



MANCHESTER-BY-THE-SEA

CONSERVATION COMMISSION • TOWN HALL
Manchester-by-the-Sea, Massachusetts 01944-1399
Telephone (978) 526-4397 FAX (978) 526-2001

4 June 2020

Greg Federspiel, Town Administrator
Town Hall
10 Central Street
Manchester, MA 01944

HAND DELIVERY

Re: Order of Conditions Central Pond Restoration Project DEP File #039-0824

Dear Greg:

Enclosed is the Order of Conditions for restoration of tidal flows to Central Pond to stabilize the shore with retaining wall repair/replacement, and to construct a living shoreline to improve ecological conditions and coastal resiliency within Riverfront, Land Under Ocean, Coastal Beach, Coastal Bank, Land Subject to Coastal Storm Flowage, and the 50-foot No Build Zone, and 30-foot No Disturb Zone Buffers at 0 Elm Street (map 53, lot 28) which was approved by the Manchester Conservation Commission on 5/5/2020.

Before any work may begin, you must wait 10 business days (the appeal period) after which the Order must be recorded at the Registry of Deeds in its entirety. Once the Order is recorded, please submit proof of recording to me prior to the commencement of work.

Please review the Order carefully as it will govern how the work must be performed in order to be in compliance with the Massachusetts Wetlands Protection Act and the Manchester Wetlands By-Law. Please note that this order includes several pre-construction conditions, **including a pre-construction meeting between your contractors and me prior to the commencement of work** (see Standard and Special Conditions, Section B).

The Order is valid for three years from the original issuance date, except where otherwise specified. Requests for extensions must be received at least 30 days prior to the expiration date. Also note that ANY deviation from the plans contained or required in the Order of Conditions will require a *de minimis* change request, an amendment to the order(s) or submittal of a new application. As always, any other applicable permits required from any other Board or Department (state or local) will have to be obtained prior to commencement of work..

Please be advised that once work has been completed and the plantings have been monitored for two growing seasons, you should promptly seek a Certificate of Compliance from this office. Recording the Certificate of Compliance will clear the title for this property from the Order.

Please let me know if you have any questions or if I may be of further assistance.

Sincerely,



Chris Bertoni
Manchester Conservation Administrator

cc: Richard Canavan, Tighe & Bond, Inc., 120 Front Street, Suite 7, Worcester, MA 01608
DEP Northeast Regional Office (electronic copy only - filed eDEP)
/file

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

Provided by MassDEP:
 MassDEP File #:039-0824
 eDEP Transaction #:1200120
 City/Town:MANCHESTER

A. General Information

1. Conservation Commission MANCHESTER
 2. Issuance a. OOC b. Amended OOC

3. Applicant Details

a. First Name GREGORY b. Last Name FEDERSPIEL
 c. Organization TOWN OF MANCHESTER
 d. Mailing Address 10 CENTRAL STREET
 e. City/Town MANCHESTER f. State MA g. Zip Code 01944

4. Property Owner

a. First Name b. Last Name
 c. Organization
 d. Mailing Address
 e. City/Town f. State g. Zip Code

5. Project Location

a. Street Address CENTRAL STREET, EAST OF ELM STREET
 b. City/Town MANCHESTER c. Zip Code 01944
 d. Assessors 53 e. Parcel/Lot# 28
 Map/Plat#
 f. Latitude 42.57532N g. Longitude 70.73622W

6. Property recorded at the Registry of Deed for:

a. County b. Certificate c. Book d. Page
 SOUTHERN ESSEX 881 173

7. Dates

a. Date NOI Filed : 4/13/2020 b. Date Public Hearing Closed: 5/5/2020 c. Date Of Issuance: 6/4/2020

8. Final Approved Plans and Other Documents

a. Plan Title: b. Plan Prepared by: c. Plan Signed/Stamped by: d. Revised Final Date: e. Scale:

SEE ATTACHED
 DOCUMENT CENTRAL
 POND
 RESTORATION_STANDARD
 AND SPECIAL
 CONDS_039-0824

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act

Following the review of the the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act.

