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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:

5-1127

MassDEP File #

eDEP Transaction #

Beverly

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: Beverly
 Conservation Commission

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

3. To: Applicant:

Paul

a. First Name

DiBiase

b. Last Name

DUC Residential, LLC

c. Organization

P.O. Box 780

d. Mailing Address

Lynnfield

e. City/Town

MA

f. State

01940

g. Zip Code

4. Property Owner (if different from applicant):

Walker Realty, LLC

c. Organization

2 Lan Drive

d. Mailing Address

Westford

e. City/Town

b. Last Name

MA

f. State

01886

g. Zip Code

5. Project Location:

Essex Street (#232 Essex Street & off Ice House Lane)

Map 44

c. Assessors Map/Plat Number

Beverly

b. City/Town

Lot 31

d. Parcel/Lot Number

Latitude and Longitude, if known:

42d34m00Ns

d. Latitude

70d55m56Ws

e. Longitude



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A. General Information (cont.)

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

Essex

a. County

b. Certificate Number (if registered land)

27973

299

c. Book

d. Page

7. Dates: July 10, 2014 October 12, 2014 November 4, 2014
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):

See Attached List of Approved Plans & Other Documents

a. Plan Title

b. Prepared By

c. Signed and Stamped by

d. Final Revision Date

e. Scale

f. Additional Plan or Document Title

g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

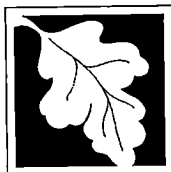
Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act).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

- a. ☒ Public Water Supply b. ☐ Land Containing Shellfish c. ☒ Prevention of Pollution
d. ☒ Private Water Supply e. ☒ Fisheries f. ☒ Protection of Wildlife Habitat
g. ☒ Groundwater Supply h. ☒ Storm Damage Prevention i. ☒ Flood Control

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

- a. ☒ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



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B. Findings (cont.)

Denied because:

- b. ☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
3. ☒ Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) 5+/-
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. ☐ Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. ☐ Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
6. ☐ 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. ☐ 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. ☐ Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. ☐ Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet



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B. Findings (cont.)

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

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. ☐ Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. ☐ Land Under the Ocean	<u> </u> a. square feet	<u> </u> b. square feet		
	<u> </u> c. c/y dredged	<u> </u> d. c/y dredged		
12. ☐ Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. ☐ Coastal Beaches	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. nourishment cu yd	<u> </u> d. nourishment cu yd
14. ☐ Coastal Dunes	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. nourishment cu yd	<u> </u> d. nourishment cu yd
15. ☐ Coastal Banks	<u> </u> a. linear feet	<u> </u> b. linear feet		
16. ☐ Rocky Intertidal Shores	<u> </u> a. square feet	<u> </u> b. square feet		
17. ☐ Salt Marshes	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
18. ☐ Land Under Salt Ponds	<u> </u> a. square feet	<u> </u> b. square feet		
	<u> </u> c. c/y dredged	<u> </u> d. c/y dredged		
19. ☐ Land Containing Shellfish	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
20. ☐ Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	<u> </u> a. c/y dredged	<u> </u> b. c/y dredged		
21. ☐ Land Subject to Coastal Storm Flowage	<u> </u> a. square feet	<u> </u> b. square feet		



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B. Findings (cont.)

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

22. ☐ Restoration/Enhancement *:

a. square feet of BVW

b. square feet of salt marsh

23. ☐ Stream Crossing(s):

a. number of new stream crossings

b. number of replacement stream crossings

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

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



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

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

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]
"File Number 5-1127 "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.



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

18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

19. The work associated with this Order (the "Project") is (1) ☒ is not (2) ☐ subject to the Massachusetts Stormwater Standards. If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:

a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.

b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:

- i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
- ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
- iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;
- iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
- v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.



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

- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following: *i.*) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and *ii.*) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



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

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

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



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D. Findings Under Municipal Wetlands Bylaw or Ordinance

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

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:

Beverly Wetlands Protection Ordinance & Regulations

Art. XXXVII
et. seq.

1. Municipal Ordinance or Bylaw

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):

Beverly Conservation Commission Findings (see attached)

Beverly Conservation Commission Special & Standard Conditions (see attached)



Massachusetts Department of Environmental Protection
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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.

11/4/2014

1. Date of Issuance

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

5

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.

Signatures:

G. B. L...
R. N. K...
Anthony Paluzzi

W. B. Z...
...

☐ by hand delivery on

☒ by certified mail, return receipt requested, on

November 4, 2014

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.

