

Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor



Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

January 6, 2021

Ms. Karen Martin
c/o Town of Andover
Department of Public Works
397 Lowell Street
Andover, MA 01810

RE: WETLANDS/ANDOVER
DEP File #090-1338
39 Dale Street
**SUPERSEDING ORDER OF
CONDITIONS**

Dear Ms. Martin,

Following an in-depth review of the file referenced above, and in accordance with Massachusetts General Laws, Chapter 131, Section 40, the Northeast Regional Office of the Massachusetts Department of Environmental Protection, Wetlands Program (MassDEP), is issuing the enclosed Superseding Order of Conditions (SOC) approving the project. This SOC allows the project based upon: 1) information and plans submitted; 2) information gathered during an on-site inspection; and 3) reasons MassDEP has deemed necessary to protect the statutory interests identified in the Wetlands Protection Act (the "Act") and Regulations.

The project site is located at the end of Dale Street in Andover, Massachusetts, and serves as the driveway entrance into the Dale Street Conservation Area. At the end of the dirt driveway is an existing wastewater ejector pump station that services residential, commercial and industrial areas within the Ballardvale section of Andover. The site is bounded by residential and commercial buildings to the south and west, the Shawsheen River to the east and northeast and a mix of forested wetlands and uplands to the north.

The project, as presented by the Town of Andover (Town) in the October 2019 Notice of Intent (NOI), proposed to replace the existing ejector pump station with a new submersible wastewater pump station with a valve vault and two (2) submersible pumps, a wet well, and an above ground electrical cabinet. The installation of 400 feet of 3-inch diameter high density polyethylene (HDPE) force main was also proposed to convey sewage to the existing sewer manhole on Dale Street. The project was filed as a Limited Project pursuant to 310 CMR 10.53(3)(d) and would require filling approximately 3,880 cubic feet of Bordering Land Subject to Flooding (BLSF) associated with Shawsheen River. The project also includes removal of

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.
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MassDEP Website: www.mass.gov/dep

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the existing pump station structures, which would provide approximately 960 cubic feet of flood storage volume.

On January 2, 2020, the Andover Conservation Commission (ACC) issued an Order of Conditions (OOC) approving the project. On January 13, 2020, MassDEP appealed the OOC due to concerns that the project did not meet the performance standards for BLSF (310 CMR 10.57(4)(a)). On January 16, 2020, MassDEP received a second appeal by Keith Saxon on behalf of ten (10) Andover residents. The residents were concerned that the project fails to provide an alternative analysis that minimizes wetland alteration, provides insufficient mitigation; and that the applicant did not identify an Isolated Vegetated Wetland (IVW) near the new pump station.

On January 29, 2020, MassDEP conducted a site inspection. In attendance were representatives from the Town, its consultant, representatives from the ACC, members of the resident group, as well as abutters from Dale Street. At the site visit, MassDEP discussed the project and observed existing site conditions with a focus on where the new pump station and compensatory flood storage areas were proposed. MassDEP did not find evidence of hydrophytic vegetation in or immediately adjacent to the proposed pump station that would be classified as Bordering Vegetated Wetland (BVW) or IVW.

Based upon a review of the project site and information contained in the file, MassDEP has determined that the site contains the following Areas Subject to Protection under the WPA: 1) BLSF and 2) Riverfront Area. These areas are presumed to protect one or more statutory interests identified in the Regulations and are noted in the attached SOC. The site is located within a Zone AE (base flood elevation 64 NAVD88) as determined by FEMA (National Flood Insurance Program and Flood Insurance Rate Map, Map Number 25009C0218F, effective date July 13, 2012.)

On February 7, 2020, MassDEP requested additional information including a revised alternative analysis demonstrating how the filling of BLSF for the new pump station could be avoided and minimized; exploring additional town-owned properties within the reach of the Shawsheen River where additional compensatory flood storage area could be created; and to revise the plans to show where BLSF filling and compensatory flood storage areas are proposed. MassDEP also requested the Town seek a waiver from the Zoning Board of Appeals to allow the electric pedestal cabinet to be placed within the 30-foot set back from Dale Street right-of-way, in order to relocate the pump station outside of the 100-year floodplain.

