2B- Mill Street Westwood, Massachusetts," as referenced in Special Condition No. 20.
39. During the alteration of any BVW, all organic topsoil shall be excavated and segregated from the subsoil to a maximum depth of 12 inches. Organic soils that are removed from the BVW shall be stockpiled for as little time as possible and adequately protected to ensure that they do not dry out. Excavated organic soils shall be reused in the restoration and replications areas after sub-grading is complete and shall be replaced so that the original soil horizons are restored.
40. To the greatest extent possible, wetland plants shall be carefully removed from the BVW areas that will be permanently altered, and appropriately stored to be reused during the BVW replication activities.
41. Work within the BVW shall be conducted, to the greatest extend possible, under low flow conditions as determined by the EM.

42. Preparation and construction of the wetland replication area shall be overseen by the EM. The EM shall be on site while the work is conducted and shall be responsible for overseeing activities including, but not limited to: inspecting and confirming erosion controls and wetland flagging prior to and after the alteration the BVW; identifying the appropriate organic soils to be placed in the BVW replication area; overseeing final grading of the BVW replication area; inspecting final elevations and confirming groundwater elevations within the BVW replication area; obtaining, planting and maintaining the specified wetlands plants and seed mixes; and monitoring and reporting on the BVW replication area. The EM shall request a site visit with MassDEP when the BVW replication area are at final grade, but prior to planting. Planting shall not proceed without the written permission of MassDEP. The EM shall notify MassDEP and the WCC, in writing, at the following times:
 - a. At the start of filling the BVW that will be permanently altered;
 - b. At the start of the excavation of the BVW replication area;
 - c. When final grades within the BVW replication and BLSF compensatory flood storage areas are established, but prior to planting; and
 - d. When planting is complete.
43. If manufactured organic soils are used in the BVW replication area, it shall consist of soil that contains twenty (20) percent peat or partially decomposed leaf litter and shall have the same pH, texture, and fertility as the native wetland soil. The BVW replication area shall have a base of at least twelve (12) inches of organic soil prior to planting.
44. Planting of the wetland replication area shall not take place between November 15th and May 1st. If seasonal conditions do not permit planting, it shall be done as soon as weather conditions are appropriate.
45. Within thirty (30) days of the completion of constructing the BVW replication area and area of compensatory flood storage, the EM shall prepare and submit to MassDEP (at Tyler.Ferrick@mass.gov) a written narrative with photographs of the work that was performed and an inventory of the plant media that was installed.
46. The EM shall submit weekly reports to MassDEP with copies sent to the WCC immediately upon the start of work. These reports shall summarize the site activities within the BVW, BLSF, Riverfront Areas and the 100-foot Buffer Zone, and shall confirm that all activities are in compliance with the conditions of this Superseding Order. The reports shall include, but are not limited to, a description of construction status and activities; overall site conditions; the condition of erosion and sedimentation controls; BVW and BLSF activities; and reports of any erosion, sedimentation, or pollution problems and how they were corrected, along with recommendations on how to prevent similar problems in the future. The EM shall immediately report any unauthorized discharges of sediments to MassDEP and the WCC, and the applicant shall take immediate steps to correct the problem.

47. Upon completion of construction, the EM shall submit monthly reports to MassDEP with copies sent to the WCC to indicate whether the site is in compliance with the conditions of this Superseding Order. These monthly reports shall be submitted until such time that erosion is no longer a concern due to seasonal conditions and the applicant submits a written request to MassDEP to temporarily cease monitoring. The monthly monitoring reports shall include, but are not limited to, a description of overall site conditions; the condition of erosion and sedimentation controls; and actions taken to address problems and any other recommendations for site management. The EM shall immediately report any unauthorized discharges of sediments to MassDEP, and the applicant shall take immediate steps to correct the problem.
48. The EM shall monitor the BVW replication area for three (3) years of full continuous growing seasons, with written reports submitted to MassDEP and copied to the WCC **no later than October 31st** of each calendar year. A Certificate of Compliance will not be issued until this condition has been met.

Monitoring reports shall include photographic stations for “before” and “after” photographic documentation that clearly and comprehensively describe the conditions of the BVW replication area. The report should describe the presence of any visible hydrology; soil profile; the stability, health, growth, and vigor of the planted species; and any enhancement activities performed or remedial actions necessary to be undertaken within the BVW replication area. At least 75 percent of the replication areas shall be reestablished with wetland plant species within three growing seasons. Any plants that die shall be promptly replaced with a similar plant species.

