

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

DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

IAN A. BOWLES  
Secretary

LAURIE BURT  
Commissioner

October 31, 2008

Mr. James G. Ward  
Nutter, McClennen & Fish  
World Trade Center West  
155 Seaport Boulevard  
Boston, MA 02210-2604

RE: WETLANDS/BELMONT  
DEP File #106-0075  
Frontage Road/Acorn Park Dr.  
**SUPERSEDING ORDER  
OF CONDITIONS**

Dear Mr. Ward:

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 Massachusetts Department of Environmental Protection, Wetlands and Waterways Program (MassDEP), is issuing the enclosed Superseding Order of Conditions (SOC). This Superseding Order allows the project based upon: 1) information and plans submitted; 2) information gathered during previous site inspections; and 3) reasons the MassDEP has deemed necessary to protect the statutory interests identified in the Wetlands Protection Act.

The proposed project is located on a 15.6 acre property on Frontage Road and Acorn Park in Belmont and Cambridge, Massachusetts. Approximately 2.6 acres of the site lies in Cambridge and is not addressed in this Superseding Order of Conditions. The project proposed in Belmont entails the construction of a 299-unit affordable rental housing complex with associated parking, utilities, stormwater management facilities, grading, wildlife habitat mitigation and compensatory flood storage areas. In addition, water and sewer connections are proposed in two possible alignments, one of which will require the filing of a Notice of Intent with the Cambridge Conservation Commission.

Based upon a review of the project site and information contained in the file to date, the Department has determined that the site contains the following Areas Subject to Protection Under the Act: 1) Bordering Vegetated Wetlands (BVW); 2) Bordering Land Subject to Flooding (BLSF); and 3) Riverfront Area (associated with an offsite perennial stream). These areas are presumed to protect one or more of the statutory interests identified in the Act and as marked on Page One of the attached Superseding Order of Conditions.

You filed an appeal with the MassDEP in response to the Belmont Conservation

Commission's issuance of an Order of Conditions denying the project. Extensive site visits were conducted by a representative from MassDEP's Wetlands Program in 2004 for an earlier project on the same site. The Superseding Order of Conditions (SOC) for that project (DEP #106-0042) remains in effect. The MassDEP did not conduct a site visit for the current proposal. Under MassDEP's Multiple Filings Policy (DWW Policy 88-3, revised March 1, 1995), the applicant has 21 days from the date of issuance of this SOC to withdraw one of the two Notices of Intent for this site.

The proposed project is located entirely outside the Riverfront Area associated with Little River. There are no impacts to BVW in Belmont. A portion of the stormwater management system, specifically underground detention basins 2, 4, 5 and 6 and two drainage outfalls, and small parts of Buildings A, B and D are located within the 100 foot Buffer Zone associated with BVW. The 100-year floodplain as determined by FEMA is at elevation 8.2. Approximately 17,251 cubic feet (c.f.) (13,830 s.f.) of BLSF will be altered. Approximately 28,273 c.f. of compensatory flood storage will be provided in five (5) separate areas on the site (CFSA's 1, 2, 3, 4 and 6). CFSA's 2 and 3 are located partly in Cambridge and will require the filing of a Notice of Intent with the Cambridge Conservation Commission. Compensatory flood storage will be provided in accordance with the performance standards under 310 CMR 10.47(4) and is in excess of the required volume.

Due to the amount of proposed alteration of the ten year floodplain, the project requires wildlife habitat mitigation. Approximately 8390 s.f. of lower floodplain will be altered by the project. The project proposes to provide approximately 15, 896 s.f. wildlife habitat replication and an additional 17, 840 s.f. of habitat restoration/enhancement.

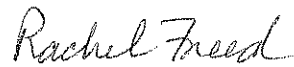
Many of the concerns raised by the BCC in its denial of the project focused on the design and function of the stormwater management system and on the assumptions underlying the stormwater analysis. The final project proposal, as reflected in the plans referenced in the attached SOC, includes five (5) subsurface detention basins (Underground Basins or UB1 - 5) and one (1) infiltration chamber (IC-1). In an effort to respond to concerns expressed by the BCC about potential dewatering of the BVW caused by UB-2 and CFSA-2, the applicant has offered to construct a clay cutoff wall along the southerly portion of UB-2 basin. MassDEP has reviewed the cutoff wall proposal and has determined that it is unnecessary and would possibly be detrimental. Therefore, it will not be approved. The applicant has incorporated porous pavement and walkways and a bio-filter strip into the design. These LID measures will increase infiltration and TSS removal on the site. In addition, the applicant has proposed the use of white roofs on the buildings, which will also reduce the thermal impacts of storm water.

