

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

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

August 12, 2016

Mr. Ben Stevens
c/o Trask, Inc.
30 Turnpike Road, Unit 8
Southborough, MA 01772

RE: **WETLANDS/SHERBORN**
DEP File #283-0366
247A Washington Street
Superseding Order of Conditions

Dear Mr. Stevens:

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"). This SOC allows the project based upon: 1) information and plans submitted; 2) information gathered during the site inspection; and 3) reasons the MassDEP has deemed necessary to protect the statutory interests identified in the Wetlands Protection Act and Regulations.

The project site is located at 247A Washington Street and currently consists of approximately 17.55 acres of land partially developed with two (2) small barns and a small shed. The property is mainly utilized for grazing goats and hay fields and contains approximately 10.56 acres of upland and 6.99 acres of Bordering Vegetated Wetlands ("BVW"). As described in the Notice of Intent ("NOI"), the project entails the construction of a 40B condominium subdivision, with 36 units, associated parking, on-site septic system, walkways, driveways, landscaping and stormwater management systems.

On November 17, 2015, the Sherborn Conservation Commission (the "Commission") issued an Order of Conditions ("OOC") denying the project for lack of information. In its decision the Commission found that information submitted by the applicant was not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Act.

You filed an appeal on November 27, 2015 with MassDEP in response to the Commission's OOC asserting that the project meets all regulatory performance standards. Your appeal states that no work is located in the BVW; on average, a 50 foot separation between the BVW and the project will be maintained; an 80 foot buffer to a certified vernal pool will be

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MassDEP Website: www.mass.gov/dep

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maintained in accordance with the MA Endangered Species Act (“MESA”) requirements to protect species breeding habitat; stormwater management meets all MassDEP stormwater standards; and a mitigation planting plan will be implemented in the 100-buffer zone.

On December 29, 2015, MassDEP conducted a site inspection. In attendance were you, your representatives and members of the Commission. During the site visit, the proposed project was discussed and the group walked the project site to observe existing site conditions and the location of the proposed development.

MassDEP’s review of the file and site inspection confirms that the project site contains the following Areas Subject to Protection of the Act: Bordering Vegetated Wetlands (“BVW”) and Inland Bank associated with an intermittent stream. These areas are significant to the statutory interests listed on the attached form. The entire project is proposed within the 100-foot Buffer Zone associated with BVW and Inland Bank. The project is located within Priority Habitat or Rare Species and Estimated Habitat of Rare Wildlife as defined by the Massachusetts Natural Heritage and Endangered Species Program (“NHESP”).

On June 24, 2014, NHESP issued a letter stating that upon review of the information contained in the NOI and information contained in their database, the project as currently proposed will not adversely affect the resource area habitat of state-protected rare wildlife species. A follow up letter from NHESP, dated October 15, 2014, provided criteria for the applicant to implement into the project design in order for the project to not be considered a “take” of Blue-spotted Salamander and Blanding Turtle habitat pursuant to MESA.

In accordance with 310 CMR 10.05(6)(c), if a commission finds that the information submitted by an applicant is not sufficient to describe the site, the work or the effect of the work on the interests of the Act, it may issue an OOC denying the work. The OOC must specify the information which is lacking and why it is necessary. MassDEP has reviewed the items listed in the OOC which the Commission cites as information necessary to evaluate the project and its impacts on wetland resource areas and provides the following comments:

- 1) In item #17 and #19 of the OOC, the Commission states that “it lacks sufficient information regarding the functions and values of the current wetland system and associated buffer zone. The Commission finds this gap in data precludes them from making a determination as to whether the proposed mitigation for the area is appropriate for the Project.” These statements are followed by the Commission’s description of various functions and values of the wetland resource areas and a conclusion that “the proposed mitigation plantings will not provide the same habitat, shade, distribution, or strata diversity as current site conditions.....This change will have significant implications for wildlife habitat and the buffer zones ability to provide for water quality and pollution prevention.” The OOC goes on to state that “the Commission finds that the overall magnitude and types of the buffer zone alterations will have a significant adverse impact to the buffer zone functioning and, in turn, to the adjacent wetland resource area.....” On August 26, 2015, August 27, 2015, September 25, 2015 and October 13, 2015, the applicant provided the Commission with information clarifying wetland buffer zone mitigation, wetland

interests, wildlife habitat evaluation, irrigation well location, wastewater and stormwater analysis and water quality analysis. After reviewing this information, it is MassDEP's opinion that the applicant did provide the Commission with sufficient information to allow an evaluation of the project's impacts on wetland resource areas.

