



**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

Provided by MassDEP:  
 090-1313  
 MassDEP File #  
 eDEP Transaction #  
 Andover  
 City/Town

*And Andover Wetlands Protection By-Law*

**A. General Information**

**Please note:**  
 this form has  
 been modified  
 with added  
 space to  
 accommodate  
 the Registry  
 of Deeds  
 Requirements

1. From: Andover  
Conservation Commission
2. This issuance is for  
 (check one): a.  Order of Conditions b.  Amended Order of Conditions
3. To: Applicant:

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

a. First Name \_\_\_\_\_ b. Last Name \_\_\_\_\_  
Fleming Avenue Andover, LLC  
 c. Organization \_\_\_\_\_  
5 Candida Way  
 d. Mailing Address \_\_\_\_\_  
Andover \_\_\_\_\_ MA \_\_\_\_\_ 01810  
 e. City/Town \_\_\_\_\_ f. State \_\_\_\_\_ g. Zip Code \_\_\_\_\_

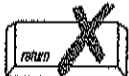
4. Property Owner (if different from applicant):

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

5. Project Location:

34 Fleming Avenue \_\_\_\_\_ Andover \_\_\_\_\_  
 a. Street Address \_\_\_\_\_ b. City/Town \_\_\_\_\_  
18 \_\_\_\_\_ 121 \_\_\_\_\_  
 c. Assessors Map/Plat Number \_\_\_\_\_ d. Parcel/Lot Number \_\_\_\_\_

Latitude and Longitude, if known: 42d40m31s \_\_\_\_\_ 71d08m38s \_\_\_\_\_  
 d. Latitude \_\_\_\_\_ e. Longitude \_\_\_\_\_





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**A. General Information (cont.)**

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

Essex North

a. County

15284

c. Book

b. Certificate Number (if registered land)

69

d. Page

7. Dates: May 1, 2018  
 a. Date Notice of Intent Filed

September 4, 2018  
 b. Date Public Hearing Closed

September 5, 2018  
 c. Date of Issuance

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

Site Plan #34 Fleming Avenue (Lot 5) Andover, Mass

a. Plan Title

Andover Consultants, Inc

b. Prepared By

4/25/18

d. Final Revision Date

Notice of Intent

f. Additional Plan or Document Title

James S. Fairweather, II, P.E.

c. Signed and Stamped by

1"=20'

e. Scale

5/1/18

g. Date

**B. Findings**

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application 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 (the 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. This Commission 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. 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.



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**B. Findings (cont.)**

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 the 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 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).**
- 3.  Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) \_\_\_\_\_ a. linear feet

**Inland Resource Area Impacts:** Check all that apply below. (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<br>_____ e. c/y dredged | _____ b. square feet<br>_____ f. c/y dredged | _____ c. square feet                        | _____ d. square feet                        |
| 7. <input type="checkbox"/> Bordering Land Subject to Flooding<br>Cubic Feet Flood Storage | _____ a. square feet<br>_____ e. cubic feet  | _____ b. square feet<br>_____ f. cubic feet  | _____ c. square feet<br>_____ g. cubic feet | _____ d. square feet<br>_____ h. cubic feet |
| 8. <input type="checkbox"/> Isolated Land Subject to Flooding<br>Cubic Feet Flood Storage  | _____ a. square feet<br>_____ c. cubic feet  | _____ b. square feet                         | _____ e. cubic feet                         | _____ f. cubic feet                         |
| 9. <input type="checkbox"/> Riverfront Area                                                | _____ a. total sq. feet                      | _____ b. total sq. feet                      |                                             |                                             |
| Sq ft within 100 ft                                                                        | _____ c. square feet                         | _____ d. square feet                         | _____ e. square feet                        | _____ f. square feet                        |
| Sq ft between 100-200 ft                                                                   | _____ g. square feet                         | _____ h. square feet                         | _____ i. square feet                        | _____ j. square feet                        |



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**B. Findings (cont.)**

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

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



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**B. Findings (cont.)**

\* #22. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

22.  Restoration/Enhancement \*:

a. square feet of BVW

b. square feet of salt marsh

23.  Stream Crossing(s):

a. number of new stream crossings

b. number of replacement stream crossings

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

The following conditions are 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.
  - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
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. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the 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.



