

Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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

Charles D. Baker
Governor

Matthew A. Beaton
Secretary

Kayn E. Polito
Lieutenant Governor

Martin Sauberg
Commissioner

December 29, 2016

Seaver Construction
c/o Ms. Mary Trudeau
141 Lowell Street
Lexington, MA 02420

RE: **WETLANDS/ARLINGTON**
DEP File #091-0275
47 Spy Pond Lane (Lot B)
Superseding Order of Conditions/Approval

Dear Mr. Seaver:

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

The project site is located at 47 Spy Pond Lane in Arlington, Massachusetts and abuts Spy Pond. An existing single family home, driveway and patio currently exist on the site. As described in the Notice of Intent ("NOI"), the proposed project entails the subdivision of the property into two lots, Lot A and Lot B. This SOC pertains to the work proposed on Lot B which involves the removal of the existing single-family home, driveway and patio and construction of a new single-family home, deck, driveway, infiltration basin and plantings along the edge of Spy Pond.

On October 26, 2016, the Arlington Conservation Commission (the "Commission") issued an Order of Conditions ("OOC") denying the project based on its opinion that the planting plan, located within an area of lawn within the buffer zone and along the edge of Spy Pond, does "not address the underlying failure to comply with the performance standards for Bordering Vegetated Wetlands 10.55, Bank 10.54, Land Under Water 10.56, especially the level of protection needed within the 100-foot setback to protect the interests identified in M.G.L. c. 131, 40." You filed an appeal on November 7, 2015 based on your opinion that the "work proposed is clearly within the standards set for work within one hundred feet of jurisdictional wetlands, and no alteration of jurisdictional resource areas are proposed in the Notice of Intent application."

This information is available in alternate format. Call the MassDEP Diversity Office at 617-556-1139. TTY# MassRelay Service 1-800-439-2370

MassDEP Website: www.mass.gov/dep

Printed on Recycled Paper

On December 14, 2016, MassDEP conducted a site inspection. In attendance were your representative, the property owner and members of the Commission. During the site visit, the proposed project was discussed and the group walked the project site to observe existing site conditions and the location of the proposed development.

MassDEP's review of the file and site inspection confirms that the project site contains the following Areas Subject to Protection under the Act: Bordering Vegetated Wetlands ("BVW"), Inland Bank, Land Under Water ("LUW") and Bordering Land Subject to Flooding ("BLSF"). These areas are significant to the statutory interests listed on the attached form. The site is also designated as Priority Habitat for rare and endangered species. A letter, dated July 8, 2016, from the Division of Fisheries and Wildlife (the "Division") states that it is the Division's opinion that the project will not adversely affect the actual habitat of the state-protected rare wildlife species and will not result in a prohibited "take" of state listed rare wildlife species.

A small section of the proposed house and the deck will be located within the buffer zone to BVW, Inland Bank and LUW. These structures are proposed approximately 70 feet from the closest wetland resource area. The remainder of the house and driveway will be located outside jurisdiction of the Wetlands Protection Act. An area of the existing lawn adjacent to Spy Pond was determined to be BVW. The applicant has proposed replanting this area with wetland vegetation in order to restore the BVW. Plantings consisting of native and indigenous species will be scattered within the buffer zone between the proposed home and Spy Pond. The planting plan for both areas is shown on the project plan titled, "Planting Plan in Arlington, Mass," dated August 16, 2016, final revision date of September 26, 2016.

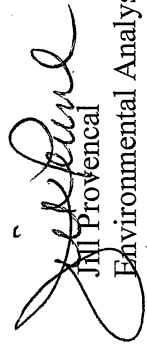
Based on a review of the information provided in the file and observations made at the site inspection, it is MassDEP's opinion that the project will not impact wetland resource areas. It is MassDEP's opinion that the enclosed SOC allowing the project serves to protect the interests of the Act, Massachusetts General Laws, Chapter 131, Section 40. Please be advised that it is MassDEP's responsibility to address only those interests identified in the Act. However, MassDEP reserves the right, should there be further proceedings in this case, to raise additional issues and present further evidence as may be appropriate. Should any party dispute these findings, please consult the language in the Order that specifies your rights and procedures for appeal.

