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Mayor

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Barney S. Heath
Director

September 27, 2021

Luis Perez Demorizi
Open Space Coordinator, Newton Parks, Recreation and Culture
246 Dudley Road
Newton, MA 02459

RE: Order of Conditions and
Certificate of Understanding
Site: Levingston Cove (Crystal Lake)
DEP#: 239-901

Dear Mr. Demorizi:

Enclosed you will 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.
- 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 recorded the original Order and Newton's Special Conditions at the Middlesex South Registry of Deeds and have forwarded proof of recording to the Conservation Commission and to the Building Department. The Order is not valid until it is recorded.
- Special conditions include, but are not limited to:
 - The following plans must be presented to the Conservation Office for review and approval prior to any activity on site.
 - A concrete washout plan designed to limit and control any adverse on the wetlands resource areas or a signed statement that no concrete washout will occur on-site.
 - A construction phasing/site management plan designed to limit and control any adverse on the wetlands resource areas. At a minimum, it must address the following:
 - Anticipated phases/milestones with dates,
 - Erosion and siltation controls for different phases of the project,
 - Parking and access for workers' vehicles and construction equipment,
 - Staging for construction materials and equipment,
 - Dust and spoil control during micropile drilling, and
 - Dewatering (with a locus and a detail).
 - The Chapter 91 License.
 - Contractor contact information.
 - The applicant must schedule and attend a pre-construction site visit with the applicant, construction supervisor and Conservation agent, to review:
 - Prohibitions include:
 - Damage to any of the mature trees (branches, trunk, or roots) shown as to be protected.
 - Work within or disturbance of the BVW shown on the plans.
 - Excavation near trees with heavy equipment.
 - The Contractor will not be allowed to wash any concrete mixing or delivery equipment on site.
 - Tracking of soil onto City streets.

- Excavation around trees will be by hand and/or air spade. No heavy equipment shall be used to excavate or grade in the critical root zone of trees that are to be protected/maintained.
- Subgrade preparation of the reinforced turf and slope stabilization slopes must comport with plan notes and specifications.
- Invasive removal: The Contractor shall abide by the Newton Conservation Commission's Invasive Species Removal Guidelines. They shall hand pull large woody plants to remove as much root ball as possible. The remaining roots shall be dabbed with a nonionic surfactant such as Rodeo or approved equal. For the non-woody invasives, the Contractor shall use cut-and-dab techniques.
- The applicant shall monitor the site for invasive plants twice annually and shall remove all invasive plants found and properly dispose of them according to the Conservation Commission's Invasive Removal Policy for the life of this Order of Conditions.
- Temporary fencing may be installed as deemed necessary by the applicant to provide safety and to protect landscape features.
- Stone dust paths must be constructed with positive drainage to limit erosion. If material migrates, regrading or edging may be required by the Conservation Commission.
- Stockpiling may only occur within the grassy portion of the Crystal Lake Park. Stockpiles must be protected with staked compost sock. Laydown of non-erosive materials may occur within the limits of work, but shall not endanger any of the trees identified as to remain. Once the stockpiles have been removed, the stockpile area will be returned to grass.
- During the drilling for micropiles, barriers must be installed that will minimize air-borne and water-borne drilling spoils from entering the lake or shoreline.
- Landscape plantings within Commission jurisdiction must:
 - Stabilize all exposed areas
 - Be installed in compliance with the approved plans (desired changes must be approved by the Conservation office in advance)
 - Have a survival rate of 100 % of total number of trees (after 2 growing seasons)
 - Have a survival rate of 90 % of total number of shrubs (after 2 growing seasons)
 - Have a survival rate of 90 % aerial coverage of all other plants including turf (after 2 growing seasons)
 - Mulch applications shall diminish over time and eventually cease as ground cover species and shrubs spread.
- If any trees within the project area die within 2 years of the start of construction or have been demonstrably harmed by construction activities, they shall be replaced at a ratio of 2:1 with native canopy saplings (roughly 2 caliper inches).
- To protect the water quality and the full suite of ecological benefits of the adjacent wetland resource area fertilizers shall be of low-nitrogen content and be used in moderation and pesticides shall not be used. Specific management regimes shall be reviewed and approved by the Senior Environmental Planner.
- The areas planted with slope stabilization seed mix shall not be mowed more than once annually in late fall.