Check all that apply:

Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

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

2. Commission hereby finds the project, as proposed, is:

Approved subject to:

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

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 interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**

c. The information submitted by the applicant is not sufficient to describe the site, the work or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**

3. Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310CMR10.02(1)(a). _____
 a. linear feet

Inland Resource Area Impacts:(For Approvals Only):

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	_____	_____	_____	_____
	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
6. <input type="checkbox"/> Land under Waterbodies and Waterways	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
	_____	_____	_____	_____
	e. c/y dredged	f. c/y dredged		
7. <input type="checkbox"/> Bordering Land Subject to Flooding	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	_____	_____	_____	_____
	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet

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<input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
<input checked="" type="checkbox"/> Riverfront Area	25062	25062		
	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	23594	23594		
	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	1468	1468		
	g. square feet	h. square feet	i. square feet	j. square feet

Coastal Resource Area Impacts:

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
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<input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
<input checked="" type="checkbox"/> Land Under the Ocean	2030	2030		
	a. square feet	b. square feet		
	3046	3046		
	c. c/y dredged	d. c/y dredged		
<input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
<input checked="" type="checkbox"/> Coastal Beaches	24492	24492	0	
	a. square feet	b. square feet	c. c/y nourishment	d. c/y nourishment
<input type="checkbox"/> Coastal Dunes				
	a. square feet	b. square feet	c. c/y nourishment	d. c/y nourishment
<input checked="" type="checkbox"/> Coastal Banks	1525	1525		
	a. linear feet	b. linear feet		
<input type="checkbox"/> Rocky Intertidal Shores				
	a. square feet	b. square feet		
<input type="checkbox"/> Salt Marshes				
	a. square feet	b. square feet	c. square feet	d. square feet
<input type="checkbox"/> Land Under Salt Ponds				
	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
<input type="checkbox"/> Land Containing Shellfish				
	a. square feet	b. square feet	c. square feet	d. square feet
<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			
	c. c/y dredged	d. c/y dredged		

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which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work..

10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

" Massachusetts Department of Environmental Protection"
[or 'MassDEP']
File Number : "039-0824"

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

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 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 Pollutant Discharge Elimination System Construction General Permit as required by Stormwater Standard 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that: *i.* all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period

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- 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 BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following: *i.*) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and *ii.*) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollutant Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 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.
- 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

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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:

D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? Yes No

2. The Conservation Commission hereby (check one that applies):

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

1. Municipal Ordinance or Bylaw _____ 2. Citation _____

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order or Conditions is issued. Which are necessary to comply with a municipal ordinance or bylaw:

b. APPROVES the proposed work, subject to the following additional conditions.

1. Municipal Ordinance or Bylaw	MANCHESTER GENERAL WETLANDS BY- LAW	2. Citation XVII
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3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows:
SEE ATTACHED DOCUMENT CENTRAL POND RESTORATION_STANDARD AND SPECIAL CONDS_039-0824

Findings

1. The Manchester Conservation Commission (MCC) finds that the site on which the work is proposed contains resource areas subject to the Massachusetts Wetlands Protection Act, M.G.L. c. 131, sec. 40 (the Act) and its Regulations, 310 CMR 10.00 and the Manchester General Wetlands By-Law which are significant to the protection of interests identified in the Act and the By-Law, specifically:
 - a. Riverfront Area (total of 314,437 sf; proposed alteration of 25,062 sf)
 - b. Land Under Ocean (1,280 sf permanent, 750 sf temporary, 3,046 cubic yards dredged)
 - c. Coastal Beach (14,245 sf permanent, 10,247 temporary)
 - d. Coastal Bank (1,525 linear feet)
 - e. Land Subject to Coastal Storm Flowage (39,000 sf temporary)
 - f. 30 foot No Disturbance Zone as protected under the By-Law (8,317 sf, including temporary impacts for safe construction access for seawall replacement and as a result of the proposed bioengineering)
 - g. 50 foot No Build Zone as protected under the By-Law (temporary impact of 2,086 sf for the gravel access construction road)

The project is not known to be within or adjacent to Estimated Habitat of rare or endangered species.