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

Sincerely,



Rachel Freed
Deputy Regional Director
Bureau of Water Resources – NERO


Jill Provencal
Environmental Analyst
Wetlands Program - NERO

cc: Arlington Conservation Commission, Town Hall Annex, 730 Massachusetts Ave., Arlington,
MA 02476
Mr. Harold Boucher, Trustee, Boucher Family Trust, 47 Spy Pond Lane, Arlington, MA
02476



MassDEP File #

A. General Information

- Northeast Regional Office**
Massachusetts Department of Environmental Protection (MassDEP/the Department)
1. From: _____
2. This issuance is for (check one):
- a. ☒ Superseding Order of Conditions
- b. ☐ Amended Superseding Order of Conditions

3. To: Applicant:

Scott Seaver
a. First Name, Last Name

Seaver Construction
b. Company

c. Organization

215 Lexington Street

Woburn

MA

01801

e. City/Town

f. State

g. Zip Code

4. **Property Owner (if different from applicant):**

Harold

Boucher, Trustee
b. Last Name

b. Last Name

Boucher Family Trust

c. Organization

47 Spy Pond Lane

d. Mailing Address Line 1

Arlington

MA

02474

5. Project Location:

47 Spy Pond Lane – Lot B

Arlington

a. Street Address

b. City/Town

12

4-2

c. Assessors Map/Plat Number

d. Parcel/Lot Number

Latitude and Longitude, if known:

e. Latitude

f. Latitude



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A. General Information (cont'd)

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

Middlesex	
a. County	b. Certificate (if registered land)
31315	438
c. Book	d. Page
7. Dates: June 1, 2016 October 6, 2016 December 14, 2016	
a. Date NOI Received	b. Date Local Order Issued c. Date of SOC Site Visit
8. Final Approved Plans and Other Documents (attach additional plans or document references):	
"Proposed Plan in Arlington, MA"	
a. Plan Title	
Keenan Survey	James Richard Keenan, P.L.S. No. 30751
b. Prepared By	c. Signed and Stamped By
May 3, 2016	1" = 10'
d. Final Revision Date	e. Scale
See Condition #20	
f. Additional Plan or Document Title	g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act - Following the review of the above-referenced Notice of Intent and based on the information provided in this application, the Department finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- | | | |
|---|--|---|
| a. ☒ Public Water Supply | b. ☐ Land Containing Shellfish | c. ☒ Prevention of Pollution |
| d. ☒ Private Water Supply | e. ☒ Fisheries | f. ☒ Protection of Wildlife Habitat |
| g. ☒ Groundwater Supply | h. ☒ Storm Damage Prevention | i. ☒ Flood Control |

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

Approved subject to:

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



B. Findings (cont'd)

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

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

 a. linear feet

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. ☐ Bank	<u> a. linear feet </u>	<u> b. linear feet </u>	<u> c. linear feet </u>	<u> d. linear feet </u>
5. ☐ Bordering Vegetated Wetland	<u> a. square feet </u>	<u> b. square feet </u>	<u> c. square feet </u>	<u> d. square feet </u>
6. ☐ Land Under Waterbodies and Waterways	<u> a. square feet </u>	<u> b. square feet </u>	<u> c. square feet </u>	<u> d. square feet </u>
	<u> e. c/y dredged </u>	<u> f. c/y dredged </u>		
7. ☐ Bordering Land Subject to Flooding	<u> a. square feet </u>	<u> b. square feet </u>	<u> c. square feet </u>	<u> d. square feet </u>
Cubic Feet Flood Storage	<u> e. cubic feet </u>	<u> f. cubic feet </u>	<u> g. cubic feet </u>	<u> h. cubic feet </u>
8. ☐ Isolated Land Subject to Flooding	<u> a. square feet </u>	<u> b. square feet </u>		
Cubic Feet Flood Storage	<u> c. cubic feet </u>	<u> d. cubic feet </u>	<u> e. cubic feet </u>	<u> f. cubic feet </u>
9. ☐ Riverfront area	<u> a. total sq. feet </u>	<u> b. total sq. feet </u>		
Sq feet within 100 feet	<u> c. square feet </u>	<u> d. square feet </u>	<u> e. square feet </u>	<u> f. square feet </u>
Sq feet between 100-200 feet	<u> g. square feet </u>	<u> h. square feet </u>	<u> i. square feet </u>	<u> j. square feet </u>

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

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

 a. linear feet

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

Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
<u> a. square feet </u>	<u> b. square feet </u>		
<u> c. c/y dredged </u>	<u> d. c/y dredged </u>		

12. ☐ Land Under the Ocean

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



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B. Findings (cont'd)

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

C. General Conditions Under Massachusetts Wetlands Protection Act

Brief Project Description of Permitted Activities:

The construction of a single-family home, driveway, grading, retaining wall, infiltration basin, deck and plantings.



