



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:
 33-1490
 MassDEP File # _____
 eDEP Transaction # _____
 Haverhill
 City/Town

A. General Information

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

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



1. From: Haverhill
 Conservation Commission

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

3. To: Applicant:
 a. Antonio b. Viola
 a. First Name b. Last Name

c. Organization
80 Main Street
 d. Mailing Address

Malden MA 02148
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):
 a. _____ b. _____
 a. First Name b. Last Name

c. _____
 c. Organization
 d. _____
 d. Mailing Address
 e. _____ f. _____ g. _____
 e. City/Town f. State g. Zip Code

5. Project Location:
 a. Broadway b. Haverhill
 a. Street Address b. City/Town
 c. Parcel ID: 539-439-18 d. _____
 c. Assessors Map/Plat Number d. Parcel/Lot Number
 e. Latitude and Longitude, if known: 42.7889762351055 -71.144285202026
 d. Latitude e. Longitude



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

Provided by MassDEP:
 33-1490

 MassDEP File #

 eDEP Transaction #
 Haverhill

 City/Town

A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):
Southern Essex District
 a. County 35365 b. Certificate Number (if registered land) 422
 c. Book 35365 d. Page 422
7. Dates: November 12, 2020 April 8, 2021 April 28, 2021
 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):
"Site Plan Land in Haverhill, Massachusetts Prepared for Antonio Viola"
 a. Plan Title
Merrimack Engineering Services Stephen Stapinski, PLS and
 b. Prepared By Vladimir Nemchenok, PE
March 24, 2021 1" = 30'
 d. Final Revision Date e. Scale
"Wetland Replication Report", by Norse Environmental Services July 2020
 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.



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:
 33-1490

 MassDEP File #

 eDEP Transaction #
 Haverhill

 City/Town

B. Findings (cont.)

Denied because:

- b. the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order. See Attachment A, “Reasons for Denial”.**
- 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). See Attachment A, “Reasons for Denial”.**
- 3. Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) 0
a. linear feet

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

| Resource Area | Proposed Alteration | Permitted Alteration | Proposed Replacement | Permitted Replacement |
|------------------------------------------------------------------------|------------------------|-------------------------|-------------------------|--------------------------|
| 4. <input type="checkbox"/> Bank | _____ | _____ | _____ | _____ |
| | a. linear feet | b. linear feet | c. linear feet | d. linear feet |
| 5. <input 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 type="checkbox"/> Bordering Land Subject to Flooding | _____ | _____ | _____ | _____ |
| | a. square feet | b. square feet | c. square feet | d. square feet |
| | _____ | _____ | _____ | _____ |
| | e. cubic feet | f. cubic feet | g. cubic feet | h. cubic feet |
| 8. <input type="checkbox"/> Isolated Land Subject to Flooding | _____ | _____ | | |
| | a. square feet | b. square feet | | |
| | _____ | _____ | _____ | _____ |
| | 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 | | |
| | _____ | _____ | _____ | _____ |
| | c. square feet | d. square feet | e. square feet | f. square feet |
| | _____ | _____ | _____ | _____ |
| | g. square feet | h. square feet | i. square feet | j. square feet |



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

Provided by MassDEP:
 33-1490

 MassDEP File #

 eDEP Transaction #
Haverhill

 City/Town

B. Findings (cont.)

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

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



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

Provided by MassDEP:
 33-1490
 MassDEP File #

eDEP Transaction #
 Haverhill
 City/Town

B. Findings (cont.)

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

23. Restoration/Enhancement *:

_____ a. square feet of BVW

_____ b. square feet of salt marsh

24. Stream Crossing(s):

_____ a. number of new stream crossings

_____ b. number of replacement stream crossings

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

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



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

Provided by MassDEP:
 33-1490

 MassDEP File #

 eDEP Transaction #
 Haverhill

 City/Town

C. General Conditions Under Massachusetts Wetlands Protection Act

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

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



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

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

Provided by MassDEP:

33-1490

MassDEP File #

eDEP Transaction #

Haverhill

City/Town

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

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

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

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



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

Provided by MassDEP:
 33-1490

 MassDEP File #

 eDEP Transaction #
 Haverhill

 City/Town

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

iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;

v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.

c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:

i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and

ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.

d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.

e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



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

Provided by MassDEP:
 33-1490

 MassDEP File #

 eDEP Transaction #
 Haverhill

 City/Town

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

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

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

NO WORK SHALL BE PERFORMED ON THIS PROJECT.

