

FILED 11/12/22  
RECEIVED & FILED  
CLERK OF THE COURTS  
NORFOLK COUNTY

1.0

THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT

2202CV00038

JOANNE DELAPA, of DELAPA REALTY  
TRUST

PLAINTIFF

v.

TOWN OF WESTWOOD CONSERVATION  
COMMISSION

DEFENDANT.

**PETITION FOR CERTIORARI PURSUANT TO M.G.L. C. 249, § 4; AND FOR  
DECLARATORY JUDGMENT, PURSUANT TO M.G.L. C. 231A, § 1**

**INTRODUCTORY STATEMENT**

1. The Plaintiff, Joanne Delapa, of Delapa Realty Trust ("Delapa"), brings this action pursuant to M.G.L. c. 249, § 4 in the nature of certiorari, equitable relief, and under M.G.L. c. 231A § 1 for a declaration of rights, against the Defendant Town of Westwood Conservation Commission ("Commission"), seeking judicial review of the Commission's administrative review of a Notice of Intent ("NOI") filed by Delapa under the Town of Westwood Wetlands Protection Bylaw ("Bylaw") and associated Regulations, and under the Wetlands Protection Act (M.G.L. c. 131, § 40, "WPA"), and its Regulations (310 CMR 10.00), seeking issuance of an Order of Conditions ("OOC") approving the proposed project under both the local ordinance and the WPA at the property known as 42 Mill Street, Westwood, MA ("Site").

2. Prior to the close of the hearing and of any vote, the Plaintiff formally withdrew the NOI under the local Bylaw on October 18, 2021.
3. This Complaint seeks relief from the Commission's OOC on Delapa's NOI application, in which the Commission issued a ruling on November 18, 2021 that denied the project under the WPA and purported to deny it under the local Bylaw, even though the application had been withdrawn under the Bylaw.
4. The issuance of a local Order following the timely withdrawal of the application under the Bylaw was an error of law.
5. In addition to the legal error, the Commission based its decision on erroneous findings of fact and law. The erroneous findings of the Commission included that the Applicant had not appealed an earlier issued Superseding Order of Resource Area Determination ("SORAD") that found part of the property to have a perennial stream (see Finding #3).
6. In fact, as the Commission's own records reflect, the Applicant appealed the SORAD and obtained a Final Order of Resource Area Delineation ("FORAD") from the DEP that made a binding ruling regarding the lack of a stream – the area in question is adjacent to a pond, and such areas are regulated differently from areas adjacent to a perennial stream.
7. The FORAD was issued by DEP's Commissioner on December 18, 2016, and extended by the Department of Environmental Protection ("DEP") on December 24, 2019.
8. After the issuance of the FORAD, the Commission issued a local ORAD accepting and incorporating the findings of the FORAD in January 2017.
9. During the NOI review process, the Commission hired a peer reviewer, who decided, without being directed by the Commission, to review the wetland resources on the Site despite the still valid and binding FORAD.

10. The peer reviewer ultimately made his own determination regarding the boundaries and extent of the resource areas on the Site, reached conclusions different from the resources and boundaries established by the DEP in the FORAD that are binding on all parties, and the Commission erroneously relied on the peer reviewer's findings in its Order despite the existing FORAD.
11. The Commission refused to accept a withdrawal of the local NOI application, which consistent with the procedures outlined in the WPA and binding on the Commission under the local Bylaw, Delapa's representative filed with the Commission in writing prior to the Commission's vote on the application and informed the Commission that the applicant wished to proceed only under the WPA and its regulations.
12. While Commissions may adopt standards that are more stringent than those of the WPA, they are bound to use procedures that are not inconsistent with or contrary to state law.
13. In its OOC, the Commission quoted the findings from the invalidated Superseding Order of Resource Area Delineation ("SORAD") including the findings regarding Riverfront Area, despite the SORAD having been overturned by the DEP in the FORAD and the Commission itself having amended its ORAD to incorporate the FORAD findings.
14. The OOC denial also includes in support of the denial a finding that the property is not served by an approved subdivision way, but instead will need access by way of a common driveway.
15. This finding is not relevant to the Commission's jurisdiction over wetland resource areas; and is also factually and legally incorrect.
16. The wetlands resource areas at issue in this proceeding, as those resources are defined in the Bylaw, as acknowledged by the Commission in its amended ORAD, are identical

under the Bylaw to the boundaries defined by the Act and its implementing regulations as determined by the FORAD.

