



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:  
090-1337  
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:

Scott Kelly  
a. First Name b. Last Name  
R.J. Kelly Co., Inc.  
c. Organization  
55 Cambridge Street  
d. Mailing Address  
Burlington MA 01803  
e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

Ballardvale LLC Ballardvale LLC  
a. First Name b. Last Name  
c. Organization  
55 Cambridge Street  
d. Mailing Address  
Burlington MA 01803  
e. City/Town f. State g. Zip Code

5. Project Location:

3, 3R, and 4 Executive Place Andover  
a. Street Address b. City/Town  
Map 163 8, 8, & 9A  
c. Assessors Map/Plat Number d. Parcel/Lot Number

Latitude and Longitude, if known: N 42.60109 W 71.16780  
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):

Northern Essex

a. County

13270

c. Book

b. Certificate Number (if registered land)

127

d. Page

7. Dates: 9/3/2019 2/2/2021 2-23-2021  
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):

Site Plans Burt Road Development, 3, 3R, and 4 Executive Place, Andover & Tewksbury, Massachusetts dated January 26, 2021, Sheets C-1 through C-14 only

TEC, Inc.

b. Prepared By

Peter F. Ellison, PE

c. Signed and Stamped by

January 26, 2021

d. Final Revision Date

Varies by sheet

e. Scale

See Special Condition 23 for additional plans/documents

f. Additional Plan or Document Title

2-23-2021

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 type="checkbox"/> Bank                                   | a. linear feet             | b. linear feet             | c. linear feet             | d. linear feet                              |
| 5. <input checked="" type="checkbox"/> Bordering Vegetated Wetland | <u>0</u><br>a. square feet | <u>0</u><br>b. square feet | <u>0</u><br>c. square feet | <u>6,450± restoration</u><br>d. square feet |
| 6. <input type="checkbox"/> Land Under Waterbodies and Waterways   | a. square feet             | b. square feet             | c. square feet             | d. square feet                              |
|  | e. c/y dredged             | f. c/y dredged             |                            |   |
| 7. <input type="checkbox"/> Bordering Land Subject to Flooding     | a. square feet             | b. square feet             | c. square feet             | d. square feet                              |
| Cubic Feet Flood Storage   | e. cubic feet              | f. cubic feet              | g. cubic feet              | h. cubic feet                               |
| 8. <input type="checkbox"/> Isolated Land Subject to Flooding      | a. square feet             | b. square feet             |                            |   |
| Cubic Feet Flood Storage   | c. cubic feet              | d. cubic feet              | e. cubic feet              | f. cubic feet                               |
| 9. <input type="checkbox"/> Riverfront Area                        |                            |                            |                            |   |
| Sq ft within 100 ft  | a. total sq. feet          | b. total sq. feet          |                            |   |
|  | c. square feet             | d. square feet             | e. square feet             | f. square feet                              |



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Sq ft between 100-  
200 ft

\_\_\_\_\_ g. square feet

\_\_\_\_\_ h. square feet

\_\_\_\_\_ i. square feet

\_\_\_\_\_ j. square feet

**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                       | _____ a. square feet  | _____ b. square feet    | _____ cu yd<br>c. nourishment | _____ cu yd<br>d. nourishment |
| 14. <input type="checkbox"/> Coastal Dunes                         | _____ a. square feet  | _____ b. square feet    | _____ cu yd<br>c. nourishment | _____ cu yd<br>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                      090-1337                      "
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



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Commission.

### 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:
 

|  |             |
|--|-------------|
| <u>Town of Andover Wetlands Protection Bylaw</u> | 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**