On March 5, 2020, CDM submitted a letter to MassDEP accompanied by revised plans dated February 28, 2020. In their letter, CDM stated that the pump station could not be relocated or reduced in size because it was currently the minimum footprint to meet "code requirements" and still allow for access to maintain the station. CDM explored installing a retaining wall around the station in order to reduce filling of BLSF. The Town determined, however, that the cost was prohibitive and therefore, was not considered a viable option. Four (4) design

alternatives were also described, including a no build scenario and replacing the pump station within the original footprint. The third alternative (preferred by the residents' group) involved relocating the pump station along the west side of the driveway. This alternative would remove the station from within BLSF but would result in permanently filling approximately 100 square feet of BVW, as well as an unspecified amount of temporary BVW impacts. The Town's preferred location was selected because 39 Dale Street is currently town-owned land, and the proposed site of the new pump station was already partially disturbed. They determined that it would require less tree removal than putting it on the opposite side of the driveway. Although it required filling of BLSF, it did not require any BVW alterations. The revised plan includes the creation of an additional 2,900 cubic feet of compensatory flood storage to be placed in the existing gravel parking area associated with the walking trail

On April 15, 2020, MassDEP sent an email to the Town and CDM requesting that the plans be revised to show the existing and proposed elevations within the area of compensatory flood storage to be created in the existing parking lot. On April 27, 2020, MassDEP received an email and a revised plan set from CDM addressing MassDEP's concerns.

On April 29, 2020, MassDEP sent an email to the Town and CDM requesting that Sheet C-4 be revised to show proposed elevations within the compensatory flood storage areas. On April 30, 2020 the Town submitted a set of revised plans.

On July 13, 2020, MassDEP sent an email to the Town and CDM identifying a discrepancy on the plans that were submitted to MassDEP on April 30, 2020. Specifically, the total amount of cubic feet shown on the cut and fill chart on Sheet C-4 differed from that shown on previously submitted plans. In addition, MassDEP requested that the cut and fill chart be revised to include the amount of compensatory flood storage in square feet.

On September 30, 2020, CDM submitted a plan set that included a revised cut and fill chart on Plan Sheets C-2 and C-4.

On October 8, 2020, CDM sent MassDEP a letter addressing MassDEP outstanding concerns pertaining to the overall alteration of BLSF and compensatory flood storage amounts. Based on review of the plans submitted on September 30, 2020 and CDM's letter of October 8, 2020, MassDEP sent an email to the Town and CDM on October 19th and 22nd pointing out additional discrepancies in the cut and fill charts on Plan Sheets C-2 and C-4 with regards to the overall amount and elevations of compensatory flood storage being provided.

On December 10, 2020, MassDEP received revised plans. Sheet C-2 entitled, "*Layout, Materials and Grading Plan,*" and Sheet C-4 entitled, "*Dale Street Wastewater Pump Station Improvements,*" both dated November 3, 2020 appears to address MassDEP's comments and concerns.

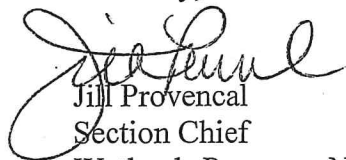
Based on review of the information and revised plans provided it is MassDEP's opinion that the project meets the Limited Project criteria in 310 CMR 10.53(3)(d) and that pursuant to

Superseding Order of Conditions
39 Dale Street, Andover
DEP File # 090-1338

310 CMR 10.58(6)(h) the project is exempt from meeting the Riverfront Area performance standards. It is MassDEP's position that the enclosed SOC approving this project as proposed and conditioned serves to protect the statutory interests identified in the Act and its Regulations. However, MassDEP reserves the right, should there be further proceedings in this matter, to raise additional issues and present further evidence as may be appropriate. Should you or any concerned party dispute these findings, your attention is directed to the language at the end of attached SOC specifying the rights and procedures for appeal.

