

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

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

July 8, 2016

Mr. Peter Mahoney
c/o Rackemann Sawyer and Brewster
160 Federal Street
Boston, MA 02110-1700

RE: **WETLANDS/STONEHAM**
DEP File #297-0371
170 Franklin Street
Superseding Order of Conditions

Dear Mr. Mahoney:

The Northeast Regional Office of the Massachusetts Department of Environmental Protection, Wetlands Program (“MassDEP”), has completed its review of the file referenced above in preparation for issuance of a Superseding Order of Conditions (“SOC”). Pursuant to the provisions of the Wetlands Protection Act (the “Act”) under Massachusetts General Laws, Chapter 131, Section 40, MassDEP is issuing the enclosed SOC allowing the project based upon: 1) information and plans submitted; 2) information gathered during the site inspection; and 3) conditions MassDEP has deemed necessary to protect the statutory interests identified in the Act.

The project site is located at 170 Franklin Street and consists of approximately 25.7 acres, partially developed with a farm house and two barns and is known as Weiss Farm Inc. Weiss Farm Inc. utilizes the property mainly for a loam and mulch operation. As described in the Notice of Intent (“NOI”), the site is situated along the north side of Franklin Street west of Ellen Road in the northeastern portion of Stoneham. The project entails the construction of 264 residential units contained in (3) apartment buildings and five (5) townhouse buildings, a clubhouse, associated parking, walkways, driveways, landscaping and stormwater management Best Management Practices (“BMPs”).

On July 27, 2015, the Stoneham Conservation Commission (the “Commission”) issued an Order of Conditions (“OOC”) denying the project. In this decision the Commission found that the proposed work could not be conditioned to meet the performance standards set forth in the Act and Regulations and that information submitted by the applicant was not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, it was the opinion of the Commission that work could not go forward unless a new NOI was submitted.

You filed an appeal on July 31, 2015 with MassDEP in response to the Commission's issuance of an OOC denying the project. It is your opinion that the OOC issued by the Commission is inconsistent with the Act and the Regulations. You state, specifically, that the OOC incorrectly concludes that the project does not meet MassDEP stormwater management standards and that the additional information requested by the Commission "concerned matters that are not part of the Project as set forth in the Notice of Intent filed by the Petitioner."

On September 2, 2015, MassDEP conducted a site inspection. In attendance were you, your representatives, members of the Commission, Town Counsel, State Senator Jason M. Lewis and members of his staff, and State Representative Michael S. Day. During the site visit, the proposed project was discussed and the group walked the project site to observe existing site conditions and the location of the proposed development.

MassDEP's review of the file and site inspection confirms that the project site contains the following Areas Subject to Protection under the Act: Bordering Land Subject to Flooding ("BLSF"), Bordering Vegetated Wetlands ("BVW") and Inland Bank. These areas are significant to the statutory interests listed on the attached form. The entire project is proposed within the Buffer Zone to BVW and Inland Bank. No work is proposed within any wetland resource area.

On September 22, 2015, MassDEP issued a letter to you stating that pursuant to 301 CMR 11.03(1)(b)2, an ENF is required to be submitted to MEPA for the creation of five (5) or more acres of impervious surface. The proposed project proposes adding approximately 5.90 acres of impervious surface. On January 22, 2016, the Secretary of Energy and Environmental Affairs issued a Certificate stating that the preparation of an Environmental Impact Report ("EIR") was not required.

In accordance with 310 CMR 10.05(6)(c), if a commission finds that the information submitted by an applicant is not sufficient to describe the site, the work or the effect of the work on the interests of the Act, it may issue an OOC denying the work. The OOC must specify the information which is lacking and why it is necessary. In its OOC, the Commission states that the Applicant responded to the Commission's inquires in a timely and responsive manner, and improvements were made to the project, however, certain information that the Commission requested was not provided by the Applicant. MassDEP has reviewed the items listed in the OOC which the Commission cites as information necessary to evaluate the project and its impacts on wetland resource areas and provides the following comments:

- 1) In item #6 of the OOC, the Commission states that additional information is lacking for the project's landscaping plan for the area between the development and wetland resource areas. It references a notation in a letter, dated July 7, 2016, from the Commission's peer review consultant which states that "landscape plan improvements requested by the Commission are still pending," but does not state in the OOC what information the Commission was asking for or why this information was necessary to evaluate the project or the impacts to wetland resource areas. According to a letter from the Applicant's consultant, dated July 9, 2015, a notation

was added on the project's landscape plan stating that native plants would be placed within the "25 foot buffer zone" between the development and the wetland resource areas and that the applicant was amenable to a condition being placed in the OOC which required such plantings. Based on this information, MassDEP does not agree that additional information regarding the landscaping plan is necessary to evaluate this project and its impacts on wetland resource areas.

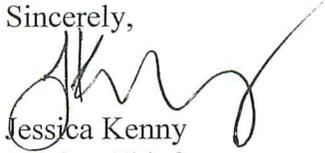
- 2) In item #7 of the OOC, the Commission states that the topographic plans associated with the project show existing large stockpiles of soils or material adjacent to the BVW. The Commission states that the project plan is incomplete as it does not attempt to blend existing contours into proposed contours, so that it is impossible for the Commission to understand the proposed drainage conditions that will exist in this area, or how the proposed work will look upon completion. It is MassDEP's opinion that removal of any stockpiled soils and material located on the project site could have been conditioned under the OOC to ensure against impacts to wetland resource areas.
- 3) In item #10 of the OOC, the Commission expressed concerns that the proposed work on the existing weir located in Weiss Farm's easterly drainage channel would not reliably control water in the future. The NOI includes an analysis titled "Stormwater Pump Station and Weir Dam Improvements," dated June 8, 2015, as well as a watershed study evaluating the development of this watershed over past decades and its impacts on the Weiss Farm property. On April 11, 2016, MassDEP requested the Applicant to provide calculations demonstrating that the placement of the weir would not impact the up-gradient wetland by increasing flooding beyond the capacity of the wetland to the extent that wetland hydrology, vegetation and functions would be impacted. The information received from the Applicant, on May 11, 2016 reiterates information already contained in the NOI which demonstrates that the reconstruction of the weir will not create impacts to wetland hydrology, vegetation or functions. Therefore, MassDEP is satisfied that the original proposal for work to restore the weir will not impact wetland resource areas.
- 4) In items #11-#17, the Commission cites several issues with failure of the Applicant to provide additional information regarding "off-site drainage issues" and the existing, on-site pump station. MassDEP is aware of the long standing issues surrounding the off-site drainage issues that the Commission is concerned with, specifically that the culverts under both Franklin Street and Sunset Road were placed at an elevation higher than the upstream Weiss Farm property thereby causing impacts to flows both on and off the site. According to the watershed study provided with the NOI, subdivisions constructed over the years around the Weiss Farm property do not include BMPs to control stormwater run-off. All stormwater from these areas sheet flow into an adjacent wetland which drains through channels located on the Weiss Farm property. Attempts have been made to alleviate flooding issues through the creation of man-made channels and placement of a pump station on the Weiss Farm property. However, it appears that off-site culverts and sediment laden downstream channels continue to contribute to existing flooding issues. Upon review of the

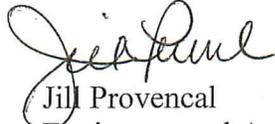
information provided in the NOI, it is MassDEP's opinion that the project, as defined in the Stormwater Management Plan, dated March 6, 2015, will not increase post peak discharge rates above pre-existing discharge rates and therefore, does not exacerbate existing flooding conditions and that further studies of the watershed to address flooding and drainage problems occurring in and around the surrounding neighborhoods goes beyond the scope of the proposed project. The NOI does include an analysis of the pumping capacity of the onsite pump station and includes recommendations for its maintenance and improvements in order to allow the pump station to handle existing flows. It is MassDEP's opinion that additional information regarding off-site drainage issues was not necessary to evaluate this project and its impacts on wetland resource areas.