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

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 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            090-1313 "
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 MassDEP.
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.



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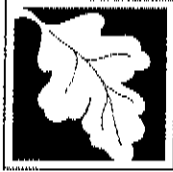
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**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

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 control any erosion problems that occur at the site and shall also 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.
19. The work associated with this Order (the "Project")
- (1)  is subject to the Massachusetts Stormwater Standards
  - (2)  is NOT subject to the Massachusetts Stormwater Standards

**If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:**

- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
  - i.* all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
  - ii.* as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
  - iii.* any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;



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

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 18(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 Pollution Discharge Elimination System Multi-Sector General Permit.

e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



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

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

Special Conditions (if you need more space for additional conditions, please attach a text document):

**See Special Conditions Attached.**

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20. For Test Projects subject to 310 CMR 10.05(11), the applicant shall also implement the monitoring plan and the restoration plan submitted with the Notice of Intent. If the conservation commission or Department determines that the Test Project threatens the public health, safety or the environment, the applicant shall implement the removal plan submitted with the Notice of Intent or modify the project as directed by the conservation commission or the Department.



**D. Findings Under Municipal Wetlands Bylaw or Ordinance**

1. Is a municipal wetlands bylaw or ordinance applicable?  Yes  No
2. The Andover Conservation Commission hereby finds (check one that applies):

a.  that the proposed work 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 of Conditions is issued.

b.  that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

Andover Wetlands Protection By-Law \_\_\_\_\_ By-Law  
 1. Municipal Ordinance or Bylaw \_\_\_\_\_ 2. Citation \_\_\_\_\_

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 (if you need more space for additional conditions, attach a text document):  
See Special Conditions Attached.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## 34 Fleming Ave

DEP FILE NO. 090-1313 SPECIAL CONDITIONS

1 FINDING - NOTICE OF JURISDICTION UNDER THE MASSACHUSETTS WETLANDS PROTECTION ACT, M.G.L.C. 131, S. 40. The Andover Conservation Commission hereby finds that all or part of the property on which the work authorized by this Order is proposed is subject to jurisdiction under the Massachusetts Wetlands Protection Act, M.G.L.C. 131, s. 40. The owner is hereby notified of his or her responsibility to comply with the provisions of that statute. **This condition shall remain in effect in perpetuity and shall survive the issuance of a Certificate of Compliance.**

2 FINDING – ANDOVER WETLANDS PROTECTION BY-LAW. The Conservation Commission finds that all conditions set forth in this Order of Conditions are necessary to protect the interest described in the Andover Wetlands Protection By-Law. The owner is hereby notified of his or her responsibility to comply with the provisions of that By-Law. **This condition shall remain in effect in perpetuity and shall survive the issuance of a Certificate of Compliance.**

3 FINDING – BORDERING VEGETATED WETLAND. The Conservation Commission finds that the Boundary of Bordering Vegetated Wetland, as reviewed and confirmed the approved plan.

4 FINDING - 25 FOOT PERMANENT BUFFER STRIP PROTECTED. The Andover Conservation Commission hereby finds that the “25’ NON-DISTURBANCE ZONE” depicted on the approved plan (a copy of which is attached to and made part of this Order) shall remain in effect in perpetuity. No building or alteration is to occur in this restricted area. The markers noted on the APRIL 25, 2018 plan entitled “SITE PLAN.” shall be installed as noted on the approved plan. **No work other than installation of erosion controls the Non-Disturb Markers have been installed and approved by the Conservation Agent or Commission’s Site Monitor.** Such bounds shall consist of Berntsen Feno Survey Markers with permanent medallions (information can be provided by the Conservation Commission), bearing the following inscription: “25 FOOT NON-DISTURBANCE ZONE TO WETLAND. PER ORDER OF ANDOVER CONSERVATION COMMISSION. DO NOT REMOVE.” The condition will be enforceable by the Andover Conservation Commission against the owner and /or its successors. **This condition shall remain in effect in perpetuity.**