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

(only applicable to approved projects)

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

10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MA DEP"]

"File Number 091-0275 _____"



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

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

NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

19. **The work associated with this Order (the "Project") is (1) ☐ is not (2) ☒ subject to the Massachusetts Stormwater Standards. If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:**
 - a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.



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

- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
- i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
 - ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
 - iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;
 - iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
 - v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.
- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 19(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMPs Operation and Maintenance Plan ("O&M Plan") and certifying the following: *i.*) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and *ii.*) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, and acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 19(f) through 19(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 19(f) through 19(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



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

g) The responsible party shall:

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

Special Conditions (See attached sheet(s) or below for additional Special Conditions numbered 20 through 38.

See attached

SUPERSEDING ORDER OF CONDITIONS
DEP File Number 091-0275

Special Conditions

20. All work shall conform with the following plans, reports and special conditions:
- a) "Proposed Land in Arlington, Mass," prepared by Keenan Survey, stamped by James Richard Keenan, P.L.S., final revision date May 3, 2016.
 - b) "Post Construction Stormwater Operation and Maintenance Plan, 47 Spy Pond Lane (Lot B), Arlington, MA."
 - c) "Planting Plan in Arlington, Mass," prepared by Keenan Survey, final revision date September 26, 2016.
 - d) "Roof Drain Detail, 47 Spy Pond Lane, Lot 2, Arlington, MA," prepared by Alan Engineering, L.L.C., dated June 28, 2016.
21. This Superseding Order supersedes all previous Orders issued for this project, DEP File #091-0275. All work shall conform to the Notice of Intent and plans and documentation referenced above unless otherwise specified in this Superseding Order. In case of a conflict, the Conditions of this Superseding Order shall prevail.
22. A copy of this Superseding Order shall be included in all construction contracts and shall supersede any conflicting requirements.
23. A copy of this Superseding Order as well as the plans and reports referenced in Condition #20 shall be available on site while activities regulated by this Order are being performed. In addition to the owners, all contractors and subcontractors shall be held responsible for compliance with this Superseding Order.
24. No work shall commence on-site until all appeal periods have elapsed and this Superseding Order of Conditions has been recorded with the Registry of Deeds and MassDEP has been formally notified via the form provided at the end of this Order.
25. This Superseding Order shall apply to any successor or assigns in interest or control and any other party engaging in activity on the property identified in the Notice of Intent.
26. Any proposed or executed change in the plans approved under this Superseding Order shall require the applicant to file a new Notice of Intent with the conservation commission or to inquire of MassDEP in writing whether the change is substantial enough to require a new filing. A copy shall be sent at the same time to the Arlington Conservation Commission. Any errors in the plans or information submitted by the applicant shall be considered changes and the above procedures shall be followed.
27. Members and agents of MassDEP and the Arlington Conservation Commission shall have the right to enter and inspect the premises to evaluate compliance with the conditions contained in this Superseding Order, and may require the submittal of any data deemed necessary by MassDEP for that evaluation.