2. The wetland depictions appearing on the Approved Plan(s) is confirmed for this project only and shall be reconfirmed and/or re-delineated for subsequent filings.
3. The project as permitted is an Ecological Restoration Limited Project. The project is for the purposes of restoring or enhancing a wetland resource area in addition to the square footage listed above. The project proposes salt marsh plantings; however, the total area in square feet of Salt Marsh is pending trial plantings.
4. The project as permitted allows an alteration in Riverfront Area of 25,062 square feet (23,594 sf within 100 feet; 1,468 sf between 100 feet and 200 feet).
5. The project as permitted allows an alteration of up to 1,280 square feet of permanent alteration and 750 square feet of temporary alteration in Land Under Ocean; and 3,046 cubic yards of dredging to install footers for the wall replacement in Land Under Ocean.
6. The project as permitted allows an alteration of up to 14,245 square feet of permanent alteration and 10,247 square feet of temporary alteration in Coastal Beach.
7. The project as permitted allows an alteration of up to 1,525 linear feet of Coastal Bank.
8. The project as permitted allows a temporary alteration of 39,000 in Land Subject to Coastal Storm Flowage.
9. The MCC finds that the resources listed above are significant to the protection of the following interests as defined in the Act and its Regulations and the Manchester General Wetlands By-Law :
 - a. Groundwater supply
 - b. Flood control
 - c. Storm Damage Prevention
 - d. Prevention of Pollution
 - e. Fisheries
 - f. Land Containing Shellfish
 - g. Protection of Wildlife Habitat

Specific Findings under the Manchester General Wetlands By-Law and its regulations

1. In addition to those interests protected under the Act and its Regulations, the MCC finds that the resource areas and their buffer zones are significant to the protection of the following interests:
 - a. Water quality

- b. Erosion and sedimentation control
2. The MCC grants a waiver as requested in the “Notice of Intent” prepared for the Town of Manchester-by-the-Sea by Tighe & Bond Engineers; dated March 20, 2020, sections 5.3.2.1 and 5.3.3.1, and as shown on the Approved Plans for the following:
 - a. Installation of a temporary safe construction access for the wall replacement in the 30-foot No Disturb Zone;
 - b. Bioengineering associated with the installation of the living shoreline in the 30-foot No Disturb Zone; and
 - c. Construction of the temporary gravel access road in the 50-foot No Build Zone as needed on each side of the pond. No other structures are proposed for the 50-foot No Build Zone.

The MCC grants the waiver under the by-law for the following reasons:

- a. The applicant has satisfied the requirement of demonstrating, by clear and convincing evidence as set forth in the Alternatives Analysis, that there is no Practicable Alternative to the proposed activity which would have a materially less Significant Immediate or Cumulative Adverse Impact to the Resource Area in the No Disturb Zone. The applicant has also satisfied the requirement of demonstrating, by a preponderance of credible evidence as set forth in the Alternatives Analysis, that there is no Practicable Alternative to the proposed activity which would have a materially less Significant Immediate or Cumulative Adverse Impact to the Resource Area in the No Build Zone.
- b. The project on the whole (Preferred Alternative, Section 4.1.6 of the NOI) will provide free-flowing water in a continuous stream, will replace a failing seawall along the east bank, will provide for spot treatment of areas susceptible to erosion along the west bank with toe protection and living shoreline components.
- c. The project overall will increase habitat diversity and restored naturalized landscape with the establishment of the living shoreline and salt marsh plantings.
- d. The project overall will provide improved bank stabilization for the Town of Manchester and abutters to the project area.
- e. The proposed impacts to the 30-foot No Disturb Zone and 50-foot No Build Zone are temporary disturbance for construction access. After construction, the 50-foot No Build Zone will be restored to the existing conditions; the 30- No Disturb Zone will be planted with native vegetation through the top of the living shoreline.

General and Special Conditions

A. General Conditions

1. The term “Applicant” as used in this Order of Conditions shall refer to the owner, any successor in interest or successor in control of the property referenced in the Notice of Intent, supporting documents and this Order of Conditions. The MCC shall be notified in writing within 30 days of all transfers of title of any portion of property that take place prior to the issuance of the Certificate of Compliance.
2. With respect to all conditions the MCC designates the Conservation Administrator as its agent with full powers to act on its behalf in administering and enforcing this Order.
3. This document shall be included by reference in all contracts, plans and specifications dealing with the activity that is the subject of this Order, and that are created or modified after the issuance date of this Order, along with a statement that this Order shall supersede any conflicting contractual arrangements, plans or specifications.

