



Setti D. Warren  
Mayor

City of Newton, Massachusetts  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

Barney S. Heath  
Director

January 20, 2017

Brian McDonald  
Continuous Improvement Realty Trust  
462 Main St. Suite 300t  
Watertown, MA 02472

RE: Order of Conditions and  
Certificate of Understanding  
Site: 46 Farwell St.  
DEP#: 239-774

Dear Mr. McDonald:

Enclosed please find the Order of Conditions (the Order) issued pursuant to the Wetlands Protection Act, General Laws, Ch. 131, Sec. 40 and pursuant to the Newton Floodplain/Watershed Protection Ordinance, Section 22-22, for the above-referenced project.

**No work on the project may begin until the following requirements have been satisfied:**

- You have read and understand the enclosed Order of Conditions (especially Newton's Findings and Special Conditions). It is the responsibility of the owner/applicant to ensure that all conditions and approved plans are complied with. Deviation from the approved plans or conditions may result in a stop work order or further enforcement, as well as the inability to obtain a Certificate of Compliance at project completion. Special Conditions include, but are not limited to:
  - A pre-construction site visit must be scheduled by the applicant prior to the start of work
  - Limit of Work: The only activity beyond the sediment fence shall be removal of surficial trash or debris. No equipment shall go beyond the sediment fence.
  - Sediment controls shall be properly installed and maintained.
  - Compost socks, not hay bales, shall be used in conjunction with silt fence in the vicinity of the bank. Silt fence alone should be sufficient for the remainder of the property.
  - All fill encountered on site when removed shall comply with the State & Federal DEP dust control and disposal laws.
  - Stockpiles shall be covered and/or confined by compost socks to stop sediment or contaminants from running into the street drain system.
  - Dust control should also be undertaken during the restoration process.
  - Tree Protection: Trees (trunks, branches and roots) on the river bank shall be protected throughout the project.
  - Earth anchors shall be used to secure the coir logs.
  - Vegetation and stabilization of the bank are required.
  - The restoration planting areas must survive (to 75% cover) for at least two growing seasons for a Certificate of Compliance to be issued.
  - Bank shall be reseeded, if necessary, during the two year survival period to establish full vegetative cover.
  - Irrigation shall be employed for the first two growing seasons to ensure survival.
  - The existing driveway apron shall be remodeled as a compliant City sidewalk; the new driveway apron shall conform to the City's Construction standards.
  - A 1-2' band of pervious material shall be installed at the river-edge of the "patio" to limit runoff and erosion of the slope.
  - Lighting Installation: To protect wildlife and/or vernal pool species, artificial lighting shall be designed to prevent lighting of the wetlands. Any outdoor lights within 200 feet of the wetland shall be directed so as not to radiate light towards those areas. Any such lights shall be limited to no more than 1,800 lumens per fixture and the fixture shall not illuminate any part of the wetland more than 0.2 footcandles. Exterior lights shall not be mounted higher than 25 feet above the ground.
  - Snow shall not be plowed onto the embankment of the river.
  - Tidy removal of fill and debris. No construction materials or debris shall be allowed to remain on the surface of the embankment. No construction materials, debris, or sediment shall be allowed to fall, flush, or roll into the river.

- The restoration planting of the sloped embankment (the DCR property) must be maintained in its natural condition in perpetuity as per 310 CMR 10.58(5).
  - The use of herbicides and other pesticides is prohibited and fertilizers shall be limited to slow-release organic fertilizers to improve water quality in the adjacent wetlands and waterways.
- The owner has signed and returned to me the attached Certificate of Understanding.
  - The 10-business day appeal period had elapsed. The appeal period begins on the date of issue (pages 1 and 11 of the Order).
  - You have had the original Order and Newton's Special Conditions recorded at the Middlesex South Registry of Deeds and have forwarded proof of recording to the Conservation Commission (Condition 9). The Order is not valid until it is recorded.
  - The DEP file number sign has been erected at the project entrance (see Condition 10 of the Order).
  - You have contacted the Conservation office to arrange for a "pre-construction site visit" to inspect and approve erosion controls, to submit the name(s) and phone number(s) of the parties responsible for work on the site (e.g., contractor, erosion control monitors, field engineer, and wetland scientist), and to discuss other matters of construction as applicable.
  - Please note that there may be other requirements in your Order of Conditions that must occur before work may be begin.

**Upon completion of the project, you must submit:**

- A "Request for a Certificate of Compliance" (state WPA Form 8a),
- A letter from an engineer stating that the project was completed in substantial compliance with the approved order and plans.
- An engineer-stamped and signed "as-built plan"
- A letter from a landscaper stating that the project was completed in substantial compliance with the approved plans.