28. The applicant shall employ a wetland professional to oversee all plantings proposed within the BVW and buffer zone and report in writing to MassDEP and the Arlington Conservation Commission once a month, during construction, to confirm that all activities are in compliance with the planting plan (referenced in Condition #20). The report shall, at a minimum, include a description of the relative health of the planted species and shall make recommendations for replacement of plants if needed.
29. Any changes proposed to the plants listed in the planting plan (referenced in Condition #20) shall be reviewed and approved by MassDEP prior to placement.
30. Prior to the start of work, the applicant shall submit a construction sequence to MassDEP and the Arlington Conservation Commission, for approval by MassDEP. The construction sequence shall include a plan showing the location of any material stockpile areas and any temporary, construction period, stormwater BMPs.
31. Prior to the start of work, erosion controls consisting of silt fence and staked haybales shall be installed between the limits of work and the wetland resource areas. These barriers shall serve as the limit of disturbance and shall be installed as close to the work area as possible. Erosion controls shall remain in place until MassDEP approves their removal. If work occurs during the winter months, the applicant shall install orange snow fencing along the erosion control line in order to provide a more visible barrier.
32. No soil or other materials shall be stockpiled within 100 feet of wetland resource areas.
33. Upon completion of construction, all exposed soils shall be seeded with appropriate vegetation or otherwise stabilized by a method acceptable to the MassDEP and Arlington Conservation Commission.
34. At no time during or after construction shall fill or other materials be placed, slump into or fall beyond the limit of grading as shown on the plan. The Environmental Monitor shall be responsible for inspecting and maintaining all slopes and shall immediately notify the MassDEP and the Arlington Conservation Commission if slumping, erosion or encroachment occurs.
35. Excess soil, rock and debris excavated or generated during the course of this project shall be removed from the site and disposed of in a legal manner. Records of the destination of all materials, including excess fill and loam, to be removed from the site shall be kept on file and shall be provided to the MassDEP and the Arlington Conservation Commission upon request.
36. Storing, servicing or cleaning of equipment, including but not limited to fueling, changing, adding or applying lubricants or hydraulic fluids, or washing/rinsing of trucks or equipment, shall be performed outside the 100-foot buffer zone.
37. During work on this project, there shall be no discharge or spillage of fuel, oil or other pollutants, including sediments, onto any part of the site. The applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident or vandalism.
38. Upon completion of the project, the applicant shall request a Certificate of Compliance from the MassDEP and shall submit the following information with the request:

- a) A written statement by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts certifying compliance with the approved plans referenced above and this Superseding Order of Conditions and setting forth deviations, if any exist;
- b) An as-built site plan prepared by a registered land surveyor or registered professional engineer showing location and grades of the project, including but not limited to: the single-family home, deck, driveway, stormwater BMP, and site grading on the project site.
- c) A final plan and report showing the location, number and health of the plants shown on the planting plan referenced in Condition #20.



Massachusetts Department of Environmental Protection
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D. Findings Under Municipal Wetlands Bylaw or Ordinance

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

E. Issuance

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

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

Northeast

MassDEP Regional Office

Rachel Freed

Deputy Regional Director Signature

Rachel Freed

Deputy Regional Director Printed Name

12/29/2016

Date

This Order is issued to the applicant as follows:

☐ by Hand delivery on

☒ by certified mail on:

Date

12.29.16

Date – Certified Mail #



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

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F. Appeal Rights and Time Limits

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

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

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

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

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

Contents of Appeal Notice

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

- a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;
- b) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative; if a ten residents group, the same information for the group's designated representative;
- c) if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;
- d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceeding that lead to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;
- e) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;



F. Appeal Rights and Time Limits (cont.)

- f) a clear and concise statement of the alleged errors contained in the Department's decision and how each alleged error in inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c. 131, § 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision, and the relief sought, including any specific desired changes to the Department's decision;
- g) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;
- h) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and
- i) if asserting a matter that is Major and Complex, as defined at 310 CMR 10.04(1), a statement requesting that the Presiding Officer make a designation of Major and Complex, with specific reasons supporting the request.

Filing Fee and Address

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

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

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



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

MassDEP File #

091-0275

G. Recording Information

This Superseding 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 Department.

To: Massachusetts Department of Environmental Protection Northeast Regional Office
Issuing Authority

205B Lowell Street, Wilmington, MA 01887
MassDEP Regional Office Address

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

47 Spy Pond Lane, Lot B 091-0275
Project Location (Street and Town) MassDEP File Number

Has been recorded at the Registry of Deeds of:

Middlesex Book Page
County

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

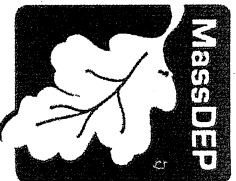
If recorded land, the instrument number identifying this transaction is:

Instrument Number

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

Document Number

Signature of Applicant



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

December 29, 2016

Seaver Construction
c/o Ms. Mary Trudeau
141 Lowell Street
Lexington, MA 02420

RE: **WETLANDS/ARLINGTON**
DEP File #091-0276
47 Spy Pond Lane (Lot A)
Superseding Order of Conditions/Approval

Dear Mr. Seaver:

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

The project site is located at 47 Spy Pond Lane in Arlington, Massachusetts and abuts Spy Pond. An existing single family home, driveway and patio currently exist on the site. As described in the Notice of Intent ("NOI"), the proposed project entails the subdivision of the property into two lots, Lot A and Lot B. This SOC pertains to the work proposed on Lot A which involves the removal of the existing single-family home, driveway and patio and construction of a new single-family home, deck, driveway, infiltration basin, grading, retaining walls and plantings along the edge of Spy Pond.

On October 26, 2016, the Arlington Conservation Commission (the "Commission") issued an Order of Conditions ("OOC") denying the project based on their opinion that the planting plan, located within an area of existing lawn in the buffer zone and along the edge of Spy Pond, does "not address the underlying failure to comply with the performance standards for Bordering Vegetated Wetlands 10.55, Bank 10.54, Land Under Water 10.56, especially the level of protection needed within the 100-foot setback to protect the interests identified in M.G.L. c. 131, 40." You filed an appeal on November 7, 2015 based on your opinion that the "work proposed is clearly within the standards set for work within one hundred feet of jurisdictional

wetlands, and no alteration of jurisdictional resource areas are proposed in the Notice of Intent application.”

On December 14, 2016, MassDEP conducted a site inspection. In attendance were your representative, the property owner and members of the Commission. During the site visit, the proposed project was discussed and the group walked the project site to observe existing site conditions and the location of the proposed development.

MassDEP’s review of the file and site inspection confirms that the project site contains the following Areas Subject to Protection under the Act: Bordering Vegetated Wetlands (“BVW”), Inland Bank, Land Under Water (“LUW”) and Bordering Land Subject to Flooding (“BLSF”). These areas are significant to the statutory interests listed on the attached form. The site is also designated as Priority Habitat for rare and endangered species. A letter, dated July 8, 2016, from the Division of Fisheries and Wildlife (the “Division”) states that it is the Division’s opinion that the project will not adversely affect the actual habitat of the state-protected rare wildlife species and will not result in a prohibited “take” of state listed rare wildlife species.

A section of the proposed house, deck, infiltration basin, grading and retaining walls will be located within the buffer zone to BVW, Inland Bank and LUW. These structures and grading are proposed approximately 50 feet from the closest wetland resource area. The remainder of the house, driveway and grading will be located outside jurisdiction of the Wetland Protection Act. Plantings, consisting of native and indigenous species, are proposed to be placed within the existing lawn adjacent to Spy Pond. The planting plan is shown on the project plan titled, “Planting Plan in Arlington, Mass,” dated September 26, 2016.

Based on review of the information provided in the file and observations made at the site inspection, it is MassDEP’s opinion that the project will not impact wetland resource areas. It is MassDEP’s opinion that the enclosed SOC allowing the project serves to protect the interests of the Act, Massachusetts General Laws, Chapter 131, Section 40. Please be advised that it is MassDEP’s responsibility to address only those interests identified in the Act. However, MassDEP reserves the right, should there be further proceedings in this case, to raise additional issues and present further evidence as may be appropriate. Should any party dispute these findings, please consult the language in the Order that specifies your rights and procedures for appeal.

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

Sincerely,



Rachel Freed
Deputy Regional Director
Bureau of Water Resources – NERO



Jill Provencal
Environmental Analyst
Wetlands Program - NERO

cc: Arlington Conservation Commission, Town Hall Annex, 730 Massachusetts Ave., Arlington,
MA 02476
Mr. Harold Boucher, Trustee, Boucher Family Trust, 47 Spy Pond Lane, Arlington, MA
02476



MassDEP File #

A. General Information

- 1. From:** Northeast Regional Office
Massachusetts Department of Environmental Protection (MassDEP/the Department)
- 2. This issuance is for (check one):**
- a. ☒ Superseding Order of Conditions
- b. ☐ Amended Superseding Order of Conditions