17. In Count I, the Plaintiff seeks Declaratory Judgment that the Commission erred in claiming the authority to refuse to accept Delapa's withdrawal of an application under the local Bylaw prior to a vote and action on the application. Thus, Plaintiff seeks a judgment that the OOC issued by the Commission under the Bylaw is void *ab initio*, having been issued when Delapa had already withdrawn the application under the Bylaw and nothing was before the Commission under the Bylaw on which to vote.
18. In Count II, Plaintiff seeks Declaratory Judgment ruling that the Bylaw and its local rules establish wetlands resources that are no different from those created by the State under the WPA. The Commission issued a local ORAD accepting the wetland resource boundaries as determined under the FORAD. Therefore, the Commission's issuance of its OOC, which ignores the still binding FORAD's wetland resource boundaries and relies on the Commission's peer reviewer's calculation of disturbance based on his delineation, is invalid and unenforceable because the Bylaw is no more stringent, as to the boundaries of protected resources at issue in this case, than the State law, and because the Commission has already accepted and been bound by the boundaries determined by the binding FORAD.
19. In Count III, if the Court does not first grant Declaratory Judgment on Counts 1 and 2, in the alternative the Plaintiff seeks certiorari review of the OOC under the local Bylaw, and a finding invalidating the Commission's decision as arbitrary and capricious, as inconsistent with and not supported by substantial evidence in the record, and the result of significant errors of law.

## **PARTIES**

20. The Plaintiff, Joanne Delapa of the Delapa Realty Trust, has a mailing address at P.O. Box 277, Norwood, MA 02062, and is the owner of the property at 42 Mill Street, Westwood, MA 02090 (the "Site").
21. The Defendant, Town of Westwood Conservation Commission ("Commission"), is the duly constituted body charged with implementing the Town of Westwood Wetlands Protection Bylaw, Chapter 392 of the Westwood General Bylaws ("Bylaw"), originally adopted by the 1989 Annual Town Meeting; and the Conservation Commission Regulations adopted by the Commission on February 13, 2008.

## **JURISDICTION**

22. The Superior Court has jurisdiction under M.G.L. c. 249, § 4 as this is a case involving a civil action in the nature of certiorari to correct errors in proceedings before a municipal body, where such proceedings are not otherwise reviewable by motion or appeal. The Court may enter judgment quashing or affirming such proceedings or such judgment as justice requires. The Court also has jurisdiction under M.G.L. c. 231A § 1 to issue Declaratory Judgment and grant equitable relief.
23. The Plaintiff seeks to correct errors in the proceeding before the Westwood Conservation Commission, which errors are contrary to the Bylaw and contrary to the provisions set forth in the Massachusetts Wetland Protection Act and its implementing regulations that are referenced in and incorporated into the local bylaw and its regulations.
24. There is no other appeal or review available to Plaintiff to challenge the Commission's decision under the Bylaw, and that decision has resulted in substantial injury and manifest injustice to the Plaintiff.

## **FACTUAL ALLEGATIONS**

25. Delapa filed a NOI application seeking approval to construct a single-family residence and the appurtenant amenities on the property at 42 Mill Street in Westwood ("Site"), which consists of an existing undeveloped lot of land, created by plan recorded in 1969 with 4 acres, fronting on Mill Street and having deeded rights to use of an existing driveway as access into the site, with that driveway located within an approved subdivision right of way for which any further construction was waived by the Planning Board.
26. The application, plans, and supporting materials for the NOI are based on the resource areas identified and confirmed in the FORAD, issued in 2016 and extended by the DEP under the WPA, and which were adopted in an amended ORAD issued under the Bylaw by the Commission.
27. The FORAD is still valid and binding on the Site.
28. The Commission disregarded the FORAD and had its peer reviewer suggest alternative boundaries for the resource area on the Site.
29. Delapa's representative filed in writing the withdrawal of the NOI application as filed under the local Bylaw on October 18, 2021, directing the Commission to proceed only under the WPA.
30. Contrary to the procedures in the Act, the Commission ignored the written withdrawal of the application under the Bylaw and proceeded with the continued hearing on November 10, 2021, and at that hearing purported to close the hearing under the WPA and the Bylaw, for which the Applicant had already withdrawn the application, and voted to deny the project under the Act and the Bylaw.

31. The Commission thereafter issued the denial purporting to be under the Bylaw and the Act on November 18, 2021.
32. The Commission also relied on its peer reviewer's delineation and calculations based on that delineation in the OOC, ignoring the binding FORAD.
33. Delapa has timely appealed the Commission's denial issued under the WPA to the DEP, and the DEP accepted the appeal and conducted its appeal site inspection on January 6, 2022. Delapa contends that the project in fact complies with the regulatory standards under the WPA, including the performance standards for work impacting and adjacent to Bordering Vegetated Wetlands ("BVW"). DEP requested specific additional technical information that is easily provided, and Delapa anticipates that DEP will issue a Superseding Order of Conditions after its review and will rule that the proposed project complies with the WPA and its regulations.
34. This Complaint seeks relief from the Commission's OOC under the Bylaw, on the grounds that OOC is ultra vires, arbitrary and capricious, and an abuse of discretion.
35. The Plaintiff seeks relief from the Court as there is no alternative route for relief available under the Bylaw.
36. This Complaint is timely filed, within sixty (60) days after the issuance of the OOC.

**COUNT I (Declaratory Judgment under M.G.L. c. 231A § 1.)**

**Refusal to Accept a Withdrawal of an Application**

37. Plaintiff realleges and incorporates herein all allegations made in paragraphs 1 through 36 above.

38. Delapa's representative informed the Commission in writing on October 18, 2021, that Delapa withdrew the NOI application filed under the Bylaw, and wished to proceed with the NOI solely under the state law.
39. The Commission ignored that instruction, proceeded with the hearing under both the Act and the Bylaw on November 10, 2021, voted on and thereafter on November 18, 2021 issued an OOC under both the state law and the Bylaw.
40. A Commission has no discretionary authority to refuse to accept a withdrawal of an application when withdrawn prior to the Commission closing its hearing and voting.