It is MassDEP's opinion that the project meets the performance standards under 310 CMR 10.05(6)(k) for Stormwater Management. No work is proposed within BLSF, BVW or on Inland Bank. It is MassDEP's opinion that the enclosed SOC allowing the project serves to protect the interests of the Act, Massachusetts General Laws, Chapter 131, Section 40. Please be advised that it is MassDEP's responsibility to address only those interests identified in the Act. However, MassDEP reserves the right, should there be further proceedings in this case, to raise additional issues and present further evidence as may be appropriate. Should any party dispute these findings, please consult the language in the Order that specifies your rights and procedures for appeal.

Should you have any questions, please contact Jill Provencal at (978) 694-3250.

Sincerely,


Jessica Kenny
Section Chief
Wetlands Program – NERO


Jill Provencal
Environmental Analyst
Wetlands Program - NERO

cc: Stoneham Conservation Commission, 35 Central Street, Stoneham, MA 02180
Dennis Lowry, c/o AECOM, 35 Apollo Drive, Chelmsford, MA 01824



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 #

297-0371

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:

Peter Mahoney
 a. First Name, Last Name
c/o Weiss Farm Apartments, LLC
 c. Organization
100 Grandview Road, Suite 207
 d. Mailing Address Line 1
Braintree MA 02184
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

Donna Weiss
 a. First Name b. Last Name
Weiss Farm, Inc.
 c. Organization
170 Franklin Street
 d. Mailing Address Line 1
Stoneham MA 02180
 e. City/Town f. State g. Zip Code

5. Project Location:

170 Franklin Street Stoneham
 a. Street Address b. City/Town
Map 8 106
 c. Assessors Map/Plat Number d. Parcel/Lot Number

Latitude and Longitude, if known:

42d28m31Ns 071d05m27W
 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>Middlesex</u>		
a. County		b. Certificate (if registered land)
<u>7706</u>		<u>469</u>
c. Book		d. Page

7. Dates:	<u>12/17/2014</u>	<u>7/22/2015</u>	<u>9/2/2015</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>"The Commons at Weiss Farm, Stoneham, Massachusetts"</u>	
a. Plan Title	
<u>HW Moore Associates, Inc.</u>	<u>James M. White</u>
b. Prepared By	c. Signed and Stamped By
<u>April 30, 2015</u>	<u>various</u>
d. Final Revision Date	e. Scale
<u>"Updated Water Quality Basin Grading" and "Drain Manholes C-3A & B-2A"</u>	<u>07/09/2015</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 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
	_____	_____		
	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	_____	_____		
	a. total sq. feet	b. total sq. feet		
Sq feet within 100 feet	_____	_____	_____	_____
	c. square feet	d. square feet	e. square feet	f. square feet
Sq feet between 100-200 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 | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | a. square feet | b. square feet | c. c/y | d. c/y nourish. |
| 15. <input type="checkbox"/> Coastal Dunes | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | a. square feet | b. square feet | c. c/y | d. c/y nourish. |
| 16. <input type="checkbox"/> Coastal Banks | <u> </u> | <u> </u> | | |
| | a. linear feet | b. linear feet | | |
| 17. <input type="checkbox"/> Rocky Intertidal Shores | <u> </u> | <u> </u> | | |
| | a. square feet | b. square feet | | |
| 18. <input type="checkbox"/> Salt Marshes | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | a. square feet | b. square feet | c. square | d. square feet |
| 19. <input type="checkbox"/> Land Under Salt Ponds | <u> </u> | <u> </u> | | |
| | a. square feet | b. square feet | | |
| | <u> </u> | <u> </u> | | |
| | c. c/y dredged | d. c/y dredged | | |
| 20. <input type="checkbox"/> Land Containing Shellfish | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | 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 | <u> </u> | <u> </u> | | |
| | a. c/y dredged | b. c/y dredged | | |
| 22. <input type="checkbox"/> Land Subject to Coastal Storm Flowage | <u> </u> | <u> </u> | | |
| | a. square feet | b. square feet | | |
| 23. <input type="checkbox"/> Riverfront area | <u> </u> | <u> </u> | | |
| | a. total sq. feet | b. total sq. feet | | |
| Sq feet within 100 feet | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | c. square feet | d. square feet | e. square | f. square feet |
| Sq feet between 100-200 feet | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | 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:

Construction of a residential community



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 297-0371 _____"



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 46.