5 FINDING – HOMEOWNER’S ASSOCIATION RESPONSIBILITIES. A Homeowner’s Association shall be established and shall be responsible to maintain the stormwater management system and its components in proper condition. Subsequent to issuance of a Certificate of Compliance for the project, such maintenance shall include *in situ* long term rate testing not less than once in five years. The results of such testing shall be forwarded to the Conservation Commission, together with recommendations from a Professional Engineer registered in the Commonwealth of Massachusetts for remedial work in the event that the rate exceeds five minutes per inch. Any such remedial work required by the Conservation Commission shall be promptly completed in a workmanlike manner.

6 FINDING – STOCKPILING OF MATERIAL WITHIN THE JURISDICTIONAL 100 FOOT BUFFER ZONE. The Conservation Commission finds that there shall be no stockpiling of material within the 100 foot buffer zone.

7 FINDING – DIGITAL FILE FOR WETLAND RESOURCES. Prior to recording, the applicant shall provide to the Andover Conservation Commission a digital file containing the file of the confirmed boundary of resource areas. The file format shall be in PDF form. AutoCAD file delivery shall be in full model view. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of side walk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, etc. Said digital data shall be delivered in Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet. **(or other format approved by the Commission staff.)**

8 FINDING - NON-DISTURBANCE ZONE – REQUIRED DEED LANGUAGE. Any Deed (as defined below) for all or any portion of the property subject to this Order of Conditions which includes a non-disturbance zone shall contain the following language ". This property is subject to a non-disturbance zone in which no alteration of land or vegetation may occur. The non-disturbance zone is shown on the plans entitled SITE PLAN recorded at the Essex County Registry of Deeds, North District, at Book \_\_\_\_, Page \_\_\_\_, and/or registered with the Land Registration Office of the Essex County Registry District as Document No. \_\_\_\_\_ and as described in the Order of Conditions recorded in the same Registry at Book \_\_\_\_, Page \_\_\_\_, and/or in the same Registry District as Document \_\_\_\_\_. In accordance with said Order of Conditions, this language shall be incorporated in full into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the property or a portion thereof is conveyed (a "Deed")."

The plans referenced in this Order of Conditions shall be recorded with the Order of Conditions and cross referenced thereto in the Essex County Registry of Deeds and/or the Essex County Registry District. **This condition shall remain in effect in perpetuity.**

9 FINAL APPROVED PLAN AND OTHER DOCUMENTS. Work shall conform to the plans referenced on Page 1 of this Order and other materials submitted by the applicant and which are on file with the Andover Conservation Commission.

10 RELIANCE UPON PEER REVIEW. The Conservation Commission is in partial reliance upon a peer review of the filing completed by Matt Lundsted, PE. The documentation for this review is comprised of a **letter report dated June 28, 2018**

11 WORK AUTHORIZED UNDER THIS ORDER – Only work explicitly described in the above-referenced plans and Notice of Intent is authorized under this Order of Conditions.

12 INSTALLATION OF EROSION CONTROL. Prior to commencement of work the applicant shall retain the services of the design professional or a Professional Land Surveyor to stake out the location of the proposed sediment controls. The applicant shall then install

*appropriate* sediment controls in accordance with the above-referenced plans *that have been approved by an Agent for the Commission and are specific to site conditions.*

A written request for inspection of the erosion control shall be submitted to the Conservation Commission, and a satisfactory inspection performed before any land-disturbing activity may commence. The Conservation Commission or its agents may require other sediment controls as field conditions warrant. The siltation control device shall be the Limit of Construction beyond which no earth-disturbing activity shall occur or heavy equipment shall be allowed. All siltation and erosion controls shall be maintained in a state of good repair. The siltation control devices shall not be removed until the commission or its agent has reviewed and found satisfactory the stabilization of the disturbed area.