WHEREFORE, the Plaintiff hereby respectfully requests this Court, pursuant to M.G.L. c. 231A, § 1, to:

1. Declare that the Commission acted outside its legal authority in refusing to accept the withdrawal of the application; and
2. Declare that the Commission, after the withdrawal, lacked jurisdiction over the application or authority to issue an OOC under the Bylaw; and
3. To rule and declare that the OOC issued under the Bylaw is void and without effect; and
4. Such other relief that the Court deems appropriate.

**COUNT II (Declaratory Judgment, M.G.L. c. 231A, § 1)**

**Vegetated Wetlands, Stream, and Riverfront Boundaries and Their Performance**

**Standards Are the Same Under the Bylaw as Under State Law, and Therefore Not**

**Separately Enforceable**

41. Plaintiff realleges and incorporates herein all allegations made in paragraphs 1 through 40 above.



42. The Bylaw has definitions of Freshwater Wetlands, Streams, Rivers, and Riverfront Area that result in exactly the same boundaries as resources defined under state law.
43. The Bylaw also defines the term "Alter" in terms that are effectively identical to the definition provided by the WPA and DEP's Regulations, other than in Subsection 11 of the Bylaw's "Alter" definition pertaining to activities undertaken "within 35 feet of the boundary of a wetland...". The Bylaw, however, explicitly exempts or excepts the subject project from the so called 35' rule, at Section 392-3 "Exceptions, paragraph C.(1) which provides that the "Subsection (11) of the definition of "alter" . . .shall not apply" to lots such as the Site which were in existence as of March 1, 1998.
44. The Bylaw has no performance standards for work in Buffer Zone or in Resource Areas, and explicitly adopts and incorporates by reference the defined terms of the WPA and DEP's Regulations in Section 392-8(B).
45. The Commission has not adopted substantive regulations under the Bylaw.
46. The Bylaw explicitly provides at Section 392-7 that until "such time as such regulations are promulgated, the regulations promulgated under the Wetlands Protection Act, MGL c. 131, § 40, shall be deemed to effectuate the purposes of this bylaw."
47. Therefore, the performance standards under the Bylaw are identical to those under the WPA.
48. Where a local Bylaw has standards no more stringent than state law, the local Bylaw is not separately enforceable.

WHEREFORE, the Plaintiff hereby respectfully requests this Court, pursuant to M.G.L. c. 231A, § 1, to:

1. Declare that the Commission acted outside its legal authority in issuance of a separate Order under its Bylaw when its boundaries and performance standards as applicable in this proceeding are not more stringent than state law; and
2. To rule and declare that the OOC issued under the Bylaw is void and without effect; and
3. For such other and further relief as the Court shall deem, meet and just.

### **COUNT III (Certiorari, M.G.L. c. 249, § 4)**

#### **The Commission's Decision is Ultra Vires, Exceeding Its Authority, Not Supported By Substantial Evidence in the Record, and is Arbitrary, Capricious, and an Abuse of Discretion**

49. Plaintiff realleges and incorporates herein all allegations made in paragraphs 1 through 48 above.
50. The Commission's peer reviewer ignored an existing, still valid and binding FORAD and made conclusory statements regarding his opinion on the resource areas on Site.
51. The Commission relied solely on its peer reviewer's calculations in issuing the OOC.
52. The FORAD and the NOI application contain substantial evidence demonstrating the boundaries of the resource areas on the Site and the project's compliance with the regulatory performance standards.
53. The Commission ignored the binding FORAD and the evidence presented by Delapa's experts, without explanation or rational basis, and arbitrarily, capriciously, and as an error of law issued its OOC denying the project and referencing inaccurate resource area boundaries and impact calculations.
54. The Commission gave no basis for disregarding the substantial evidence in the record, and substituted its own views and arbitrary standards to support its OOC denial.

55. The Commission's OOC is inconsistent with its obligation to make a fact-based ruling guided by the substantive standards of the WPA, its Regulations, and the Bylaw.

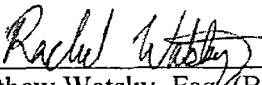
56. The Commission's OOC denial was an error of law under the state statute and state regulatory standards that it incorporated by reference into the Bylaw's review standards.

WHEREFORE, the Plaintiff hereby respectfully requests this Court, pursuant to M.G.L. c. 249, § 4, to:

1. Review the record of the proceedings and rule that the Commission's OOC was unsupported by substantial evidence in the record and an error of law, and therefore reversed; and
2. Rule that the Commission's OOC was ultra vires, arbitrary and capricious, and therefore unenforceable; and
3. Enter judgment reversing the Commission's OOC denial;
4. Enter judgment issuing an OOC approving the project under the local Bylaw; and
5. For such other and further relief as the Court shall deem, meet and just.