The MassDEP has reviewed the entire project, with particular attention to the stormwater design, as well as the compensatory flood storage areas, wildlife habitat replication/mitigation and buffer zone activities. Three (3) information requests were issued by MassDEP, with responses received from both the applicant and the BCC. A group of residents who are concerned about the impacts of the proposed project have also commented on many of the applicant's submissions. Through the course of MassDEP's review, the applicant has made a number of revisions, particularly to the layout and details of the stormwater design. It is the MassDEP's opinion that the storm water management plan referenced in the attached SOC meets the standards contained in the DEP Storm Water Policy. Further, it is the MassDEP's opinion that the project as proposed and

conditioned herein adequately protects the interests of the Act and Regulations. Please be advised that the DEP reserves the right, should there be further proceedings in this matter, to raise additional issues and present further evidence as may be appropriate.

If you have any questions concerning this Superseding Order, please do not hesitate to contact me at 978-694-3258.

Sincerely,

A handwritten signature in cursive script that reads "Rachel Freed".

Rachel Freed, Section Chief  
Wetlands and Waterways Program - NERO

cc: Conservation Commission, Town Hall, Homer Municipal Building, 19 Moore Street,  
Belmont MA 02478-0900  
Thomas B. Bracken, 33 Mt. Vernon Street, Boston MA 02108  
Julie Vondrak, Epsilon Associates, 3 Clock Tower Place, Suite 250, Maynard MA 01754-0700



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 5A – Superseding Order of Conditions**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
 and Wetland Regulations 310 CMR 10.00

DEP File Number:

106-0075

**A. General Information**

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



1. From: Northeast Regional Office, MassDEP  
 Regional Office of the Department of Environmental Protection (the Department)

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

3. To: Applicant: James G. Ward, Nutter McClennan & Fish  
 a. First Name b. Last Name  
World Trade Center West, 155 Seaport Boulevard  
 c. Mailing Address  
Boston MA 02210-2604  
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):  
AP Cambridge Partners LLP b. Last Name  
 a. First Name  
700 South Henderson Road  
 c. Mailing Address  
King of Prussia PA 19406  
 d. City/Town e. State f. Zip Code

5. Project Location:  
Acorn Park Drive/Frontage Road Belmont  
 a. Street Address b. City/Town  
40 Parcels 1, 2, 3  
 c. Assessors Map/Plat Number d. Parcel/Lot Number  
 Latitude and Longitude, if known (**note:**  
 electronic filers will click for GIS locator): e. Latitude f. Longitude

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):  
Middlesex 1207 and 30386 102 and 240  
 a. County b. Book c. Page  
 d. Certificate (if registered land)

7. Dates: June 12, 2007 December 4, 2007 December 21, 2007  
 a. Date Notice of Intent Filed b. Date Site Inspected c. Date of OOC Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):  
See attached  
 a. Plan Title  
 b. Prepared By c. Signed and Stamped by  
 d. Final Revision Date e. Scale  
 f. Additional Plan or Document Title g. Date

9. Total WPA Fee Paid: \$ \_\_\_\_\_  
 a. Total Fee Paid b. State Fee Paid c. City/Town Fee Paid



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**B. Findings**

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent, the Order of Conditions, and information submitted with the request for the Superseding Order of Conditions, the Department finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- a.  Public Water Supply
- b.  Land Containing Shellfish
- c.  Prevention of Pollution
- d.  Private Water Supply
- e.  Fisheries
- f.  Protection of Wildlife Habitat
- g.  Groundwater Supply
- h.  Storm Damage Prevention
- i.  Flood Control

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

**Approved** subject to:

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

**Denied** because:

- b.  the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect these interests, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Superseding Order.**
- c.  the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**

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

- 3.  Buffer Zone Only

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet	b. square feet	c. square feet	d. square feet
	e. cu.yd dredged	f. cu.yd dredged		



