



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 the *Town of Andover Wetlands Protection Bylaw*

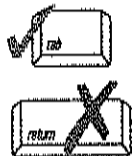
Provided by MassDEP:
090-1331
MassDEP File #

eDEP Transaction #
Andover
City/Town

A. General Information

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

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



1. From: Andover
Conservation Commission

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

3. To: Applicant:
Jennifer a. First Name Smith b. Last Name

Phillips Academy c. Organization

180 Main Street d. Mailing Address

Andover e. City/Town MA f. State 01810 g. Zip Code

4. Property Owner (if different from applicant):
Trustees of Phillips Academy a. First Name b. Last Name

Phillips Academy c. Organization

180 Main Street d. Mailing Address

Andover e. City/Town MA f. State 01810 g. Zip Code

5. Project Location:
0 Chapel Avenue/80 Bartlet Street a. Street Address Andover b. City/Town

Map 40 c. Assessors Map/Plat Number 40-99E/40-99B d. Parcel/Lot Number

Latitude and Longitude, if known: 42.650485 d. Latitude -71.132624 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):

Northern Essex

a. County

547

c. Book

b. Certificate Number (if registered land)

558h

d. Page

7. Dates: 4/23/2019 8/6/2019 8/8/19
a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance

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

Rabbit Pond Maintenance Project Phillips Academy, Andover, MA (see attached plan list)

a. Plan Title

Jennifer L. Johnson PE

b. Prepared By

July 22, 2019

d. Final Revision Date

Jennifer L. Johnson, PE

c. Signed and Stamped by

Varies by sheet

e. Scale

f. Additional Plan or Document Title

g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application 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) 0
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 checked="" type="checkbox"/> Bank	<u>10</u> a. linear feet	<u>15</u> b. linear feet	<u>15 (in-kind)</u> c. linear feet	<u>15 (in-kind)</u> d. linear feet
5. <input checked="" type="checkbox"/> Bordering Vegetated Wetland	<u>170</u> a. square feet	<u>170</u> b. square feet	<u>170 (in-kind)</u> c. square feet	<u>170 (in-kind)</u> d. square feet
6. <input checked="" type="checkbox"/> Land Under Waterbodies and Waterways	<u>380</u> a. square feet e. c/y dredged	<u>380</u> b. square feet f. c/y dredged	<u>380 (in-kind)</u> c. square feet	<u>380 (in-kind)</u> d. square feet
7. <input type="checkbox"/> Bordering Land Subject to Flooding	 a. square feet e. cubic feet	 b. square feet f. cubic feet	 c. square feet g. cubic feet	 d. square feet h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	 a. square feet c. cubic feet	 b. square feet d. cubic feet	 e. cubic feet	 f. cubic feet
9. <input type="checkbox"/> Riverfront Area	 a. total sq. feet c. square feet g. square feet	 b. total sq. feet d. square feet h. square feet	 e. square feet i. square feet	 f. 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 Alteration	Permitted Alteration	Proposed Replacement	Permitted 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	_____	_____	_____	_____
	a. square feet	b. square feet	c. nourishment	d. nourishment
14. <input type="checkbox"/> Coastal Dunes	_____	_____	_____	_____
	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.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended 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.
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.



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

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 090-1331 "
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.
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.



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

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.

NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

19. The work associated with this Order (the "Project") is (1) is not (2) subject to the Massachusetts Stormwater Standards. If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:

a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.

b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:

- i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
- ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
- iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;
- iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
- v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.