If you have any questions concerning this SOC, please contact Pamela Merrill at pamela.merrill@mass.gov.

Sincerely,



Jill Provencal
Section Chief
Wetlands Program- NERO

cc: Magdalena Lofstedt, CDM Smith, Inc., 75 State Street, Suite 701, Boston, MA 02109
Andover Conservation Commission, Town Offices, 36 Bartlett Street, Andover, MA
01810
Keith Saxon, 15 Wethersfield Street, Andover, MA 01810



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection – Wetlands Program
Superseding Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #
090-1338

A. General Information

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

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

3. To: Applicant:

<u>Karen</u>	<u>Martin</u>	
a. First Name	b. Last Name	
<u>Town of Andover, Department of Public Works</u>		
c. Organization		
<u>397 Lowell Street</u>		
d. Mailing Address Line 1		
<u>Andover</u>	<u>MA</u>	<u>01810</u>
e. City/Town	f. State	g. Zip Code

4. Property Owner (if different from applicant):

<u></u>	<u></u>	
a. First Name	b. Last Name	
<u></u>		
c. Organization		
<u></u>		
d. Mailing Address Line 1		
<u></u>	<u></u>	<u></u>
e. City/Town	f. State	g. Zip Code

5. Project Location:

<u>39 Dale Street- Wastewater Pump Station</u>	<u>Andover</u>
a. Street Address	b. City/Town
<u>Map 138</u>	<u>Lot 21</u>
c. Assessors Map/Plat Number	d. Parcel/Lot Number

Latitude and Longitude, if known:	<u>42.6d29m43s</u>	<u>71.1d57m86s</u>
	e. Latitude	f. Latitude



A. General Information (cont'd)

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

<u>Essex North</u>	
a. County	b. Certificate (if registered land)
<u>789</u>	<u>362</u>
c. Book	d. Page

7. Dates:	<u>October 1, 2019</u>	<u>January 2, 2020</u>	<u>January 29, 2020</u>
	a. Date NOI Received	b. Date Local Order Issued	c. Date of SOC Site Visit

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

<u>"Dale Street Wastewater Pump Station Improvements"</u>	
a. Plan Title	
<u>CDM Smith</u>	<u>John T. Doherty, P.E.</u>
b. Prepared By	c. Signed and Stamped By
<u>November 3, 2020</u>	<u>various</u>
d. Final Revision Date	e. Scale
<u>See attached</u>	
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, the Department finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

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

2. This Department hereby finds the project, as proposed, is (check one):

Approved subject to:

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



B. Findings (cont'd)

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

3. Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available) _____ a. linear feet

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	_____ a. linear feet	_____ b. linear feet	_____ c. linear feet	_____ d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
7. <input checked="" type="checkbox"/> Bordering Land Subject to Flooding	_____ e. c/y dredged	_____ f. c/y dredged		
	882	882		
Cubic Feet Flood Storage	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
	3887	3887	3922	3922
	_____ 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 checked="" type="checkbox"/> Riverfront area	N/A	N/A		
Sq feet within 100 feet	_____ a. total sq. feet	_____ b. total sq. feet		
Sq feet between 100-200 feet	_____ c. square feet	_____ d. square feet	_____ e. square feet	_____ f. square feet
	_____ g. square feet	_____ h. square feet	_____ i. square feet	_____ j. square feet

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

10. Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available) _____ a. linear feet

11. Designated Port Areas - Indicate size under Land Under the Ocean, below

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
12. <input type="checkbox"/> Land Under the Ocean	_____ a. square feet	_____ b. square feet		
	_____ c. c/y dredged	_____ d. c/y dredged		