Respectfully submitted,  
Plaintiff Joanne Delapa, of Delapa Realty Trust,  
By her attorneys,

Dated: January 12, 2022

  
\_\_\_\_\_  
Matthew Watsky, Esq. (BBO #546308)  
Rachel Watsky, Esq. (BBO #704043)  
30 Eastbrook Road, Suite 301  
Dedham, MA 02026  
(781) 329-5009  
matt@watskylaw.com  
rachel@watskylaw.com



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 5 – Order of Conditions**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP.  
438-0706  
MassDEP File #  
eDEP Transaction #  
Westwood  
City/Town

## A. General Information

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

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



1. From: Westwood  
Conservation Commission

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

3. To: Applicant:

Joanne Delapa  
a. First Name b. Last Name  
Delapa Realty Trust  
c. Organization  
P.O. Box 277  
d. Mailing Address  
Norwood MA 02062  
e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

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

5. Project Location:

42 Mill Street Westwood  
a. Street Address b. City/Town  
28 013  
c. Assessors Map/Plat Number d. Parcel/Lot Number  
Latitude and Longitude, if known: 42d2090m18s -71d2396m71s  
d. Latitude e. Longitude



**Massachusetts Department of Environmental Protection**  
**Bureau of Resource Protection - Wetlands**  
**WPA Form 5 – Order of Conditions**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:  
 438-0706  
 MassDEP File #  
 eDEP Transaction #  
 Westwood  
 City/Town

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

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):  
 Norfolk  
 a. County  
 14299  
 c. Book  
 b. Certificate Number (if registered land)  
 480  
 d. Page  
 7. Dates: 6/25/20 11/10/21 11/18/21  
 a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance  
 8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):  
 PROPOSED SITE PLAN OF LAND LOT 2B - MILL STREET WESTWOOD,  
 MASSACHUSETTS sheets 1 - 3  
 GLM Engineering Consultants, Inc.  
 b. Prepared By Paul Truax  
 NOV 2, 2018 rev. 7/3/21  
 c. Signed and Stamped by  
 d. Final Revision Date 1" = 30'  
 e. Scale  
 sketch plan from peer review consultant and plan showing sq. ft. of N/A  
 disturbance in riverfront area g. Date

**B. Findings**

1. Findings pursuant to the Massachusetts Wetlands Protection Act:  
 Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:
- |   |  |   |
|---|--|---|
| a. <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 Commission hereby finds the project, as proposed, is: (check one of the following boxes)

**Approved subject to:**

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



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

438-0706

MassDEP File #

eDEP Transaction #

Westwood

City/Town

**B. Findings (cont.)**

Denied because:

- b. ☒ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
3. ☒ Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) 0  
a. linear feet

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

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input checked="" type="checkbox"/> Bordering Vegetated Wetland	<u>550</u>	<u>0</u>	<u>700</u>	<u>0</u>
	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 checked="" type="checkbox"/> Riverfront Area	<u>24,775 sf.</u>	<u>0</u>		
	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	<u>14,475 sf.</u>	<u>0</u>	<u>0</u>	<u>0</u>
	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	<u>10,300 sf.</u>	<u>0</u>	<u>0</u>	<u>0</u>
	g. square feet	h. square feet	i. square feet	j. square feet



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 5 – Order of Conditions**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:  
438-0706

MassDEP File #

eDEP Transaction #

Westwood

City/Town

## B. Findings (cont.)

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

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. nourishment cu yd	d. nourishment cu yd
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. nourishment cu yd	d. nourishment cu yd
15. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	a. c/y dredged	b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		
22. <input type="checkbox"/> Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 5 – Order of Conditions**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:  
438-0706

MassDEP File #

eDEP Transaction #

Westwood

City/Town

## B. Findings (cont.)

\* #23. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23. ☐ Restoration/Enhancement \*:

a. square feet of BVW

b. square feet of salt marsh

24. ☐ Stream Crossing(s):

a. number of new stream crossings

b. number of replacement stream crossings

## C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - a. The work is a maintenance dredging project as provided for in the Act; or
  - b. The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
  - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on 11/18/24 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.





**Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands**

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

438-0706

MassDEP File #

eDEP Transaction #

Westwood

City/Town

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

8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,
 

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]

"File Number                      338-0706                      "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.



**Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands**

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

438-0706

MassDEP File #

eDEP Transaction #

Westwood

City/Town

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

17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
19. The work associated with this Order (the "Project")
  - (1) ☐ is subject to the Massachusetts Stormwater Standards
  - (2) ☒ is NOT subject to the Massachusetts Stormwater Standards

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

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



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

## WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

438-0706

MassDEP File #

eDEP Transaction #

Westwood

City/Town

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

- iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
- v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.
- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:
  - i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and
  - ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

438-0706

MassDEP File #

eDEP Transaction #

Westwood

City/Town

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

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

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

**See attached bylaw conditions.**

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



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

## WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

438-0706

MassDEP File #

eDEP Transaction #

Westwood

City/Town

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

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

- a. ☒ that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

Westwood Wetland Bylaw

Chapter 392

1. Municipal Ordinance or Bylaw

2. Citation

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

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

1. Municipal Ordinance or Bylaw

2. Citation

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

see attached bylaw conditions

Denied Plans:

PROPOSED SITE PLAN OF LAND LOT 2B -- MILL STREET WESTWOOD,  
MASSACHUSETTS sheets 1 - 3

Date: November 2, 2018 rev. July 3, 2021

Hearing closed: November 10, 2021

Date Issued: November 18, 2021

**FINDINGS:**

The Commission has reviewed the Notice of Intent plans and has held three public hearing on the project with 16 continuances (not continued to consecutive meetings). On March 10, 2021 the applicant was required to re-notify the abutters due to the number of requested continuations. Based on the information available, the Commission has determined that the area on which the proposed work is to be done is significant to the following values set forth in Massachusetts Wetland Protection Act and Westwood Wetlands Protection Bylaw, chapter 392:

<input checked="" type="checkbox"/> Public water supply	<input checked="" type="checkbox"/> Flood control	<input type="checkbox"/> Fisheries
<input checked="" type="checkbox"/> Private water supply	<input checked="" type="checkbox"/> Storm damage prevention	<input checked="" type="checkbox"/> Wildlife habitat
<input checked="" type="checkbox"/> Groundwater supply and quality	<input checked="" type="checkbox"/> Prevention of pollution	<input checked="" type="checkbox"/> Erosion and sediment control

Furthermore, this Commission finds that the project is denied and that:

1. The Applicant (Ms. Joanne Delapa) has proposed to construct a single family dwelling and appurtenant structures on the Applicant's +/- 4-acre lot at 42 Mill Street, Westwood, MA. The Applicant has characterized the lot as a "forested lot that is undeveloped" and has described the dwelling to be constructed thereon as a single family home.

2. The +/- 4-acre lot on which the Applicant proposes construction contains Bordering Vegetated Wetland, Bank of Pond, Riverfront Area and Bordering Land Subject to Flooding. The lot is currently completely undeveloped. The area in which the Applicant proposes to construct the principal dwelling is in the front portion of the lot. Most of the house, driveway and clearing are proposed to be constructed within the inner riparian zone. A shared common driveway located on the adjacent property will serve as the primary access to the proposed residence with an individual driveway constructed off of that right of way to service the proposed residence, which is required to access the property. Filling of 550 sq. ft. of wetland is required to construct the individual driveway. The applicant is proposing 700 sq. ft. of replication, which is proposed immediately adjacent to the crossing causing most of the driveway construction within the 10 foot no disturb zone. Directional drilling is proposed along the south side of the driveway to supply the residence with water and sewer. An existing deed agreement prevents the applicant from installing these utilities within the easement. This work is proposed within the wetland and the 10 foot no disturb zone. In total the project would irrevocably alter, by means of occupation of portions of the house, driveway and clearing approximately 26,638 square feet of resource area of which 1,836 is within the 10-foot no-disturb zone.

3. On November 10, 2014 the applicant submitted an Abbreviated Notice of Resource Area Delineation, DEP file #338-0594. The application was reviewed by Brian Donahoe of Goldman Environmental. (See SUMMARY REPORT OF WETLAND EVALUATION & REQUEST

FOR DETERMINATION OF APPLICABILITY 42 MILL STREET, WESTWOOD MASSACHUSETTS dated January 27, 2016. (Attachment A)) In this report Mr. Donahoe sites several inaccuracies with the delineation of the property. On October 28, 2015 the Westwood Conservation Commission denied the Order of Resource Area Delineation on the basis of "inaccurate delineation and incorrect stream determination. The applicant appealed this decision to the Department of Environmental Protection (DEP). On August 25, 2016, DEP issued a Superseding Order of Resource Area Delineation. Within this Order, DEP states the following regarding the impoundment on the property (See Attachment B):

"It is also MassDEP's contention that the impoundment at 42 Mill Street is a run-of-the river impoundment and has primarily riverine characteristics based on its extremely shallow depth (estimated average depth of about 2 feet), small impoundment size compared with its watershed (341 times smaller than the watershed), the short distance between the brook inlet and the dam outlet (approximately 400 feet) which effectively short-circuits the impoundment; and the 1941 USGS quad shows a channel through a wetland area with no impoundment on the site. Therefore, it is MassDEP's opinion that the impoundment is subject to the riverfront regulations at 310 CMR 10.58."