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**B. Findings (cont.)**

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
7. <input checked="" type="checkbox"/> <b>Bordering Land Subject to Flooding</b>	<u>13830</u> a. square feet	<u>13830</u> b. square feet	<u>17301</u> c. square feet	<u>17301</u> d. square feet
Cubic Feet Flood Storage	<u>17251</u> e. cubic feet	<u>17251</u> f. cubic feet	<u>28273</u> e. cubic feet	<u>28273</u> f. cubic feet
8. <input type="checkbox"/> <b>Isolated Land Subject to Flooding</b>	<u>                    </u> a. square feet	<u>                    </u> a. square feet	<u>                    </u> e. cubic feet	<u>                    </u> f. cubic feet
Cubic Feet Flood Storage	<u>                    </u> e. cubic feet	<u>                    </u> f. cubic feet	<u>                    </u> e. cubic feet	<u>                    </u> f. cubic feet
9. <input type="checkbox"/> <b>Riverfront area</b>	<u>                    </u> a. total square ft	<u>                    </u> a. total square ft		
Sq ft within 100 ft	<u>                    </u> c. square feet	<u>                    </u> c. square feet		
Sq ft between 100-200 ft	<u>                    </u> e. square feet	<u>                    </u> e. square feet		

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

- |   |  |
|---|--|
| 10. <input type="checkbox"/> <b>Designated Port Areas</b>                 | Indicate size under Land Under the Ocean, below  |
| 11. <input type="checkbox"/> <b>Land Under the Ocean</b>                  | <u>                    </u> a. Square feet <u>                    </u> b. Square feet<br><u>                    </u> c. cu.yd dredged <u>                    </u> d. cu.yd dredged   |
| 12. <input type="checkbox"/> <b>Barrier Beaches</b>                       | Indicate size under Coastal Beaches and/or Coastal Dunes below   |
| 13. <input type="checkbox"/> <b>Coastal Beaches</b>                       | <u>                    </u> a. Square feet <u>                    </u> b. Square feet <u>                    </u> c. c/y nourishmt. <u>                    </u> d. c/y nourishmt.  |
| 14. <input type="checkbox"/> <b>Coastal Dunes</b>                         | <u>                    </u> a. Square feet <u>                    </u> b. Square feet <u>                    </u> c. c/y nourishmt. <u>                    </u> d. c/y nourishmt.  |
| 15. <input type="checkbox"/> <b>Coastal Banks</b>                         | <u>                    </u> a. Linear feet <u>                    </u> b. Linear feet <u>                    </u> c. c/y nourishmt.  |
| 16. <input type="checkbox"/> <b>Rocky Intertidal Shores</b>               | <u>                    </u> a. Square feet <u>                    </u> b. Square feet  |
| 17. <input type="checkbox"/> <b>Salt Marshes</b>                          | <u>                    </u> a. Square Feet <u>                    </u> b. Square feet <u>                    </u> c. Square feet <u>                    </u> d. Square feet  |
| 18. <input type="checkbox"/> <b>Land Under Salt Ponds</b>                 | <u>                    </u> a. Square feet <u>                    </u> b. Square feet<br><u>                    </u> c. cu.yd dredged <u>                    </u> d. cu.yd dredged   |
| 19. <input type="checkbox"/> <b>Land Containing Shellfish</b>             | <u>                    </u> a. Square feet <u>                    </u> b. Square feet <u>                    </u> c. Square feet <u>                    </u> d. Square feet  |
| 20. <input type="checkbox"/> <b>Fish Runs</b>                             | Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above<br><u>                    </u> a. cu.yd dredged <u>                    </u> b. cu.yd dredged |
| 21. <input type="checkbox"/> <b>Land Subject to Coastal Storm Flowage</b> | <u>                    </u> a. Square feet <u>                    </u> b. Square feet  |



Massachusetts Department of Environmental Protection  
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Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
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DEP File Number:

106-0075

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

(only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - a. the work is a maintenance dredging project as provided for in the Act; or
  - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. 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 DEP Regional Office 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 106-0075"



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 5A – Superseding Order of Conditions**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
 and Wetland Regulations 310 CMR 10.00

DEP File Number:  
 106-0075

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

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 of Environmental Protection 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 of Environmental Protection.
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.
19. All work associated with this Order is required to comply with the Massachusetts Stormwater Policy Standards.