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# Burt Road Development

## 3, 3R, and 4 Executive Place, Andover & Tewksbury, MA

DEP FILE NO. 090-1337 FINDINGS AND SPECIAL CONDITIONS

### Findings

1. FINDING - THE MASSACHUSETTS WETLANDS PROTECTION ACT, M.G.L.C. 131, S. 40. The Andover Conservation Commission (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 Act). The owner is hereby notified of his or her responsibility to comply with the provisions of this statute. **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 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 By-Law, Article 14 (Bylaw). The owner is hereby notified of his or her responsibility to comply with the provisions of this statute. **This finding shall remain in effect in perpetuity and shall survive the issuance of a Certificate of Compliance.**
3. FINDING - RELIANCE UPON PEER REVIEW. The Commission is in partial reliance upon a peer review of the filing completed by Ann M. Marton, President and Director of Ecological Services, LEC Environmental Consultants, Inc. (LEC) and Janet Bernardo, P.E. of Horsley & Witten Group (HWG). The documentation for this review is comprised of the following:
  - a. Stormwater Peer Review Burt Road Development prepared for the Andover Planning Board by Janet Bernardo of Horsley Witten Group dated September 30, 2019.
  - b. 2<sup>nd</sup> Stormwater Peer Review Burt Road Development prepared for the Andover Planning Board by Janet Bernardo of Horsley Witten Group dated December 6, 2019.
  - c. 3<sup>rd</sup> Stormwater Peer Review Burt Road Development prepared for the Andover Planning Board by Janet Bernardo of Horsley Witten Group dated March 23, 2020.
  - d. Initial Peer Review of Wetland Boundary & Site Access Alternatives Analysis Memorandum prepared by Ann Marton of LEC dated June 30, 2020.
  - e. Final Summary Peer Review Memorandum prepared by Ann Marton of LEC dated January 29, 2021.
  - f. Stormwater Peer Review Burt Road Development prepared for the Andover Conservation Commission by Janet Bernardo of Horsley Witten Group dated February 2, 2021.

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.

4. FINDING – BORDERING VEGETATED WETLAND. The Commission finds that the site contains Bordering and Isolated Vegetated Wetlands, protectable under the *Act* and the *Bylaw*, and relied upon LEC’s *Initial Peer Review of Wetland Boundaries & Site Access Alternatives Analysis Memorandum* dated June 30, 2020 and the TEC, Inc. Plans depicting said wetlands.
5. FINDING – CERTIFIED VERNAL POOL. The Commission finds that the site contains Certified Vernal Pool #6657, protectable under the *Act* and the *Bylaw*, and relied upon LEC’s *Initial Peer Review of Wetland Boundaries & Site Access Alternatives Analysis Memorandum* dated June 30, 2020 and the TEC, Inc. Plans depicting said CVP.
6. FINDING – LIMITED PROEJCT. The Commission finds that the proposed project meets the definition of a Limited Project in Section 4 (4) Limited Projects of the *Bylaw* for construction of the site access roadway as depicted on the approved plans. The Commission relied upon information presented by TEC, Inc. in the *May 5, 2020 Alternatives Analysis* for both Off-Site and On-Site Access and LEC’s *Wetland Boundary and Alternatives Analysis Peer Review Memorandum*, dated June 30, 2020.
7. FINDING – NO PRACTICABLE ALTERNATIVES. The Commission finds that the Applicant has demonstrated that there are no practicable alternatives to the proposed access roadway layout. The Commission makes this finding under the General Performance Standards for Vernal Pools, Section 7 (5) (d) 1.-5. of the *Bylaw*. The Commission relied upon information presented by TEC, Inc. in the *May 5, 2020 Alternatives Analysis* for both Off-Site and On-Site Access, and LEC’s *Wetland Boundary and Alternatives Analysis Peer Review Memorandum*, dated June 30, 2020, and LEC’s *Final Summary Peer Review* dated January 29, 2021.
8. FINDING – BVW WETLAND “D” MITIGATION. The Commission finds that the Applicant proposes to remove trash and debris from within 6,450± SF of BVW Wetland “D”. This work shall be performed by hand as detailed on the approved site plans referenced in Condition 23, more specifically the *Wetland Restoration Plan*, Sheet 1 of 1, prepared by TEC, Inc. dated January 12, 2021 and the *Report & Proposed Solution Burt Road, Andover Massachusetts* prepared by Northeastern Consulting Forestry Services dated December 22, 2020. The Commission finds that the above mitigation is an appropriate means of enhancing and improving the functions and values of BVW Wetland “D”.
9. FINDING - BVW WETLAND “D” BUFFER ZONE MITIGATION. The Commission finds that the Applicant proposes to remove trash and debris from within 13,650± square

feet of the Buffer Zone, 9,800± SF of which occurs within the 25-foot No Disturbance Zone as detailed on the approved site plans referenced in Condition 23, more specifically the *Wetland Restoration Plan*, Sheet 1 of 1, prepared by TEC, Inc. dated January 12, 2021 and the *Report & Proposed Solution Burt Road, Andover Massachusetts* prepared by Northeastern Consulting Forestry Services dated December 22, 2020. The Commission finds that the values associated with the proposed mitigation is an appropriate means of enhancing and improving the functions and values of the BVW Wetland “D” Buffer Zone.

