



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:

051-0973

MassDEP File #

eDEP Transaction #

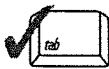
Newburyport

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: Newburyport
Conservation Commission

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

3. To: Applicant:
James Goodwin
a. First Name b. Last Name
Evergreen Commons, LLC c/o Mead, Talerman & Costa,
c. Organization
30 Green Street
d. Mailing Address
Newburyport MA 01950
e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):
Donna Koen
a. First Name b. Last Name
DDJH, LLC
c. Organization
16 Boyd Drive
d. Mailing Address
Newburyport MA 01950
e. City/Town f. State e. City/Town

5. Project Location:
18 Boyd Drive and 5 Brown Avenue Newburyport
a. Street Address b. City/Town
110 20
c. Assessors Map/Plat Number d. Parcel/Lot Number
Latitude and Longitude, if known: d m s d m s
d. Latitude e. Longitude



WPA Form 5 – Order of Conditions

A. General Information (cont.)

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

Essex

a. County

b. Certificate Number (if registered land)

c. Book

d. Page

7. Dates: 6/2/2017 1/9/2018 2/6/2018
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):

19. Plan Set titled "Port Place by Evergreen Commons LLC Definitive Subdivision, including the following pages:

Design Consultants Inc

Stephen B. Sawyer

b. Prepared By

c. Signed and Stamped by

5/22/2017, 1/9/2018

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:

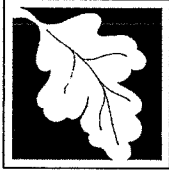
Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act).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



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) 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 |
| Cubic Feet Flood Storage | _____ | _____ | _____ | _____ |
| | e. cubic feet | f. cubic feet | g. cubic feet | h. cubic feet |
| 8. <input checked="" type="checkbox"/> Isolated Land Subject to Flooding | 222431 | 222431 | | |
| | a. square feet | b. square feet | | |
| Cubic Feet Flood Storage | 330487 | | 1102564 | 1102564 |
| | 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 |



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. nourishment cu. yd | d. nourishment cu. yd |
| 14. <input type="checkbox"/> Coastal Dunes | _____ | _____ | _____ | _____ |
| | a. square feet | b. square feet | c. nourishment cu. yd | d. nourishment cu. yd |
| 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 | | |



B. Findings (cont.)

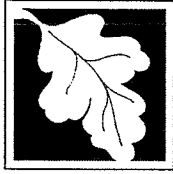
* #22. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

| | | |
|---|-------|-------|
| 22. <input type="checkbox"/> Restoration/Enhancement *: | 0 | 0 |
| a. square feet of BVW | _____ | _____ |
| b. square feet of salt marsh | | |
| 23. <input type="checkbox"/> Stream Crossing(s): | 0 | 0 |
| 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 2/6/2021 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.



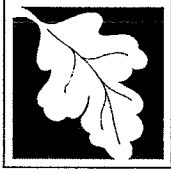
WPA Form 5 – Order of Conditions

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

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 051-0973 "
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.



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;



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:

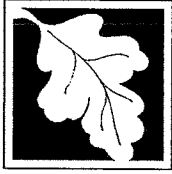
i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and

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.



WPA Form 5 – Order of Conditions

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

- 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.



D. Findings Under Municipal Wetlands Bylaw or Ordinance

- 1. Is a municipal wetlands bylaw or ordinance applicable? Yes No
- 2. The Newburyport Conservation Commission hereby finds (check one that applies):
Conservation Commission
 - a. that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw

2. Citation

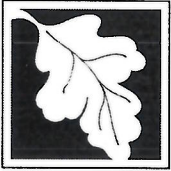
Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

- b. that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

1. Municipal Ordinance or Bylaw

2. Citation

- 3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.
The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):



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:
 051-0973
 MassDEP File # _____
 eDEP Transaction # _____
 Newburyport
 City/Town

E. Signatures

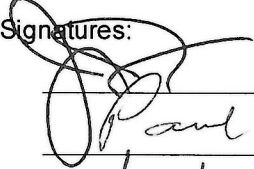
This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

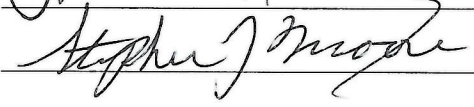
February 6, 2018
 1. Date of Issuance

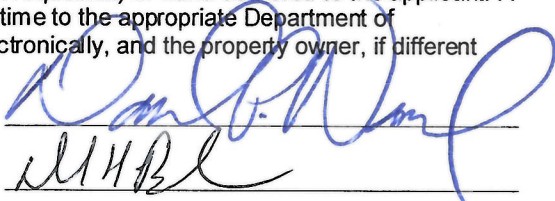
Please indicate the number of members who will sign this form.
 This Order must be signed by a majority of the Conservation Commission.