4. It is the responsibility of the applicant to complete any review required by all agencies with jurisdiction over the activity that is the subject of this Order, and to procure all required permits or approvals. These reviews, permits and approvals may include but are not limited to the following:
 - a. Review by the U.S. Army Corps of Engineers for any Category 2 or Individual Permit Activity, and procurement of any permits or approvals identified by the Corps including but not limited to a Section 404/10 Pre-Construction Notification.
 - b. Review by the DEP and procurement of any permits or approvals identified by the DEP, including but not limited to 401 Water Quality Certification for dredging more than 100 cubic yards of Land Under Water, Chapter 91 License.
 - c. Review by the Massachusetts Natural Heritage and Endangered Species Program for any projects within estimated and/or priority habitat and any permits or approvals identified by the Program.
 - d. Review by Massachusetts Office of Coastal Zone Management for a Federal Consistency Review.
 - e. Review by local Planning Boards, Boards of Health, Zoning Boards, and Building Inspectors, and procurement of any permits or approvals required by these boards or agencies.
5. The MCC shall be informed of all changes that may be made to the Plan(s) of Record by any other Board, Commission or Authority or as a result of changes by the Applicant. All changes shall require additional approvals from the MCC.
6. The MCC reserves the right to impose additional conditions on this project, including but not limited to, additional or modified erosion/siltation controls during the project, if it deems that site conditions warrant such measures to mitigate potential impacts.
7. Members and agents of the MCC shall have the right to enter and inspect the property to evaluate compliance with this Order, the Wetlands Protection Act, Wetlands Protection Bylaw, and to require submittal of any data deemed necessary by the MCC for that evaluation.
8. The site engineer or contractor shall have a copy of this Order of Conditions and the final approved plans at the site and available for inspection during all phases of construction. It is the applicants' responsibility to provide the contractors with a set of the approved documents, plans, and this Order, and to ensure that the contractors are aware of the Order's provisions, and that they follow them. If the conditions of the Order are not clear, the MCC or its Administrator shall be asked to clarify them.
9. **Any change in the plans approved under this Order, including those due to review by other boards or resulting from the aforementioned conditions, must be submitted to the MCC in writing for approval prior to implementation.** The MCC will then decide whether the change is substantial enough to require a new Notice of Intent filing or a request for an amendment to this Order of Conditions. Any errors found in the plans or information submitted by the applicant shall be considered as changes.
10. If any changes are made in the above-described plan(s) which may or will alter an area subject to protection under the Wetlands Protection Act, 310 CMR 10.00 or the Manchester Wetlands By-Law, the applicant shall inquire from the MCC or its Administrator, prior to implementing the change in the field, whether the change is significant enough to require the filing of a new Notice of Intent. Any errors in the plans or information submitted by the applicant shall be considered changes and the above procedures shall be followed.

B. Pre-Construction Requirements

11. This Order shall be recorded at the Registry of Deeds in its entirety. The form provided at the end of WPA Form 5 shall be completed and stamped at the Registry of Deeds after the expiration of the 10-day appeal period and within 30 days of the issuance if no request for appeal has been filed with the Department of Environmental Protection. This form shall be returned to the MCC within 21 days of recording **and prior to commencement of any activities subject to the Order of Conditions.**