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

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 attached Findings and Special Conditions



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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:

Town of Andover Wetlands Protection Bylaw

Article IV

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 attached Findings and Special Conditions

Rabbit Pond Maintenance Project

DEP FILE NO. 090-1331 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 as 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. **This finding shall remain in effect in perpetuity and shall survive the issuance of a Certificate of Compliance.**

2. FINDING - NOTICE OF JURISDICTION UNDER THE ANDOVER WETLAND PROTECTION BYLAW. 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 Andover Wetlands Protection Bylaw, Article 14. 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. **This finding shall remain in effect in perpetuity and shall survive the issuance of a Certificate of Compliance.**

3. FINDING – ANDOVER WETLAND PROTECTION BYLAW. The Andover Conservation Commission finds that all conditions set forth in this Order of Conditions are necessary to protect the interests described in the Andover Wetland Protection Bylaw. The Commission makes the Finding that the proponent has provided the Commission with a suitable notification (in the form of a Notice of Intent, and other documents cited in this Order). Furthermore, the Commission makes the Finding that the proposed work reviewed by the Commission and their peer reviewer, and approved by this Order conforms to performance standards and design specifications in the regulations adopted by the Commission.

4. WORK AUTHORIZED UNDER THIS ORDER – Only work explicitly described on the Plans referenced on Page 2, Section A.8. of the Order of Conditions and the following documents and materials that were partially relied upon by the Commission to issue this Order of Conditions. To the extent that the information contained in the reports and on the plans differ, the plans control. If necessary, direction or clarification may be sought from the Conservation Agent or the designated Environmental Monitor.

Plans and Materials prepared by Nitsch Engineering:

Notice of Intent Application	4/23/19
Mary Elise McClement Letter to the Andover Conservation Commission	5/28/19
Michael Miller, Jr. Letter to Director of Conservation	5/28/19
Town of Andover Drainage Maps for Vicinity of Rabbit Pond	no date
Phillips Academy Andover, Massachusetts, An Illustrative History of the Property by Robert A. Domingue, Pages 97-102	no date

Rabbit Pond Maintenance Project Phillips Academy, Andover, MA Final Permit Set-Not for Construction November 9, 2018, Revised July 22, 2019

EX-1 through Ex-3 stamped and signed by Alexander D. Diotte on July 22, 2019

EX-1	Existing Conditions Survey	June 21, 2018
EX-2	Existing Conditions Survey	June 21, 2018
EX-3	Existing Conditions Survey	June 21, 2018

C Series Site Plans Stamped and signed by Madeline DeClerck on July 22, 2019

C-000	Notes, Legend, and Abbreviations	dated 11/9/18 last revised July, 22, 2019
C-001	Construction Access Plan	dated 11/9/18 last revised July, 22, 2019
C-100	Drainage and Erosion Control Plan	dated 11/9/18 last revised July, 22, 2019
C-101	Drainage and Erosion Control Plan	dated 11/9/18 last revised July, 22, 2019
C-200	Detail Sheet	dated 11/9/18 last revised July, 22, 2019
C-201	Detail Sheet	dated 11/9/18 last revised July, 22, 2019

- §. FINDING – RELIANCE UPON PEER REVIEW. The Conservation Commission is in partial reliance upon a peer review of the filing completed by Janet Bernardo of Horsley Witten Group and Ann Marton of LEC Environmental Consultants, Inc. The documentation for this review is comprised of the following summary memorandum with attached email correspondence and/or representations at Public Hearing.

Stormwater Management Peer Review by Janet Bernardo of Horsley Witten Group	7/22/19
NOI Application Summary Review by Ann Marton of LEC Environmental	7/26/19

The Commission and its consultants, in evaluating the Notice of Intent submittal and supporting documents, have relied solely upon the data and representations made by the Applicant and its representatives. Accordingly, the Applicant shall indemnify and save harmless the Commission, its consultants, Agents, and the Town of Andover against any and all claims arising out of or in connection with any work or structures authorized herein. Any discrepancies, errors or omissions discovered may result in revocation, suspension or modification of this Order without liability to the municipality or its consultants or Agents.

6. FINDING – WETLANDS. The Conservation Commission finds that the site contains Rabbit Pond, an Intermittent Stream, and the associated Bordering Vegetated Wetland, Bank, and Land Under Waterbody and Waterway, and relied upon LEC's Peer Review Summary Report dated July 24, 2019. This OOC only confirms the accuracy of the following wetland resource area flags as depicted on the approved plans:

Sheet C-100: BNK 14 through BNK 20;

Sheet C-101: BNK 1, BNK2, BNK36, BNK I-1 through BNK I-10; BVW1, BVW2, BVW 23, BVW 25- BVW 37; and

Sheet C-102: BVW17 through BVW 20.