Upon completion of the project, you must:

- Submit a "Request for a Certificate of Compliance" (state WPA Form 8a).
- Submit a letter from an engineer stating that the project was completed in substantial compliance with the order and plans.
- Submit an engineer-stamped and signed "as-built plan," showing all relevant site features including landscaping.

If you have any questions, please don't hesitate to contact the office at 617-796-1134.

For the Commission,

Jennifer Steel, Chief Environmental Planner

Enclosures: *Order of Conditions*

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

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

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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):

Middlesex

a. County

b. Certificate Number (if registered land)

c. Book

d. Page

7. Dates: 8/10/21 9/23/21 9/27/21
a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance

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

Improvements to Levingston Cove

a. Plan Title

Weston and Sampson

Brandon McKunkel

b. Prepared By

c. Signed and Stamped by

9/22/21

d. varies

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 checked="" type="checkbox"/> Bank	125.4 a. linear feet	125.4 b. linear feet	125.4 c. linear feet	125.4 d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
6. <input checked="" type="checkbox"/> Land Under Waterbodies and Waterways	1266 a. square feet 0 e. c/y dredged	1266 b. square feet 0 f. c/y dredged	1266 c. square feet	1266 d. square feet
7. <input type="checkbox"/> Bordering Land Subject to Flooding	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
Cubic Feet Flood Storage	_____ e. cubic feet	_____ f. cubic feet	_____ g. cubic feet	_____ h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	_____ a. square feet	_____ b. square feet		
Cubic Feet Flood Storage	_____ c. cubic feet	_____ d. cubic feet	_____ e. cubic feet	_____ f. cubic feet
9. <input type="checkbox"/> Riverfront Area	_____ a. total sq. feet	_____ b. total sq. feet		
Sq ft within 100 ft	_____ c. square feet	_____ d. square feet	_____ e. square feet	_____ f. square feet
Sq ft between 100-200 ft	_____ g. square feet	_____ h. square feet	_____ i. square feet	_____ j. square feet



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B. Findings (cont.)

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

- | | Proposed
Alteration | Permitted
Alteration | Proposed
Replacement | Permitted
Replacement |
|--------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|-------------------------|------------------------------------|------------------------------------|
| 10. <input type="checkbox"/> Designated Port Areas | Indicate size under Land Under the Ocean, below | | | |
| 11. <input type="checkbox"/> Land Under the Ocean | a. square feet | b. square feet | | |
| | c. c/y dredged | d. c/y dredged | | |
| 12. <input type="checkbox"/> Barrier Beaches | Indicate size under Coastal Beaches and/or Coastal Dunes below | | | |
| 13. <input type="checkbox"/> Coastal Beaches | a. square feet | b. square feet | c. ^{cu yd}
nourishment | d. ^{cu yd}
nourishment |
| 14. <input type="checkbox"/> Coastal Dunes | a. square feet | b. square feet | c. ^{cu yd}
nourishment | d. ^{cu yd}
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 | | |
| 22. <input type="checkbox"/> Riverfront Area | a. total sq. feet | b. total sq. feet | | |
| Sq ft within 100 ft | c. square feet | d. square feet | e. square feet | f. square feet |
| Sq ft between 100-200 ft | g. square feet | h. square feet | i. square feet | j. square feet |



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B. Findings (cont.)

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

23. Restoration/Enhancement *:

a. square feet of BVW _____

b. square feet of salt marsh _____

24. Stream Crossing(s):

a. number of new stream crossings _____

b. number of replacement stream crossings _____

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. The work is a maintenance dredging project as provided for in the Act; or
 - b. The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
 - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on 09/27/24 unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.



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C. General Conditions Under Massachusetts Wetlands Protection Act

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

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]
"File Number 239-901 "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.



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

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

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

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



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

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



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

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

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

See attached "Findings and Special Conditions of the Newton Conservation Commission" pages 10-A et seq.