13. Barrier Beaches - Indicate size under Coastal Beaches and/or Coastal Dunes below.



B. Findings (cont'd)

- | | | | | |
|--|-------------------|-------------------|-----------|-----------------|
| 14. <input type="checkbox"/> Coastal Beaches | _____ | _____ | _____ | _____ |
| | a. square feet | b. square feet | c. c/y | d. c/y nourish. |
| 15. <input type="checkbox"/> Coastal Dunes | _____ | _____ | _____ | _____ |
| | a. square feet | b. square feet | c. c/y | d. c/y nourish. |
| 16. <input type="checkbox"/> Coastal Banks | _____ | _____ | | |
| | a. linear feet | b. linear feet | | |
| 17. <input type="checkbox"/> Rocky Intertidal Shores | _____ | _____ | | |
| | a. square feet | b. square feet | | |
| 18. <input type="checkbox"/> Salt Marshes | _____ | _____ | _____ | _____ |
| | a. square feet | b. square feet | c. square | d. square feet |
| 19. <input type="checkbox"/> Land Under Salt Ponds | _____ | _____ | | |
| | a. square feet | b. square feet | | |
| | _____ | _____ | | |
| | c. c/y dredged | d. c/y dredged | | |
| 20. <input type="checkbox"/> Land Containing Shellfish | _____ | _____ | _____ | _____ |
| | a. square feet | b. square feet | c. square | d. square feet |
| 21. <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 | | |
| 22. <input type="checkbox"/> Land Subject to Coastal Storm Flowage | _____ | _____ | | |
| | a. square feet | b. square feet | | |
| 23. <input type="checkbox"/> Riverfront area | _____ | _____ | | |
| | a. total sq. feet | b. total sq. feet | | |
| Sq feet within 100 feet | _____ | _____ | _____ | _____ |
| | c. square feet | d. square feet | e. square | f. square feet |
| Sq feet between 100-200 feet | _____ | _____ | _____ | _____ |
| | g. square feet | h. square feet | i. square | j. square feet |

C. General Conditions Under Massachusetts Wetlands Protection Act

Brief Project Description of Permitted Activities:

This SOC permits the replacement of the existing ejector pump station with a new submersible wastewater pump station with a valve vault and two (2) submersible pumps, a wet well, and an above ground electrical cabinet. Four hundred feet of 3-inch diameter high density polyethylene ("HDPE") force main will be installed in the pump station driveway in order to convey sewage to the existing sewer manhole located on Dale Street. The project is filed as a Limited Project pursuant to 310 CMR 10.53(3)(d) and will require filling approximately 3,887 cubic feet of Bordering Land Subject to Flooding ("BLSF") associated with Shawsheen River. Approximately 3,922 cubic feet of compensatory flood storage area will be provided in the area of the existing pump station and within the existing gravel parking area for the neighboring trail system.



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

(only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. the work is a maintenance dredging project as provided for in the Act; or
 - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended Superseding Order of Conditions, this Amended Superseding Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Superseding Order will expire on _____ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Department on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,
"Massachusetts Department of Environmental Protection" [or, "MA DEP"]
"File Number 090-1338 "



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

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

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.



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

- 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.
- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 19(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement (“O&M Statement”) for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMPs 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, and acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 19(f) through 19(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 19(f) through 19(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



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 (See attached sheet(s) or below for additional Special Conditions numbered 20 through 55.

See the attached document for a list of Special Conditions.



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection – Wetlands Program
Superseding Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

090-1338

D. Findings Under Municipal Wetlands Bylaw or Ordinance

To the extent that the Order is based on a municipal bylaw or ordinance, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no jurisdiction to supersede the local by-law order.

E. Issuance

This Order is valid for three years from the date of issuance, unless otherwise specified as a special condition pursuant to General Conditions # 4 or # 6.

Issued by: **Massachusetts Department of Environmental Protection:**

Northeast Regional Office

MassDEP Regional Office

Jill Provencal

 Wetland Section Chief Signature

Jill Provencal

Wetland Section Chief Printed Name

1-6-21

 Date

This Order is issued to the applicant as follows:

by Hand delivery on

by certified mail on:

 Date

1-6-21

 Date



F. Appeal Rights and Time Limits

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

Case Administrator
Office of Appeals and Dispute Resolution
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the request (hereinafter also referred to as Appeal Notice) shall at the same time be sent by certified mail or hand delivery to the Conservation Commission, the applicant, the person that requested the Superseding Order or Determination, and the issuing office of the MassDEP at:

MassDEP – Northeast Region
Wetlands Program
205B Lowell Street
Wilmington, MA 01887

In the event that a ten-resident group requested the Superseding Order or Determination, the Appeal Notice shall be served on the designated representative of the ten resident group, whose name and contact information is included in this Reviewable Decision (when relevant).