No other resource area boundaries are confirmed under this OOC.

7. FINDING – IMPACTS TO BVW, BANK, AND LAND UNDER WATERBODY AND WATERWAY.

The Andover Conservation Commission finds that the Rabbit Pond Maintenance Project will impact 380 SF of LUW, 170 SF of BVW, 15 LF of Bank and remove 5 trees. The Commission relied upon information presented by Nitsch Engineering documenting that there are no other feasible alternatives with less adverse impacts for repair and maintenance of the existing drainage system and all feasible measures were taken to avoid, minimize, and mitigate such impacts. Except for the required placement of rip rap for outlet stabilization, all impacts are temporary in nature and will be mitigated with in-kind restoration.

8. FINDING – 25-FOOT NON-DISTURBANCE ZONE. The Andover Conservation Commission finds that the site contains the 25-foot Non-Disturbance Zone. The majority of this 25-foot Non-Disturbance Zone is comprised of vegetated uplands with the exception of an earthen walking path and the above-ground portions of subsurface drainage structures. The Andover Conservation Commission finds that maintenance work will occur within the 25-foot Non-Disturbance Zone to abandon in place, remove or replace deteriorating and outdated stormwater structures, provide laydown areas for said work, and access to the work areas. This work requires a waiver under the Bylaw. The Commission relied upon information presented by Nitsch Engineering documenting that there are no other feasible alternatives with less adverse impacts for repair and maintenance of the existing drainage system and such impacts to the 25-foot Non-disturbance Zone will be limited and temporary in nature. The Andover Conservation Commission hereby grants a waiver for this work as depicted on the plans and conditioned in this Order. No other waivers are granted for this project.

9. FINDING - PERMANENT NO DISTURBANCE SIGNAGE. The Andover Conservation Commission hereby finds that **prior to issuance of a Certificate of Compliance or cessation of inspections by the Environmental Monitor**, No Disturbance Signage 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.” shall be installed at intervals not less than every 50-feet along the Non-Disturbance Boundary. **Prior to the start of construction, the Applicant shall provide a plan depicting the locations for these Non-Disturbance bounds.** This condition will be enforceable by the Andover Conservation Commission against the owner and/or its successors. **This signage shall be maintained in good condition and this requirement shall remain in effect in perpetuity and shall survive the issuance of a Certificate of Compliance.**

10. FINDING – 25 FOOT NON-DISTURBANCE ZONE REQUIRED DEED LANGUAGE. **Prior to issuance of Certificate of Compliance**, 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 be recorded at the Registry of Deeds and 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 _____, 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")."

11. FINDING – LAWN/LANDSCAPE CHEMICALS WITHIN 100 FEET OF WETLAND. The Conservation Commission finds that in order to minimize the potential for adverse impacts on water quality, the use of any type of lawn or landscape chemical, pesticide or herbicide is prohibited in the 25-foot Non-Disturbance Zone and only organic, slow release, low-nitrogen type and phosphorous free fertilizers or herbicides are allowed within the area 75-100 feet horizontally from the boundary of Bordering Vegetated Wetland depicted on the approved plans. **This condition will be enforceable by the Andover Conservation Commission against the owner and/or its successors. This condition shall remain in effect in perpetuity.**
12. FINDING – STORMWATER MANAGEMENT. The Applicant has demonstrated that no additional impervious surface is proposed as part of this maintenance project, nor are there any proposed changes in drainage patterns. Therefore, pre and post hydrology analysis and preparation of a stormwater management report and plan under the MA DEP Stormwater Management Standards and Sections 6F and 6G of the Town of Andover Bylaw Article XIII for drainage and grading were not required. Based on the materials provided by Nitsch Engineering, the Commission finds that the 12" pipe modification will not increase the rate of stormwater discharging into Rabbit Pond. The Commission also finds that replacement of the weir structure, overflow pipes, and an intake pipe should not increase the stormwater discharging from Rabbit Pond over the original design rate. Lastly, the Commission finds that replacement of the flat basin grate located at 39 Morton Street with an 8" high beehive grate will allow an additional 1.5 cubic feet per second of flow and aid in preventing clogging of the grate, but not prevent clogging. Therefore, the property owner will need to remain diligent in clearing the grate.
13. FINDING – DIGITAL FILE FOR WETLAND RESOURCES. **Prior to commencement of work**, the applicant shall provide to the Andover Conservation Commission a digital file containing the confirmed boundary of resource areas. The file format shall be in AutoCAD DWG (or ASCII DXF) version 2010 or earlier and Adobe PDF, delivered on CD-ROM or DVD-R media. 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 sidewalk, 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.
14. FINDING – **Prior to commencement of work**, 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 finding**