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



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D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? Yes No
2. The Newton Conservation Commission hereby finds (check one that applies):
 - a. that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:
City Floodplain Ordinance 22-22
 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:
City Floodplain Ordinance 22-22
 1. Municipal Ordinance or Bylaw 2. Citation
3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.
 The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

See attached "Findings and Special Conditions of the Newton Conservation Commission" pages 10-A et seq.

Findings and Special Conditions of the Newton Conservation Commission
DEP #239-901, Levingston Cove, park improvements

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

Site: Levingston Cove (Crystal Lake)

Owner/Applicant: Luis Perez Demorizi, City of Newton Parks, Recreation & Culture
246 Dudley Road, Newton, MA 02459
617-796-1507 lpdemorizi@newtonma.gov

Representative Cassie Bethoney and Alexandra Gaspar, Weston & Sampson Engineers
55 Walkers Brook Drive, Suite 100, Reading, MA 01867
978-532-1900 gaspara@wseinc.com

Date of Issuance September 24, 2021

Existing Conditions: Grassed (and barren) and treed park area along lake shore, with paved paths and retaining walls

Approved Project Summary:

- Install a new cantilevered deck over the edge of Crystal Lake to alleviate conflicts between fishing/pausing and walking.
- Install a new at-grade deck and granite blocks near water to reduce potential for erosion in the high-use area.
- Install new ADA-compliant pathways.
- Regrade and introduce terraced walls to ease steep slopes
- Install native plants and reinforced turf and slope stabilization mix to stabilize steep and eroded slopes
- Replace invasive species with native species along the water's edge.
- Install rain gardens and infiltration trenches at the toe of steep slopes to collect and convey stormwater through overflows into Crystal Lake.
- Remove 1 tree.
- Install new plantings:
 - 7 trees
 - 369 Shrubs
 - 349 ferns, grasses, rushes, and sedges
 - 492 aquatic plants
 - Areas of grass/turf
 - turf restoration – to be mowed regularly
 - reinforced turf – to be mowed regularly
 - loam and seed – to be mowed regularly
 - Areas of slope stabilization seed mix – not to be mowed more than once annually in October
- Install fencing and guardrails to provide safety and protect areas of vegetation.
- Possibly add stone veneer to face of existing "fishing wall".

Final Approved Plans

- "Improvements to Louise Levingston Cove (27 sheets)", prepared by Weston & Sampson, stamped and signed by Brandon McKunkel, 9/22/2021
 - L0.01: Cover Page and Location Map, no scale
 - L1.00: "Existing Conditions Plan," scale 1" = 20'
 - L1.10: "Erosion Control Plan," scale 1" = 20'
 - L1.11: "Site Preparation and Demolition Plan," scale 1" = 20'
 - L1.20-L1.21: "Materials Plan Enlargements," scale 1" = 10'
 - L1.30-L1.31: "Layout Plan Enlargements," scale 1" = 10'
 - L1.40-L1.41: "Grading and Drainage Plan Enlargements," scale 1" = 10'
 - L1.50: "Planting Plan," scale 1" = 20'
 - L1.51-L1.52: "Planting Plan Enlargements," scale 1" = 10'
 - L1.60-L1.61: "Construction Sections," scale 1" = 5'
 - L15.00-L5.07: "Construction Details," scale varies
 - S001: "Structural General Notes," no scale
 - S101: "Deck Plan and Sections," no scale

Plan Revisions

Findings and Special Conditions of the Newton Conservation Commission
DEP #239-901, Levingston Cove, park improvements

- Any required or desired deviations from this plan shall be requested in writing of the Commission Office.
- 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.
- The Newton Conservation Commission retains the right to require the submittal of additional information or impose additional conditions deemed necessary to ensure the protection of wetland resource areas.