**Once received, your Certificate of Compliance must be recorded at the Middlesex South Registry of Deeds** and proof of recording sent to the Conservation office (as per the Wetlands Protection Regulations 310 CMR 10.05(9)(f)).

If you have any questions, please don't hesitate to contact the office at 617-796-1134. For the Commission,  
Jennifer Steel, Sr. Environmental Planner

Enclosures: *Order of Conditions and Certificate of Understanding*

CC: *Wetlands Division, DEP - NERO, 205B Lowell St., Wilmington, MA 01887*

### Certificate of Understanding re Conditions and Restrictions in Wetlands and Buffer Zones

Street Address: \_\_\_\_\_

DEP File # \_\_\_\_\_

Owner: \_\_\_\_\_

OOC Issue Date: \_\_\_\_\_

I, \_\_\_\_\_, one of the owners of \_\_\_\_\_, Newton, Massachusetts, do hereby acknowledge and understand that:

<ul style="list-style-type: none"> <li>• A portion of my property lies within buffer zones and/or wetlands and that any <b>new work</b> within this area is subject to review and approval by the Conservation Commission,</li> </ul>	initials _____
<ul style="list-style-type: none"> <li>• I, as property owner, am <b>responsible for all work on my property</b> even if it is conducted by private contractors,</li> </ul>	initials _____
<ul style="list-style-type: none"> <li>• I have received and <b>read and understand all the conditions</b> established in the referenced Order of Conditions (OOC),</li> </ul>	initials _____
<ul style="list-style-type: none"> <li>• There are specific <b>requirements PRIOR to the start of work,</b></li> </ul>	initials _____
<ul style="list-style-type: none"> <li>• There are specific <b>requirements DURING construction and work,</b></li> </ul>	initials _____
<ul style="list-style-type: none"> <li>• There are specific requirements for <b>getting a Certificate of Compliance</b> once all work is complete, and</li> </ul>	initials _____
<ul style="list-style-type: none"> <li>• There are a number of <b>ongoing/perpetual conditions that restrict the kind of landscaping and maintenance activities</b> allowed within wetlands and/or buffer zones.</li> </ul>	initials _____

I have carefully reviewed and understand all these requirements and agree to adhere to them.

\_\_\_\_\_  
(Signature) (Printed Name) (Date)

Please complete this form and return it to:

Jennifer Steel  
Conservation Commission  
1000 Commonwealth Avenue  
Newton, Massachusetts 02459









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:  
239-774  
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### A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):  
South Middlesex  
a. County 66159 b. Certificate Number (if registered land) 458  
c. Book 66159 d. Page 458
7. Dates: 12/27/16 1/12/17 1/ /17  
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):  
 7 plan sheets: EX.0, L1.0, L1.1, LD.1, LD.2, LD.3, and C.1  
a. Plan Title Pate Landscape William Doyle, P.E.  
b. Prepared By 12/23/16 c. Signed and Stamped by  
d. Final Revision Date 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 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.  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 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) \_\_\_\_\_ 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	_____ b. square feet	_____ c. square feet	_____ d. square feet
	_____ e. c/y dredged	_____ f. c/y dredged		
7. <input checked="" type="checkbox"/> Bordering Land Subject to Flooding	0 _____ a. square feet	0 _____ b. square feet	0 _____ c. square feet	0 _____ d. square feet
Cubic Feet Flood Storage	_____ e. cubic feet	_____ f. cubic feet	_____ g. cubic feet	_____ h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	_____ a. square feet	_____ b. square feet		
Cubic Feet Flood Storage	_____ c. cubic feet	_____ d. cubic feet	_____ e. cubic feet	_____ f. cubic feet
9. <input checked="" type="checkbox"/> Riverfront Area	_____ a. total sq. feet	_____ b. total sq. feet		
Sq ft within 100 ft	4,400 _____ c. square feet	4,400 _____ d. square feet	Restoration _____ 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	_____ a. square feet	_____ b. square feet		
	_____ c. c/y dredged	_____ d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	_____ a. square feet	_____ b. square feet	_____ <sup>cu yd</sup> c. nourishment	_____ <sup>cu yd</sup> d. nourishment
14. <input type="checkbox"/> Coastal Dunes	_____ a. square feet	_____ b. square feet	_____ <sup>cu yd</sup> c. nourishment	_____ <sup>cu yd</sup> d. nourishment
15. <input type="checkbox"/> Coastal Banks	_____ a. linear feet	_____ b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	_____ a. square feet	_____ b. square feet		
17. <input type="checkbox"/> Salt Marshes	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	_____ a. square feet	_____ b. square feet		
	_____ c. c/y dredged	_____ d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	_____ a. c/y dredged	_____ b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	_____ a. square feet	_____ b. square feet		





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**B. Findings (cont.)**

\* #22. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

22.  Restoration/Enhancement \*:

a. square feet of BVW

b. square feet of salt marsh

23.  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.
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 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 1/13/20 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.