List of Approved Plans & Other Documents
232 Essex Street & Off Ice House Lane, Map 44 Lot 31
DEP File #5-1127

1. OSRD Site & Index Plan Essex Crossing Beverly, Mass. Index Sheet 1 of 1, Sheet 1 of 11, prepared by Hayes Engineering, Inc., stamped and signed by Peter Ogren, Scale 1"=100', dated September 30, 2014;
2. OSRD Site & Definitive Plan Essex Crossing Beverly, Mass. Definitive Sheet 1 of 2, Sheet 2 of 11, prepared by Hayes Engineering, Inc., stamped and signed by Thomas Winslow, Scale 1"=40', dated September 30, 2014;
3. OSRD Site & Definitive Plan Essex Crossing Beverly, Mass. Definitive Sheet 2 of 2, Sheet 3 of 11, prepared by Hayes Engineering, Inc., stamped and signed by Thomas Winslow, Scale 1"=40', dated September 30, 2014;
4. OSRD Site & Existing Conditions Plan Essex Crossing Beverly, Mass. Existing Sheet 1 of 2, Sheet 4 of 11, prepared by Hayes Engineering, Inc., stamped and signed by Peter Ogren, Scale 1"=40', dated September 30, 2014;
5. OSRD Site & Existing Conditions Plan Essex Crossing Beverly, Mass. Existing Sheet 2 of 2, Sheet 5 of 11, prepared by Hayes Engineering, Inc., stamped and signed by Peter Ogren, Scale 1"=40', dated September 30, 2014;
6. OSRD Site & Definitive Plan & Profile Essex Crossing Beverly, Mass. Profile Sheet 1 of 1, Sheet 6 of 11, prepared by Hayes Engineering, Inc., stamped and signed by Peter Ogren, Scale 1"=40' (Hor) & 4' (Vert), dated September 30, 2014;
7. OSRD Site & Topographic Plan Essex Crossing Beverly, Mass. Topographic Sheet 1 of 2, Sheet 7 of 11, prepared by Hayes Engineering, Inc., stamped and signed by Peter Ogren and James Emmanuel, Scale 1"=40', dated September 30, 2014;
8. OSRD Site & Topographic Plan Essex Crossing Beverly, Mass. Topographic Sheet 2 of 2, Sheet 8 of 11, prepared by Hayes Engineering, Inc., stamped and signed by Peter Ogren and James Emmanuel, Scale 1"=40', dated September 30, 2014;
9. OSRD Site & Utility Plan Essex Crossing Beverly, Mass. Utility Sheet 1 of 1, Sheet 9 of 11, prepared by Hayes Engineering, Inc., stamped and signed by Peter Ogren, Scale 1"=40', dated September 30, 2014;
10. OSRD Site & Detail Sheet Essex Crossing Beverly, Mass. Detail Sheet 1 of 2, Sheet 10 of 11, prepared by Hayes Engineering, Inc., stamped and signed by Peter Ogren, Scale 1"=as shown, dated September 30, 2014;
11. OSRD Site & Detail Sheet Essex Crossing Beverly, Mass. Detail Sheet 2 of 2, Sheet 11 of 11, prepared by Hayes Engineering, Inc., stamped and signed by Peter Ogren, Scale 1"=as shown, dated September 30, 2014;
12. Revised Mitigative Drainage Study Essex Crossing Beverly, Massachusetts, prepare by Hayes Engineering, Inc., Revised September 2, 2014;
13. OSRD Site & Existing Watershed Map Essex Crossing Beverly, Mass., Watershed Sheet 1 of 2, prepared by Hayes Engineering, Inc., scale 1"=60' dated September 5, 2014;
14. OSRD Site & Proposed Watershed Map Essex Crossing Beverly, Mass., Watershed Sheet 2 of 2, prepared by Hayes Engineering, Inc., scale 1"=60' dated September 5, 2014;

**City of Beverly
Conservation Commission**



FINDINGS

DEP FILE #: 5-1127

APPLICANT: Paul DiBiase, DiBiase Corporation

OWNER: Walker Realty LLC

PROJECT LOCATION: Essex Street (#232 Essex Street & off Ice House Lane), Map 44 Lot 31, Beverly, MA 01915

Project Description: This Order governs the construction of a subdivision roadway to service a 16-lot OSRD residential subdivision, with associated grading, utility and stormwater management BMP installation, as well as the following Lots in the subdivision which contain wetland resources and/or buffer zones: 7, 8, 9, 13, 14, 15, & 16. Work to take place within the 100-foot buffer zone to bordering vegetated wetland and bank of pond.