Jurisdiction

- Buffer Zone: 301 CMR 10.53(1)
- Bank: 301 CMR 10.55 (4)
- Land Under Water and Waterways: 301 CMR 10.56
- City Floodplain: Sec. 22-22

Reasons for Approval (Impact Analysis)

- Buffer Zone: This is, in large part, a Buffer Zone restoration project, designed to revegetate significant barren areas.
- Bank: There will be temporary impacts to LUWW when invasives are removed and natives installed, but that it all for improved ecological health. None of the proposed activities will adversely affect:
 1. The physical stability of the Bank;
 2. The water carrying capacity of the existing channel within the Bank;
 3. Ground water and surface water quality;
 4. The capacity of the Bank to provide breeding habitat, escape cover and food for fisheries; or
 5. The capacity of the Bank to provide important wildlife habitat functions
- Land Under Water and Waterways: There will be temporary impacts to LUWW when invasives are removed and natives installed, but that is all for improved ecological health. There will be temporary impacts to LUWW if the fishing wall gets a new stone veneer and that area is dewatered. There will be permanent riprap at the 3 flared end pipes and minor regrading around the new granite blocks. The cantilevered deck will cast shadow over some LUWW, but given the slatted nature of the deck and its elevation above the water level, it is not likely to degrade the habitat value of the substrate. None of the proposed activities will adversely affect:
 1. The water carrying capacity;
 2. Ground and surface water quality;
 3. The capacity of said land to provide breeding habitat, escape cover and food for fisheries; and
 4. The capacity of said land to provide important wildlife habitat functions.
- City Floodplain: Sec. 22-22. There will be no net fill within the flood zone.
- Stormwater Management Standards have been met by increasing infiltration through the rain gardens and the enhanced plantings.
 1. No new untreated discharges (treat to the level required in other standards)
 2. No increase in peak discharges (store and gradually release)
 3. Recharge / Infiltrate
 4. 80% annual TSS must be removed - Long term pollution prevention plan. Structural BMPs (consistent with TMDL), pre-treatment per the handbook.
 5. LUHPPLs
 6. In sensitive receiving water areas Pretreat
 7. Redevelopment projects
 8. Construction Period Controls (and SWPP if over an acre)
 9. Long-Term O&M Plan
 10. No illicit discharges
- Conclusion: The site is currently developed and barren in large swaths due to over-use. This project will provide more hardscape to accommodate the demands and durable protected areas of vegetation. Stormwater management measures will limit sediment and nutrients from entering the lake. Improved pathways, seating areas, and fencing will better protect the reestablished and enhanced vegetated areas. Areas of reinforced turf are intended to be mowed; areas of slope stabilization mix shall not be mowed more than once annually.

Limit of Work: The sediment control line shall be the limit of work.

In case of emergencies, problems, or questions, contact: Jennifer Steel: 617-796-1134.

Conditions Prior to the Start of Work

21. All other applicable federal, state and/or local permits and/or approvals must be obtained.

Findings and Special Conditions of the Newton Conservation Commission
DEP #239-901, Levingston Cove, park improvements

22. This document shall be included in all construction contracts, subcontracts, and specifications associated with the proposed work and shall supersede any conflicting contract requirements. The Applicant shall ensure that all contractors, subcontractors and personnel performing the permitted work are aware of the permit's terms and conditions. Thereafter, the contractor will be held jointly liable for any violation of this Order. Nothing in this paragraph shall limit or restrict the liability of the Applicant for violations of this Order.
23. The following plans must be presented to the Conservation Office for review and approval prior to any activity on the site.
 - a. A concrete washout plan designed to limit and control any adverse on the wetlands resource areas or a signed statement that no concrete washout will occur on-site.
 - b. A construction phasing/site management plan designed to limit and control any adverse on the wetlands resource areas. At a minimum, it must address the following:
 1. Anticipated phases/milestones with dates,
 2. Erosion and siltation controls for different phases of the project,
 3. Parking and access for workers' vehicles and construction equipment,
 4. Staging for construction materials and equipment,
 5. Dust and spoil control during micropile drilling, and
 6. Dewatering (with a locus and a detail).
 - c. The Chapter 91 License.
 - d. Contractor contact information.
24. The applicant must schedule and attend a pre-construction site visit with the applicant, construction supervisor and Conservation agent, to review:
 - a. Proof of Recording the Order and the Operations and Maintenance Plan appended hereto
 - b. A signed Certificate of Understanding
 - c. Contact information for those responsible for construction, sediment controls, and landscaping
 - d. Anticipated timeline
 - e. DEP File number sign (minimum size 2'x2', clearly visible from the street)
 - f. Sedimentation/erosion controls (properly installed in the correct locations)
 - g. Protection of all trees and shrubs as shown within the limit of work, and as necessary outside the limit of work, with orange snow fence installed at the dripline, plywood sheeting over the roots, and boards tied to the trunk.
25. Notice shall be given to the Conservation Commission at least two business days prior to the start of work.

Conditions During Work

26. Prohibitions include:
 - a. Damage to any of the mature trees (branches, trunk, or roots) shown as to be protected.
 - b. Work within or disturbance of the BVW shown on the plans.
 - c. Excavation near trees with heavy equipment.
 - d. The Contractor will not be allowed to wash any concrete mixing or delivery equipment on site.
 - e. Tracking of soil onto City streets.
27. A copy of the approved plans and Order of Conditions shall be on-site and available at all times. All contractors must adhere to the approved plan and conditions. Should any damage occur during the project, the applicant or any successor shall be responsible for the full cost of restoration of the wetland to the satisfaction of the Commission.
28. Erosion controls must be inspected and properly maintained during construction until the site is stable. 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. City streets shall be kept clean and catch basins in the immediate area shall be protected from eroding soils. An adequate supply of extra erosion control materials shall be stored on-site at all times for repair or replacement. Hay bales are prohibited without permission from the Commission. Erosion control barriers shall remain in place until written authorization for their removal has been received from the Newton Conservation Commission.

Findings and Special Conditions of the Newton Conservation Commission
DEP #239-901, Levingston Cove, park improvements

29. The Applicant must inform the Commission of any violation of this Order and any other project related spill or accident that may impact wetland resource areas as soon as possible and at least by the end of the business day, and must take appropriate action to mitigate impacts from such spill or accident.
30. "Good housekeeping practices" shall be implemented at all times, including:
 - a. appropriate limits to stormwater discharges
 - b. appropriate stockpile area management
 - c. appropriate limits to vehicle refueling, washing, etc.
 - d. appropriate litter management
 - e. appropriate controls for tire tracking
31. 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.
32. 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.
33. Excavation around trees will be by hand and/or air spade. No heavy equipment shall be used to excavate or grade in the critical root zone of trees that are to be protected/maintained.
34. Subgrade preparation of the reinforced turf and slope stabilization slopes must comport with plan notes and specifications.
35. Invasive removal: The Contractor shall abide by the Newton Conservation Commission's Invasive Species Removal Guidelines. They shall hand pull large woody plants to remove as much root ball as possible. The remaining roots shall be dabbed with a nonionic surfactant such as Rodeo or approved equal. For the non-woody invasives, the Contractor shall use cut-and-dab techniques.
36. The applicant shall monitor the site for invasive plants twice annually and shall remove all invasive plants found and properly dispose of them according to the Conservation Commission's Invasive Removal Policy for the life of this Order of Conditions.
37. Temporary fencing may be installed as deemed necessary by the applicant to provide safety and to protect landscape features.
38. Stone dust paths must be constructed with positive drainage to limit erosion. If material migrates, regrading or edging may be required by the Conservation Commission.
39. Stockpiling may only occur within the grassy portion of the Crystal Lake Park. Stockpiles must be protected with staked compost sock. Laydown of non-erosive materials may occur within the limits of work, but shall not endanger any of the trees identified as to remain. Once the stockpiles have been removed, the stockpile area will be returned to grass.
40. During the drilling for micropiles, barriers must be installed that will minimize air-borne and water-borne drilling spoils from entering the lake or shoreline.
41. Landscape plantings within Commission jurisdiction must:
 - a. Stabilize all exposed areas
 - b. Be installed in compliance with the approved plans (desired changes must be approved by the Conservation office in advance)
 - c. Have a survival rate of 100 % of total number of trees (after 2 growing seasons)
 - d. Have a survival rate of 90 % of total number of shrubs (after 2 growing seasons)
 - e. Have a survival rate of 90 % aerial coverage of all other plants including turf (after 2 growing seasons)
 - f. Mulch applications shall diminish over time and eventually cease as ground cover species and shrubs spread.
42. If any trees within the project area die within 2 years of the start of construction or have been demonstrably harmed by construction activities, they shall be replaced at a ratio of 2:1 with native canopy saplings (of roughly 2 caliper inches).

Conditions after Work has been Completed

43. 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. An as-built plan signed and stamped by a professional engineer or land surveyor registered in Massachusetts. This plan will include all structures, grading (topography), drainage, and landscape features and plantings.

Findings and Special Conditions of the Newton Conservation Commission
DEP #239-901, Levingston Cove, park improvements

- c. 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.
- d. As-built plan and letter from a landscaper certifying compliance with the approved planting scheme.

Perpetual Conditions that Shall Not Expire upon the Issuance of a Certificate of Compliance

- 44. To protect the water quality and the full suite of ecological benefits of the adjacent wetland resource area fertilizers shall be of low-nitrogen content and be used in moderation and pesticides shall not be used. Specific management regimes shall be reviewed and approved by the Senior Environmental Planner.
- 45. The areas planted with slope stabilization seed mix shall not be mowed more than once annually in late fall.



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:
239-901
 MassDEP File #

eDEP Transaction #
Newton
 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.

9/27/21
 1. Date of Issuance

Please indicate the number of members who will sign this form.
 This Order must be signed by a majority of the Conservation Commission.

7
 2. Number of Signers

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

I, Jennifer Steel, Chief Environmental Planner of the City of Newton, am authorized to execute on behalf of the members of the City of Newton Conservation Commission all Determinations of Applicability, Orders of Condition, and Certificates of Compliance pursuant to the Commission's vote dated April 2, 2020, and recorded with the Middlesex South District Registry of Deeds in Book 74537, Page 433.

Jennifer Steel 9/27/21

Signature
 s/ Daniel Green
 Signature
 s/ Susan Lunin
 Signature
 s/ Jeffery Zabel
 Signature
 s/ Kathy Cade
 Signature
 s/ Ellen Katz
 Signature
 s/ Judith Hepburn
 Signature
 s/ Leigh Gilligan
 Signature

Printed Name
 Daniel Green
 Printed Name
 Susan Lunin
 Printed Name
 Jeffery Zabel
 Printed Name
 Kathy Cade
 Printed Name
 Ellen Katz
 Printed Name
 Judith Hepburn
 Printed Name
 Leigh Gilligan
 Printed Name

by hand delivery on

by certified mail, return receipt requested, on

9/27/21 to Carol Stapleton
 Date

 Date



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:
239-901
MassDEP File #

eDEP Transaction #
Newton
City/Town

F. Appeals

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

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

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



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

Provided by MassDEP:
 239-901
 MassDEP File # _____
 eDEP Transaction # _____
 Newton
 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



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

DEP File Number:

**Request for Departmental Action Fee
Transmittal Form**

Provided by DEP

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

A. Request Information

1. Location of Project

a. Street Address

b. City/Town, Zip

c. Check number

d. Fee amount

2. Person or party making request (if appropriate, name the citizen group's representative):

Name

Mailing Address

City/Town

State

Zip Code

Phone Number

Fax Number (if applicable)

3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Name

Mailing Address

City/Town

State

Zip Code

Phone Number

Fax Number (if applicable)

4. DEP File Number:

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



B. Instructions

1. When the Departmental action request is for (check one):

- Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)
- Superseding Determination of Applicability – Fee: \$120
- Superseding Order of Resource Area Delineation – Fee: \$120



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
**Request for Departmental Action Fee
Transmittal Form**

DEP File Number:

Provided by DEP

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

B. Instructions (cont.)

Send this form and check or money order, payable to the *Commonwealth of Massachusetts*, to:

Department of Environmental Protection
Box 4062
Boston, MA 02211

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.
3. Send a **copy** of this form and a **copy** of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office (see <https://www.mass.gov/service-details/massdep-regional-offices-by-community>).
4. 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.