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

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            239-774            "
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.
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.





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

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.

#### 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.

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.





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

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 SPECIAL CONDITIONS.**

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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):

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Findings and Special Conditions of the Newton Conservation Commission  
DEP #239-774, 46 and 34 rear Farwell St. (river bank restoration, site restoration, landscaping)

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**Findings (considered as and given equal status as special conditions)**

- Owner 46 Farwell St.: Brian McDonald
- Owner 36 rear Farwell St.: Mass Department of Conservation and Recreation (DCR)
- Applicant: Brian McDonald and DCR
- Representative: Bill Doyle (civil engineering), John Pate (landscape architect)
- In case of emergencies, problems, or questions, contact: Jennifer Steel: 617-796-1134.
- Existing Conditions: Pavement right to and over the edge of the bank of the Charles River, two buildings, driveway and parking lot.
- Jurisdiction/Performance Standards and Ecological Issues
  - Riverfront Area. The entire lot is in the Riverfront Area. The project is approved as a redevelopment project under 310 CMR 10.58(5).
    - 10.58(5) RFA: Redevelopment within Previously Developed Riverfront Areas; Restoration & Mitigation
      - ... work improves existing conditions.
      - Redevelopment means ... reuse of degraded or previously developed areas.
      - A previously developed riverfront area contains areas degraded prior to August 7, 1996....
      - Work to redevelop previously developed riverfront areas shall ...:
        - (a) At a minimum, work shall result in an improvement over existing conditions ...
        - (b) Stormwater management is provided according to standards
        - (c) Proposed work shall not be closer to the river than existing conditions or 100', whichever is less
        - (d) Proposed work...shall be located... away from the river, except in accordance with 10.58(5)(f) or (g).
        - (e) .... proposed work shall not exceed the ... degraded area ... except in accordance with 10.58(5)(f) or (g).
        - (f) despite what it says in 310 CMR 10.58(5)(c), (d), and (e), more alteration at the RFA outer boundary may be allowed if an applicant proposes restoration ... of at least 1:1 ...
        - (g) despite what it says in 310 CMR 10.58(5)(c), (d), or (e), more alteration at the RFA outer boundary may be allowed if an applicant proposes mitigation ... of at least 2:1
        - (h) The issuing authority shall include a continuing condition in the COC ...under 10.58(5)(f) or (g) prohibiting further alteration within the restoration or mitigation area....
  - Ecological Issues: Most of the land cover of the property is either cement concrete decking or patio pavers. The site contains a commercial structure that is being renovated, a bituminous concrete parking area directly south of the building between Farwell Street and the building, and a concrete deck that cantilevers out over the bank of the Charles River (this deck represents the encroachment onto the DCR property which is 34 Farwell Street). This project will improve all aspects of the site by removing the structured encroachment that exists on the DCR property, regrading and stabilization of the degraded bank where the encroachment was on DCR property, removing approximately 4,400 square feet of pavement on 46 Farwell Street, and installing a lawn area with trees on 46 Farwell Street. The proposed work will improve the quality of the bank and inner riparian zone, and improve stormwater runoff quantity and quality.
- Approved Project:
  - Permitted Activities: Removal of fill over, on, and in the bank, and restoration of the land surface as shown on the approved plans
  - Construction period protective measures include: Compost sock and entrenched sediment fence as sediment control, dust controls, and controlled stockpile areas.
  - Required activities: Vegetation and stabilization of the bank.
- Final Approved Plans
  - Seven plan sheets by Pate Landscape Architecture (William Doyle, P.E.), EX.0, L1.0, L1.1, LD.1, LD.2, LD.3, and C.1, Dated 12/23/16.
- Plan Revisions
  - The Newton Conservation Commission shall retain the right to require the submittal of additional information or additional construction measures deemed necessary to ensure the protection of wetland resource areas
  - Any required or desired deviations from this plan shall be requested in writing of the Commission Office, who shall determine if said changes require filing a new Notice of Intent.
  - When plans are updated it is the responsibility of the applicant to provide all City Departments involved in the permitting and approval process complete and consistent plans.