1. The Conservation Commission finds that the site on which the work is proposed contains resource areas subject to protection under the City of Beverly Wetlands Protection Ordinance Article XXXVII and City of Beverly Wetlands Protection Regulations (hereafter the Regulations) issued pursuant to it, which are significant to the protection of the interests identified in the Ordinance and Regulations, specifically:

The resource areas, which are depicted on "OSRD Site & Existing Conditions Plan, Essex Crossing, Beverly, Mass", Existing Sheets 1 and 2 of 2, as prepared by Hayes Engineering, Inc., signed and stamped by Peter Ogren, scale 1"=40', dated September 5, 2014, and as observed and determined by the Commission, are the following:

- Land Under Water (Kelleher Pond)
- Inland Bank to pond
- Bordering Vegetated Wetland
- 100-Foot Buffer Zone

The project site is not known to be within or adjacent to Estimated Habitat of rare or endangered species.

Portions of the proposed project are within the Beverly regulatory 25-Foot No-Disturbance Zone, namely grading associated with roadway shoulder construction,

installation of stormwater discharge level spreader, removal of remnant historic asphalt and restoration planting.

2. The Commission finds that the above-mentioned resource areas are significant to the protection of the following interests identified in the Ordinance:

- Public & Private Water Supply
- Groundwater Supply
- Flood Control
- Storm Damage Prevention
- Prevention of Pollution
- Fisheries
- Protection of Wildlife Habitat
- Prevention of Erosion & Sedimentation

3. A Notice of Intent signed by Paul DiBiase, Robert Walker, Brian McGrail and Elizabeth Wallis, with associated attachments, narrative, stormwater report, and accompanying plans was submitted to the Commission on July 10, 2014. The public hearing was opened on July 22, 2014, and the applicant's representative provided a presentation of the project. Discussion was held, which included opportunity for public comment. The hearing was continued through to September 30, 2014 to allow time for the applicant to address comments from the City Engineer, who performed a peer review of, among other project elements, the proposed stormwater drainage system. The Commission resumed the public hearing at the September 30th meeting at which it received revised plans in response to the City Engineer's peer review. The hearing was further continued to the October 21, 2014 meeting to allow the Commission time to review the new material and draft a set of conditions.

4. After continued discussion and consideration at the October 21st hearing, and there being no further questions or comments from the Commission, abutters or the public, the Commission voted to close the hearing. The Commission then deliberated and made the following findings:

- a. Based on the following findings, the Commission voted to grant a partial waiver from the 25-Foot No Disturb Zone (25' NDZ) performance standards pursuant to Regulations Sections V. C. to allow for grading related to construction of the roadway shoulder and installation of stormwater discharge level spreader:

- i. The Commission finds that the applicant satisfactorily demonstrated that there are no practicable alternatives that would allow this portion of the project to proceed in full compliance with these Regulations, as the existing roadway alignment, from which the new subdivision roadway will extend, constrains the location of the new subdivision roadway and the extent to which the turning radius can be manipulated away from the wetland resource areas. The Commission finds that the applicant made every effort to avoid locating the roadway and stormwater structures within the 25' NDZ. The Commission finds that the installation of the rip

rap velocity reducer to be a minor incursion as this structure impacts a small footprint and is a necessary component of the stormwater management BMP's to avoid and reduce potential for scour and erosion from overflow runoff from the subsurface infiltration system. Its location at the base of the slope at the pond bank is necessary due to natural hydrology and further avoids potential for erosion and associated impacts that would result if placed further up the slope outside the 25' NDZ;

- ii. The project element(s), or their natural and consequential effects, will have no adverse effects on any of the interests protected by the Ordinance, as current conditions are impaired with remnant broken bituminous concrete asphalt, disturbance by past activities associated the operation of a construction company on site and the presence of invasive species. The Commission finds that the removal of the asphalt and management of invasive species will remove current conditions that are adversely impacting the buffer zone and wetland and result in mitigating current impaired conditions:
 - iii. The project elements will improve the natural capacity of the resource area to protect the interests identified in the Ordinance, as the proposed "25-Foot Buffer Zone Mitigation" plan and compliance with the attached Special and Standard Conditions will result in an enhanced naturalized buffer zone immediately adjacent to the pond. Restoration of the 25' NDZ will serve to protect and improve the functions of the buffer zone, inland bank and bordering vegetated wetland as they contribute to public & private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, fisheries, protection of wildlife habitat, prevention of erosion & sedimentation.
5. The Commission voted 6-0 in favor of approving the project, based on the findings above and subject to compliance with the attached Special Conditions and Standard Conditions.

