



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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

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JUL 18 2019
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WAYLAND CONSERVATION COMMISSION
WAYLAND CONSERVATION COMMISSION

JUL 16 2019

Chris D'Antonio
Windsor Place, LLC
73 Pelham Island Road
Wayland, MA 01778

RE: WETLANDS/WAYLAND
DEP FILE# 322-0897
24 School Street
**Superseding Order of Conditions
Affirmation of Denial**

Dear Mr. D'Antonio:

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

The project proposal is for the demolition of an existing single-family house, garage, barn and driveways and the construction of 12 townhouses filed under MGL Chapter 40B along with on-site parking, a septic system and stormwater management system on an approximately 0.86 acre (37,865 square feet) lot.

MassDEP's review of the file and site inspection confirms that the project site is adjacent to the following resource areas subject to protection under the Act: Bordering Vegetated Wetlands (BVW) and Bank of an intermittent stream. In accordance with the Wetlands Protection Act and its Regulations, the aforementioned areas are presumed to be significant to the statutory interests identified in the attached SOC. The project is within the Buffer Zones only. No wetland alteration is proposed.

An Order of Conditions was issued by the Commission on October 4, 2018 denying the project. The denial was based on both a lack of information pursuant to 310 CMR 10.05(6)(c) and the Commission's opinion that the proposed project cannot be conditioned to meet the performance standards pursuant to 310 CMR 10.53, 10.54, 10.55 and 10.56. The Commission's primary concern is that the project is too large for the lot and that impacts from the proposed project,

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

TTY# MassRelay Service 1-800-439-2370

MassDEP Website www.mass.gov/dep

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specifically the discharge of septic leachate and stormwater, will adversely affect the adjacent wetland resource areas.

You filed an appeal of the Commission's Order on October 18, 2018 based on your opinion that only a portion of the proposed project is located in the buffer zones of the BVW and Bank and that the project will not involve the removing, filling, dredging or altering of BVW or Bank. It is your opinion that the project will fully meet the stormwater standards.

On November 6, 2018, MassDEP held a site visit that was attended by you and your representatives and members of the Commission. The site is in a state of abandonment and the house is in disrepair. The lot slopes gradually down from School Street towards the BVW bordering an intermittent stream. The property line varies from 20 feet to approximately 55 feet from the BVW boundary. The intermittent stream is tributary to Snake Brook which eventually flows into Lake Cochituate.

Construction debris appears to have been dumped just off site of the property line near the BVW. Large tree trunks were observed in the wetland. Although the property is zoned as single family residential, according to information provided by the town, a chimney cleaning and repair company was permitted to run a business from this address from the years 2000 to 2013. The Commission believes that material from the chimney business may have also been buried with the construction debris.

Based on the Notice of Intent, after the demolition of the existing structures on the site, a 7.5-foot-high, 220-foot-long retaining wall will be built on the down-slope property line and fill will be used to raise the grade approximately seven (7) feet near the wall with fill tapering back towards School Street. Two buildings are proposed on the site with seven (7) townhouses in the building adjacent to the retaining wall and five (5) townhouses in the building adjacent to School Street. An on-site septic system is proposed at the north end of the lot with an 86-foot by 72-foot leach field that will have a projected daily hydraulic loading of 2860 gallons per day. The leach field will be set back from the wetland by a distance that ranges from 62.5 feet to 96 feet. The system had not been approved by the Board of Health at the time of MassDEP's review.

The proposed stormwater management system is made up of two treatment trains. The primary treatment train captures runoff from the parking areas and a portion of the roof surfaces and consists of catch basins discharging to 450i Stormceptors which then discharge to a 32-foot by 52-foot subsurface galley infiltration system. Overflow from the system will discharge to a level spreader located in the buffer zone. The proposed subsurface infiltration system will be located under the driveway between the buildings; there will be between one (1) and three (3) feet of fill and asphalt placed on top of the infiltration galleys. The second treatment train consists of a landscaped infiltration basin with overflow discharge to a level spreader.