See attached



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
 MassDEP Regional Office

 Section Chief Signature
 Jessica Kenny

 Section Chief Printed Name

_____ 7/8/16
 Date

This Order is issued to the applicant as follows:

by Hand delivery on

by certified mail on:

_____ Date

_____ 7-8-16
 Date – Certified Mail #



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
Massachusetts 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;
- 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. Appeal Rights and Time Limits (cont.)

- 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.

SUPERSEDING ORDER OF CONDITIONS
DEP File Number 297-0371

Special Conditions

20. All work shall conform with the following plans, reports and special conditions:

- 1) "The Commons at Weiss Farm, Stoneham, Massachusetts," final revision date: 04/30/2015, prepared by H.W. Moore Associates, Inc., stamped by James M. White, PE., No. 32146.
- 2) "Updated Water Quality Basin Grading" and "Drain Manholes C-3A & B-2A," final revision date: 07/09/2015, prepared by H.W. Moore Associates, Inc.
- 3) "Operation and Maintenance Plan, The Commons at Weiss Farm, Stoneham, MA," dated March 6, 2015.
- 4) "Stormwater Pump Station and Weir Dam Improvements, Stoneham, MA," Final revision date: June 8, 2015.
- 5) "Weir Control in Drainage Channel," dated April 29, 2016, prepared by H.W. Moore Associates, Inc.

21. This Superseding Order supersedes all previous Orders issued for this project, DEP File#297-0371. All work shall conform to the Notice of Intent and plans and documentation referenced above unless otherwise specified in this Superseding Order. In case of a conflict, the Conditions of this Superseding Order shall prevail.

22. A copy of this Superseding Order shall be included in all construction contracts and shall supersede any conflicting requirements.

23. A copy of this Superseding Order as well as the plans and reports referenced in Condition #20 shall be available on site while activities regulated by this Order are being performed. In addition to the owners, all contractors and subcontractors shall be held responsible for compliance with this Superseding Order.

24. No work shall commence on-site until all appeal periods have elapsed and this Superseding Order of Conditions has been recorded with the Registry of Deeds and MassDEP has been formally notified via the form provided at the end of this Order.

25. This Superseding Order 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.

26. Any proposed or executed change in the plans approved under this Superseding Order shall require the applicant to file a new Notice of Intent with the conservation commission or to inquire of MassDEP in writing whether the change is substantial enough to require a new filing. A copy shall be sent at the same time to the

Stoneham Conservation Commission. 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 Stoneham Conservation Commission shall have the right to enter and inspect the premises to evaluate compliance with the conditions contained in this Superseding Order, and may require the submittal of any data deemed necessary by MassDEP for that evaluation.

28. The applicant shall employ an Environmental Monitor (EM) to oversee all work within the 100-foot buffer zone to Inland Bank and Bordering Vegetated Wetland on the project site, including but not limited to supervision of the maintenance and replacement of all erosion controls and storm water structures. The Environmental Monitor shall be responsible for ensuring compliance with this SOC during construction. The applicant shall provide the MassDEP and the Stoneham Conservation Commission with the name(s), address(es) and telephone number(s) of the Environmental Monitor and his or her alternate prior to the start of work.

29. The Environmental Monitor shall inspect erosion controls on a weekly basis and after any storm events and shall have the authority to modify existing controls or require additional controls if he or she deems it necessary. The Environmental Monitor shall immediately control any erosion problems that occur on the site and shall immediately notify MassDEP and the Stoneham Conservation Commission if any discharges to a wetland resource area occur. MassDEP reserves the right to require additional erosion control and/or damage prevention controls it may deem necessary.

30. The Environmental Monitor shall report in writing to MassDEP and the Stoneham Conservation Commission once every month while construction is underway within the 100-foot buffer zone to confirm that all activities are in compliance with the conditions of this SOC. The status report shall at a minimum include a description of any erosion control problems, progress on construction and grading, changes in construction schedule, actions taken to address problems and any other recommendations for site management.