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



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

Provided by MassDEP:
 33-1490
 MassDEP File #
 eDEP Transaction #
 Haverhill
 City/Town

D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? Yes No
 2. The Haverhill 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:
 An Ordinance to Protect the Wetlands, Related Water Resources and Chapter 253
Adjoining Land Areas 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):

NO WORK SHALL BE PERFORMED ON THIS PROJECT.



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:
 33-1490

 MassDEP File #

 eDEP Transaction #
 Haverhill

 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.

April 28, 2021

1. Date of Issuance

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

five

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

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.

Pursuant to the vote taken by the Conservation Commission on May 7, 2020, the following signatures are made in accordance with M.G.L. c.110G and pursuant to said Commission's electronic signature authorization vote recorded on May 21, 2020, with the Southern Essex District Registry of Deeds in Book 38538, Page 455.

| | |
|---------------------------------------|----------------------------------------|
| <u>/Harmony Wilson/</u> Signature | <u>Harmony Wilson</u> Printed Name |
| <u>/Ralph Basiliere/</u> Signature | <u>Ralph Basiliere</u> Printed Name |
| <u>/Thomas Wylie/</u> Signature | <u>Thomas Wylie</u> Printed Name |
| <u>/Neil Frasca/</u> Signature | <u>Neil Frasca</u> Printed Name |
| <u>/Frederick Clark/</u> Signature | <u>Frederick Clark</u> Printed Name |
| _____ Signature | - Printed Name |
| _____ Signature | - Printed Name |
| _____ Signature | _____ Printed Name |

by hand delivery on

by certified mail, return receipt requested, on

Date

April 28, 2021
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:
 33-1490

 MassDEP File #

 eDEP Transaction #
 Haverhill

 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:
 33-1490

 MassDEP File #

 eDEP Transaction #
 Haverhill

 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.

Haverhill

 Conservation Commission

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

To:
 Haverhill

 Conservation Commission

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

| | |
|----------------------------------|---------------------|
| Broadway - Parcel ID: 539-439-18 | 33-1490 |
| Project Location | MassDEP File Number |

Has been recorded at the Registry of Deeds of:

| | | |
|-------------------------|-------|-------|
| Southern Essex District | _____ | _____ |
| 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:

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

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



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

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)):

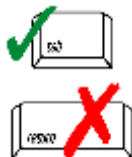
Name

Mailing Address

| | | |
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| 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

DEP File Number:

Request for Departmental Action Fee Transmittal Form

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.



Haverhill

Conservation Department
Phone: 978-374-2334 Fax: 978-374-2366
rmoores@cityofhaverhill.com
conservation@cityofhaverhill.com

ATTACHMENT A: REASONS FOR DENIAL

MassDEP FILE #33-1490

ISSUING AUTHORITY: Haverhill Conservation Commission (“HCC”)

APPLICANT: Antonio Viola

PROJECT LOCATION: Broadway - Parcel ID: 539-439-18

PROJECT DESCRIPTION

Construction of a single-family house with related appurtenances and direct impacts to bordering vegetated wetlands and 200’-Riverfront Area associated with West Meadow Brook.

REASONS FOR DENIAL UNDER 310 CMR 10.05(6)(b) – Failure to Meet Performance Standards:

1. The project does not comply with either the 25’-No Disturbance or 50’-No Build Zones defined under City of Haverhill Municipal Ordinance Chapter 253. The Commission typically provides relief of the scale proposed by the applicant in instances of long-term ownership (e.g., lots that are grandfathered under zoning) or for homeowner additions to structures built prior to passage of the wetland protection ordinance. The proposal does not meet either of these instances. The Applicant has not supplied any other support information for the proposed encroachments. Alternatives, such as purchasing additional and/or alternative land from the abutter (Fortin) to construct this house and/or improve compliance with performance standards for bordering vegetated wetland replication and local ordinance offsets, were requested to be analyzed and presented to the Commission. [Assessor and Registry records show the Applicant purchased the subject parcel in 2016 from the abutting owner at 954 Broadway (Fortin) for \$13,500. The Fortins purchased this parcel in 1985 for \$30,000.] The Applicant did demonstrate his unsuccessful pursuit of an access easement from the abutter at 984 Broadway (Peters).
2. 310 CMR 10.55(4)(a) – The construction of the proposed driveway would hydrologically disconnect the northwesterly section of bordering vegetated wetland (Flags 9A through 15A) from the remainder of the wetland to the southeast. There is no culvert or other means of hydraulic connection proposed under the driveway, resulting in the additional destruction and/or impairment of approximately 5,000-10,000sf of bordering vegetated wetland.
3. 310 CMR 10.55(4)(b)2 – No grading is proposed within proposed Replication Area “Section 1” and minimal grading is proposed within “Sections 2, 3, and 4”, likely resulting in the failures of these resource areas due to insufficient access to the groundwater table supporting the proposed wetland fill location.