shall remain in effect in perpetuity and shall survive the issuance of a Certificate of Compliance.

Special Conditions

15. **All materials required to be submitted to the Commission shall also be submitted to the Environmental Monitor for review and approval. For the purposes of this order, the Environmental Monitor functions as an Agent of the Commission.**
16. This Order of Conditions shall be made part of all construction documents for this project. This document shall be included in all construction contracts including subcontracts dealing with work proposed and shall supersede any conflicting contract requirements. 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.
17. Until the Certificate of Compliance to this Order is issued, a Conservation Commissioner or an Agent of the Commission reserves the right to enter and inspect the property at reasonable times in order to evaluate compliance with this Order and any instructions or orders issued pursuant to this Order. Such parties may require any information, measurements, photographs and/or materials or may require any additional information deemed necessary for that evaluation. Further, work shall be halted onsite if the Conservation Commissioner or Agent of the Commission determines that any of the work is not in compliance with the Order. Work shall not resume until the Commission is satisfied that the work will comply with the Order and has so notified the applicant in writing.
18. This Order shall apply to any successor in control in interest of the property described in the Notice of Intent and accompanying plans, and to any contractor or other person performing work conditioned by this Order. These obligations shall be expressed in all deeds to succeeding owners of all or portions of the property. (This is in addition to DEP's Standard Condition under B. Findings, General Conditions 16.)

Pre-Construction

19. **Prior to commencement of work**, the applicant shall have received all other required federal, state, and/or local permits required by law.
20. **Prior to commencement of work**, the sign displayed according to B. Findings General Condition 10 must say **DEP & ACC File No. 090-1331**. This sign is not to be attached to a living tree and must be posted at a location readily visible from a public access roadway.
21. **Prior to the commencement of any work onsite**, the limits of all wetland resource areas within the vicinity of the proposed work shall be re-established with surveyors tape. Once established, said markers shall be checked and replaced as necessary and shall be maintained until all construction has been completed and a Certificate of Compliance has been issued. Note: This is in addition to DEP's Standard Condition under B. Findings, General Condition 17.

22. The contractor responsible for the project's completion shall be notified of, and understand, the requirements of this Order of Conditions. **The 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.
23. **EROSION CONTROLS/LIMIT OF WORK.** **Prior to commencement of work,** the erosion control line as depicted on the approved plans shall be staked in the field by a Professional Land Surveyor for inspection by the Commission or an Agent of the Commission prior to installation of the erosion controls. This inspection may be coupled with the pre-construction meeting referenced in Special Condition 25.

During this inspection of the staked erosion controls, the Applicant's consultant shall record the presence of any shrubs and herbaceous species present within the footprint of the 170 SF of BVW to be impacted and the 15 LF of Bank to be impacted. This list will inform the in-kind restoration of Bank and BVW.