The plan submitted by the applicant (PROPOSED SITE PLAN OF LAND LOT 2B- MILL STREET WESTWOOD, MASSACHUSETTS dated November 2, 2018, revised March 10 2021 does not reflect this determination from DEP (which was not contested or challenged by the applicant). Applying DEP's determination to this plan, much of the development is within the 100-foot inner riparian zone and all of the proposed development is within the 200-foot Riverfront Area. (See Attachment C and D)

4. See attached letter from Kerry Snyder of Neponset River Water shed Association, in which she states that Mill Brook is identified by the Division of Fisheries and Wildlife and therefore, is a critical area for preservation. Ms. Snyder states she has several concerns with the project including the possible significant impact to Mill Brook, the sewer line impacts and environmental and public safety hazards regarding floodplain. (See Attachment E)

5. The Westwood Planning Board agent has given the following comment to the work required on the shared driveway:  
The Westwood Town Planner indicated that a Definitive Subdivision was granted in 1969 by the Planning Board but the road and subdivision was never constructed. To develop this lot a new Definitive Subdivision Approval and Shared Driveway Special Permit from the Planning Board is required. However, the Planning Board's Subdivision Regulations were updated in 2016 to include Section 4.4.7 that says no new ways can be created closer than 40 ft. to any lot line of any lot situated outside the subdivision. This lot cannot meet this requirement due to its shape which narrows where it meets Mill Street. (See Attachment F)

7. This property is currently classified as "unbuildable" and assessed at a value of \$16,000.00 by the Westwood Assessor's Office due to the wetlands on the site, and has been since its purchase for \$1.00 in April of 2020. (See Attachment G and H)

6. This project was formally heard at the July 8, 2020, October 28, 2020, March 24, 2021, May 5, 2021 and November 10, 2021 Westwood Conservation Commission meetings. The applicant's representatives, Tim McQuire of Goddard Consulting, LLC was present.

Presentations were made by Mr. McQuire. During the course of the hearing, the primary focus of discussion was the amount of impact to the resource area. The Commission believes the extensive work within the resource area will have a direct impact on the surrounding resource areas. Also discussed were the replication area, the directional drilling, the driveway and the infiltration system. The proposed location of the replication area is a mature wooded area. The Commission believes the infiltration systems may not be effective given the high ground water throughout the site. The Applicant requested that the Commission consider hiring a second peer review consultant to review the project, but the Commission felt this would not change these conclusions, and would therefore be a waste of money for the applicant, and the time of the Commission.

#### **CONCLUSIONS:**

Based upon the foregoing findings, the Commission reaches the following conclusions:

1. The Commission has determined that the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations, specifically 310 CMR 10.55 and 310 CMR 10.58. Therefore, work on this project may not go forward unless or until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. The Commission believes the proposed plan is too aggressive and will cause direct impact to the surrounding wetland, buffer zone and wildlife habitat. The Westwood Wetland Bylaw requires, at a minimum, a ten foot continuous naturally vegetated buffer strip within the Upland Buffer Zone Resource Area with the aim of minimizing adverse impact to the Resource Area.
2. The Commission concludes the proposed wetlands replication area, standing alone, is not a sufficient basis to permit the proposed alteration and occupation of 550 square feet of wetlands and 26,638 sq. ft. of Resource Area, including portions within 10 and also 35 feet, which receive special protection and consideration under the Town's wetlands by-law. The Commission concludes that replication can appropriately serve in mitigation of wetland impacts that are otherwise being authorized for good and sufficient reasons, however there is always a risk that replication will not be successful and there will be a loss of wetland area and function. In this case the Applicant's proposed replication plans appear to be acceptable mitigation for impacts within the wetland and buffer zone, were the Commission to conclude that such wetland alteration was absolutely necessary in the first place in order to permit a fully described and evaluated activity and to avoid hardship to an applicant that would otherwise be prevented from undertaking such activity. The owner and previous owners have received an very low assessment from the Westwood Assessor's Office due to wetland on this lot. Accordingly, the subject application is denied under both the authority of the Wetlands Protection Act and under the Westwood Wetlands By-law.

**NOTE: The Westwood Conservation Commission has denied this project, however the STANDARD CONDITIONS below have been included. In the event there is a Superseding Order issued by the Department of Environmental Protection we would like the following conditions to be considered.**



## **STANDARD CONDITIONS**

1. This Order of Conditions applies to the applicant, the owner of the lot described in the Notice of Intent, and the successors and assigns of each. The Conservation Commission shall be notified in writing of any transfer in title to the Land or any change in contractor or developers before the Certificate of Compliance is issued. The notice shall include the name, address, and telephone numbers of the new owner or new contractor or developer, as well as a statement made under the penalties of perjury that the new owner or new contractor or developer has been provided with a copy of this order.
2. This Order shall be included in all construction contracts with contractors and subcontractors dealing with the work proposed and shall supersede all conflicting contract requirements.
3. A copy of this Order of Conditions and applicable plans shall be provided to each company doing work on the site and shall be available on the site at all times during construction.
4. Members of the Westwood Conservation Commission, and/or their designated representatives, shall, at reasonable times, have the right to enter upon and inspect the premises to evaluate compliance with this Order of Conditions.
5. The Applicant or owner shall be liable for any non-compliance with the Conditions of this Order or with any Condition that may survive the issuance of a Certificate of Compliance. The Conservation Commission may assess appropriate penalties for non-compliance with the Order and surviving conditions. This may include a \$300.00 per violation/per day non-criminal penalty issued under the Westwood Wetlands Protection Bylaw, Article 18.
6. A foundation plan shall be submitted **prior** to the start of framing activities on any structure. The plan shall include the location of the resource areas and show the distance between the foundation and the resource areas on site.