- 2) In item #27 of the OOC, the Commission expresses concerns with the proposed on-site septic system and the possible adverse impact to wetland functions due to its proximity to wetlands and the "scale of effluent." MassDEP finds that the on-site septic system is located outside the Act's jurisdiction. The closest soil absorption field is approximately 200 feet from the boundary of the BVW. Therefore, it is MassDEP's opinion that additional information regarding this issue was not necessary to evaluate this project's compliance with the Act and Regulations.
- 3) In item #26 of the OOC, the Commission states that the proposed stormwater Best Management Practices ("BMPs") meet the requirements under 310 CMR 10.05(6)(k); however, the Commission determined that the proposed stormwater system will adversely impact the wetlands due to the scale of the project and that "new pollutant loading that are not captured by the project's system will adversely impact the wetlands..." Upon review of the information contained in the NOI and stormwater management report and plans, it is MassDEP's opinion that the BMPs proposed to treat stormwater discharge from the project site meet the requisite stormwater standards pursuant to 310 CMR 10.05(6)(k).
- 4) In items #35-41, the Commission cites concerns that the project will adversely impact wildlife habitat. The NHESP concluded that the project will not adversely affect the actual habitat of the state-protected rare wildlife species (310 CMR 10.59). NHESP also provided the applicant and Commission with conditions that must be implemented in the project design to ensure the protection of these species pursuant to MESA. It is MassDEP's opinion that the Commission had sufficient information to condition the project to protect wildlife habitat.
- 5) MassDEP issued an information request letter to the applicant on March 11, 2016 requesting clarification regarding potential shading impacts and the effect that removal of the wooded area may have on wetland resource areas; the total area of buffer zone that currently exists on the site and the amount of permanent development that will occur in the buffer zone; and requested the applicant to explore either reducing the number of units associated with buildings E and F (as identified on the project plans) or relocating these units further away from the BVW boundary. On April 26, 2016, the applicant responded with a letter and updated plans which provided a chart summarizing the pre vs. post amounts of square footage of alteration and mitigation within the buffer zone. An evaluation of shading and "edge effect" impacts was also provided. As a result, the applicant has reduced the number of units from 36 to 32 (four (4) units proposed adjacent to the on-site septic system were removed from the project plans). Based on a review of this information, MassDEP is satisfied that the project will not impact wetland resource areas.

It is MassDEP's opinion that the applicant provided sufficient information to describe the site, the work, and the effect of the work on the interests identified in the Act and regulations and that the enclosed SOC allowing the project serves to protect the interests of the Act, Massachusetts General Laws, Chapter 131, Section 40. 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 any party dispute these findings, please consult the language in the Order that specifies your rights and procedures for appeal.

Should you have any questions, please contact Jill Provencal at (978) 694-3250.

Sincerely,

Rachel Freed
Deputy Regional Director
BWR – NERO


Jill Provencal
Environmental Analyst
Wetlands Program - NERO

cc: Sherborn Conservation Commission, Town Hall, 19 Washington Street, Sherborn, MA
01770



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

MassDEP File #

283-0366

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:

Ben Stevens
 a. First Name, Last Name

c/o Trask, Inc.
 b. Company

c/o Trask, Inc.
 c. Organization

30 Turnpike Road, Unit 8
 d. Mailing Address Line 1

Southborough MA 01772
 e. City/Town f. State g. Zip Code
4. Property Owner (if different from applicant):

Ben Stevens
 a. First Name b. Last Name

The Fields at Sherborn, LLC
 c. Organization

30 Turnpike Road, Unit 8
 d. Mailing Address Line 1

Southborough MA 01772
 e. City/Town f. State g. Zip Code
5. Project Location:

Washington Street Sherborn
 a. Street Address b. City/Town

Map 3 Lots 88B and 88C
 c. Assessors Map/Plat Number d. Parcel/Lot Number

Latitude and Longitude, if known: 42d13m06s 72d24m16s
 e. Latitude f. Latitude



A. General Information (cont'd)

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

<u>Middlesex</u>		
a. County		b. Certificate (if registered land)
<u>60250</u>		<u>16</u>
c. Book		d. Page