12. Prior to the commencement of work on each specific Approved Activity of this project (western shoreline, eastern shoreline, tidal marsh plantings):
 - a) Erosion controls (filter sock) shall be installed per the Approved Plan. The filter sock shall consist of biodegradable materials only.
 - b) The applicant or owner shall provide the name, address, and phone number of a contact person responsible for compliance with this Order.
 - c) Apex Jam Structures. Construction details for the Apex Jam Structures similar to those provided for 'Bank Treatment A – Rootwad detail' and 'Bank Treatment C – Encapsulated Soil Lift' shall be provided by the applicant and shall include anchoring details if the structures are to be anchored. In addition, a Monitoring Plan specific to the Apex Jam Structures shall be provided detailing bank /access protection during construction, who is responsible for monitoring effectiveness of the Structures, and who is responsible for removing woody debris that collects on the apex jams.
 - d) Cofferdams. Construction details, choice of material shall not be left up to the discretion of the contractor. Construction details and choice of material shall be provided by the applicant prior to construction and approved by MCC.
 - e) Monitoring. The applicant shall establish fixed photographic monitoring locations and submit photodocumentation of existing conditions. The fixed locations shall be used to photo-document construction, final project conditions and restoration of disturbed areas.
 - f) The Applicant or his designee shall install a sign no less than 2 square feet or more than 3 square feet, visible from the street reading “**MA DEP File #39-0824**”, and not placed on a living tree.
13. Once all of the above pre-construction requirements stated in Conditions #11 and #12 have been fulfilled, the Conservation Administrator shall be contacted at least 48 hours prior to the start of work on each specific Approved Activity of this project in order to schedule a pre-construction meeting at the site. The Administrator may be contacted by email at: bertonic@manchester.ma.us or by phone at [978-526-4397](tel:978-526-4397).

C. Special Conditions

14. Western bank living shoreline plantings and those mitigation plantings installed in the 30-foot No Disturb Zone shall be monitored for two growing seasons to guarantee at least an 85% survivorship. A monitoring plan shall be submitted to the Conservation Administrator for approval. Plant monitoring reports shall be submitted after the first growing season and again after the second growing season. Issuance of a final Certificate of Compliance shall occur only after this condition has been met. Monitoring this dynamic living shoreline shall be an ongoing condition for a minimum of five (5) years following the issuance of a Certificate of Compliance.
15. Western bank streambank stabilization components including root wads and apex jams shall be monitored for erosion and scour for two years. A monitoring plan shall be submitted to the Conservation Administrator for approval. Monitoring reports shall be submitted after the first year and again after the second year. Issuance of a final Certificate of Compliance shall occur only after this condition has been met. Monitoring this dynamic living shoreline shall be an ongoing condition for a minimum of five (5) years following the issuance of a Certificate of Compliance.
16. A monitoring plan for invasive species shall be submitted to the Conservation Administrator for approval and include monitoring of invasive species for at least two years. The monitoring plan shall include details for removing invasive species if found in the planting area. This condition shall survive the expiration of this Order and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
17. Prior to any construction that is not on property owned by the Town of Manchester, permission for access shall be obtained, this Order made part of the permission, and kept on file with the Manchester Department of Public Works.

18. **Time-of-Year Restriction.** Sawmill Brook, including Central Pond, is migratory habitat for rainbow smelt (*Osmerus mordox*), and habitat for American eel (*Anguila rostrata*). The proposed work may impact passage. In-water work and silt-producing work shall be avoided from March 1 to June 30 of any year.
19. The MCC shall receive monitoring reports and sediment test results as shall be required by the 401 Water Quality permitting process.
20. The contractor selected for this restoration project shall be familiar with the principles and installation of large woody debris for use in restoration and stabilization projects.
21. Bioengineering structures / living shoreline implementation / tide marsh plantings installation shall be overseen by a qualified Environmental Monitor or equivalent with design knowledge and experience with bank restoration and stabilization projects.
22. In case of a major storm event, the site shall be secured beforehand in such a way to protect Sawmill Brook, including covering of any stockpiles of soil; installation of erosion control mats over areas of exposed soil; and removal of any debris, equipment, materials, etc. that could potentially enter the brook.
23. These special conditions shall survive in perpetuity beyond the issuance of a Certificate of Compliance: 16.