Brief Project Description of Permitted Activities:

Construction of a 299-unit affordable rental housing project

Special Conditions: See the attached sheet(s) for additional conditions numbered 20 through 57



**SUPERSEDING ORDER OF CONDITIONS**  
**DEP #106-0075**  
**SPECIAL CONDITIONS**  
Page 1 of 1

20. All work shall conform with the Notice of Intent and attachments, and the following plans, reports and Special Conditions:
- a. Plans entitled, "Residences at Acorn Park," prepared by Tetra Tech Rizzo, signed and stamped by David M. Albrecht:  
  
Sheets C-1 – C-4, Sheet C-4.1d, C-6.1, C-6.2, C-7 – C-15; C-16.1, C-16.2, C-17 – C-19 dated (revised) 6/23/08.  
Sheet C-5 dated (revised) 8/26/08.
  - b. Report entitled, "Drainage Report, Acorn Park Drive, Belmont Massachusetts," dated June 4, 2007 and revised June 23, 2008, prepared by Tetra Tech Rizzo, signed and stamped by David M. Albrecht.
  - c. Report entitled, "Wildlife Habitat Evaluation, Residences at Acorn Park," prepared by Epsilon Associates, Inc., dated June 12, 2007 and updated (final) November 28, 2007, with accompanying plans.
  - d. "Operation and Maintenance Plan," prepared by Tetra Tech Rizzo; revised June 23, 2008, (included in the Drainage Report referenced above).
21. This Superseding Order supersedes all previous Orders issued for this project, DEP File #106-0075. 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 the 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 the 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 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 the MassDEP and the Belmont Conservation Commission (BCC) 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 the DEP for that evaluation.

28. The applicant shall employ an Environmental Monitor to oversee all work within the 100-foot buffer zone and Bordering Land Subject to Flooding on the project site, including but not limited to supervision of the maintenance and replacement of all erosion controls and temporary 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 BCC with the name(s), address(es) and telephone number(s) of the EM 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 EM shall have the authority to require that any erosion problems are addressed immediately and shall immediately notify MassDEP and the BCC if any discharges to a wetland resource area occur.

30. The EM shall report in writing to MassDEP and the BCC once every month while construction is underway within the 100-foot buffer zone or any wetland resource area 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, changes in construction schedule or sequence, actions taken to address problems and any other recommendations for site management.

31. The applicant shall employ a wetland professional who has experience in wildlife habitat mitigation to supervise the construction and planting of all wildlife restoration/enhancement/replication areas. The professional shall be responsible for ensuring that all areas are constructed in accordance with the plans and reports referenced in Condition 20 above and the special conditions contained in this SOC.

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 BCC and a representative of MassDEP 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 and schedule to

MassDEP and the BCC, for approval by MassDEP. The construction sequence shall address the construction of the compensatory flood storage areas, wildlife mitigation areas and storm water facilities, including but not limited to the installation of interim or permanent storm water controls as shown on the erosion control phasing plans. The construction sequence shall indicate the method(s) by which the stormwater infiltration area will be protected from contamination during construction. 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 as shown on the referenced plans. These barriers shall serve as the limit of disturbance and shall be installed as close to the work area as possible.

35. Prior to the start of work, the applicant shall notify MassDEP as to which water/sewer alignment will be constructed. Alternative A is approved as part of this filing. Alternative B will require the filing of a Notice of Intent with the Cambridge Conservation Commission and receipt of a final Order of Conditions for the segment of work proposed in Cambridge.

36. There shall be no vehicles, machinery or activities within wetland resource areas, except as required to construct the compensatory flood storage and wildlife habitat mitigation areas under the supervision of a wetland professional. Any debris that falls or blows into wetland resource areas shall be removed immediately by hand.

37. At least 28,273 c.f. of compensatory flood storage shall be provided, at the elevations and locations shown on the plans referenced in Condition 19. At least 15,896 s.f. of wildlife habitat replication and 17,840 s.f. of wildlife restoration/enhancement shall be provided. All activities involving preparation and construction of these areas, including but not limited to: inspecting and confirming site flagging prior to and after excavation of the compensatory flood storage areas; identifying appropriate soils to be placed in the areas if needed; overseeing final grading; inspecting final elevations; obtaining, planting and maintaining the specified plants; and monitoring and reporting on the wildlife replication/restoration/enhancement areas shall be overseen by a wetlands professional who will be on-site while the work is being performed. The wetland professional shall submit a written status report to MassDEP and the Conservation Commission at the following times:

- a) at the start of excavation of the compensatory flood storage areas;
- b) when final grades are established;
- c) when the planting of compensatory flood storage and wildlife habitat areas is completed;
- d) one month after planting has been completed;
- e) at the end of the growing season each year for at least two years after the areas have been planted.

38. Planting of the wildlife replication/restoration/enhancement areas with the species described in the planting plan shall proceed immediately upon final grading, weather permitting. If seasonal conditions prevent planting, the areas shall be planted as soon as weather permits. Any plants that die shall be replaced.

39. A wetland professional shall submit a status report on the wildlife habitat replication/restoration/enhancement areas at the end of each growing season, and no later than September 1 of each year, for two (2) years after planting is completed. The report shall include a description of the relative health of the planted species and shall make recommendations for replacement of plants if needed.