In accordance with the MA Stormwater Handbook (Volume 2, Chapter 2), two (2) feet of separation is required between seasonal high groundwater and the bottom of the infiltration system. In addition, at least six (6) inches of a crushed, washed stone layer is required between the infiltrative surface and the bottom of the galleys. The required two (2) feet of separation

between the seasonal high groundwater and the bottom of the infiltration system should be measured from the bottom of the stone layer.

In order to meet the required two (2) feet of separation, the applicant has designed the infiltration system without the six (6) inches of stone and with the galleys resting directly on the soil with only a layer of filter fabric separating the galleys from the soil. It is MassDEP's opinion that this design does not meet the Stormwater Standards.

As designed, the proposed infiltration system has the capacity to store and recharge up to the 2-year storm event. Storm events in excess of the 2-year storm will pass directly through the infiltration system and discharge through a level spreader located approximately 40 feet from the BVW. The Stormwater Handbook specifies that subsurface systems should be designed to function off-line by placing a bypass structure upgradient of the system to convey high flows around it during large storms. It is MassDEP's opinion that the proposed design could lead to failure of the infiltration system by discharging untreated stormwater through the system without pre-treatment. Failure of the infiltration system could result in flooding on the site as well as erosion into the BVW, possible downstream flooding and discharge of untreated stormwater.

MassDEP is also concerned about the impact of dead and live loads on the galleys and the surface they sit upon. Dead loads, such as the weight of the overlying soils, are static forces that are relatively constant for an extended time. Live loads, such as the weight of a loaded moving truck, are usually variable and have the potential to crush the galleys or to push them into the subsurface soils, especially as no crushed stone layer is proposed.

The applicant has provided a hydraulic mounding analysis of the project site because of the hydraulic loading from both the septic system (2860 gallons per day) and the stormwater infiltration system and the proximity of these systems to each other. The USGS Hantush method was used to predict the effect of the groundwater mounds on the infiltration system and the septic leach field resulting from the 100 year storm event. Because of the constraints on the site such as the size of the lot, the retaining wall and the amount of hydraulic loading, it was the opinion of the Commission that a more robust analysis of the hydraulic loading using the USGS MODFLOW method should be used to model site conditions to determine if the proposed project is capable of protecting the interests of the BVW. MassDEP agrees that this information is necessary to properly evaluate the proposed project.

Pursuant to the Regulations at 310 CMR 10.05(7)(h), "When the request for a Superseding Order concerns an Order prohibiting work and issued pursuant to 310 CMR 10.05(6)(c), the Department shall limit its review to the information submitted to the conservation commission. If the Department determines that insufficient information was submitted, it shall affirm the denial and instruct the applicant to refile with the conservation commission and include the appropriate information."

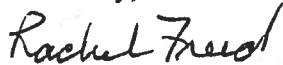
MassDEP agrees with the Commission that the information submitted by the applicant was not adequate to allow an evaluation of the proposal. It is MassDEP's position that the enclosed Superseding Order of Conditions denying the project as proposed is without prejudice and in no way prohibits the applicant from filing a new Notice of Intent. If a new Notice of Intent is filed, the applicant is encouraged to include the use of the USGS MODFLOW method and provide design calculations for live and dead loads

In addition, based on a review of the information provided by the applicant, information gathered at the site visit and consideration of all issues raised through the appeal, it is MassDEP's opinion that the project, as currently proposed, does not meet the Stormwater Standards in accordance with 310 CMR 10.05(6)(k).

It is MassDEP's position that the enclosed Superseding Order of Conditions affirming the denial issued by the Commission serves to protect the statutory interests identified in the Wetlands Protection Act, M.G.L. Chapter 131, Section 40. However, MassDEP reserves the right, should there be further proceedings in this case, to raise additional issues and present further evidence as may be appropriate. Should you or any concerned party dispute these findings, your attention is directed to the language at the end of the enclosed Superseding Order specifying the rights and procedures for appeal.

If you have any questions concerning this Superseding Order, please contact Gary Bogue at 978-694-3372 or by email gary.bogue@state.ma.us.