3. To: Applicant: _____
- _____
- Scott Seaver
- _____
- a. First Name, Last Name
- _____
- b. Company
- Seaver Construction

- | | | |
|---------------------------|----------|-------------|
| c. Organization | | |
| 215 Lexington Street | | |
| d. Mailing Address Line 1 | | |
| Woburn | | |
| e. City/Town | | |
| | MA | 01801 |
| | f. State | g. Zip Code |

4. Property Owner (if different from applicant):
- | | |
|---------------------------|------------------|
| Harold | Boucher, Trustee |
| a. First Name | b. Last Name |
| Boucher Family Trust | |
| c. Organization | |
| 47 Spy Pond Lane | |
| d. Mailing Address Line 1 | |
| Arlington | MA |
| e. City/Town | f. State |
| | g. Zip Code |
| | 02474 |

- | | |
|------------------------------|----------------------|
| 5. Project Location: | Arlington |
| 47 Spy Pond Lane – Lot A | |
| a. Street Address | b. City/Town |
| 12 | 4-2 |
| c. Assessors Map/Plat Number | d. Parcel/Lot Number |

Latitude and Longitude, if known:

e. Latitude	
f. Longitude	



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

MassDEP File #
091-0276

A. General Information (cont'd)

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

Middlesex		
a. County		b. Certificate (if registered land)
31315		438
c. Book		d. Page

7. Dates:	June 1, 2016	October 6, 2016	December 14, 2016
	a. Date NOI Received	b. Date Local Order Issued	c. Date of SOC Site Visit

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

"Proposed Plan in Arlington, MA"

a. Plan Title	
Keenan Survey	
b. Prepared By	James Richard Keenan, P.L.S. No. 30751
September 6, 2016	c. Signed and Stamped By
d. Final Revision Date	1" = 10'
See Condition #20	e. Scale
f. Additional Plan or Document Title	
	g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act - Following the review of the above-referenced Notice of Intent and based on the information provided in this application, the Department finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

a. ☒ Public Water Supply	b. ☐ Land Containing Shellfish	c. ☒ Prevention of Pollution
d. ☒ Private Water Supply	e. ☒ Fisheries	f. ☒ Protection of Wildlife Habitat
g. ☒ Groundwater Supply	h. ☒ Storm Damage Prevention	i. ☒ Flood Control

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

Approved subject to:

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



B. Findings (cont'd)

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

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

 a. linear feet

Resource Area

Proposed
Alteration

Permitted
Alteration

Proposed
Replacement

Permitted
Replacement

4. ☐ Bank

 a. linear feet

 b. linear feet

 c. linear feet

 d. linear feet

5. ☐ Bordering Vegetated Wetland

 a. square feet

 b. square feet

 c. square feet

 d. square feet

6. ☐ 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. ☐ Bordering Land Subject to Flooding

 a. square feet

 b. square feet

 c. square feet

 d. square feet

 e. cubic feet

 f. cubic feet

 g. cubic feet

 h. cubic feet

8. ☐ Isolated Land Subject to Flooding

 a. square feet

 b. square feet

 c. cubic feet

 d. cubic feet

 e. cubic feet

 f. cubic feet

Cubic Feet Flood Storage

9. ☐ Riverfront area

 a. total sq. feet

 b. total sq. feet

 c. square feet

 d. square feet

 e. square feet

 f. square feet

Sq feet within 100 feet

Sq feet between 100-200 feet

 g. square feet

 h. square feet

 i. square feet

 j. square feet

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

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

 a. linear feet

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

Proposed
Alteration

Permitted
Alteration

Proposed
Replacement

Permitted
Replacement

12. ☐ Land Under the Ocean

 a. square feet

 b. square feet

 c. c/y dredged

 d. c/y dredged

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



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

MassDEP File #

091-0276

B. Findings (cont'd)

14. ☐ Coastal Beaches
a. square feet b. square feet c. c/y d. c/y nourish.
15. ☐ Coastal Dunes
a. square feet b. square feet c. c/y d. c/y nourish.
16. ☐ Coastal Banks
a. linear feet b. linear feet
17. ☐ Rocky Intertidal Shores
a. square feet b. square feet
18. ☐ Salt Marshes
a. square feet b. square feet c. square d. square feet
19. ☐ Land Under Salt Ponds
a. square feet b. square feet
20. ☐ Land Containing Shellfish
a. square feet b. square feet c. square d. square feet
21. ☐ Fish Runs - Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above
a. c/y dredged b. c/y dredged
22. ☐ Land Subject to Coastal Storm Flowage
a. square feet b. square feet
23. ☐ Riverfront area
a. total sq. feet b. total sq. feet
c. square feet d. square feet e. square f. square feet
g. square feet h. square feet i. square j. square feet
Sq feet within 100 feet
Sq feet between 100-200 feet