13 CERTIFIED FOUNDATION PLAN. Within ten days of the installation of the building foundation, **but in every case prior to framing or further construction of the building**, the applicant shall submit to the Conservation Commission a Certified Foundation Plan prepared by a Registered Land Surveyor. Said plan shall be sufficiently detailed to show the horizontal location of the foundation with respect to the property lines and the top of foundation elevation, or elevations if more than one level, and the location of any major openings, including, but not limited to, garage entrance, if one shall be provided for. No framing or further construction of the building may occur until the Certified Foundation Plan has been approved by the Conservation Agent or Commission's Site Monitor.

14 STORMWATER MANAGEMENT. The Applicant or his successors in interest shall be responsible in perpetuity to maintain all drainage and stormwater management features, including stormwater best management practices (BMPs) in good working order. The Conservation Commission reserves the right to enter upon the property and make independent examination of these BMP measures, and to require the Applicant or his successors in interest to perform such maintenance as is needed in its judgment. The Conservation Commission shall provide prior notice to the property owner of its intent to perform such inspection not less than forty-eight hours prior to such inspection. **This condition shall remain in effect in perpetuity and shall survive the issuance of a Certificate of Compliance.**

15 CERTIFICATE OF COMPLIANCE. Not more than thirty days following completion of the project, the applicant shall submit to the Commission and the Commission's Site Monitor with their request for a Certificate of Compliance, an affidavit prepared by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts, stating that the site has been developed in accordance with the requirements of this Order of Conditions, based upon an on-site inspection and the referenced site plan. This affidavit should include a listing of any deviations from the approved plan.

An as-built drawing, prepared by a Professional Land Surveyor or Professional Engineer, registered in the Commonwealth of Massachusetts, and depicting the final and actual condition of all areas within the jurisdiction of the Massachusetts Wetlands Protection Act shall accompany such request.

16 EXCAVATION DEWATERING. In the event that excavation dewatering is required within any area subject to jurisdiction of the Wetlands Protection Act the applicant shall notify the Conservation Commission and the Commission's Site Monitor in advance of such work, and shall be responsible to ensure that such water is free of suspended solids before being discharged into either a wetland or into any storm water drainage system. This condition applies to all forms of dewatering, including pumping and trenching.

17 NOTIFICATION OF COMMENCEMENT OF WORK. The applicant shall notify the Conservation Commission and the Commission's Site Monitor, in writing, 48 hours before any activity commences on the project site and shall advise the Conservation Commission and the Commission's Site Monitor of the name(s) and telephone number(s) of the person(s) responsible on site for compliance with this Order. This list shall be resubmitted if any changes are made to it.

The developer or contractor responsible for the project's completion shall be notified of, and understand, the requirements of this Order of Conditions. The developer and/or contractor shall acknowledge receipt of the Order of Conditions by submitting a letter to that effect to the Conservation Commission. A copy of this Order, as well as copies of the above-mentioned documents, plans, and reports shall be on-site while activities regulated by this Order are being performed.

This Order of Conditions shall be made part of all construction documents for this project. All contractors working at the site shall be made aware of the provisions contained within this Order of Conditions and shall adhere to all the Special Conditions contained herein. The applicant, or his designee, shall, at all times, have a copy of the Final Order of Conditions at the site and shall monitor compliance with the provisions of this Order.