31. The Environmental Monitor shall oversee all work associated with the reconstruction of the existing weir. All work shall conform to the construction criteria cited in the Stormwater Pump Station and Weir Dam Improvements document referenced in Condition #20 and the plan titled "Weir Control in Drainage Channel," dated April 29, 2016.

32. All landscape plant material shall be native to the New England region and not listed on the Massachusetts Prohibited Plant List and the USDA Invasive Plants Database at the time of document submission. Two weeks prior to the preconstruction meeting, final list of all plant species shall be submitted to MassDEP for its review and approval and copied to the Stoneham Conservation Commission.

33. Two weeks prior to the pre-construction meeting, a plan shall be submitted to MassDEP for its review and approval showing any existing soil or any material stockpiles on the project site. The plan shall include a description of how these materials will be removed and an erosion control plan to ensure that these materials do not slump or erode into the wetlands.

34. Prior to the commencement of any activity on the site, there shall be a pre-construction meeting between the project supervisor, the contractor responsible for the work, the Environmental Monitor, a representative of the Stoneham Conservation Commission and a representative of MassDEP to ensure that the requirements of

the SOC are understood. Arrangements for the meeting shall be made at least two (2) weeks prior to any activity.

35. Prior to the start of work, the applicant shall submit a construction sequence to MassDEP and the Stoneham Conservation Commission, for approval by MassDEP. The construction sequence shall include a plan showing the location of any soil, material stockpile areas and any temporary, construction period, stormwater BMPs. Work shall not commence until MassDEP has approved the construction sequence.

36. Prior to the start of work, erosion controls consisting of silt fence and staked haybales shall be installed between the limits of work and the wetland. These barriers shall serve as the limit of disturbance and shall be installed as close to the work area as possible. Erosion controls shall remain in place until MassDEP approves their removal.

37. Upon installation of all infiltration basins, and prior to cover being placed over the basins, a report shall be submitted to MassDEP verifying depths and measurements of each basin as well as all invert elevations.

38. Upon completion of the project and full stabilization of all disturbed surfaces, all sedimentation barriers shall be removed from the site. Soil surfaces which are disturbed by the erosion controls shall be raked smooth by hand (if needed) and seeded with an appropriate seed mix.

39. No soil or other materials shall be stockpiled within 100 feet of wetlands.

40. Upon completion of construction, all exposed soils shall be seeded with appropriate vegetation or otherwise stabilized by a method acceptable to the MassDEP and Stoneham Conservation Commission.

41. At no time during or after construction shall fill or other materials be placed, slump into or fall beyond the limit of grading as shown on the plan. The Environmental Monitor shall be responsible for inspecting and maintaining all slopes and shall immediately notify the MassDEP and the Stoneham Conservation Commission if slumping, erosion or encroachment occurs.

42. Excess soil, rock and debris excavated or generated during the course of this project shall be removed from the site and disposed of in a legal manner. Records as to 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 the MassDEP and the Stoneham Conservation Commission upon request.

43. 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-foot buffer zone.

44. During work on this project, 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.

45. All stormwater structures shall be managed and maintained in accordance with the project's Operation and Maintenance Plan (referenced in Condition #20) and the conditions contained in this Superseding Order. This Condition shall remain in effect in perpetuity and shall be recorded on the Certificate of Compliance.

46. Upon completion of the project, the applicant shall request a Certificate of Compliance from the MassDEP and shall submit the following information with the request:

- a) A written statement by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts certifying compliance with the approved plans referenced above and this Superseding Order of Conditions and setting forth deviations, if any exist;
- b) A written statement by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts certifying that the stormwater BMPs function as designed.
- c) An as-built site plan prepared by a registered land surveyor or registered professional engineer showing location and grades of the project, including but not limited to: structures, driveways, landscaping, detention basin, infiltration units, site grading, and sidewalks within the 100-foot Buffer Zone.
- d) An as-built plan prepared by a registered land surveyor registered professional engineering showing the location, grades and elevations of the reconstructed weir.