5
 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.

Signatures:








by hand delivery on

by certified mail, return receipt requested. on

 Date

 Date

F. Appeals

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

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

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



Massachusetts Department of Environmental Protection
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Provided by MassDEP:
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 Newburyport
 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.

Newburyport
 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

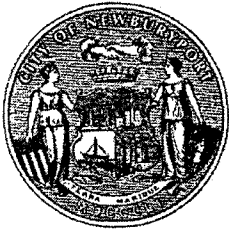
If recorded land, the instrument number identifying this transaction is:

Instrument Number

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

Document Number

Signature of Applicant



CITY OF NEWBURYPORT
CONSERVATION COMMISSION
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4400
WWW.CITYOFNEWBURYPORT.COM

DEP File Number: 051-0973

Date: February 6, 2018

Applicant: James Goodwin, Evergreen Commons, LLC

Property Owner: Donna Koen

Project Location: 18 Boyd Drive

Map: 110 and 111 **Lot:** 20 and 13

Project Description: Construction of a 38 home subdivision within a Zone II water supply protection district, including roadways, public infrastructure, stormwater management systems, public open space, conservation restriction area, isolated wetland restoration and isolated land subject to flooding creation (as mitigation for filling of isolated land subject to flooding).

These conditions are in addition to and part of the Order of Conditions (WPA Form 5) for the property located at 18 Boyd Drive, Newburyport, MA 01950.

This project shall conform to the following documents and plans unless otherwise specified:

1. WPA Form 3 Notice of Intent and Project Narrative, submitted by Hughes Environmental Consulting, last revised December 11, 2017.
2. Mitigation Plan, submitted by Hughes Environmental Consulting, dated December 27, 2017.
3. Proposed Conservation Restriction, last revised January 7, 2018.
4. Proposed Declaration of Restriction, dated January 25, 2018.
5. Proposed Homeowners Association Agreement, last revised January 25, 2018.
6. Landscape O&M Info, including index plan, table, and pollinator meadow info.
7. US Army Corps of Engineers Jurisdictional Determination, dated October 3, 2017.
8. Resource Area Summary Plan, last revised January 9, 2018.
9. Signage and Monuments Plan, SMP-1, dated January 9, 2018.
10. PH-1, Phasing Plan, dated January 9, 2018.
11. Stormwater Report Narrative with Appendix A, last revised January 9, 2018.
12. Plan Set titled "Port Place by Evergreen Commons LLC Definitive Subdivision" drawn by Design Consultants Inc., 68 Pleasant Street, Newburyport and dated May 22, 2017 and revised January 9, 2018, including the following pages:

- T1 Cover Sheet
- Ex1 Existing Conditions Plan of Land 1 of 6
- Ex2 Existing Conditions Plan of Land 2 of 6
- Ex3 Existing Conditions Plan of Land 3 of 6
- Ex4 Existing Conditions Plan of Land 4 of 6
- Ex5 Existing Conditions Plan of Land 5 of 6
- Ex6 Existing Conditions Plan of Land 6 of 6
- S1 Lot Layout Key Sheet
- S2 Lot Layout Sheet 1
- S3 Lot Layout Sheet 2
- S4 Lot Layout Sheet 3
- S5 Lot Layout Sheet 4
- S6 Lot Layout Sheet 5
- C1 Civil Key Sheet
- C2 Grading Plan 1
- C3 Grading Plan 2
- C4 Grading Plan 3
- C5 Grading Plan 4
- C6 Drainage and Utility Plan 1
- C7 Drainage and Utility Plan 2
- C8 Drainage and Utility Plan 3
- C9 Drainage and Utility Plan 4
- C10 Street Plan and Profile Road "A" & "D"
- C11 Street Plan and Profile Road "B"
- C12 Street Plan and Profile Road "C"
- C13 Typical Sections, Details and Notes 1
- C14 Typical Sections, Details and Notes 2
- C15 Typical Sections, Details and Notes 3
- C16 Typical Sections, Details and Notes 4
- L1 Overall landscape Plan
- L2 Landscape Plan
- L3 Landscape Plan
- L4 Landscape Plan
- L5 Landscape Plan
- L6 Details
- A1 Architectural Elevations

A. General Conditions

19. The Conservation Commission shall be informed of all changes that may be made to the Plan(s) of Record by any other Board, Commission or Authority or as a result of changes by the Applicant. All changes shall require additional approvals from the Conservation Commission.
20. A member of the Newburyport Conservation Commission (the Commission) or its administrator may enter and inspect the property and the activity that are the subjects of this Order at all reasonable times, with or without probable cause or prior notice, and until a Certificate of Compliance is issued, for the limited purpose of evaluating compliance with this Order.

21. With respect to all conditions the Conservation Commission designates the Conservation Administrator as its agent with full powers to act on its behalf in administering and enforcing this Order.
22. The term "Applicant" as used in this Order of Conditions shall refer to the owner, any successor in interest or successor in control of the property referenced in the Notice of Intent, supporting documents and this Order of Conditions. The Commission shall be notified in writing within 30 days of all transfers of title of any portion of property that take place prior to the issuance of the Certificate of Compliance.
23. This document shall be included by reference in all contracts, plans and specifications dealing with the activity that is the subject of this Order, and that are created or modified after the issuance date of this Order, along with a statement that this Order shall supersede any conflicting contractual arrangements, plans or specifications.
24. The applicant shall provide a copy of this Order to the person or persons supervising the activity that is the subject of this Order, and shall be responsible for ensuring that all persons performing the permitted activity are fully aware of the terms and conditions of this Order.
25. Any person performing work on the activity that is the subject of this Order is individually responsible for understanding and complying with the requirements of this Order, the Act, 310 CMR 10.00.
26. The Commission reserves the right to impose additional conditions on this project, including but not limited to, additional or modified erosion/siltation controls during construction, if it deems that site conditions warrant such measures to mitigate potential impacts.
27. If any changes are made in the above-described plan(s) which, in the Commission's opinion, may alter an area subject to protection under the Wetlands Protection Act, 310 CMR 10.00 or the Newburyport Wetlands Ordinance, the applicant shall inquire from this Commission or its agent, prior to implementing the change in the field, whether the change is significant enough to require the filing of a new Notice of Intent. Any errors in the plans or information submitted by the applicant shall be considered changes and the above procedures shall be followed. Approval of changes must be granted by the Conservation Commission before such work may continue.
28. This Order authorizes only the activity described on the approved plan(s) and approved documents referenced in this Order. Any other or additional activity in areas within the jurisdiction of the Commission shall require separate review and approval by the Commission or its agent.
29. The limits of work in the field shall be clearly marked and all workers shall be instructed not to work beyond the specified limits. Resource area flags shall be maintained and replaced as necessary until a final Certificate of Compliance is issued for the project.

B. Pre-Construction

30. Prior to the commencement of any activity on this site, the applicant or owner shall complete and submit the attached "Permit Compliance Contact Form," providing the name(s), address(es), phone number(s) and email address(es) of a contact person or persons responsible for compliance with this Order. Should the responsible parties change during the course of the project, the Commission shall be notified as soon as practical of such change.

31. The applicant shall display the Department of Environmental Protection (DEP) file number for this Order on a sign within the minimum dimensions of two feet by two feet at a location clearly visible from the street. This sign shall remain in place and visible until a Certificate of Compliance is issued for the activity.
32. The applicant shall arrange for a pre-construction meeting with the Conservation Commission or its designated representative(s) no less than 72 hours prior to the commencement of construction. Commencement of construction includes any site clearing or grading. The purpose of this meeting is to inspect the erosion controls and to review all conditions of this Order of Conditions with the applicant, contractor and sub-contractors as appropriate to ensure they are understood.
33. The Commission shall be notified at least 48 hours in advance of the commencement of work at the site.

C. During Construction

34. A copy of this Order of Conditions and approved Plan(s) of Record shall be on the site upon commencement and during any site work for contractors to view and adhere to.
35. Any material placed in wetland resource areas or outside the Limit of Work by the applicant without express authorization under this Order shall be removed as soon as possible by the applicant upon the request of the Conservation Commission or its administrator.
36. All construction materials, earth stockpiles, landscaping materials, slurry pits, waste products, refuse, debris, stumps, slash, or excavate may only be stockpiled or collected in areas as shown and labeled on the approved plan(s), or if no such areas are shown must be placed or stored outside the isolated vegetated wetland and associated buffer zones under cover (unless the piles are too large for cover) and surrounded by a double-staked row of hay bales or other approved erosion control device to prevent sediment from migrating from the stockpile. Specific measures for stockpiles shall be included in the SWPPP, to be submitted under condition 43 below.
37. As soon as possible, all disturbed areas shall be brought to final grade and shall be permanently stabilized within 30 days of that time by measures acceptable to the Commission.
38. The project manager shall be responsible for regular inspections of the erosion controls on at least a weekly basis and after each rain storm. Necessary repairs and maintenance of the erosion control devices shall be made expeditiously.
39. Any and all demo/construction debris resulting from the approved construction shall be placed in an enclosed covered container or removed from the site daily.
40. Trash dumpsters shall be located as far away from the resource areas as possible and shall be emptied at least once a week during construction.
41. No material of any kind may be buried, placed or dispersed in areas within the jurisdiction of the Commission by activities that are the subject of this Order.
42. No fuel, oil, urethanes, or other pollutants shall be stored in any resource area or the buffer zone.

D. Special Conditions

43. No work, including site preparation and land disturbance, may commence unless and until a construction period pollution prevention and erosion and sedimentation control plan that meets the requirements of Standard 8 as further elaborated by the Massachusetts Stormwater Handbook has been approved by the Conservation Commission. This plan may be the same as or include the Stormwater Pollution Prevention Plan (SWPPP) required by the EPA for coverage under the NPDES Construction General Permit. This plan must be submitted to the Conservation Commission or its Administrator for review at least 14 days prior to any planned land disturbance and must be approved in writing by the Conservation Commission or its Administrator prior to land disturbance.
44. The Applicant shall include BMPs for stabilizing slopes 3:1 or steeper in the construction period pollution prevention and erosion and sedimentation control plan. This shall include both short and long term stabilization for areas not being actively worked for two weeks or longer. Any stabilizing measures in the plan shall not be susceptible to washing into the resource area. When rough grade will not be worked for longer than 30 days during the growing season, stabilization shall include seeding with a temporary seed mix. When finish grade is achieved, these areas shall be planted and/or seeded as soon as possible within the growing season.
45. Work within the resource areas shall be conducted as early in the construction process as feasible, such that the resource areas and the functions they provide (specifically flood control and storm damage prevention) will be reestablished with minimal delay.
46. To the extent practicable, initial alterations within the existing IVW should occur outside of the growing season/active wildlife season and work outside of the winter months (non-growing season) should be limited. If work must begin outside of winter months, disturbance should be phased in order to allow small mammals time to relocate.
47. The Applicant shall continue to monitor groundwater levels within wells 3 and 6 on a monthly or more frequent basis and adjust the proposed elevations within the reconstructed IVW accordingly to ensure that the area supports sufficient hydrology during the growing season resulting in a functional wetland habitat.
48. The Applicant shall provide for oversight by a wetland scientist or other qualified individual during all phases of the construction to monitor the IVW and ILSF to ensure that site-specific adjustments can be made that will further ensure the successful restoration/recreation of these resource areas.
49. The Applicant shall hire a wetland scientist to monitor the recreated IVW for a period of two full growing seasons and submit a monitoring report to the Conservation Commission at the end of each growing season. Any individual dead or dying plants (containerized plants) should be replaced during the two monitoring period. Dead or dying tubelings and seed mix areas should be replaced on a coverage basis rather than based on performance of individual plants. The Applicant/owner must demonstrate success based on the general BVW performance standards within the two years of reporting, or additional restoration and continued reporting is required to ensure success.

50. The IVW shall support 75% or greater cover of native wetland vegetation after two full growing seasons. In order to establish the extent of a full growing season, the cutoff date for completion of construction will be June 30. The Applicant shall perform remedial actions during each growing season to ensure a native wetland plant community becomes established. If this has not occurred by the end of two growing seasons, the monitoring period shall be extended to ensure two full years of monitoring after remedial work has occurred.
51. Prior to issuance of any partial or complete Certificate of Compliance, the Applicant shall install permanent signage in conformance with the Signage and Monument Plan (dated January 9, 2018, included in the Notice of Intent) in order to alert residents and users of the sensitive nature of the area. Signage shall be placed in strategic locations such that it is clearly visible. The signage should include language indicating that the area is environmentally sensitive and that no new disturbance or dumping of debris or yard waste is allowed within this area. The Applicant shall submit sample signage along with a plan of sign locations to the Conservation Commission and/or its Agent for approval prior to installation. The Homeowners Association shall circulate guidelines to the Association members indicating the same regarding the no disturbance buffer and the resource areas and that the signage may not be removed. A copy of these guidelines shall be provided to the Conservation Commission.
52. Prior to issuance of any partial or complete Certificate of Compliance, the Applicant shall install educational signage within the Open Space area in conformance with the Signage and Monument Plan (dated January 9, 2018, included in the Notice of Intent), the content and design of which is shown on the plan and the final sign shall be approved by the Conservation Commission and/or its Agent prior to installation.
53. The Applicant shall provide for oversight by a wetland scientist or other qualified individual during the construction of the stormwater overflow feature of the constructed wetland to ensure that the channel is lined with cobbles and that veins and J hooks are created to provide varied flow characteristics, as noted on the plans, to provide additional habitat and to allow for site-specific adjustments that will further ensure the successful restoration/recreation of these resource areas.
54. The Applicant shall provide a signed Illicit Discharge Compliance Statement prior to any earth disturbance.
55. The Applicant shall install a plaque beside the exterior door as one enters each house from the connected garage which notifies the homeowner of the obligations and restrictions related to the Water Resource Protection District and the requirements of these permits. The design and content of each such plaque shall be reviewed and approved prior to installation by the Conservation Commission and the Planning Board. Said plaques shall be installed in each applicable house prior to the grant of any Occupancy permit therefor.
56. Prior to issuance of any occupancy permit or Partial Certificate of Compliance covering any home within the subdivision, evidence that the approved plaque, referenced in Special Condition #55, has been installed in a visible location in the garage of each house so that it can be clearly seen when one is entering the house. The plaque shall

be a permanent installation and shall be replaced if removed, damaged or otherwise obscured.

57. In the event that the Conservation Restriction is not final at the time of sale of any of the homes within the subdivision, the Declaration of Restriction shall be provided to each new homeowner, and each new homeowner shall acknowledge in writing that they have received and read the Declaration of Restriction.

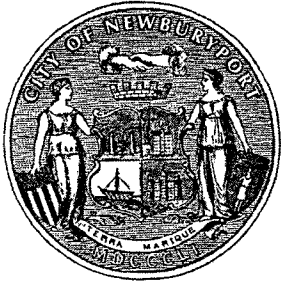
E. Post Construction

58. Partial Certificates of Compliance may be issued for lots in each phase as a group, by phase, as shown on the approved Project Phasing Plan, provided that all of the infrastructure related to stormwater management and all of the wetland resource areas associated with that phase, as also shown on the Phasing Plan, have been completed and are in functional working condition.
59. Any request for a Partial Certificate of Compliance shall include at a minimum, the following:
- a. A completed Request for a Partial Certificate of Compliance – WPA form 8A.
 - b. A letter from a registered professional engineer certifying compliance of the subject properties with this Order of Conditions and detailing any deviations that exist and their potential effect on the project. A statement that the work is in “substantial compliance” with no detailing of the deviations shall not be accepted.
 - c. Photos of the completed elements in the project phase, including evidence that a plaque has been installed in each garage, as required by Special Condition #56, and an “As-Built” plan showing post-construction conditions, stamped and signed by a professional engineer or land surveyor. This plan shall note any deviations from the original plans/profiles and shall include final lot elevations.
60. A complete COC shall not be issued until the Conservation Restriction (CR) has been approved by the City and State of Massachusetts and has been recorded at the Registry of Deeds. Proof of recording of the CR shall be provided to the Conservation Commission.
61. After the completion of construction of homes in the final phase of the project and prior to issuance of the occupancy permit for the final home to be sold in that phase, as shown on the Phasing Plan, and prior to the expiration date of this Order of Conditions, the applicant shall submit the following to the Conservation Commission:
- a. A completed Request for a Complete Certificate of Compliance – WPA form 8A.
 - b. A letter from a registered professional engineer certifying compliance of the entire subdivision with this Order of Conditions and detailing any deviations that exist and their potential effect on the project. A statement that the work is in “substantial compliance” that does not specify whether there are any deviations from the plans, and if so what those deviations are, shall not be accepted.
 - c. Photos of the completed project, including:
 - current photos of the stormwater bioretention basins, rain gardens, constructed wetland and restored isolated vegetated wetland,

- evidence that a plaque has been installed in each garage, as required by Special Condition #56, and
- an “As-Built” plan showing post-construction conditions, stamped and signed by a professional engineer or land surveyor. This plan shall note any deviations from the original plans/profiles and shall include final lot elevations.

F. Perpetual Conditions

62. Maintenance of the private landscapes, public infrastructure, stormwater management features, open space, conservation areas and isolated wetland area shall continue in perpetuity in conformance with the approved Homeowners Association document, Conservation Restriction and Stormwater Management Operations & Maintenance Plan.
63. The maintenance and management of the Conservation Restriction shall be a part of the Order of Conditions in perpetuity and shall be carried with the property deed. Once the Conservation Restriction is legally established, the Applicant and/or the Homeowners Association shall submit a report at the end of the season (no later than December 15th of each year) documenting a qualified third party inspection of the CR and summarizing the maintenance steps taken within the Open Space area. The Conservation Agent shall be notified in advance of the inspection each year.



CITY OF NEWBURYPORT
CONSERVATION COMMISSION
60 PLEASANT STREET
NEWBURYPORT, MA 01950
978-465-4462

VARIANCE

UNDER THE NEWBURYPORT WETLANDS PROTECTION ORDINANCE

Chapter 6.5: Environment, Article II: Wetlands

DEP File Number: 051-0973

Date: February 6, 2018

Applicant: Evergreen Commons, LLC

Property Owner: City of Newburyport

Project Location: 18 Boyd Drive

Project Description:

Construction of a 38 lot Open Space Residential Design (OSRD) Subdivision on the site of the former Evergreen Golf Course at 18 Boyd Drive. Work is proposed to take place within Isolated Land Subject to Flooding and Isolated Vegetated Wetland and its buffer zone. This Variance is required in order to allow the proposed wetland restoration and open space improvement work within the Isolated Vegetated Wetland and 25-foot no-disturb zone.

Resource Areas Affected

Isolated Vegetated Wetland and 25-Foot No-Disturb Zone

Public Interests Protected

- | | |
|---|--|
| <input type="checkbox"/> Private Water Supply | <input checked="" type="checkbox"/> Groundwater Supply |
| <input checked="" type="checkbox"/> Flood Control | <input checked="" type="checkbox"/> Storm Damage Prevention |
| <input checked="" type="checkbox"/> Prevention of Pollution | <input checked="" type="checkbox"/> Public Water Supply |
| <input type="checkbox"/> Land Containing Shellfish | <input checked="" type="checkbox"/> Protection of Wildlife Habitat |
| <input type="checkbox"/> Protection of Fisheries | |

Variance Requested under Section 6.5-30 for the following activities:

1. Disturbance/construction within the Isolated Vegetated Wetland and the 25 Foot No Disturb Zone, as prohibited under Section 8 (A)(4)(a) of the Newburyport Wetland Protection Regulations. Work proposed within this area includes grading, planting, and site work associated with the wetland restoration and open space enhancements.

Findings in Support of the Variance

The Newburyport Conservation Commission voted on January 7, 2018 to grant a variance for the project under the Newburyport Wetlands Protection Ordinance, Chapter 6.5, Article II of the Newburyport Code of Ordinances.

After the public hearing, the Commission found the project to meet the following criteria:

1. There are no reasonable conditions or alternatives that would allow the project to proceed in compliance with these regulations: In order to expand the existing wetland and better tie it into natural hydrology, work is necessary in the wetland and within the buffer zone.
2. Mitigating measures are proposed that will allow the project to be conditioned so as to contribute to the protection of the wetland values protected by this ordinance: All of the proposed work within the no disturbance zone is mitigative in nature. The entire area is heavily altered and manipulated by anthropogenic activities. The finished product will be mitigative by providing enhanced water quality, pollution prevention capacity, and flood storage.
3. That the project is necessary to accommodate an overriding public interest or that it is necessary to avoid a decision that so restricts the use of property as to constitute an unconstitutional taking without compensation: There is an overriding public interest in providing a significant area of open space and improved wetland functions. The wetland will be doubled in size; its function will be improved by a hydrological connection. The improved function and size will encourage wildlife habitat. Additionally, 23 +/- acres of open space will be restricted in perpetuity at no cost to the public. The walking paths will be open to the public, and the improved wetland will provide important functions that are lacking in the current condition. Further, and significantly, the improved wetland will provide for better water quality and quantity than what currently exists in the Zone II Public Water Supply aquifer.