7. Dates:	<u>July 13, 2014</u>	<u>November 17, 2015</u>	<u>December 29, 2015</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>"The Fields At Sherborn, Washington Street, Sherborn, MA"</u>	
a. Plan Title	
<u>Bruce Saluk & Assoc., Inc.</u>	<u>Bruce M. Saluk, P.L.S. 35415</u>
b. Prepared By	c. Signed and Stamped By
<u>February 16, 2016</u>	<u>various</u>
d. Final Revision Date	e. Scale
<u>"The Fields at Sherborn, Washington Street, Sherborn, MA – Overall Conceptual Landscape Plan"</u>	<u>September 25, 2015</u>

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) various
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 type="checkbox"/> Bordering Vegetated Wetland | <u> </u>
a. square feet | <u> </u>
b. square feet | <u> </u>
c. square feet | <u> </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 type="checkbox"/> Bordering Land Subject to Flooding
Cubic Feet Flood Storage | <u> </u>
a. square feet | <u> </u>
b. square feet | <u> </u>
c. square feet | <u> </u>
d. square feet |
| | <u> </u>
e. cubic feet | <u> </u>
f. cubic feet | <u> </u>
g. cubic 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>
b. square feet | | |
| | <u> </u>
c. cubic feet | <u> </u>
d. cubic feet | <u> </u>
e. cubic feet | <u> </u>
f. cubic feet |
| 9. <input type="checkbox"/> Riverfront area | | | | |
| Sq feet within 100 feet | <u> </u>
a. total sq. feet | <u> </u>
b. total sq. feet | | |
| | <u> </u>
c. square feet | <u> </u>
d. square feet | <u> </u>
e. square feet | <u> </u>
f. square feet |
| Sq feet between 100-200 feet | <u> </u>
g. square feet | <u> </u>
h. square feet | <u> </u>
i. 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>
b. square feet | | |
| | <u> </u>
c. c/y dredged | <u> </u>
d. c/y dredged | | |
| 13. <input type="checkbox"/> Barrier Beaches - Indicate size under Coastal Beaches and/or Coastal Dunes below. | | | | |



B. Findings (cont'd)

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

C. General Conditions Under Massachusetts Wetlands Protection Act

Brief Project Description of Permitted Activities:

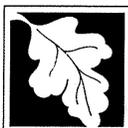
Construction of a residential community



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 283-0366"



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

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

NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

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



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

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



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

- 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 43.

See attached



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.

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

MassDEP Regional Office

Rachel Freed

Deputy Regional Director Signature

Rachel Freed

Deputy Regional Director Printed Name

8/12/2016

Date

This Order is issued to the applicant as follows:

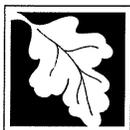
by Hand delivery on

by certified mail on:

8.12.16

Date

Date – Certified Mail #



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
Massachusetts 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;
- 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. Appeal Rights and Time Limits (cont.)

- 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.

SUPERSEDING ORDER OF CONDITIONS
DEP File Number 283-0366

Special Conditions

20. All work shall conform with the following plans, reports and special conditions:

- 1) "The Fields at Sherborn, Washington Street, Sherborn, MA," final revision date: 02/16/2016, prepared by Bruce Saluk & Assoc., Inc., stamped by Bruce M. Saluk, P.L.S., No. 32375.
- 2) "The Fields at Sherborn, Washington Street, Sherborn, MA, Overall Conceptual Landscape Plan," final revision date: September 25, 2015, prepared by Hawk Design, Inc.
- 3) "Operation and Maintenance Plan, The Fields at Sherborn" dated June 8, 2015.
- 4) Letter dated October 15, 2014 from The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife ("NHESP").

21. This Superseding Order supersedes all previous Orders issued for this project, DEP File#283-0366. All work shall conform to the Notice of Intent and plans and documentation referenced above unless otherwise specified in this 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 Condition #20 shall be available on site while activities regulated by this 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 of Conditions has been recorded with the Registry of Deeds and MassDEP has been formally notified via the form provided at the end of this Order.

25. This Superseding Order shall apply to any successor or assigns in interest or control and any other party engaging in activity on the property identified in the Notice of Intent.

26. Any proposed or executed change in the plans approved under this Superseding Order shall require the applicant to file a new Notice of Intent with the conservation commission or 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 Sherborn Conservation Commission. Any errors in the plans or information submitted by the applicant shall be considered changes and the above procedures shall be followed.

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

28. The applicant shall employ an Environmental Monitor (EM) to oversee all work within the 100-foot Buffer Zone to Inland Bank and Bordering Vegetated Wetland on the project site, including but not limited to supervision of the maintenance and replacement of all erosion controls and storm water structures. The Environmental Monitor shall be responsible for ensuring compliance with this SOC during construction. The applicant shall provide the MassDEP and the Sherborn Conservation Commission with the name(s), address(es) and telephone number(s) of the Environmental Monitor and his or her alternate prior to the start of work.