4. 310 CMR 10.55(4)(b)3 – Wetland replication is proposed over four separate locations, where this should have been consolidated to no more than two by adding “Section 1” to “Sections 2 and 3”. As already stated with regard to replication, the purchase of additional and/or alternative land from the abutter should be vetted for the potential to create one compliant replication area.
5. 310 CMR 10.55(4)(b)4 – Wetland Replication “Section 4”, which represents about half of the replication area, is connected to the section of bordering vegetated wetland that will be hydrologically isolated from the remaining bordering vegetated wetland (see 310 CMR 10.55(4)(a), above).
6. 310 CMR 10.55(4)(b)7 – Wetland Replication “Section 1” and access to this area unnecessarily impacts forested Riverfront Area along the perimeter of this open bordering vegetated wetland.
7. 310 CMR 10.58(4) – Grading of the 140’ and 142’-contours on the south side of the house serves no apparent purpose and proposes to unnecessarily disturb forest Riverfront Area along the perimeter of the wetland. Regrading of the Riverfront Area should be eliminated.

REASONS FOR DENIAL UNDER 310 CMR 10.05(6)(c) – Insufficient Information:

8. The application lacked a revised Site Plan to reflect the final boundaries listed in the ORAD issued under DEP File #33-1479. The current plan shows multiple floodplain lines and Riverfront Area boundaries.
9. The application claims Limited Project Status without providing sufficient support. Such status must be earned from the issuing authority; this is discussed in the 1988 DEP Policy included in the Notice of Intent application materials submitted by the Applicant. All alternatives must be exhausted. The aforementioned purchase of additional and/or alternative land has the potential to eliminate the need for the wetland crossing.
10. One access alternative the Applicant initially proposed was a driveway along the Peters property line. The Commission understands this was met with consternation by one of the gas pipeline owners. However, the related materials provided by the pipeline company to the Applicant leave this option open. Specifically, the Kinder Morgan Developers Handbook states “some encroachment activities not normally allowed may be considered under special circumstances”. The excessive wetland impacts, increased wetland footprint within the pipeline, and unnecessary costs to the Applicant should be considered a special circumstance. The Applicant has not provided any easement or utility right-of-way information pertaining to the parcel. Commission research found a Maritimes & Northeast right-of-way agreement recorded against the parcel. While there are rights reserved by both the grantor and grantee, the agreement does not prohibit the construction of a driveway and utilities within the corridor. Commission research did not find the Northeast Gas Transmission Company (Kinder Morgan) agreement that is apparently recorded against the parcel. [This is the more important of the two agreements, as following the Kinder Morgan easement would allow for the elimination of direct wetland filling.] However, the many other agreements that were recorded in Haverhill for that corridor are templates. Again, none of which prohibited a driveway and utilities. Commission staff met with representatives from both gas companies. Kinder Morgan was the more concerned party with respect to a driveway along the easement. The concern given was that a repair to the underlying pipe could result in temporary blockage of the driveway. Note this remains a possibility with the current design, which proposes to cross all three pipes owned by the two companies. This design alternative to eliminate direct wetland filling was insufficiently pursued by the applicant.

11. The low point of the driveway appears to sit just 6” above the wetland grade at the proposed bend. It is likely this will cause very early failure of the driveway pavement and the need for additional permitting to remedy this failure. The Commission requested this design concern to be addressed during the hearing. No further information was submitted.
12. The use of retaining walls to reduce wetland impacts was requested to be reviewed. No further information was submitted.
13. During the hearing, a revised plan was submitted to reflect an area of grasscrete to be constructed near the proposed house to provide for vehicle turning. With this initial concern, the Commission had also noted the lack of a usable yard space and the likely potential for future violations at the property. The Applicant did not provide any information detailing how the wetland would be protected from future encroachments due to the lack of usable space on the parcel.
14. The Commission requested an additional utility pole be set near the driveway entrance to eliminate the aerial run above the wetland and the potential for conflict with the wooded edge. No further information was submitted.

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