10. FINDING – NON-JURISDICTIONAL IVW “C” MITIGATION. The Commission finds that the 2,251± square foot Wetland “C” IVW does not meet the size requirement for protection under the Bylaw as an IVW. Furthermore, the Commission finds that the Applicant proposes to remove trash and debris from within 2,251± SF of this IVW and from within an additional 1,685± SF of the surrounding area for a total of 3,936± SF of trash and debris removal. This work shall be performed as detailed on site plans referenced in Condition 23, more specifically the *Wetland Restoration Plan*, Sheet 1 of 1, prepared by TEC, Inc. dated January 12, 2021 and the *Report & Proposed Solution Burt Road, Andover Massachusetts* prepared by Northeastern Consulting Forestry Services dated December 22, 2020. The Commission finds that the above mitigation is an appropriate means of cleaning up this property and enhancing and improving the functions and values of the non-jurisdictional IVW and surrounding uplands on this Site.
11. FINDING – BUFFER ZONE & UPLAND MEADOW MITIGATION. The Commission finds that the Applicant proposes mitigation to stabilize and revegetate 85,500 SF of land disturbance and grading (51,100± SF in the Buffer Zone and 34,400± SF in the uplands) with a meadow seed mix as depicted on plan sheet C-9. The Commission finds that the above mitigation is an appropriate means of enhancing and improving the functions and values of the Buffer Zone and Uplands on this Site.
12. FINDING - 25-FOOT NON DISTURBANCE ZONE WAIVER. The Commission finds that the Applicant proposes to remove trash and debris from within 9,800± SF of the 25-foot No Disturbance Zone that will require relief under the Bylaw. The Commission finds that the values associated with the proposed mitigation provide adequate reasoning to allow this work within the 25-foot No Disturbance Zone. The Commission relies upon Findings 4-11 and grants relief from the 25-foot No Disturb Zone for the proposed trash and debris removal.
13. FINDING – 25 and 75-FOOT NON DISTURBANCE ZONE MARKERS. **Prior to sign off on any certified foundation plan**, Berntsen Feno Survey Markers with permanent medallions (information can be provided by the Commission), bearing the following inscription: “25 FOOT NON-DISTURBANCE ZONE TO WETLAND. PER ORDER OF ANDOVER CONSERVATION COMMISSION. DO NOT REMOVE.” and “75 FOOT NON-DISTURBANCE ZONE TO VERNAL POOL. PER ORDER OF ANDOVER CONSERVATION COMMISSION. DO NOT REMOVE.” shall be

installed approximately every 50 feet along the 25-foot and 75-foot No Disturbance boundary. Prior to the pre-construction meeting, the Applicant shall provide the Conservation Agent and Environmental Monitor with a plan depicting the proposed location for said markers for sign off or modification by the Conservation Agent or Environmental Monitor. **This condition will be enforceable by the Commission against the owner and/or its successors. This finding shall remain in effect in perpetuity and shall survive the issuance of a Certificate of Compliance.**

14. FINDING - 25 and 75-FOOT PERMANENT NON DISTURBANCE ZONE PROTECTION. The Commission hereby finds that the "25' NON-DISTURBANCE ZONE" to BVW and IVW and the "75' NON-DISTURBANCE ZONE to CVP #6657 shall remain in effect in perpetuity. Following completion of the trash and debris removal and buffer zone restoration, and construction of the site access roadway, no building or alteration is to occur in this restricted area. **This finding shall remain in effect in perpetuity and shall survive the issuance of a Certificate of Compliance.**
15. FINDING - 25 and 75-FOOT NON-DISTURBANCE ZONE REQUIRED DEED LANGUAGE. Prior to issuance of a 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")."