Contents of Appeal Notice

An Appeal Notice shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6) and 310 CMR 10.05(7)(j), and shall contain the following information:

- a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;
- b) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative; if a ten residents group, the same information for the group's designated representative;
- c) if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;



F. Appeal Rights and Time Limits (cont.)

- d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceeding that lead to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;
- e) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;
- f) a clear and concise statement of the alleged errors contained in the Department's decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c.131, § 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision, and the relief sought, including any specific desired changes to the Department's decision;
- g) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;
- h) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and
- i) if asserting a matter that is Major and Complex, as defined at 310 CMR 10.04(1), a statement requesting that the Presiding Officer make a designation of Major and Complex, with specific reasons supporting the request.

Filing Fee and Address

A copy of the Appeal Notice along with a MassDEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

SPECIAL CONDITIONS

**Dale Street Pump Station
39 Dale Street, Andover, MA
DEP File No. 090-1338**

20. All work shall conform to the Notice of Intent, plans, reports and special conditions:
 - a. Plan set consisting 7 Sheets:
 - Sheet C-1, entitled, "Existing Conditions," and
Sheet C-3, entitled, "Overall Utility Plan," dated October 2019 and last revised on February 28, 2020;
 - Sheet C-2, entitled, "Layout, Materials and Grading Plan," and
Sheet C-4, entitled, "Mitigation Plan," dated October 2019 and last revised on November 3, 2020;
 - Sheet M-1, entitled, "Demolition Plan and Section," dated October 2019 last revised on April 27, 2020;
 - Sheet D-1 entitled, "Civil Details I," and
Sheet D-2 entitled, "Civil Details II," dated October 2019.

All plans were prepared by CDM Smith, and stamped/signed John T. Doherty, P.E.
21. This Superseding Order of Conditions (SOC) supersedes all previous Orders issued for the project, DEP File #090-1338. All work shall conform to the plans and documentation referenced above unless otherwise specified in the SOC. In case of a conflict, the conditions of this SOC shall prevail.
22. A copy of this SOC shall be included in all construction contracts and shall supersede any conflicting requirements.
23. A copy of this SOC as well as the plans and reports referenced in Special Condition #20 shall be available on site while activities regulated by this SOC are being performed. In addition to the owners, all contractors and subcontractors shall be held responsible for compliance with this SOC.
24. No work shall commence on-site until all appeal periods have elapsed.
25. This SOC shall apply to any successor or assigns in interest or control and any other party engaging in activity on the property identified in the Notice of Intent. The applicant shall notify MassDEP in writing within 30 days of all transfers of title of any portion of property that takes place prior to the issuance of a Certificate of Compliance.