## ***Pre-Construction Requirements***

7. All work shall conform to the plans referenced above, specifications, and special conditions defined in this Order of Conditions.
8. No work shall commence on site until the following conditions are met.
  - a) All appeal periods have elapsed.
  - b) The applicant records the approved plan and the Order of Conditions at the Registry of Deeds and provides a copy of the recorded plan and Order of Conditions, stamped by the Norfolk County Registry of Deeds to the Conservation Commission.
  - c) The D.E.P. sign is to be placed in a visible location on the site in accordance with State General Condition 10 and remain visible until the Commission issues a Certificate of Compliance. The sign shall be weather proof, no less than Two square feet or greater than Three square feet in size with language as described in Condition. The sign shall be mounted on a wooden or metal post acceptable to the commission.

- d) The Applicant informs the Conservation Commission, in writing, of the names, addresses, and business telephone numbers of each person responsible for supervising the project and for onsite compliance with this Order and his/her alternate.
- e) The Applicant installs erosion control measures at the locations shown on the plan referenced in the Order of Conditions or as directed by the Agent in the field. Only vegetation directly in the path of the erosion control works shall be removed at this time.
- f) Where silt fence and hay bales are used as erosion control measures, the placement of hay bales upon the silt fence flap as a method of backfill or entrenchment is not acceptable. Fifteen covered hay bales shall be kept in reserve on site at all times.
- g) A limit of work line shall be staked in the field by means of a four-foot high fluorescent orange snow fencing supported eight foot on center with standard weight metal agricultural fence posts. The limit of work shall be placed immediately to the rear of the hay bale check dam as indicated on the approved plan or as may be determined by the Commission or their agent in the field. Workers shall be informed that no construction activity beyond that conditioned herein is to occur beyond this line at any time.
- h) The Applicant shall notify the Conservation Commission **in writing** of the Applicant's desire to have the erosion control works and limit of work flagging inspected by the Commission or their Agent.
- i) The applicant shall receive **written approval** of the erosion control installation from the Commission or their Agent.
- j) The applicant shall arrange a pre-construction meeting between the applicant, the General Contractor's site superintendent, and the Conservation Commission. The purpose of this meeting is to review all aspects of the Order, in detail. The Project Supervisor in charge of day-to-day operations on site shall read and sign each page of a copy of the recorded Order. The purpose of this exercise is to insure that each and every Condition has been read and is understood. Questions relative to the meaning or intent of any Condition shall be clarified during the pre-construction meeting.
- k) The applicant shall post an assurance bond by submitting a check to the Conservation Commission made out to the Town of Westwood, in the amount of \$1,000.00. The purpose of the bond is to ensure that the Certificate of Compliance is issued prior to the expiration date of the Order of Conditions. The funds are returned to the applicant when the Certificate is issued. In the event that a Certificate of Compliance is not issued in the prescribed time, the Commission may use the funds to complete the unfinished work.

Only after the Applicant has satisfied the procedural requirements above shall the Applicant be allowed to begin construction.

### ***Erosion Control and Pollution Prevention Measures***

9. All erosion control measures shall be maintained in good condition at all times. Deteriorated erosion control measures shall be replaced as required, to maintain effectiveness for sediment interception. The Conservation Commission or their agent reserve the right to require additional erosion and/or damage prevention control at any time they are deemed appropriate. **At no time shall any sediment be deposited in the wetland.**
10. During all phases of construction, disturbed or exposed soil surfaces shall be brought to final finished grade and immediately stabilized. Bare ground that cannot be permanently stabilized within 30 days shall be loamed and seeded or stabilized with mulch.
11. Standard Condition 6 of the State General Order of Conditions relating to the use of clean fill is modified to prohibit the presence of asphalt in any fill used on site.
12. No erosion control measures shall be removed until such removal is allowed by the Commission, or their agent, in writing, or if a Certificate of Compliance issues for the work conditioned herein, whichever comes first.
13. Dewatering of excavation shall be accomplished in the manner described by the attached sedimentation basin design to preclude the discharge of turbid water or sediment into any wetland or undisturbed buffer. The Commission and /or their Agent **must** inspect the sedimentation basin prior to use on site to insure compliance with this condition.
14. There shall be no stockpiling of soil, erodible materials and other debris within 50 feet of any Resource Area without the permission of the Conservation Commission.
15. No materials excavated from any area on the site shall be dumped into any Resource Area or Buffer Zone thereto.
16. During construction of the project, there shall be no discharge of fuel, oil, or other pollutants onto any part of the site. The Applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident, or vandalism. In the event there is a spill on the site, the Applicant shall immediately notify the Conservation Commission and the Board of Health.
17. Equipment fuel storage and refueling operations shall be situated in an upland area at a horizontal distance greater than 100 feet from the boundaries of the wetlands.

### ***Changes in Plans***

18. Changes to the approved plans require formal action by the Conservation Commission allowing the change. The Applicant must submit a written request for the Commission to amend the Order of Conditions and a revised plan outlining the changes. If the Commission determines by a majority vote that the changes are significant, the Commission may require a new public hearing, at the expense of the Applicant, to amend the Order of Conditions, or if necessary, issue a new Order.