16. FINDING - 75-FOOT NON DISTURBANCE ZONE TO CVP #6657 WAIVER. The Commission finds that work will occur within the 75-foot No-Disturbance Zone to CVP #6657 for construction of the site access roadway as depicted on the approved plans that will require a waiver under the Bylaw. The Commission relies upon Findings 4-11 and hereby grants relief from the 75-foot No Disturbance Zone to CVP #6657 for construction of the site access roadway as depicted on the plans referenced in Condition 23 and conditioned in this Order.

17. FINDING - 85-FOOT ACCESS ROAD SETBACK TO CVP #6657 WAIVER. The Commission finds that work will occur within the 85-foot Access Road Setback Zone to CVP #6657 for construction of the access roadway as depicted on the approved plans that will require a waiver under the Bylaw. The Commission relies upon Findings 4-11 and hereby grants relief from the 85-foot Access Road Setback to CVP #6657 for construction of the site access roadway as depicted on the plans referenced in Condition 23 and conditioned in this Order.
18. FINDING - 100-FOOT STRUCTURE SETBACK TO CVP #6657 WAIVER. The Commission finds that work will occur within the 100-foot Structure Setback to CVP #6657 for construction of a retaining wall to limit grading associated with the access roadway as depicted on the approved plans that will require a waiver under the Bylaw. The Commission relies upon Findings 4-11 and hereby grants relief from the 100-foot Structure Setback to CVP #6657 for construction of the site access roadway retaining wall as depicted on the plans referenced in Condition 23 and conditioned in this Order.
19. FINDING –LAWN/LANDSCAPE CHEMICALS WITHIN 100 FEET OF WETLAND. The 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 Commission against the owner and/or its successors. This condition shall remain in effect in perpetuity.**
20. FINDING – STOCKPILING OF MATERIAL WITHIN THE BUFFER ZONE. The Commission finds that there shall be no stockpiling of material within 100-foot Buffer Zone other than material necessary to complete work occurring within the Buffer Zone.
21. FINDING – DIGITAL FILE FOR WETLAND RESOURCES. **Prior to commencement of work**, the Applicant shall provide to the Commission a digital file containing the file of 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 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.
22. FINDING – SPECIAL CONDITIONS. The Commission finds that all conditions set forth in this Order are necessary to protect the interests described in the Act and the By-law. **This finding shall remain in effect in perpetuity and shall survive the issuance of a Certificate of Compliance.**

## Special Conditions

23. 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.

- a. *Site Plans Burt Road Development 3, 3R, 4 Executive Place, Andover & Tewksbury, Massachusetts* (Sheets C-1 through C-14) as noted on the Cover Sheet, last revised January 26, 2021, prepared by TEC, Inc., and stamped and signed by Peter Ellison on January 26, 2021.

The cover sheet and plan set submitted to the Commission includes Existing Conditions Plot Plan (2 Sheets) dated December 12, 2018 and Concept Roadway Improvement Plans (2 sheets) dated February 27, 2020. The Existing Conditions Plot Plans do not accurately depict the wetland boundaries on the project site and the Concept Roadway Improvement Plans were not part of the NOI Application. These plans were provided for informational purposes only and should not be considered part of the Order of Conditions issued for this project.

- b. *Wetland Restoration Plan, Burt Road Development 3, 3R, 4 Executive Place, Andover, Massachusetts* (Sheet 1 of 1) last revised January 12, 2021 prepared by TEC, Inc., and stamped and signed by Peter Ellison on January 12, 2021.
- c. *Report & Proposed Solution Burt Road, Andover Massachusetts* prepared by Leo Garneau of Northeastern Consulting Forestry Services, dated December 22, 2020.
- d. Email from Peter Ellison with Revised CVP Watershed Analysis dated January 14, 2021.
- e. *Drainage Report, Burt Road Development, Andover & Tewksbury, MA*, prepared by TEC, Inc., and dated August 28, 2019, last revised on February 27, 2020.
- f. *Stormwater Management Operations and Maintenance Plan, Burt Road Development, Burt Road, Andover, Massachusetts* prepared by TEC, Inc. dated August 29, 2019, last revised January 19, 2021.

Only work explicitly described on the plans referenced on Page 2, Section A.8. of this Order and described in the above-referenced documents is authorized under this Order of Conditions.

24. 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.