C. General Conditions Under Massachusetts Wetlands Protection Act

Brief Project Description of Permitted Activities:

The construction of a single-family home, driveway, grading, retaining wall, infiltration basin, deck and plantings.



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

(only applicable to approved projects)

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

"File Number 091-0276 _____"



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

MassDEP File #

091-0276

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

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

NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

19. **The work associated with this Order (the "Project") is (1) ☐ is not (2) ☒ subject to the Massachusetts Stormwater Standards. If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:**
 - a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.



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

- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
- i.* all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
 - ii.* as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
 - iii.* any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;
 - iv.* all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
 - v.* any vegetation associated with post-construction BMPs is suitably established to withstand erosion.
- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 19(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMPs Operation and Maintenance Plan ("O&M Plan") and certifying the following: *i.*) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and *ii.*) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, and acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 19(f) through 19(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 19(f) through 19(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



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

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

Special Conditions (See attached sheet(s) or below for additional Special Conditions numbered 20 through 38.

See attached

SUPERSEDING ORDER OF CONDITIONS
DEP File Number 091-0276

Special Conditions

20. All work shall conform with the following plans, reports and special conditions:
- a) "Proposed Land in Arlington, Mass," prepared by Keenan Survey, stamped by James Richard Keenan, P.L.S., final revision date September 6, 2016
 - b) "Post Construction Stormwater Operation and Maintenance Plan, 47 Spy Pond Lane (Lot A), Arlington, MA."
 - c) "Planting Plan in Arlington, Mass," prepared by Keenan Survey, final revision date September 26, 2016.
21. This Superseding Order supersedes all previous Orders issued for this project, DEP File#091-0276. All work shall conform to the Notice of Intent and plans and documentation referenced above unless otherwise specified in this Superseding Order. In case of a conflict, the Conditions of this Superseding Order shall prevail.
22. A copy of this Superseding Order shall be included in all construction contracts and shall supersede any conflicting requirements.
23. A copy of this Superseding Order as well as the plans and reports referenced in Condition #20 shall be available on site while activities regulated by this Order are being performed. In addition to the owners, all contractors and subcontractors shall be held responsible for compliance with this Superseding Order.
24. No work shall commence on-site until all appeal periods have elapsed and this Superseding Order of Conditions has been recorded with the Registry of Deeds and MassDEP has been formally notified via the form provided at the end of this Order.
25. This Superseding Order shall apply to any successor or assigns in interest or control and any other party engaging in activity on the property identified in the Notice of Intent.
26. Any proposed or executed change in the plans approved under this Superseding Order shall require the applicant to file a new Notice of Intent with the conservation commission or to inquire of MassDEP in writing whether the change is substantial enough to require a new filing. A copy shall be sent at the same time to the Arlington Conservation Commission. Any errors in the plans or information submitted by the applicant shall be considered changes and the above procedures shall be followed.
27. Members and agents of MassDEP and the Arlington Conservation Commission shall have the right to enter and inspect the premises to evaluate compliance with the conditions contained in this Superseding Order, and may require the submittal of any data deemed necessary by MassDEP for that evaluation.
28. The applicant shall employ a wetland professional to oversee all plantings proposed within the buffer zone and report in writing to MassDEP and the Arlington Conservation Commission once a month, during