### **Denial**

19. No work involving the change(s) shall be done until a new or amended Order of Conditions has been issued and all appeal periods have expired. It is the responsibility of the Applicant to make sure that all changes accepted by, or required by, the Conservation Commission are reflected in the plans held by other Town departments.
20. Errors found in the plans or information submitted to other Boards or Departments in the Town of Westwood by the Applicant that differs from the plan of record for this Order shall be considered changes and the above procedures shall be followed.
21. Modifications to the plan of record for this Order required by any Town of Westwood Board or Department shall be considered changes and procedures outlined for changes shall be followed.
22. Plans submitted to any Town of Westwood Board or Town Department for work on this site that differ from the plan of record for this Order shall be considered changes and the procedures outlined for changes shall be followed.

### ***Requirements for a Certificate of Compliance***

23. Upon completion of work covered by this Order, the Applicant shall request in writing that a Certificate of Compliance be issued. The written request shall be accompanied by a statement from a Professional Engineer registered in the State of Massachusetts that all work allowed or required by this Order has been satisfactorily completed. Such request shall also be accompanied by an as-built plan prepared, stamped and signed, by a registered P.E. and Land Surveyor
24. A Certificate of Compliance will not be issued for *new* housing construction until the prospective lot buyer signs and delivers a statement to the Conservation Commission indicating that they are aware that:
  - a. They have received a copy of the approved plans.
  - b. The Commission has determined that the lot contains wetlands.
  - c. Modifications or changes to the approved plan may require a new Notice of Intent.
  - d. An Article 18 Order of Conditions exists upon the property and that certain Conditions, forever binding upon the lot, will survive the issuance of the Certificate of Compliance.
  - e. That the buyer/owner of the property is responsible for compliance with all conditions that survive the issuance of a Certificate of Compliance.
  - f. The buyer/owner is liable for non-compliance with any continuing conditions and may be assessed appropriate penalties by the Conservation Commission, as applicable.
  - g. There is a no disturbance setback surrounding the wetlands on site for future planning.
  - h. Dumping grass clippings, brush, leaves or other yard waste into the resource areas or the no disturb buffer will alter the resource area and shall be considered a violation of the Wetlands Protection Act and the local bylaw.

### ***Continuing Conditions***

25. As a continuing order of these conditions, even after a Certificate of Compliance is issued, no activity is permitted within the no-disturb buffer to the existing wetland including, but not limited to, the removal or cutting of vegetation.
26. As a continuing order of these conditions, if within two (2) years from the issuance of a Certificate of Compliance, erosion is evident on any slopes mitigating measures satisfactory to the Westwood Conservation Commission shall be taken.
27. As a continuing order of these conditions, even after a Certificate of Compliance is issued, no by-products of landscaping may be placed within the no disturbance buffer zone, in the wetland area or flood plain.

### **Site Specific Conditions for 42 Mill Street:**

1. Compost sock or similar (straw wattles are NOT to be used unless approved by the Commission) and orange construction fence are to be installed and inspected prior to start of work.
2. All paved surfaces associated with this project must be kept clean at all times. All silt and debris should be swept up at the end of each work day throughout the duration of the project.
3. Organic fertilizer must be used on the lawn in perpetuity.
4. The first phase of invasive plant removal shall be performed prior to start of construction, then at least twice a year for three years. After the first phase of removal has been completed the area shall be either seeded with an approved seed mix, or revegetated with approved plants and covered with 3 inches of shredded bark mulch, to minimize the regrowth of the invasive plants. A monitoring report must be submitted to the Commission twice a year (before June 1 and November 1) describing the health of the new plantings and the status of the invasive removal plan.

42 Mill St. 4  
Denied 11/10/21



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 5 – Order of Conditions**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:  
338-0706  
MassDEP File #

eDEP Transaction #  
Westwood  
City/Town

### E. Signatures

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

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

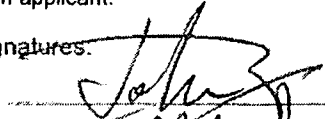
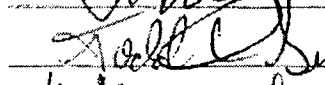
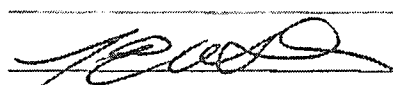

This Order must be signed by a majority of the Conservation Commission.

11/17/21  
1. Date of Issuance

4  
2. Number of Signers

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

Signatures:

 John Rogers  
 Todd Sullivan  
 Todd Weston  
 Veronica Manera

☐ by hand delivery on

☒ by certified mail, return receipt requested, on

Date

Date

### F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.



**Massachusetts Department of Environmental Protection**  
**Bureau of Resource Protection - Wetlands**  
**WPA Form 5 – Order of Conditions**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

338-0706

MassDEP File #

eDEP Transaction #

Westwood

City/Town

## G. Recording Information

Prior to commencement of work, this Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

Westwood

Conservation Commission

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

To:

Westwood

Conservation Commission

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

42 Mill Street

Project Location

338-0706

MassDEP File Number

Has been recorded at the Registry of Deeds of:

County

Book

Page

for:

Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant