

Middlesex South Registry of Deeds
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Recording Information

Document Number	: 77583
Document Type	: ORD
Recorded Date	: May 21, 2020
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Receipt Number	: 2464291
Recording Fee	: \$105.00

Middlesex South Registry of Deeds
Maria C. Curtatone, Register
208 Cambridge Street
Cambridge, MA 02141
617-679-6300
www.middlesexsouthregistry.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:
091-0318

MassDEP File #

eDEP Transaction #

Arlington

City/Town

A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):
Middlesex South
- | | |
|-----------|--|
| a. County | b. Certificate Number (if registered land) |
| 73606 | 227 |
| c. Book | d. Page |
7. Dates: 2/21/2020 4/16/2020 5/12/2020
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 in Arlington, Mass." showing Lot
- | | |
|--------------------------------------|-----------------------------------|
| a. Plan Title | James Richard Keenan P.L.S #30751 |
| Keenan Survey of Winchester, MA | |
| b. Prepared By | c. Signed and Stamped by |
| June 27, 2019 | 1:10 |
| d. Final Revision Date | e. Scale |
| See Findings and Special Conditions | various |
| f. Additional Plan or Document Title | g. Date |

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:

- | | | |
|---|---|---|
| a. <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 type="checkbox"/> Storm Damage Prevention | i. <input 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.



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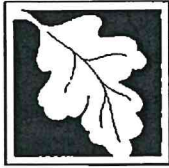
B. Findings (cont.)

Denied because:

- b. the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
- 3. Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) 74.4
 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 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 e. c/y dredged	b. square feet f. c/y dredged	c. square feet	d. square feet
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 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



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B. Findings (cont.)

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

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



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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 (BWV) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23. Restoration/Enhancement *:

 a. square feet of BWV _____ 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 05/12/2023 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.



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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 091-0318 "
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.



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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;



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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.



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

- g) The responsible party shall:
 1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.

- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

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

See Attached Findings and 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.



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D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? Yes No
2. The _____ 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:

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):

This project was approved under the Arlington Bylaw for Wetlands Protection and issued a permit on 10/18/2019.



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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.

5/12/2020
1. Date of Issuance

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

7
2. Number of Signers

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

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:

[Signature] _____
[Signature] _____

by hand delivery on

by certified mail, return receipt requested, on

Date

Date

5/12/2020

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.



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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.

Arlington
Conservation Commission

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

To:

Arlington
Conservation Commission

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

47 Spy Pond Lane (Lot1/LotA) 091-0318
Project Location MassDEP File Number

Has been recorded at the Registry of Deeds of:

Middlesex South 73606 227
County Book Page

for: Scott Seaver, Seaver Construction
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:

05/12/2020
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

ARLINGTON CONSERVATION COMMISSION
APPROVAL ORDER OF CONDITIONS – 47 SPY POND LANE – LOT 1(A)
MassDEP File # 091-0318
ONLY UNDER THE WETLANDS PROTECTION ACT
05/12/2020

DOCUMENTS REVIEWED

1. Notice of Intent for work at 47 Spy Pond Lane (Lot 1/Lot A), Arlington, MA, signed July 9, 2019 by Mary Trudeau; Applicant: Scott Seaver of Seaver Construction, Woburn, MA and Representative: Mary Trudeau of Lexington, MA, and including:
 - a. "Description of Work - Notice of Intent Filing", undated (5 pages).
 - b. June 28, 2016 Drainage Analysis for 47 Spy Pond Lane Lot 1/A conducted by Alan Engineering LLC.
 - c. October 29, 2013 letter from Division of Fisheries and Wildlife and Natural Heritage and Endangered Species Program map of site.
 - d. Construction Period Stormwater Operation and Maintenance Plan, 47 Spy Pond Lane (Lot 1/A), undated (4 pages).
 - e. Post-Construction Construction Stormwater Operation & Maintenance Plan, 47 Spy Pond Lane (Lot 1/A), undated (3 pages).
 - f. MassDEP Superseding Order of Conditions/Approval Cover Letter (3 pages).
 - g. MassDEP Superseding Order of Conditions/Approval Permit and Special Conditions (15 pages).
2. "Proposed Site Plan in Arlington, Mass." showing Lot 1 by Keenan Survey of Winchester, MA, scale 1:10, dated November 7, 2018, revised June 27, 2019, stamped by James Richard Keenan, P.L.S #30751.
3. "Planting Plan in Arlington, Mass." showing Lot 1 by Keenan Survey of Winchester, MA, scale 1:10, dated November 7, 2018, revised June 27, 2019, by James Richard Keenan, P.L.S #30751.
4. All relevant documents submitted during the prior hearings and working session(s) for which the Commission approved this project under the Arlington Bylaw for Wetlands Protection on 10/18/2019 are incorporated by reference.

PROCEEDINGS

The Conservation Commission held hearings on the Notices of Intent filed under the Massachusetts Wetlands Protection Act only on March 5 and April 2, 2020. The Commission closed the public hearing on April 2, 2020, and deliberated on April 16, 2020 and May 7, 2020.

On May 7, 2020, the Commission voted 5-1-0 to approve the Project with conditions under the Massachusetts Wetlands Protection Act (the "Act").

Hearings and deliberations for 47 Spy Pond Lane Lots A(1) and B(2) were performed together; however, two separate decisions were rendered, consistent with the two separate filings for Lot A(1) and Lot B(2).

ARLINGTON CONSERVATION COMMISSION
APPROVAL ORDER OF CONDITIONS – 47 SPY POND LANE – LOT 1(A)
MassDEP File # 091-0318
ONLY UNDER THE WETLANDS PROTECTION ACT
05/12/2020

The existing dock at the property of Lot A(1) is subject to a separate permit proceeding; however, the Commission did add a Special Condition #62 concerning placement of this dock.

**FINDINGS OF FACT AND LAW
UNDER MASSACHUSETTS WETLANDS PROTECT ACT**

- A. The Applicant filed a Notice of Intent under the Massachusetts Wetlands Protection Act only because the Superseding Order of Conditions issued in late 2016 had expired; as such, these findings do not consider the Arlington Bylaw for Wetlands Protection and regulations thereunder.
- B. The Commission approved this project under the Arlington Bylaw for Wetlands Protection (the "Bylaw") on 10/18/2019.
- C. The Commissions finds that the property at 47 Spy Pond Lane is currently, and has been for 50 or more continuous years, considered and managed as a single parcel with an existing house (vacant due to a fire) and large paved driveway to the north. The property is approximately 18,300 square feet along the shoreline of Spy Pond. The existing house and all but 789 (491 lot 1+ 298 lot 2) sq. ft. of the existing expansive driveway are beyond 100 feet from Spy Pond so the existing house and most of the existing driveway are outside of the Commission's jurisdiction.
- D. The Applicant represents that the existing historical lot can be divided into two new conforming lots under zoning. The Applicant thus filed a Notice of Intent (NOI) for each proposed Lot. Lot 1, also called Lot A, consists of the majority of the existing paved driveway, lawn area, trees and shrubs. Lot 1/A is approximately 8,452 square feet. A separate decision for approval was made for Lot 2(B) under the Bylaw on 12/21/2018.
- E. This Order of Conditions is only for work proposed and allowed on Lot 1/A. Work proposed on Lot 2/B is covered under a different Order of Conditions.
- F. 47 Spy Pond Lane slopes downward and toward Spy Pond which borders the property on the north. Resource Areas under the Bylaw on or within 100 feet of the property of Lot 1(A) are: Land Under Water Body, Bordering Land Subject to Flooding, Bank, and Wetlands Buffer.
- G. The Commission finds the delineation of the Resource Areas shown on the latest revised plans to be accurate.

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- H. The Town of Arlington holds a sewer easement through the 47 Spy Pond Lane property in which it has placed a sewer line serving the neighborhood. Its location is shown on several plans.
- I. The Commission finds that the Resource Areas on Lot 1(A) are significant to the Resource Area values protected by the Act, as specified in the Regulations for each Resource Area.
- J. Spy Pond is an approximately 100-acre pond that is teeming with wildlife and enjoyed by many Arlington residents. Spy Pond Park is one of the most used parks in Arlington. The Arlington Boys and Girls Club also borders the shoreline and uses the Pond for many activities. The Town over the years has funded efforts to reduce and manage invasive aquatic plant species in Spy Pond. Many groups in Arlington advocate for the preservation of Spy Pond and work to improve its water quality, including the Arlington Conservation Commission, Spy Pond Committee, Friends of Spy Pond Park, and the Arlington Land Trust.
- K. The Notice of Intent for Lot 1(A) proposes construction of a single-family house and related appurtenances including an underground stormwater infiltration device. The house footprint will be approximately 1,757 square feet with the closest point of the dwelling (excluding the deck) proposed to be approximately 74.4-feet from the edge of Spy Pond. Work proposed also includes grading and construction of a retaining wall next to the house, the addition of a native planting area within 25-feet from the Pond with an 8-foot wide lawn path through the Wetlands Buffer down to the Pond along the edge of the property. A freestanding field stone unmortared and dry laid wall would be constructed 25-feet from the Pond to surround the proposed 25-foot planting area. The Applicant proposes planting two 3-inch diameter-at-breast height (dbh) trees to mitigate the removal of one mature sycamore tree that would have to be removed for construction of the house. The proposal also includes installing an offsite stormwater treatment unit at the corner of Princeton Road and Alfred Road to treat stormwater from an approximately 1.55 acre watershed area for off-site mitigation, within the Spy Pond watershed.
- L. The Commission finds that the existing impervious surface on the proposed Lot 1(A) is 491 square feet within the Wetlands Buffer and that the project proposed to increase the impervious surface to 879 square feet, a net increase of 388 square feet within the 50 – 100 foot portion of the Wetlands Buffer.
- M. As for work in the Wetlands Buffer, the Commission finds that the Applicant has demonstrated that there are no available or practical alternatives available with less impact to wetlands resource areas. The Applicant has significantly reduced the footprint of the house from the Applicant's first Notice of Intent filed in 2016, its second Notice of Intent filed in 2017, and its third Notice of Intent filed in 2018. The proposed house is

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approximately 74.4 feet from the boundary of Spy Pond, compared to the current impervious concrete driveway which is 68 feet from the pond. Therefore, impervious surface will be pushed approximately 6 feet back from the pond through the project. Thus, as proposed, this project would reduce intrusion into the 100-foot Buffer Zone compared to prior submittals from 2016 through 2018. The proposed project also mitigates more stormwater runoff than needed for the size of the house, restores a 25-ft wide vegetated buffer adding habitat value which currently does not exist, and contributes to a larger watershed's stormwater management with the installation of an offsite stormwater unit that will help improve water quality in Spy Pond. These, among others, are further detailed in Findings N through S, below.

- N. The two infiltration chambers will have the capacity for an approximately 30% larger house originally proposed in 2017 even though the current proposed house will now be smaller. This added capacity further protects the interests of the Act by providing more than sufficient infiltration of roof runoff, meaning there will be less overland stormwater flow across the property into Spy Pond.
- O. During construction, erosion and sediment controls will serve to protect the Wetlands Buffer and Spy Pond resource areas.
- P. The proposed 25-foot wide area of native plantings close to Spy Pond will enhance wildlife habitat by providing more plant material for wildlife foraging, escape cover, over-wintering, and breeding. Currently, this area is lawn. The vegetated buffer will also help to protect the water quality of Spy Pond by slowing down stormwater runoff and bringing greater stability to the bank and areas immediately adjacent to Spy Pond. The Applicant agrees to construct an unmortered, dry-laid stone wall as a boundary to this vegetative buffer area.
- Q. The Applicant agrees to pursue a waterways license modification to relocate the dock currently on Lot 1(A), to run perpendicular to and straddle the property line between Lot 1(A) and Lot 2(B). Moving the dock to the proposed boundary between Lot 1 and Lot 2 as a shared dock will further protect the bank of Spy Pond by reducing the number of access points that may result in bank erosion and sediment entering Spy Pond.
- R. The Applicant agrees to purchase and install off-site mitigation stormwater Vortechics 2000 water quality treatment unit at the intersection of Princeton Road and Alfred Road. The Town will maintain it per conversations with the Town Engineer. The Town of Arlington shall take over the maintenance of the unit per the conservations documented with the Town Engineer, only when the Town Engineer is satisfied with the function of the unit. The off-site unit shall be installed and accepted by Arlington Department of Public Works within 12 months of the issuance of the Order of Conditions.

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- S. The Applicant agrees to install a pervious driveway and walkway although outside of the Conservation Commission's jurisdiction. The Applicant agrees to put in a deed restriction that these surfaces are to remain pervious.

CONCLUSION

The Commission finds that the proposed work on Lot 1(A) has the potential to individually and/or cumulatively harm the resource area values protected by the Act if not adequately regulated, but can proceed here given the mitigation provided and implementation of the conditions specified herein.

Based on the testimony at the public hearings, and review of the application materials and the documents listed above submitted during the public hearings, the Commission concludes that the proposed Project as conditioned will not have significant or cumulative effects upon the interests of the Resource Area values of the Massachusetts Wetlands Protect Act when the conditions imposed are implemented to protect the Resource Area values. With the conditions contained herein, the Project meets the performance standards in the Act.

For the foregoing reasons, the Commission approves under the Act with the conditions stated herein the applications for work on 47 Spy Pond Lane Lot 1(A).

ADDITIONAL SPECIAL CONDITIONS

In addition to the General Conditions (numbered 1 – 20 above), the Project is subject to the following Additional Special Conditions (under the Act):

Pre-Construction

21. Work permitted by this Order and Permit shall conform to the Notice of Intent, the approved plans and documents (listed above), and oral representations (as recorded in hearing minutes) submitted or made by the Applicant and the Applicant's agents or representatives, as well as any plans and other data, information or representations submitted per these Conditions and approved by the Commission.
22. The provisions of this Order and Permit shall apply to and be binding upon the Applicant and Applicant's assignees, tenants, property management company, employees, contractors, and agents.
23. No work shall be started under this Order until: (a) all other required permits or approvals have been obtained and (b) the appeal period of ten (10) business days from the date of issue of this Order has expired without any appeal being filed and (c) this

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Order has been recorded in the Registry of Deeds. No work shall be started under this Permit until all other necessary permits or approvals have been obtained.

24. The Applicant shall ensure that a copy of this Order of Conditions and Permit for work, with any referenced plans, is available on-site at all times, and that contractors, site managers, foremen, and sub-contractors understand its provisions.
25. Prior to starting work, the Applicant shall submit to the Commission the names and 24-hour phone numbers of project managers or the persons responsible for site work or mitigation.
26. Before work begins, erosion and sediment controls shall be installed at the limits of the work area and as depicted in the approved plans. These will include a silt fence and 12-inch straw or silt wattle around the entire work area (hay bales are not allowed and silt socks are preferred).
27. The contractor shall contact the Conservation Agent (concomm@town.arlington.ma.us ; 781-316-3012) to arrange for a pre-construction meeting with the on-site project manager to walk through the Order of Conditions, confirm the wash out location, and walk the site to confirm the installation and placement of erosion controls prior to the start of any grading or construction work.
28. At least 21 days prior to construction, the Applicant shall submit revised planting, foundation, retaining wall, pervious surfaces plans reflecting any additions, additional details, and changes from the June 11, 2019 plans referenced in this Order of Conditions to the Commission for approval.
29. At least 21 days prior to the start of any construction on Lot 1/A, the Applicant shall submit a signed agreement between the Town of Arlington and Seaver Construction for the acceptance and maintenance of the off-site stormwater treatment unit.
30. The contractor shall provide written Notice of the work start date to the Conservation Agent 48 hours prior to start of work.
31. The Commission, its employees, and its agents shall have the right of entry onto the site to inspect for compliance with the terms of this Order of Conditions and Permit until a Certificate of Compliance has been issued.
32. Within 30 days of completion of the installation of the concrete foundation, the Applicant shall submit an as-built plan, stamped by a Professional Engineer or

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Registered Land Surveyor, to the showing distances from property lines and Bank and Bordering Vegetated Wetland resource areas.

33. Before the Applicant named in this Order sells or conveys either Lot 1/A or Lot 2/B whichever occurs first, the Applicant shall submit for Conservation Commission approval a restrictive covenant that any pervious surfaces shown on the plan outside of the Commission's jurisdiction shall remain pervious. The restrictive covenant shall benefit and be enforceable by the Conservation Commission and the Town of Arlington. Before either property is sold (whichever occurs first), the restrictive covenant must be executed and recorded, and proof of recording provided to the Commission.
34. The Applicant shall include the Arlington Conservation Commission's Agent on all communication related to the necessary Chapter 91 Licensing in order to move the location of the existing dock to the boundary of Lots 1/A and 2/B. The Applicant shall not later than September 1, 2020 file a formal request to MassDEP's Waterways Division its request to relocate the dock. If MassDEP does not grant permission to relocate the dock, the Applicant shall remove it.

Environmental Monitors

35. The Applicant must hire a qualified environmental monitor to be on-site during project construction. The monitor shall submit an electronic report to the Conservation Agent twice a month regarding construction progress and relation to resource areas. The qualified environmental monitor shall also submit an electronic report after every rain event exceeding 0.5 inches of rain during the duration of construction to the Conservation Agent regarding the condition of the site during and after the rain event, as well as the status erosion controls and any additional measures to address stormwater management issues caused by said rain event.
36. The Applicant must hire a qualified planting monitor to oversee the installation of the vegetated buffer plantings installation. The qualified monitor shall be a certified landscape architect. A planting report must be submitted to the Conservation Commission within 10 days of the completion of the plant installation. The planting report shall include an as-installed plan and a list of what was planted (including Latin and common names, size of each plant, quantity of each species).
37. The Applicant must hire a qualified stormwater monitor or engineer to oversee the installation of the on-site stormwater infiltration unit, permeable pavers, and off-site stormwater mitigation unit. The qualified stormwater monitor shall be a certified engineer. A stormwater mitigation report must be submitted to the Conservation Commission within 10 days of the completion of the stormwater infiltration units and

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permeable pavers installation. The stormwater report shall include as-built plans, photographs from installation, and a written summary of the installation of the on-site stormwater infiltration unit, permeable pavers, and off-site stormwater mitigation unit. The stormwater monitor shall submit separate reports for the on-site stormwater infiltration unit, permeable pavers, and off-site stormwater mitigation unit.

Post-Construction

38. When requesting a Certificate of Compliance for this Order of Conditions, the Applicant must submit a written statement from either (1) Massachusetts professional engineer and registered land surveyor, or (2) registered land surveyor and landscape architect certifying that the completed work complies with the plans referenced in this Order, or provide an as-built plan and statement describing any differences.
39. Certification must be provided to the Commission that the Order of Conditions has been conveyed and received by any new owner of the property, so that new owners were apprised of the continuing conditions of this permit. **This shall be a continuing condition that survives the expiration of this permit.**

Dumpsters

40. All dumpsters must be covered at the end of each work day, and no dumpsters will be allowed overnight within the 100-foot Buffer Zone or other Resource Areas.

Stockpiling

41. No uncovered stockpiling of materials shall be permitted overnight within 100 feet of any waterway or water body.

Erosion

42. Areas that are disturbed by construction and access activities shall as soon as possible be brought to final grade and reseeded and restabilized, and shall be done so prior to the removal of the erosion control barrier.

Equipment

43. No heavy equipment may be stored overnight within 50 feet of the wetland and no refueling or maintenance of machinery shall be allowed within the 100-foot Buffer Zone or within any Resource Area.
44. Arrangements shall be made for any rinsing of tools, equipment, etc. associated with on-site mixing or use of concrete or other materials such that the waste water is disposed of in the concrete wash out station-at least 50 feet from the resource area. In no case may waste water be discharged into or onto Resource Areas on or adjacent to

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the site. In no case may waste water be placed in storm drains. Any spillage of materials shall be cleaned up promptly.

Sweeping

45. A power-broom must be kept onsite at all times to conduct the daily workday street sweeping along the construction entrance and street within the property boundaries.
46. Any dirt or debris spilled or tracked onto any paved streets shall be swept up and removed daily with a power-broom.

Dewatering

47. Any dewatering operations shall conform to the following:
 - (a) Notify the Conservation Commission that dewatering is required.
 - (b) Any catch basins, drains, and outfalls to be used in dewatering operations shall be cleaned out before operations begin.
 - (c) Any water discharged as part of any dewatering operation shall be passed through filters, on-site settling basins, settling tank trucks, or other devices to ensure that no observable sediments or pollutants are carried into any Resource Area, street, drain or adjacent property.
 - (d) Measures shall be taken to ensure that no erosion or scouring shall occur on public or private property, or on the banks or bottoms of water bodies, as a result of dewatering operations.
 - (e) No dewatering shall occur within 50 feet of the pond.

Plantings

48. All vegetated buffer plantings shall be native and be installed and maintained according to the standards of the American Association of Nurserymen (AAN) and be maintained in perpetuity. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition in perpetuity.**
49. At least 21 days prior to plant installation, the Applicant shall submit an invasive plant management plan to the Conservation Commission. The plan shall focus on invasive plant management for the vegetated buffer area. **The plan's recommendations shall be performed by the Applicant and the recommendations shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition in perpetuity.**
50. The Applicant shall monitor all approved plantings for a period of three years after plant installation. The Applicant shall maintain 100% survival of all installed plantings after the

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first and second year of monitoring, and maintain a 90% survival of all installed plantings after the third (final) year of monitoring.

51. The Applicant shall maintain 100% survival of the two approved replacement trees. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition in perpetuity.**
52. The unmortared and dry laid stone wall approved to delineate the vegetated buffer area shall remain as unmortared and dry laid. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition in perpetuity.**
53. A metal (or other permanent material) sign or marker shall be installed on or along the unmortared wall to demarcate the conservation area. Specifications and a plan for the sign shall be submitted to the Commission for approval 21 days prior to the construction of the wall. **The permanent sign or marker shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition in perpetuity.**

Chemicals

54. To avoid adding excess nitrogen runoff to Spy Pond, the Applicant shall only treat the lawn with slow release nitrogen fertilizer. Application of this fertilizer cannot occur in the summer, or after storm events. Lawn fertilizer shall only be applied twice a year, in spring and fall. No herbicides shall be used to treat invasive or unwanted plants. New plantings shall only be fertilized once, during the initial planting year. No pesticides or rodenticides shall be used to treat pest management issues within the Wetland Buffers Zone. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition in perpetuity.**

Pervious Surfaces

55. Pervious surfaces shown on the project plans shall be maintained and not be replaced by impervious surfaces. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition in perpetuity.**
56. The approved deck shall be constructed to facilitate stormwater infiltration below so that it acts a pervious surface. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition in perpetuity.**

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Stormwater Management

57. The on-site infiltration system shall be maintained according to the manufacturer best management practices and operations/maintenance plan. The system shall be checked twice a year to ensure compliance with the best management practices and operations/maintenance plan. An annual report shall be submitted to the Conservation Commission and Town Engineer demonstrating that the operation and maintenance of the unit was performed per the manufacturer best management practices. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition in perpetuity.**
58. The off-site Vortechincs unit shall be purchased and installed by the Applicant at the Applicant's expense. The Town of Arlington shall take over the maintenance of the unit per the conservations documented with the Town Engineer, only when the Town Engineer is satisfied with the function of the unit. The off-site unit shall be installed and operational within 12 months of the issuance of the Order of Conditions.
59. The Applicant must obtain a letter from the Town Engineer that the off-site stormwater unit was installed properly and accepted by the Arlington Department of Public Works, and send it to the Commission.

Retaining Wall

60. There shall be no retaining wall over the existing sewer easement. Instead, the property shall be gradually graded to meet the existing contours.
61. At least 21 days prior to construction, the Applicant shall submit a revised retaining wall plan to the Conservation Commission Agent for review and approval.

Dock

62. The dock on Lot 1/A must either be relocated to the property boundary between Lots 1/A and 2/B, or fully removed and abandoned before the Applicant named in this Order sells or conveys either Lot 1/A or Lot 2/B whichever occurs first.