- construction, to confirm that all activities are in compliance with the planting plan (referenced in Condition #20). The report shall, at a minimum, include a description of the relative health of the planted species and shall make recommendations for replacement of plants if needed.
29. Any changes proposed to the plants listed in the planting plan (referenced in Condition #20) shall be reviewed and approved by MassDEP prior to placement.
30. Prior to the start of work, the applicant shall submit a construction sequence to MassDEP and the Arlington Conservation Commission, for approval by MassDEP. The construction sequence shall include a plan showing the location of any material stockpile areas and any temporary, construction period, stormwater BMPs.
31. Prior to the start of work, erosion controls consisting of silt fence and staked haybales shall be installed between the limits of work and the wetland resource areas. These barriers shall serve as the limit of disturbance and shall be installed as close to the work area as possible. Erosion controls shall remain in place until MassDEP approves their removal. If work occurs during the winter months, the applicant shall install orange snow fencing along the erosion control line in order to provide a more visible barrier.
32. No soil or other materials shall be stockpiled within 100 feet of wetland resource areas.
33. Upon completion of construction, all exposed soils shall be seeded with appropriate vegetation or otherwise stabilized by a method acceptable to the MassDEP and Arlington Conservation Commission.
34. At no time during or after construction shall fill or other materials be placed, slump into or fall beyond the limit of grading as shown on the plan. The Environmental Monitor shall be responsible for inspecting and maintaining all slopes and shall immediately notify the MassDEP and the Arlington Conservation Commission if slumping, erosion or encroachment occurs.
35. Excess-soil, rock and debris excavated or generated during the course of this project shall be removed from the site and disposed of in a legal manner. Records of the destination of all materials, including excess fill and loam, to be removed from the site shall be kept on file and shall be provided to the MassDEP and the Arlington Conservation Commission upon request.
36. Storing, servicing or cleaning of equipment, including but not limited to fueling, changing, adding or applying lubricants or hydraulic fluids, or washing/rinsing of trucks or equipment, shall be performed outside the 100-foot buffer zone.
37. During work on this project, there shall be no discharge or spillage of fuel, oil or other pollutants, including sediments, onto any part of the site. The applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident or vandalism.
38. Upon completion of the project, the applicant shall request a Certificate of Compliance from the MassDEP and shall submit the following information with the request:
- a) A written statement by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts certifying compliance with the approved plans referenced above and this Superseding Order of Conditions and setting forth deviations, if any exist;

- b) An as-built site plan prepared by a registered land surveyor or registered professional engineer showing location and grades of the project, including but not limited to: the single-family home, deck, driveway, stormwater BMP, and site grading on the project site.
- c) A final plan and report showing the location, number and health of the plants shown on the planting plan referenced in Condition #20.



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

MassDEP File #
091-0276

D. Findings Under Municipal Wetlands Bylaw or Ordinance

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

E. Issuance

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

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

Northeast

MassDEP Regional Office

Rachel Freed

Deputy Regional Director Signature

Rachel Freed

Deputy Regional Director Printed Name

12/29/2016

Date

This Order is issued to the applicant as follows:

☐ by Hand delivery on

☒ by certified mail on:

Date

12-29-16

Date – Certified Mail #



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

MassDEP File #

091-0276

F. Appeal Rights and Time Limits

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

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

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

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

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

Contents of Appeal Notice

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

- a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;
- b) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative; if a ten residents group, the same information for the group's designated representative;
- c) if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;
- d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceeding that lead to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;
- e) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;



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

MassDEP File #
091-0276

F. Appeal Rights and Time Limits (cont.)

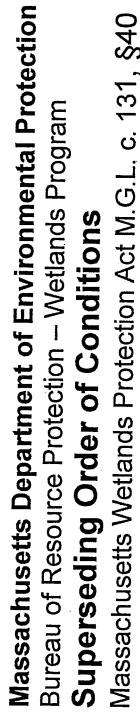
- f) a clear and concise statement of the alleged errors contained in the Department's decision and how each alleged error in inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c.131, § 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision, and the relief sought, including any specific desired changes to the Department's decision;
- g) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;
- h) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and
- i) if asserting a matter that is Major and Complex, as defined at 310 CMR 10.04(1), a statement requesting that the Presiding Officer make a designation of Major and Complex, with specific reasons supporting the request.

Filing Fee and Address

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

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

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



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

This Superseding 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 Department.

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

Has been recorded at the Registry of Deeds of:

For: _____
Property Owner

	Page
Book	

Date _____

Instrument Number

Document Number _____ Signature of Applicant _____