26. Any proposed or executed change in the plans approved under this SOC shall require the applicant to inquire of MassDEP, in writing, whether the change is substantial enough to require the filing of a new Notice of Intent with the Andover Conservation Commission (ACC). A copy shall be sent at the same time to the ACC. Any errors in the plans or information submitted by the applicant shall be considered changes and the above procedures shall be followed.
27. Members and agents of MassDEP and the ACC shall have the right to enter and inspect the premises to evaluate compliance with the conditions contained in this SOC and may require the submittal of any data deemed necessary by MassDEP for that evaluation.
28. The applicant shall retain a wetland specialist, as the project's Environmental Monitor (EM) who will oversee all activities involving the preparation and construction of compensatory flood storage areas. This person shall be competent in wetland ecology, soil science and have a minimum of five (5) years of experience working in wetland resource areas. Prior to the pre-construction meeting, the applicant shall provide MassDEP with the EM's qualifications and contact information for MassDEP's approval. The EM or their backup shall be available on a 24-hour basis.
29. Prior to the pre-construction meeting, the applicant shall provide MassDEP with a contact list containing the telephone number(s), address(es) and email(s) for the project supervisor and site contractor(s), as well as their back-up contacts.
30. Prior to the pre-construction meeting, the applicant shall submit a detailed construction schedule to MassDEP with a copy provided to the ACC.
31. Prior to the pre-construction meeting, the applicant shall submit to MassDEP for review and approval a revised Plant Schedule (shown on Sheet C-4 entitled, "Mitigation Plan") with the proposed quantity of each of the plant species. A copy shall also be provided to the ACC.
32. Prior to the the pre-construction meeting, erosion control, consisting of the straw bales and trenched silt fence, shall be installed pursuant to the plans referenced in Special Condition #20. In addition, the erosion control shall be extended around the existing pump station components and the proposed compensatory flood storage areas under the direction of the EM. MassDEP will approve its location at the pre-construction meeting.
33. Prior to the start of work on site, except for the installation of erosion controls, there shall be a pre-construction meeting between the applicant, the project supervisor, the contractor(s) performing the work, the EM, a representative from the ACC and MassDEP to ensure the requirements of the SOC are understood. Arrangements for the meeting shall be with made with MassDEP at least two (2) weeks prior to any activity.
34. The applicant shall not alter Bordering Land Subject to Flood (BLSF) associated with the Shawsheen River (elevation 64 NAVD88), **except for the permanent alteration of no more than 3,887 cubic feet (838 square feet) of BLSF** allowed under this SOC for the

- installation of the new sewer pump station and site grading as shown on the plans referenced in Special Condition #20.
35. At least **3,922 cubic feet of compensatory flood storage area shall be provided in four (4) areas** shown on the “*Mitigation Plan*” (Sheet C-4) in the plans referenced in Condition #20.
 36. **No more than 40 square feet of BLSF may be temporarily altered** associated with the installation of the sewer manholes, 10” sewer line, and 4” force main within Dale Street, and shall be restored to pre-existing elevations.
 37. Prior to the excavation of the compensatory flood storage areas, all elevations within each of the storage areas shall be survey-located and staked in the field by a Professional Land Surveyor.
 38. **The compensatory flood storage areas shall be immediately constructed upon the removal of the existing pump station** and planted with the tree and shrub species listed in the Plan Schedule shown on Plan Sheet C-4, entitled, “*Mitigation Plan*” referenced in Special Condition #20. In addition, these areas shall be seeded with an appropriate seed mix, such as a New England Erosion Control/Restoration seed mix. The EM shall oversee all planting activities. If seasonal conditions do not permit planting, it shall be done as soon as weather conditions are appropriate. Any plants that die shall be immediately replaced.
 39. Within 30 days upon completion of the compensatory flood storage areas, the EM shall prepare and submit to MassDEP with copies sent to the ACC, a written narrative with photographs of each of the compensatory flood storage areas. The report shall confirm the compensatory flood storage areas have been graded as shown on the plans referenced on Sheet C-4 and M-1, as referenced in Special Condition #20, the specification of the plant species and seed mix that were installed in each area, and noting the amount of compensatory flood storage created in each areas (in cubic feet).
 40. The EM shall monitor the compensatory flood storage areas for two (2) years of full continuous growing seasons, with written reports submitted annually to MassDEP and copied to the ACC no later than **by October 31st**.
 41. The monitoring report shall incorporate photographic stations for “before” and “after” photographic documentation, and shall clearly and comprehensively describe the areas of compensatory flood storage, including, but not limited to, the topography, the stability, health, growth and vigor of the planted species, and any enhancement activities performed or remedial actions necessary to be undertaken to ensure that the 100-year floodplain areas are functionally and successfully restored. There shall be a minimum of 75% vegetation surface cover with no evidence of erosion. Any plants that die shall be promptly replaced with a similar plant species. All reports shall be sent to:

Pamela Merrill
MassDEP Wetlands Program
Northeast Regional Office
205B Lowell Street
Wilmington, MA 01887
or via email to pamela.merrill@mass.gov

and shall reference the DEP File No. 090-1338 and be copied to the ACC.

42. If monitoring data indicates that the plantings within the compensatory flood storage areas are dying, a corrective plan of action shall be submitted to the MassDEP for review, approval and implementation under the direct supervision of the EM.
43. Wetland flags shall be maintained at all times and replaced if they are missing until a Certificate of Compliance has been issued.
44. At the start of work, additional erosion control materials shall be available on site (stored under cover) for emergency and routine replacement.
45. Erosion controls shall serve as the limit of work and shall be maintained in good repair until disturbed areas have been fully stabilized with vegetation or other means acceptable to MassDEP. At no time shall sediments be deposited in a wetland resource area.
46. MassDEP shall be immediately notified of any unauthorized discharges of sediments into the wetland resource areas, and the applicant shall take immediate steps to correct the problem. MassDEP reserves the right to require additional erosion controls that are deemed necessary.
47. Erosion controls shall remain in place until MassDEP approves their removal.
48. All soil stockpiles to be stored longer than 24-hours shall be surrounded by erosion controls and located outside the 100-year floodplain (BLSF) (elevation 64). Any soil stockpiles that are left idle for more than 14 days shall be temporarily stabilized with seed mix and tackifier.
49. If necessary, dewatering activities shall be conducted in an upland area and water shall be effectively filtered or settled to remove silt prior to being discharged towards the wetland resource area. Discharges from any dewatering activities shall not cause scouring or erosion of wetland resource areas. MassDEP shall be notified prior to any dewatering activities.
50. Excess soils, rock and debris excavated or generated during the course of this project shall be removed from the site and disposed in a legal manner. Records of the destination

of all materials, including excess fill and loam to be removed from the site, shall be kept on file and shall be provided to MassDEP and the ACC upon request.

51. At no time during or after construction shall fill or other material be placed, slump into or fall beyond the limit of grading as shown on the plan. The applicant shall be responsible for inspecting and maintaining all slopes, and shall immediately notify the MassDEP if slumping, erosion or encroachment occurs.
52. Storing, servicing or cleaning of equipment, including but not limited to fueling, changing, adding or applying lubricants or hydraulic fluids, or washing/rinsing of trucks or equipment, shall be performed outside the 100-year floodplain and the 100-foot Buffer Zone.
53. There shall be no discharge or spillage of fuel, oil or other pollutants, including sediments, onto any part of the site. The applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident or vandalism.
54. Immediately upon completion of construction, all exposed soils shall be seeded with appropriate vegetation or otherwise stabilized by a method acceptable to MassDEP. Where necessary, loam and seed shall be held in place using jute matting or other biodegradable materials for permanent stabilization against soil erosion. All materials not to remain on the site shall be removed and disposed of in a legal manner.
55. Upon completion of the project, the applicant shall request a Certificate of Compliance (WPA Form 8A) from MassDEP and shall submit the following information with the request:
 - a. A written statement prepared and signed by a professional engineer registered in the Commonwealth of Massachusetts certifying compliance with the approved plans referenced above and this SOC and setting forth deviations, if any exist;
 - b. An as-built site plan prepared and stamped by a registered professional engineer in the Commonwealth of Massachusetts showing the location and grades of the project, including, but not limited to: the submersible wastewater pump station, wet well, an above ground electrical cabinet, sewer manhole(s), and the new force main. The as-built plan shall also include the wetland flags, 100-year flood elevation, and the date(s) of survey.
 - c. An as-built plan of the compensatory flood storage areas and topography shown in one (1) foot contours prepared by a registered land surveyor or registered professional engineer. These plans shall include wetland flags, a notation of the amount of compensatory flood storage in each area (in cubic feet), at least three (3) photographs of each area with the date(s) they were taken, and the date(s) of survey.