D. Project Period

24. The erosion control devices shall function throughout the project to prevent erosion and sedimentation. They shall be inspected and maintained routinely by the applicant or his contractor throughout the duration of the project and after every storm event of 1/2 inch of precipitation or more. Breaks in the line shall be immediately repaired to prevent siltation into the wetlands. Additional erosion controls shall be available on site for such repairs.
25. If soils are to be disturbed for longer than two months, a temporary cover of rye or other grass (conservation mix) shall be established to prevent erosion. Once final grading is completed, loaming and seeding of each area shall be completed promptly. Vegetative cover, either temporary or permanent, shall be established prior to winter. If the season is not appropriate for plant growth, exposed soils shall be stabilized with jute netting, staked mulches, or other U. S. Natural Resource Conservation Service methods.
26. The limit of work shall be the erosion control devices beyond which no work may occur. The MCC reserves the right to require additional erosion controls and storm damage prevention measures at any time if it deems necessary.
27. The contractor or responsible party shall have an appropriately sized spill containment kit on site whenever vehicles or mechanized equipment is operating or present. The kit shall be sized to accommodate the total volume of fluids in the largest piece of equipment present. Appropriately trained personnel shall also be present and have access to this material. The contractor or responsible party shall be required to have additional absorbent materials (pads) and additional length of boom on site.
28. Equipment fuel storage and refueling and lubrication operations shall be situated least 100 feet from any wetland resource area.
29. Heavy equipment shall be stored in an upland area at least 100 feet from any wetland resource area when not in use or overnight.
30. Absolutely no washing of trucks or other equipment shall take place within 100 feet of the resource areas.
31. Only clean fill may be used in connection with this project. Any fill used in connection with this project shall not contain trash, refuse, rubbish, or debris, including but not limited to lumber, brick, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
32. Any excavated materials resulting from the work shall be moved outside the 100-foot buffer zone at the end of each day.

33. Stockpiled earth and other materials or debris shall be located outside of the 100-foot buffer zone of the resource areas(s).
34. All stumps, brush, and debris shall be removed from the site, including existing and construction debris. This material shall be disposed of promptly and properly at an off-site facility licensed to receive the material. Records as to the destination of all materials including stumps, brush, and excess fill shall be kept and supplied to the Commission if requested.
35. Any refuse material generated through the project construction will be removed to an approved landfill, and in no case will these materials be allowed to be buried or disposed of on site or on abutting property. **REMOVAL MUST BE DONE WEEKLY DURING THE CONSTRUCTION PHASE OF THE PROJECT. REFUSE MUST NOT BE ALLOWED TO ENTER ANY WETLAND AREAS.**
36. No blasting shall be permitted under this Order of Conditions. If it is discovered during the course of work that blasting will be necessary, the applicant shall file for an Amended Order of Conditions with plans and evidence describing the blasting activities.
37. If weather conditions cause the terrain to be excessively soft, the MCC may halt work until dry conditions permit work to continue without excessive churning of the soil.
38. The construction-period coffer dam shall be removed properly upon completion of construction.

E. Post Project

39. After the completion of construction, the applicant shall submit the following to the MCC:
 - a. A completed Request for a Certificate of Compliance – WPA form 8A.
 - b. A letter from a Registered Professional Engineer certifying compliance of the project with this Order of Conditions, and detailing any deviations that exist and their potential effect on the project. **A statement that the work is in “substantial compliance” with no detailing of the deviations shall not be accepted.**
 - c. An “As-Built” plans stamped and signed by a Registered Professional Engineer or Land Surveyor showing post-construction conditions. This plan shall note any deviations from the Approved Plans and include at a minimum:
 1. All wetland resource area boundaries with associated buffer zones and regulatory setback areas taken from the plan(s) approved in this Order of Conditions;
 2. Locations and elevations of all stormwater management conveyances, structures and best management designs, including foundation drains, constructed under this Order within any wetland resource area or buffer zone;
 3. Distances from any structures constructed under this Order to wetland resource areas - “structures” include, but are not limited to, all buildings, septic system components, wells, utility lines, fences, retaining walls, and roads/driveways;
 4. Wetland resource replication areas constructed under this order.
 - d. Pre-construction, during construction and post-construction photographs demonstrating compliance with this Order, including established vegetation where required, shall be submitted to the MCC.

F. Perpetual Conditions The following conditions shall run with the land and be binding in perpetuity on all successors in title and assigns of the applicant; they are ongoing and do not end upon completion of this project or the issuance of a Certificate of Compliance; they shall be the responsibility of the owner of record of this property.

40. **Additional Alteration Prohibited:** There shall be no additional alterations of the jurisdictional buffers and resource areas without the express permission from the MCC through a Request of

Determination of Applicability or a Notice of Intent application. This condition shall survive the expiration of this Order and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.

41. The applicant is required to maintain the Bank Restoration on the western and eastern banks. Should maintenance in the future require a design change to accommodate unforeseen changes in the stream regime and/or bank stability, the applicant shall file with MCC for this change. This condition shall survive the expiration of this Order and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
42. There shall be no alteration within the restoration and mitigation areas, except as may be required to maintain the area in its restored or mitigated condition.
43. Use of toxic substances for lawn and garden maintenance presents a hazard to groundwater and resource areas. Use of pesticides and herbicides is therefore permanently prohibited at this site within 100 feet of the resource area.
44. The use of de-icing chemicals (such as sodium chloride, potassium chloride or any other chemicals) is to be limited to the amount necessary to maintain public safety. The Applicant shall assume the responsibility of informing any snow removal contractors working on the property of this requirement.
45. Any hazardous materials (e.g., gasoline, lubricants, etc.) shall be stored securely above the 100-year flood elevation.
46. In areas of restoration planting, the 30-foot No Disturb Zone shall be allowed to grow naturally and shall not be mowed or altered in any way without express permission from the MCC through a Request for Determination of Applicability or a Notice of Intent application.
47. Only organic, slow-release, water-insoluble fertilizers shall be used within 50 feet of the resource areas.
48. In addition to these perpetual conditions, these special conditions shall survive in perpetuity beyond the issuance of a Certificate of Compliance: 16.

[Remainder of page left intentionally blank.]



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
 and Manchester-by-the-Sea General Wetlands Bylaw

Provided by MassDEP:
 039-0824
 MassDEP File #
 1200120
 eDEP Transaction #
 MANCHESTER
 City/Town

E. Signatures

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

6/4/2020

1. Date of Issuance

Please indicate the number of members who will sign this form.

6

This Order must be signed by a majority of the Conservation Commission.

2. Number of Signers

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

By Vote on 5/5/20, the individuals listed below have authorized the Conservation Administrator to sign on their behalf pursuant to the signature authorization recorded with the Southern Essex Registry of Deeds in Book 38501 Page 530. They also intend for their typed names below to serve as their electronic signatures for any entity (MassDEP) that accepts electronic signatures.

Signatures:

/Sarah Oseasohn/

/Stephen Gang/

/Joseph Puopolo/

/Olga Hayes/

/Henry Oettinger/

/David Lumsden/

Christine Bertoni, Conservation Administrator,
duly authorized (Book 38501, Page 530)

by hand delivery on

by certified mail, return receipt requested, on

6/4/2020

Date

Date



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
 and Manchester-by-the-Sea General Wetlands Bylaw

Provided by MassDEP:

039-0824

MassDEP File #

1200120

eDEP Transaction #

MANCHESTER

City/Town

F. Appeals

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

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

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



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
 and Manchester-by-the-Sea General Wetlands Bylaw

Provided by MassDEP:
 039-0824
 MassDEP File #
 1200120
 eDEP Transaction #
 MANCHESTER
 City/Town

G. Recording Information

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

 Conservation Commission

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

To:

 Conservation Commission

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

 Project Location

 MassDEP File Number

Has been recorded at the Registry of Deeds of:

 County

 Book

 Page

for: _____
 Property Owner

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

 Book

 Page

In accordance with the Order of Conditions issued on:

 Date

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

 Instrument Number

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

 Document Number

 Signature of Applicant



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

DEP File Number:

**Request for Departmental Action Fee
Transmittal Form**

Provided by DEP

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

A. Request Information

1. Location of Project

a. Street Address

b. City/Town, Zip

c. Check number

d. Fee amount

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

Name

Mailing Address

City/Town

State

Zip Code

Phone Number

Fax Number (if applicable)

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

Name

Mailing Address

City/Town

State

Zip Code

Phone Number

Fax Number (if applicable)

4. DEP File Number:

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



B. Instructions

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

Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)

Superseding Determination of Applicability – Fee: \$120

Superseding Order of Resource Area Delineation – Fee: \$120



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

DEP File Number:

Provided by DEP

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

B. Instructions (cont.)

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

Department of Environmental Protection
Box 4062
Boston, MA 02211

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