25. **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.**
26. 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.
27. Until the Certificate of Compliance to this Order is issued, a 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 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.
28. 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

29. **Prior to commencement of any work**, the Applicant shall obtain an Order of Conditions from the Commission for the roadway improvements to Biotech Drive/Burt Road/Executive Place that were depicted on a Concept Roadway Improvements Plan dated February 27, 2020, but specifically excluded from the work approved in this Order of Conditions.
30. **Prior to commencement of any 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.**
31. **Prior to commencement of any work**, the Applicant shall have received all other required federal, state, and/or local permits required by law including, if necessary, but

not limited to an EPA NPDES Stormwater Permit. This permit shall be provided to the Commission prior to commencement of any work.

32. **Prior to commencement of any work**, the deed restrictions required in Finding 15 shall be recorded against the deed for any and all portions of the subject property. Proof of such recording must be provided to the Commission prior to commencement of work.
33. **Prior to commencement of any work**, the sign displayed according to B. Findings General Condition 10 must say **DEP & ACC File No. 090-1337**. This sign is not to be attached to a living tree.
34. **Prior to the commencement of any work onsite**, the limits of all wetland resource areas shall be re-established with survey 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.
35. Mitigation described in Findings 8, 9, and 10 shall be performed **prior to any other work** authorized in this Order of Conditions. Mitigation described in Finding 11 shall be completed and stabilized **prior to issuance of a Certificate of Occupancy**. If the Applicant would like to start the mitigation work prior to the Pre-Construction meeting outlined in Special Condition 41, an additional, separate preconstruction meeting may be scheduled with the Environmental Monitor as long as the Applicant can certify compliance with Special Conditions 29-34, 36, 37 (to the extent it relates to the mitigation), and 38-39
36. 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 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.
37. **EROSION CONTROLS - Prior to commencement of work**, the erosion control line shall be staked in the field by a Professional Land Surveyor registered in the Commonwealth of Massachusetts for inspection by the Commission or an Agent of the Commission prior to installation of the erosion controls.

Following approval of the staked limits of the erosion control boundary, the erosion controls shall be installed between all disturbed areas and the wetlands to prevent the introduction of sediment into any wetland resource area. All siltation and erosion controls shall be installed as specified on the Plan. A written request for inspection of the erosion control shall be submitted to the Commission, and a satisfactory inspection performed before any land-disturbing activity may commence. This inspection may be coupled with the pre-construction meeting referenced in Special Condition 41. The 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.

**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.**

38. **WETLAND SCIENTIST. Prior to commencement of work,** the Applicant shall retain a Wetland Scientist to monitor and oversee all trash and debris removal work within the BVW "D", the Buffer Zone to BVW "D", and non-jurisdictional IVW "C" and associated upland, and to monitor and oversee seeding and restoration of these areas and the Buffer Zone and Upland meadow Mitigation seeding. **The name and credentials of the individual must be submitted to the Commission prior to any Pre-Construction Meeting and be approved by the Commission or an Agent of the Commission prior to commencement of any work.**
39. **CONSTRUCTION OVERVIEW BY ENVIRONMENTAL MONITOR/REPORTS.** In accordance with Massachusetts General Laws Chapter 44, §53G, the 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 once every 7 calendar days and within 24 hours of the end of a storm event having 0.50 inches of rainfall or greater within a twenty-four hour period, throughout the duration of the project and required inspections associated with the proposed mitigation. This period shall begin when siltation controls are installed, and shall end with issuance of a Certificate of Compliance. Estimated fees will be held in escrow by the Town. **Since the fees are an estimate, additional fees may be required pending the duration of the project and/or any excess escrowed fees returned to the Applicant upon the issuance of a Certificate of Compliance.**

Weekly logs/reports shall be maintained and submitted at a minimum 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, in writing, approval for temporary cessation of reports. **This request must have the prior approval of an Agent for the Commission.**

40. **Prior to commencement of work,** the Applicant shall provide the Commission and/or its Agent with 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.