Findings and Special Conditions of the Newton Conservation Commission  
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**Newton's Conditions (Note: Violation of any condition stated herein may result in Enforcement Action.)**

**Pre-Construction Site Visit**

21. A pre-construction site visit must be scheduled by the applicant prior to the start of work to review construction activities must be scheduled with the Conservation office with:

- i. Applicant or Applicant's Representative(s)
- ii. Applicant's Construction Supervisor (person responsible for compliance with this Order and who may be held jointly responsible for any violations and the penalties under the law for said violations)
- iii. Applicant's Contractor(s)
- iv. Agent(s) of the Commission

At the pre-construction site visit the following will be checked by an agent of the Conservation Commission:

- v. Sedimentation/erosion controls are properly installed in the correct locations
- vi. DEP File number sign of minimum size 2'x2' shall be displayed clearly visible from the street
- vii. Proof of Recording the Order has been supplied to the Conservation office
- viii. Contact information for those responsible for construction, sediment controls, and landscaping has been supplied to the Conservation office
- ix. Anticipated timeline has been supplied to the Conservation office

**Conditions Specific to this Project**

22. Limit of Work: The only activity beyond the sediment fence shall be removal of surficial trash or debris. No equipment shall go beyond the sediment fence.
23. Sediment controls shall be properly installed and maintained.
24. Compost socks, not hay bales, shall be used in conjunction with silt fence in the vicinity of the bank. Silt fence alone should be sufficient for the remainder of the property.
25. All fill encountered on site when removed shall comply with the State & Federal DEP dust control and disposal laws.
26. Stockpiles shall be covered and/or confined by compost socks to stop sediment or contaminants from running into the street drain system.
27. Dust control should also be undertaken during the restoration process.
28. Tree Protection: Trees (trunks, branches and roots) on the river bank shall be protected throughout the project.
29. Earth anchors shall be used to secure the coir logs.
30. Vegetation and stabilization of the bank are required.
31. The restoration planting areas must survive (to 75% cover) for at least two growing seasons for a Certificate of Compliance to be issued.
32. Bank shall be reseeded, if necessary, during the two year survival period to establish full vegetative cover.
33. Irrigation shall be employed for the first two growing seasons to ensure survival.
34. The existing driveway apron shall be remodeled as a compliant City sidewalk; the new driveway apron shall conform to the City's Construction standards.
35. A 1-2' band of pervious material shall be installed at the river-edge of the "patio" to limit runoff and erosion of the slope.
36. Lighting Installation: To protect wildlife and/or vernal pool species, artificial lighting shall be designed to prevent lighting of the wetlands. Any outdoor lights within 200 feet of the wetland shall be directed so as not to radiate light towards those areas. Any such lights shall be limited to no more than 1,800 lumens per fixture and the fixture shall not illuminate any part of the wetland more than 0.2 footcandles. Exterior lights shall not be mounted higher than 25 feet above the ground.
37. Snow shall not be plowed onto the embankment of the river.

**Prohibitions Specific to this Project**

38. Tidy removal of fill and debris. No construction materials or debris shall be allowed to remain on the surface of the embankment. No construction materials, debris, or sediment shall be allowed to fall, flush, or roll into the river.

**Perpetual Conditions Specific to this Project** shall not expire upon completion of the project or the issuance of a Certificate of Compliance.

39. The restoration planting of the sloped embankment (the DCR property) must be maintained in its natural condition in perpetuity as per 310 CMR 10.58(5).



Findings and Special Conditions of the Newton Conservation Commission  
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40. To protect wildlife and/or vernal pool species, artificial lighting shall be designed to prevent lighting of the wetlands. Any outdoor lights within 200 feet of the wetland shall be directed so as not to radiate light towards those areas. Any such lights shall be limited to no more than 1,800 lumens per fixture and the fixture shall not illuminate any part of the wetland more than 0.2 footcandles. Exterior lights shall not be mounted higher than 25 feet above the ground.
41. The use of herbicides and other pesticides is prohibited and fertilizers shall be limited to slow-release organic fertilizers to improve water quality in the adjacent wetlands and waterways.

#### Before Work Begins

42. Before any work on-site begins, all other applicable federal, state &/or local permits and/or approvals must be obtained.
43. Notice shall be given to the Newton Conservation Commission no less than two (2) business days prior to the commencement of construction activities.
44. This document shall be included in all construction contracts, subcontracts, and specifications dealing with the work proposed and shall supersede any conflicting contract requirements. The Applicant shall assure that all contractors, subcontractor and other personnel performing the permitted work are fully aware of the permit's terms and conditions. Thereafter, the contractor will be held jointly liable for any violation of this Order resulting from failure to comply with its conditions. Nothing in this paragraph shall limit or restrict the liability of the Applicant for violations of this Order.
45. Wetlands flags in the vicinity of the work area are to be clearly marked and numbered exactly as they are surveyed on the approved plan cited in this Order. They must be maintained at all times and replaced if missing or illegible.