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

41. Temporary erosion control swales and settling basins may be constructed down-gradient of construction activity, but shall be located within the limits of work, on an as-needed basis. These temporary sedimentation basins shall be inspected by the Environmental Monitor and cleaned out as needed.

42. Temporary storm water controls shall be constructed and managed in accordance with the project's storm water management plan (referenced in Condition 20 above). The underground detention basins, infiltration basin and filter strip (south) shall be constructed as described and shall be functional prior to the disturbance of areas which contribute runoff to the basins.

43. The proposed infiltration basin shall be constructed during the final stages of construction and in accordance with the construction sequence approved by MassDEP.

44. Upon completion of the project and full stabilization of all disturbed surfaces, all sedimentation barriers shall be removed from the site. Soil surfaces which are disturbed by the erosion controls shall be raked smooth by hand (if needed) and seeded with an appropriate seed mix.

45. No soil or other materials shall be stockpiled within the 100-foot buffer zone or within Bordering Land Subject to Flooding (100-year floodplain).

46. Upon completion of construction, all exposed soils shall be seeded with appropriate vegetation or otherwise stabilized by a method acceptable to the MassDEP.

47. 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 applicant shall be responsible for inspecting and maintaining all slopes and shall immediately notify the MassDEP and the Conservation Commission if slumping, erosion or encroachment occurs.

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

49. 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 as to 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 Commission upon request.

50. 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.

51. 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.

52. During construction, all paved roadways shall be swept monthly with a vacuum sweeper, except when they are covered with snow or ice.

53. The owners of the property shall be responsible for maintaining all stormwater drainage structures, including but not limited to porous pavement, catch basins, Stormceptors, swales, infiltration basin, detention basins and culverts and outlets located on the site. All structures and facilities shall be managed and maintained in accordance with the project's Operation and Maintenance Plan (dated June 23, 2008) 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.

54. Snow plowing and snow removal shall be performed in accordance with the Operation and Maintenance Plan and the snow storage plan (contained in the NOI). This Condition shall remain in effect in perpetuity and shall be recorded on the Certificate of Compliance.

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

56. Within the 100-foot Buffer Zone, native plant species shall be planted in any areas that were temporarily disturbed when the storm water facilities were constructed. Planting shall occur as soon as final grading is completed and seasonal conditions permit. The applicant shall consult with a wetlands professional on the species of plants to be installed in the Buffer Zone and on the timing and method of planting.

57. 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) 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: buildings,

lawns and landscaping, porous pavement, detention basins, infiltration basin, site grading, roadways, retaining walls, sidewalks and drainage structures within the 100-foot Buffer Zone. The plan shall include the date(s) of field work.

c) An as-built plan of the compensatory flood storage areas and wildlife habitat replication/restoration/enhancement areas. This plan shall include the date(s) of field work and at least three photographs of each area. The plan shall be accompanied by a report by a wetlands professional describing the condition of the replication/restoration/enhancement areas, including the number and relative health of the plantings.

## 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 the Department of Environmental Protection:

Rachel Freed  
Wetland Section Chief

October 31, 2008  
Date

### Notary Acknowledgment

Commonwealth of Massachusetts County of

Middlesex

On this 31st  
Day

of

October  
Month

2008  
Year

before me, the undersigned Notary Public, personally appeared

Rachel Freed  
Name of Document Signer

Proved to me through satisfactory evidence of identification, which was/were

Personally known  
Description of evidence of identification

to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Elizabeth Sabourian  
Signature of Notary Public

Elizabeth Sabourian  
Name of Notary Public



**My commission expires: February 5, 2010**

My Commission Expires (Date)

## G. Recording Information

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on Page 9 of this form shall be submitted to the DEP Regional Office listed below.

\_\_\_\_\_  
Regional Office of the Department of Environmental Protection

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

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To:

\_\_\_\_\_  
Regional Office of the Department of Environmental Protection

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

\_\_\_\_\_  
Project Location

\_\_\_\_\_  
DEP 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



## F. Appeals SOC/SDA/SORAD Notice of Appeal Rights:

### A) Appeal Rights and Time Limits

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

Case Administrator  
Office of Appeals and Dispute Resolution  
Department of Environmental Protection  
One Winter Street, 2<sup>nd</sup> 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:

Mass. Department of Environmental Protection  
Northeast Regional Office  
Wetlands and Waterways 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) 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.