All reports shall be sent to:

Tyler Ferrick
MassDEP Wetlands Program
Northeast Regional Office
205B Lowell Street
Wilmington, MA 01887
or via email to Tyler.Ferrick@mass.gov

and shall reference the DEP File No. 338-0706 and shall be copied to the WCC.

49. If monitoring data indicates that the BVW replication area is failing, a corrective plan shall be submitted to MassDEP for review and approval. Upon approval, the corrective plan shall be implemented under the direct supervision of the EM or other wetland scientist.
50. At the start of work, additional erosion control materials shall be available on site (stored under cover) for emergency and routine replacement.

51. Erosion controls shall serve as the limit of work and shall be maintained in good repair until disturbed areas have been fully stabilized with vegetation or other means acceptable to MassDEP. At no time shall sediments be deposited in a wetland resource area.
52. MassDEP shall be immediately notified of any unauthorized discharges of sediments into the wetland resource areas, and the applicant shall take immediate steps to correct the problem. MassDEP reserves the right to require additional erosion controls and/or damage prevention controls that are deemed necessary.
53. Erosion controls shall remain in place until MassDEP approves their removal.
54. Wetland flags shall be maintained at all times and replaced if they are missing until Certificate of Compliance has been issued.
55. Discharges from any dewatering activities, if necessary, shall not cause scouring or erosion of BVW or Buffer Zone.
56. All soil stockpiles to be stored longer than 24-hours shall be surrounded by erosion controls, and any soil stockpiles that are left idle for more than 14 days shall be temporarily stabilized with a seed mix and tackifier.
57. All heavy equipment shall be stored beyond the limits of the delineated wetland resource areas and confined to the upland side of the erosion controls.
58. Excess soils, rock and debris excavated or generated during the course of this project shall be removed from the site and disposed in a legal manner. Records of the destination of all materials, including excess fill and loam, to be removed from the site shall be kept on file and shall be provided to MassDEP and the WCC upon request.
59. At no time during or after construction shall fill or other material be placed, slump into or fall beyond the limit of grading as shown on the plan. The applicant and its EM shall be responsible for inspecting and maintaining all slopes and shall immediately notify the MassDEP and the WCC if slumping, erosion, or encroachment occurs.
60. Storing, servicing, or cleaning of equipment, including but not limited to fueling, changing, adding, or applying lubricants or hydraulic fluids, or washing/rinsing of trucks or equipment, shall be performed outside the 100-foot Buffer Zone unless prior authorization is obtained from MassDEP.
61. There shall be no discharge or spillage of fuel, oil, or other pollutants, including sediments, onto any part of the site. The applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident, or vandalism.
62. Immediately upon completion of construction, all exposed soils shall be seeded with appropriate vegetation or otherwise stabilized by a method acceptable to MassDEP. Where necessary, loam and seed shall be held in place using jute matting or other

biodegradable materials for permanent stabilization against soil erosion. All materials not to remain on the site shall be removed and disposed of in a legal manner.

63. Upon completion of the project, the applicant shall request a Certificate of Compliance (WPA Form 8A) from MassDEP and shall submit the following information with the request:
- a. A written statement prepared and signed by a professional engineer registered in the Commonwealth of Massachusetts certifying compliance with the approved plans referenced above and this Superseding Order and setting forth deviations if any exist;
 - b. An as-built site plan prepared and stamped by a registered professional engineer in the Commonwealth of Massachusetts showing the location and grades of the project, including, but not limited to: the wetland crossing, dwelling, utilities, driveway, and topography shown in one (1) foot contours. The as-built plan shall also include the wetland flags and the date(s) of survey.
 - c. An as-built plan prepared by a registered land surveyor or registered professional engineer of the BVW replication area and area of compensatory flood storage with topography shown in one (1) foot contours. These plans shall include wetland flags, a notation of the amount of BVW replicated and compensatory flood storage provided; at least three (3) photographs of each area with the date(s) they were taken; and the date(s) of survey. The plan shall be accompanied by a final report by the EM describing the condition of the BVW replication area, including a list of the surviving plants (with the quantity of each species), relative health of the plantings and soil profiles.