Following approval of the staked limits, the erosion controls shall be installed to prevent the transport of silt or sediment beyond the limits-of-work and the safety fence shall be installed to clearly identify the limits of work for workmen and equipment operators. All siltation and erosion controls and safety fence shall be installed as specified on the Plan unless otherwise authorized by the Conservation Agent or Environmental Monitor. A written request for inspection of the erosion control and safety fence shall be submitted to the Conservation Commission and the Environmental Monitor, and a satisfactory inspection performed before any land-disturbing activity may commence.

The Conservation Commission or its Agents may require additional sediment controls as field conditions warrant. The siltation control device or safety fence shall be the Limit of Construction demarcating where no earth-disturbing activity or heavy equipment shall be allowed any closer to the BVW and/or shall confine the limit of work in wooded areas. 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.

At all times during construction, the applicant shall maintain an on-site stockpile of erosion controls sufficient to respond to any emergency problem that may arise. Such stockpile must be replenished as it is used.

24. **CONSTRUCTION OVERVIEW BY ENVIRONMENTAL MONITOR / 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. 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.**

25. Not more than 2 weeks prior to the commencement of work, a **Pre-Construction Meeting** shall be held with the Conservation Agent and the Commission's Environmental Monitor, and the Applicant's On-Site Construction Manager, Contractor, and Project Engineer to review and discuss the Order of Conditions, construction procedures, methods, and erosion controls. Prior to requesting the pre-construction meeting, the applicant shall submit the following to the Conservation Commission:
- a. A statement that the items enumerated in Special Conditions 9, 13, 14, and 19 through 24 have been executed and the required supporting information has been provided to the Commission;
 - b. The names and 24-hour, 7 days/week phone numbers and email address of the on-site construction manager(s) who are responsible to coordinate the construction and ensure compliance with this Order. This list shall be resubmitted if any changes are made to it; and
 - c. A statement signed by the Applicant, owner of the property, and the person responsible for the construction of the project that such individuals understand the terms and conditions as specified in the Order and that such persons agree to comply with the referenced provisions.
26. **NOTIFICATION OF COMMENCEMENT OF WORK.** The applicant shall notify the Conservation Commission, in writing, at least two (2) business days before any activity commences on the project site

Construction

27. **TREE REMOVAL.** There shall be no tree clearing beyond the 5 trees authorized for removal in this Order. All other trees within or immediately adjacent to the project limits shall be protected in accordance with the measures outlined in the Preliminary Construction Sequencing on Sheet C-000 of the approved plan set or as modified and approved by the

Conservation Agent/Environmental Monitor.

28. BVW RESTORATION. Except for the footprint of rip rap at the terminus of the 12 pipe, temporary impacts to the 170 SF of BVW shall be restored in-kind replacing shrubs 1:1 and with a seed mix containing the species present on the site. Prior to restoration, said in-kind shrubs and seed mix shall be approved by the Environmental Monitor.
29. GATE VALVE MAINTENANCE. The gate valve in the concrete outlet structure must be opened and closed to test functionality at a minimum of twice per year, but no more than quarterly and Phillips Academy must maintain internal records documenting this maintenance. The Commission reserves the right to request documentation for these inspections at any time in the future. **This condition shall remain in effect in perpetuity and shall survive the issuance of a Certificate of Compliance.**
30. CONSTRUCTION AS-BUILT. During construction, the contractor will be traveling over the gravel/earthen walking path that is located adjacent to the Pond. An As-Built Plan must be submitted **within 10 days** of setting the rims, inverts, pipe sizes, and the low point of the gravel path west of the new outlet control structure to ensure all repairs were installed according to the approved plans and that the elevations along the path are not lower than the emergency overflow pipes set at elevation 228.8.
31. EXCAVATION DEWATERING. Excavation dewatering is required for installation of the proposed new 8" intake pipe. This dewatering shall be conducted in accordance with the measures outlined in the Preliminary Construction Sequencing on Sheet C-000 of the approved plan set or as modified and approval by the Conservation Agent/Environmental Monitor. The Applicant shall notify the Conservation Agent/Environmental Monitor in advance of such dewatering, and the Applicant shall be responsible to ensure that such water is free of suspended solids before being discharged into either a wetland or stream. This condition applies to all forms of dewatering, including pumping and trenching. Any dewatering areas shall be monitored daily to ensure that sediment laden water is appropriately settled prior to discharge toward the resource areas. No discharge of water is allowed directly into any wetland resource area. During dewatering, the device shall be closely monitored and replaced as needed. Sediment from the device shall be disposed of properly.
32. DEBRIS REMOVAL. Living vegetation shall not be removed from the intermittent stream. As noted on Sheet C-101, work associated with removal of broken pipe and debris (large branches or accumulated debris downgradient of the drainage outfall into Rabbit Pond shall be performed by hand. The extent of this work shall be reviewed with the Environmental Monitoring prior to any removal.
33. 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; crushed glass; stumps and other solid waste.
34. 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