#### During Construction

46. Appropriate erosion control measures must be installed, inspected, and maintained during the construction period until the site is stable. Erosion control measures shall be installed as shown on the approved Plan and shall indicate the limit of work. Earth shall not be backfilled against or allowed to overtop erosion control barriers. Silt and sand accumulating behind said barriers shall be removed regularly. If a breach of the erosion control barriers occurs, the Newton Conservation Commission shall be notified, and measures shall be taken to remediate said breach under the guidance of the Commission. All soils must be contained on the site. City streets shall be kept clean and catch basins in the immediate area shall be protected from eroding soils. Hay bales, for any purpose without explicit permission from the Commission, are prohibited by this Order. An adequate supply of extra erosion control materials shall be stored on-site at all times for repair or replacement. Erosion control barriers shall remain in place until a Certificate of Compliance is issued for said work or upon written authorization from the Newton Conservation Commission.
47. The applicant shall ensure that throughout the construction period, all measures necessary to prevent any damage to the wetland resource area are taken. Should any damage occur during the course of the project, the applicant, any successor in interest, or successor in control shall be responsible for and bear the full cost of restoration of the wetland to the satisfaction of the Conservation Commission.
48. A copy of the approved plans and Order of Conditions shall be kept on-site and available for review at all times. All contractors are expected to adhere to the approved plan and these Conditions.
49. "Good housekeeping practices" shall be implemented at all times, including:
  - a. appropriate limits to discharges within a Resource Area, Buffer Zone, or an area leading to a stormwater conveyance system
  - b. appropriate stockpile area management
  - c. appropriate limits to vehicle refueling, washing, etc.
  - d. appropriate litter management
  - e. appropriate controls for tire tracking
50. During the construction period and prior to issuance of a Certificate of Compliance, members and agents of the Conservation Commission shall have the right to inspect the applicant's project to evaluate compliance with the approved plans and these conditions.
51. Work shall be immediately halted on the site if an Agent of the Commission or DEP determines that any of the work is not in compliance with this Order of Conditions or Special Conditions.



Findings and Special Conditions of the Newton Conservation Commission  
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**Upon Completion of the Project**

52. Upon completion of the project, all exposed soil areas shall be stabilized and re-vegetated. Any excess spoil material which is to remain on Applicant's premises and all areas of disturbed soil shall be left stabilized with mulch, grass or other plantings and protected against erosion and sedimentation. All materials not to remain on Applicant's premises shall be removed from said premises and disposed of in a legal manner.
53. Upon completion of the project, the Conservation Office shall be notified, and permission to remove sediment barriers and the DEP file number sign shall be sought.
54. No Certificate of Occupancy shall be approved by Conservation unless a Certificate of Compliance has been issued or the request receives the written approval of the Sr. Environmental Planner.
55. Upon completion of the project, the applicant must apply for a Certificate of Compliance in accordance with DEP Condition #12, by submitting:
  - a. A completed "Request for Certificate of Compliance (WPA Form 8A)."
  - b. A written statement from a Professional Engineer registered in Massachusetts certifying that the work has been completed in substantial compliance with this Order of Conditions and the approved plans referenced herein (or approved revisions). If the completed work differs from that in the approved plans and conditions, the report must specify how the project differs.
  - c. An as-built plan signed and stamped by a professional land surveyor registered in Massachusetts. This plan will include all structures, grading (topography), drainage, and landscape features and plantings.
  - d. A letter from a landscaper certifying compliance with the approved planting scheme. A Certificate of Compliance shall not be issued until after two growing seasons after plantings have been installed and found to be well established.



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:  
239-774  
MassDEP File #  
eDEP Transaction #  
City/Town

**E. Signatures**

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

1/13/17  
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]  
[Signature]

[Signature]  
[Signature]  
[Signature]

by hand delivery on

by certified mail, return receipt requested, on

Date

1/20/17

Date

**F. Appeals**

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

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

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



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

Provided by MassDEP:  
239-774  
MassDEP File #  
eDEP Transaction #  
City/Town

## G. Recording Information

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

Conservation Commission

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

To:

Conservation Commission

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

Project Location

MassDEP File Number

Has been recorded at the Registry of Deeds of:

County

Book

Page

for: Property Owner

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

Book

Page

In accordance with the Order of Conditions issued on:

Date

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

Instrument Number

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

Document Number

Signature of Applicant