41. PRE-CONSTRUCTION MEETING. 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, Project Engineer, and Wetland Scientist to review and discuss the Order of Conditions, mitigation, construction procedures, methods, and erosion controls. Prior to requesting the pre-construction meeting, the Applicant shall submit the following to the Commission:
  - a. A statement that the items enumerated in Special Conditions 29 through 40 have been executed and the required supporting information has been provided to the Commission and the Environmental Monitor;
  - b. A set of photographs depicting the project site in the pre-construction condition; 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.
42. The Commission and its Agents shall be notified in writing at least two (2) business days in advance of commencement of work to enable the Commission to inspect the site to ensure compliance with the conditions.

#### Trash and Debris Removal

43. Extreme care shall be employed to ensure that the area of existing wetlands to be altered shall not exceed the limits as shown on the approved plans.
44. All trash and debris removal work shall be supervised by a Wetland Scientist to ensure compliance with the Order and the plans, to document that disturbance is avoided or minimized to the greatest extent, and to evaluate the process upon completion. The Wetland Scientist shall make a photographic record of the pre, during, and post-construction condition for all debris removal. A progress report detailing the findings and actions taken shall be submitted to the Commission at the end of each week until completion of the debris removal and seeding. A separate report shall be prepared for the buffer zone and upland mitigation meadow seeding.
45. The proposed trash and debris removal shall occur at the beginning of the project and prior to commencement of any other work.
46. All trash and debris removal and seeding/restoration areas shall be accomplished under the supervision of the Applicant's Wetland Scientist. A progress report shall be provided to the Commission at the end of each week until the removal work and restoration is complete.

47. Trash and debris removal areas shall be monitored for at least two consecutive growing seasons, conducting spring and fall monitoring visits, to 1) document that all trash and debris has indeed been removed and no additional buried material has worked its way to the surface within the footprint of the mitigation areas, and 2) to ensure that the seed mix has taken and is growing well within each of the mitigation areas. This includes all the mitigation areas referenced in Findings 8-11. It is intended for each of these areas to be stabilized with at least 75% cover by the specified seed mix or other native species colonizing from surrounding areas or the existing native on-site seed bank. If at any point during post construction monitoring, it is evident in the opinion of the Applicant's Wetland Scientist that the above standards will not be achieved, the Applicant shall supplement or reseed as necessary to achieve the required coverage.
48. The Applicant's Wetland Scientist shall prepare detailed spring and fall monitoring reports to document their observations to be submitted to the Commission no later than June 1<sup>st</sup> and November 1<sup>st</sup> of each year during the monitoring period. Each report will include an observed species list, relative abundance of each species, percent cover of upland and wetland species, the viability of the plantings, invasive species and removal recommendations, proposed remedial measures to ensure 75 percent re-establishment, and photographs.
49. Prior to the issuance of the final Certificate of Compliance for the project, the Applicant's Wetland Scientist shall certify to the Commission that the trash and debris has successfully been removed and all of the mitigation areas have achieved and maintained the 75 percent re-establishment requirement.

#### Construction

50. CERTIFIED RETAINING WALL PLAN. Within ten days of the installation of the foundation or first course of the proposed retaining walls along the access roadway, **but in every case prior to completion of the wall or any further associated construction on the site**, the Applicant shall submit to the Commission a Certified Plan prepared by a Professional Land Surveyor registered in the Commonwealth of Massachusetts. Said plan shall be sufficiently detailed to show the horizontal location of the foundation with respect to the property lines, CVP #6657, the CVP 75, 85, and 100-foot setbacks, foundation elevations, etc. The intent of this Certified Plan is to ensure the proper field location of the retaining wall in comparison to the approved plan. No further construction may occur until the Certified Plan has been approved by an Agent of the Commission.
51. CERTIFIED FOUNDATION PLAN. Proposed Warehouse 2 is proposed 3 feet off the 50-foot No Build Zone. Within ten days of the installation of the foundation for Proposed Warehouse 2, **but in every case prior to installation of any steel or framing of the building**, the Applicant shall submit to the Commission a Certified Plan prepared by a Professional Land Surveyor registered in the Commonwealth of Massachusetts. Said plan shall be sufficiently detailed to show the horizontal location of the foundation with respect to the property lines, wetland boundaries, 50-foot No Build Setback,

foundation elevations, etc. The intent of this Certified Plan is to ensure the proper field location of the foundation in comparison to the approved plan. No further construction may occur until the Certified Plan has been approved by an Agent of the Commission.