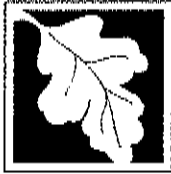
stabilized with vegetation, e.g., seed mix or planting as specified on sheet C-000 Preliminary Construction Sequence or sheet C-101. In no case shall wood chips, mulch, or similar covering be acceptable on sloping ground in lieu of vegetation.

35. STOCKPILING. All debris, fill, and excavated material shall be stockpiled outside the ~~400~~ 100-foot buffer zone.
36. CONTROL OF CONSTRUCTION DEBRIS. No construction debris (paper, wood, metal, concrete, plastic, etc.) may be allowed to enter the wetland resource areas at any time. Windblown material shall be promptly removed from wetland resource areas.
37. DAMAGES TO RESOURCE AREAS AND BUFFER ZONES. Any damage caused as a direct result of this project to any wetland resource areas or buffer zone 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 or buffer zones. 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.
38. 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. Excavated material not used for backfill shall be removed from the area and properly disposed of by the contractor. Records shall be kept documenting that the excess material has been properly disposed of at a legal site. If requested, a manifest or bill, as applicable, shall be provided to the Conservation Department documenting the legal disposal of excavated materials, building debris, concrete, asphalt, and/or materials removed from the site including that material removed from dumpsters and until a Certificate of Compliance is issued.
39. UNFORSEEN PROBLEMS. If unforeseen problems occur during construction which may affect the interests of the Wetlands Protection Act or the Town of Andover Wetlands Protection Bylaw, the Commission shall immediately be notified and a meeting shall be held between the Commission, or its Agent/Environmental Monitor, the applicant and other concerned parties to determine appropriate corrective measures agreed upon. Subsequent to the resolution, the activity and resulting actions shall be documented in writing.
40. The applicant's Landscape Architect or Wetland Scientist shall monitor stabilization and seeding of all disturbed areas for one complete growing season to confirm proper stabilization and establishment of the seed mix or planting as specified on sheet C-000 Preliminary Construction Sequence or sheet C-101. A monitoring report shall be submitted to the Commission, with document photographs, confirm proper stabilization.
41. CERTIFICATE OF COMPLIANCE. Following completion of the project, the applicant shall submit with their request for a Certificate of Compliance, WPA Form 8A; 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 setting forth any deviations that exist and their potential effect on the project or its compliance with the Order of Conditions.

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 and the Town of Andover Wetlands Protection Bylaw, shall accompany such request.

The original Certificate of Compliance signed by the Commission must be recorded at the North Essex Registry of Deeds and proof of such recording must be provided to the Commission.



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 the *Town of Andover Wetlands Protection Bylaw*

Provided by MassDEP:

090-1331

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.

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

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

8/8/19
1. Date of Issuance
5
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:

[Handwritten signatures]

[Handwritten signature]

by hand delivery on

by certified mail, return receipt requested, on

Date

Date

8/8/19

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 of 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 the *Town of Andover Wetlands Protection Bylaw*

Provided by MassDEP:

090-1331

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:

0 Chapel Avenue/80 Bartlet Street

Project Location

090-1331

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