29. The Environmental Monitor shall inspect erosion controls on a weekly basis and after any storm events and shall have the authority to modify existing controls or require additional controls if he or she deems it necessary. The Environmental Monitor shall immediately control any erosion problems that occur on the site and shall immediately notify MassDEP and the Sherborn Conservation Commission if any discharges to a wetland resource area occur. MassDEP reserves the right to require additional erosion control and/or damage prevention controls it may deem necessary.

30. The Environmental Monitor shall report in writing to MassDEP and the Sherborn Conservation Commission once every month while construction is underway within the 100-foot buffer zone to confirm that all activities are in compliance with the conditions of this SOC. The status report shall at a minimum include a description of any erosion control problems, progress on construction and grading, plantings within the buffer zone in accordance with the landscape plan (referenced in Condition #20), changes in construction schedule, actions taken to address problems and any other recommendations for site management.

31. Any changes proposed to the plants to be installed in the buffer zone shall be native to the New England region and not listed on the Massachusetts Prohibited Plant List and the USDA Invasive Plants Database at the time of planting. At least two weeks prior to the preconstruction meeting, a final list of all plant species shall be submitted to MassDEP for its review and approval and copied to the Sherborn Conservation Commission.

32. Prior to the commencement of any activity on the site, there shall be a pre-construction meeting between the project supervisor, the contractor responsible for the work, the Environmental Monitor, a representative of the MassDEP and a representative of Sherborn Conservation Commission to ensure that the requirements of the SOC are understood. Arrangements for the meeting shall be made at least two (2) weeks prior to any activity.

33. Prior to the start of work, the applicant shall submit a construction sequence to MassDEP and the Sherborn Conservation Commission, for approval by MassDEP. The construction sequence shall include a plan showing the location of any soil, material stockpile areas and any temporary, construction period, stormwater BMPs. A copy of the plan and approval required by NHESP in its October 15, 2014 letter shall also be submitted with the construction sequence. Work shall not commence until MassDEP has approved the construction sequence.

34. Prior to the start of work, erosion controls consisting of silt fence and staked haybales shall be installed between the limits of work and the wetland. These barriers shall serve as the limit of disturbance and shall be installed as close to the work area as possible. Erosion controls shall remain in place until MassDEP approves their removal.

35. Upon installation of the infiltration basin, and prior to cover being placed over the basin, a report shall be submitted to MassDEP verifying depths and measurements of the basin as well as all invert elevations.
36. No soil or other materials shall be stockpiled within 100 feet of wetlands.
37. Upon completion of construction, all exposed soils shall be seeded with appropriate vegetation or otherwise stabilized by a method acceptable to the MassDEP and Sherborn Conservation Commission.
38. At no time during or after construction shall fill or other materials be placed, slump into or fall beyond the limit of grading as shown on the plan. The Environmental Monitor shall be responsible for inspecting and maintaining all slopes and shall immediately notify the MassDEP and the Sherborn Conservation Commission if slumping, erosion or encroachment occurs.
39. Excess soil, rock and debris excavated or generated during the course of this project shall be removed from the site and disposed of 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 the MassDEP and the Sherborn Conservation Commission upon request.
40. 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.
41. During work on this project, there shall be no discharge or spillage of fuel, oil or other pollutants, including sediments, onto any part of the site. The applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident or vandalism.
42. All stormwater structures shall be managed and maintained in accordance with the project's Operation and Maintenance Plan (referenced in Condition #20) and the conditions contained in this Superseding Order. This Condition shall remain in effect in perpetuity and shall be recorded on the Certificate of Compliance.
43. Upon completion of the project, the applicant shall request a Certificate of Compliance from the MassDEP and shall submit the following information with the request:
- a) A written statement by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts certifying compliance with the approved plans referenced above and this Superseding Order of Conditions and setting forth deviations, if any exist;
 - b) A written statement by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts certifying that the stormwater BMPs function as designed.
 - c) An as-built site plan prepared by a registered land surveyor or registered professional engineer showing location and grades of the project, including but not limited to: structures, driveways, landscaping, detention basin, infiltration units, site grading, and sidewalks within the 100-foot Buffer Zone.

d) A final monitoring report shall be submitted regarding the health of the planted species within the buffer zone (as provided on the landscape plan referenced in Condition #20) and include any recommendations for replacement of plants if needed.