52. Internal drive aisles and parking lots at several areas occur at or just beyond the 50-foot No Build Zone. The limits of these areas must be staked by a Professional Land Surveyor registered in the Commonwealth of Massachusetts, prior to construction, curbing, and paving to ensure they do not encroach into the 50-foot No Build Zone.
53. GRADING AND STABILIZATION. Grading shall conform to the plans and data referenced above. In all cases final grades shall have a minimum of four inches of topsoil (measured in place) over all disturbed areas. In all cases exposed soil areas shall be stabilized as specified on the plans or if not specified 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.
54. SURPLUS EARTH MATERIAL. 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 the Act or the Bylaw. 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.
55. CONTROL OF CONSTRUCTION DEBRIS. No construction debris (paper, wood, metal, concrete, etc.) may be allowed to enter the wetland resource areas or buffer zone at any time. Windblown material shall be promptly removed from wetland resource areas and buffer zones. There shall be no dumping of leaves, grass clippings, trash or any kind of refuse in areas under the Commission's jurisdiction.
56. DAMAGE 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 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 Commission prior to implementation.
57. 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, 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.

58. 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 or debris.
59. DEWATERING. In the event that dewatering is required within any area subject to the Commission's jurisdiction or such water is discharged within the Commission's jurisdiction, the Applicant shall notify the Commission at least 2 business days in advance of such work and shall be responsible to ensure that such water is free of suspended solids before being discharged toward a wetland or into any stormwater system. 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. Dewatering shall be performed using a settling basin and/or a silt sock <sup>TM</sup> or approved equivalent filtering device. The filtering device shall be laid such that the end is at least 50 feet from the edge of any wetland above the sediment control line. During dewatering the device shall be monitored and replaced as needed. Sediment from the device shall be disposed of properly.

#### Stormwater Management

60. The Owner shall retain a qualified professional to inspect the stormwater management basins in accordance with the Stormwater Management Operation and Maintenance Plan prepared by TEC, Inc. January 19, 2021 (see attached) to ensure proper function and maintenance of the system. **This Condition shall be a continuing condition and shall not expire with the issuance of a Certificate of Compliance.**
61. The Applicant or his successors in interest shall be responsible in perpetuity to maintain all drainage and storm water management features, including stormwater best management practices (BMPs) in good working order. The 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 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. **This Condition shall be a continuing condition and shall not expire with the issuance of a Certificate of Compliance.**

#### Certificate of Compliance

62. Not more than thirty days following completion of the project, the Applicant shall submit 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. 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 Act or the Bylaw shall accompany such request.

63. If the completed work differs from that on the original plans and/or conditions listed in this Order, a report must be submitted to the Commission thirty (30) days prior to completion specifying how the work differs, at which time the Applicant shall first request a modification to the Order. Upon review and approval by the Commission, the Applicant may request in writing a Certificate of Compliance.
64. The Request for a Certificate of Compliance shall be submitted using WPA Form 8A. The Commission will not consider issuing a Certificate of Compliance until the following items are submitted to, and accepted by, the Commission:
  - a. A written narrative certifying compliance prepared by a Professional Engineer registered in the Commonwealth of Massachusetts with the conditions and approved plans and Order of Conditions, setting forth any deviations that exist and their potential effect on the project;
  - b. Post construction photographs demonstrating compliance with the Order including established vegetation where required;
  - c. A written certification by the Applicant's Wetland Scientist of trash and debris removal and that restoration of the mitigation areas referenced in Findings 8-11 have achieved the 75 percent re-establishment criteria, setting forth any deviations that exist and their potential effect on the project or its compliance with the Order of Conditions; and
  - d. A written request for a Certificate of Compliance.
65. 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:  
090-1337  
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.

2-23-2021

1. Date of Issuance

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

6

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

2. Number of Signers

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

Signatures:

Don D. Coogan  
Alufandra Driscoll  
[Signature]

Kevin J. Porto  
[Signature]  
[Signature]

by hand delivery on

by certified mail, return receipt requested, on

Date

Date

2-23-2021

**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



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:  
090-1337  
MassDEP File #

eDEP Transaction #  
Andover  
City/Town

Department has no appellate jurisdiction.

**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:

3, 3R4, and 4 Executive Place  
Project Location

090-1337  
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



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Signature of Applicant