18 CONSTRUCTION OVERVIEW BY DESIGN ENGINEER / REPORTS. In accordance with Massachusetts General Laws Chapter 44, §53G, the Conservation Commission requires that the applicant provide funds **prior to commencement of work** to the Commission for the reasonable fees of a consultant with professional credentials to be selected by the Commission to review and/or approve the inspection of work thereunder. Such fees shall be an estimate of inspections which shall take place during once every 7 calendar days and within 24 hours of the end of a storm event having ½ inch of rainfall or greater within a twenty-four hour period, throughout the duration of the project. This period shall begin when siltation controls are installed, and shall end with issuance of a Certificate of Compliance. **Since the fees are an estimate, additional fees may be required pending the duration of the project and/or overpayment returned to the applicant upon the issuance of a Certificate of Compliance.**

Where submission of a certified foundation plan is otherwise required under this Order of Conditions a copy of said certified foundation plan shall be attached to the next inspection report following installation of the foundation. The weekly logs/reports shall be submitted on a monthly basis to the Conservation Commission and shall state whether such work is in his or her opinion in compliance with the Order of Conditions. The Conservation Commission reserves the right to require submission of such reports on a more frequent interval. **The Conservation**

**Commission also reserves the right to authorize the consultant to reduce the number of weekly inspections submitted on a monthly basis at their discretion.**

The applicant must request approval for temporary cessation of reports in writing prospectively. **This request must have the prior approval of an Agent for the Commission.** Failure to submit satisfactory reports shall be deemed sufficient cause for revocation of this permit without further review.

19 CLEAN FILL. All fill used in connection with this project shall be clean borrow. The following shall be prohibited: chemically contaminated material; concrete and asphalt rubble; stumps and other solid waste.

20 GRADING AND STABILIZATION. Grading shall conform to the plans and data referenced above. In all cases final grades shall have a minimum of two inches of topsoil (measured in place) over all disturbed areas. In all cases exposed soil areas shall be stabilized with vegetation, e.g., grass or some form of ground cover plant. In no case shall wood chips, mulch, or similar covering be acceptable on sloping ground in lieu of vegetation.

21 STOCKPILING. All debris, fill and excavated material stockpiles within 100 feet of a wetland area must be surrounded by staked hay bales to prevent sediment from surface runoff from entering the wetland.

22 CONTROL OF CONSTRUCTION DEBRIS. No construction debris (paper, wood, metal, concrete, etc.) may be allowed to enter the wetland resource areas at any time. Windblown material shall be promptly removed from wetland resource areas.

23 DAMAGES TO RESOURCE AREAS. Any damage caused as a direct result of this project to any wetland resource areas, beyond that authorized by the Order, is the responsibility of the applicant to repair, restore or replace. Sedimentation or erosion into these areas shall be considered damage to wetland resource areas. The Conservation Commission shall be promptly notified of any damage to wetland resource areas. Following notification, the applicant must submit a plan for abatement of the problem and restoration. This plan must be approved by the Conservation Commission prior to implementation.

24 SURPLUS EARTH MATERIALS. It shall be the responsibility of the Applicant to ensure that any and all surplus materials that are not needed for use on the project are lawfully disposed of outside any area subject to protection under M.G.L.c 131, s. 40, unless such disposal area and activity are regulated under either a valid Order of Conditions or Determination of Applicability.



**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

Provided by MassDEP:  
 090-1313  
 MassDEP File # \_\_\_\_\_  
 eDEP Transaction # \_\_\_\_\_  
 Andover  
 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.

*Sept. 5, 2018*  
 1. Date of Issuance

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

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.

Signatures:

*Dr. S. Coyn*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Louise J. Porter*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
*Christopher D. Russell*  
 \_\_\_\_\_

by hand delivery on

by certified mail, return receipt requested, on

Date

Date

*September 5, 2018*

**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

Provided by MassDEP:

090-1313

MassDEP File #

eDEP Transaction #

Andover

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.

Andover

Conservation Commission

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

To:

Andover

Conservation Commission

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

34 Fleming Avenue

Project Location

090-1313

MassDEP File Number

Has been recorded at the Registry of Deeds of:

Essex North

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