Sincerely,



Rachel Freed, Deputy Regional Director
Bureau of Water Resources-NERO

cc: Wayland Conservation Commission, Town Hall, 41 Cochituate Road, Wayland, MA 01778
Desheng Wang, Creative Land & Water Engineering, LLC, PO Box 584, Southborough,
MA 01772



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

MassDEP File Number:

322-0897

Provided by DEP

A. General Information

1. From: **MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Northeast

Regional Office

2. This issuance is for (check one):

☒ Superseding Order of Condition--**DENIAL**

☐ Amended Superseding Order of Conditions--**DENIAL**

3. To: Applicant:

Chris D'Antonio

Name

7 3 Pelham Island Road

Mailing Address

Wayland

MA

01778

City/Town

State

Zip Code

Property Owner (if different from applicant):

Windsor Place LLC

Name

73 Pelham Island Road

Mailing Address

Wayland

MA

01778

City/Town

State

Zip Code

4. Project Location:

24 School Street

Street Address

52

Assessors Map/Plat Number

Latitude: _____

Wayland

City/Town

189

Parcel/Lot Number

Longitude: _____

5. Property recorded at the Registry of Deeds for:

Southern Middlesex

County

69050

Book

394

Page

Certificate (if registered land)

6. Dates:

9/7/2017

Date Notice of Intent Filed

10/4/2018

Date Public Hearing Closed

10/4/2018

Date of Issuance(local Order of Conditions)

7. Final Plans and Other Documents (attach additional plan references as needed):

Proposed Plans 24 School Street Wayland (5 pages)

Plan Title

8/21/2018

Date [Revised]

METROWEST ENGINEERING, INC.

Prepared By:

Robert A. Gemma, RPE & PLS

Signed and Stamped By:

Existing Conditions Site Plan 5/23/2017 Prepared by METROWEST ENGINEERING, INC.

Additional Plan or Document Title



Massachusetts Department of Environmental Protection
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B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

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

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

2. The Department hereby finds the project, as proposed, is:

Denied without prejudice because:

- a. ☒ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations to protect those interests checked above. 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 these interests, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is set forth below:**

The project as proposed does not meet the Stormwater Standards in accordance with 310 CMR 10.05(6)(k).

- b. ☒ the information submitted by the Applicant is not sufficient to describe the site, the work, or the effect of the work on the interest 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 set forth below:**

As set forth in the Commission's denial:

The hydraulic analysis using the USGS MODFLOW is necessary to evaluate the proposed project impacts.



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

MassDEP File Number:

322-0897

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C. ISSUANCE

This Order is valid for three years from the date of issuance.

Issued by: **Northeast Regional Office**
Massachusetts Department of Environmental Protection

Rachel Freed
Signature of Deputy Regional Director, BWR

Rachel Freed
Printed Name of Deputy Regional Director, BWR

This Order is issued to the applicant as follows:

☐ by hand delivery on

☒ by certified mail #

JUL 16 2019

Date of Issuance

Date of Issuance

D. Notice of Appeal Rights

Appeal Rights and Time Limits

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

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

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

Department of Environmental Protection
Northeast Regional Office
Wetlands Program
Wilmington, MA 01887

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



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
Superseding Order of Conditions-DENIAL
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
D. Notice of Appeal Rights (continued)

MassDEP File Number:

322-0897

Provided by DEP

Contents of Appeal Notice

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

- (a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;
- (b) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative; if a ten residents group, the same information of the group's designated representative.
- (c) if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;
- (d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceedings that lead to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;
- (e) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;
- (f) a clear and concise statement of the alleged errors in the Department's decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c.131, S. 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision, and the relief sought, including any specific desired changes to the Department's decision;
- (g) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;
- (h) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and
- (i) if asserting a matter that is Major and Complex, as defined at 310 CMR 10.04(1), a statement requesting that the Presiding Officer make a designation of Major and Complex, with specific reasons supporting the request.

Filing Fee and Address

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

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
Box 4062
Boston, MA 02211

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