**City of Beverly
Conservation Commission**



SPECIAL & STANDARD CONDITIONS

DEP FILE #: 5-1127

APPLICANT: Paul DiBiase, DiBiase Corporation

OWNER: Walker Realty LLC

PROJECT LOCATION: 232 Essex Street (& off Ice House Lane), Map 44 Lot 31, Beverly, MA 01915

Project Description: This Order governs the construction of a subdivision roadway to service a 16-lot OSRD residential subdivision, with associated grading, utility and stormwater management BMP installation, as well as the following Lots in the subdivision which contain wetland resources and/or buffer zones: 7, 8, 9, 13, 14, 15, & 16. Work to take place within the 100-foot buffer zone to bordering vegetated wetland and bank of pond.

SPECIAL CONDITIONS

1. **Prior** to construction, the applicant shall secure an environmental/erosion control monitor who shall be responsible for monitoring all activity within jurisdictional areas to ensure compliance with this Order. The monitor shall be a professional engineer or wetland scientist and her/his name and contact number shall be provided to the Commission. The monitor shall visit the site at least once every other week during the active phases of construction that occur within the 100-Foot Buffer Zone (100' BZ). This condition shall apply to lots within the subdivision even if ownership of lots are transferred before work/construction on said lots commence.
2. The environmental/erosion control monitor shall submit a report monthly to the Commission or its Agent reporting inspection dates, status of construction, any erosion control maintenance requirements, and who at the project site was informed. Reports may be submitted by electronic mail.
3. The limit of the 25-Foot No Disturb Zone shall be demarcated with markers made of a weather resistant material, and shall be installed such that they are not less than 3 feet above grade to ensure visibility in the field. Each No Disturbance Zone marker shall bear, on their upland side, by way of permanent weather resistant plaque or engraving, the following language: "No Disturbance Of Any Kind Beyond This Point By Order of the Beverly Conservation Commission". Not less than 3 markers shall be installed, with

one being installed on Lot 15, one on Lot 16 and one at the bend along the mitigation area at the northwest corner of the subsurface infiltration system – exact location of each marker to be determined in the field with the Conservation Administrator. Maintaining these markers in good condition is required and this requirement shall survive in perpetuity beyond the issuance of a Certificate of Compliance. Maintenance of the markers on Lots 15 & 16 shall be the perpetual responsibility of the individual homeowners of those lots. Maintenance of the marker along the bend of the mitigation area shall be the perpetual responsibility of the Homeowners Association.

4. Roadway snow management and storage shall not occur in wetland resource areas or associated buffer zones within the development. Management, movement and storage of snow on site shall take place in appropriate upland areas outside the 100-foot buffer zone or taken to an appropriate off-site facility. This condition shall survive in perpetuity beyond the issuance of a Certificate of Compliance. Compliance with this condition shall be the perpetual responsibility of the Homeowners Association.
5. The work as delineated in the of the “25-Foot Buffer Zone Mitigation, Essex Crossing, Beverly Massachusetts” dated December 20, 2013 prepared by Hayes Engineering, shall be a requirement of this Order and shall be completed no later than just prior to the roadway binder course being laid down. Removal of remnant broken asphalt within the buffer zone to the pond bank and bordering vegetated wetland is a requirement of this Order and this material shall be removed from site and disposed of at an appropriate off-site facility.
6. **Prior** to the issuance of a final Certificate of Compliance for this project, all restoration plantings shall exhibit 75% survivorship after two growing seasons post installation. A wetland scientist or other qualified professional shall verify restoration plant survivorship. A wetland scientist or other qualified professional shall monitor the success of the invasive specie removal effort and his/her findings thereto, along with the plant survivorship determination, shall be submitted to the Commission. A request for a partial Certificate of Compliance may be submitted by the applicant and issued at the discretion of the Conservation Commission at that time.
7. All maintenance and inspection reports per the Stormwater Operation and Maintenance Plans shall be submitted to the Conservation Agent on an annual basis no later than December 31st of each year. This condition shall run in perpetuity beyond the issuance of a Certificate of Compliance. Compliance with this condition shall be the perpetual responsibility of the Homeowners Association.
8. This Order of Conditions in its entirety shall be referenced in all Homeowners Association documents.

STANDARD CONDITIONS

GENERAL

1. This Order, issued under the Beverly Wetlands Protection Ordinance, shall expire three (3) years after the date of issuance. The owner/applicant can request an extension of up to one (1) year. A request for extension must be submitted at least 30 days prior to the expiration date of the Order. The Commission can grant only two (2) extensions to this Order.
2. The Conservation Agent will be notified 48 hours prior to commencement of construction activities (978-921-6000 ext. 2343). Members and agents of the Conservation Commission (Commission) shall have the right to enter and inspect the premises to evaluate and ensure compliance with the conditions and performance standards stated in this Order, the Notice of Intent, the referenced plans, the Act, and 310 CMR 10.00, the Beverly Wetlands Protection Ordinance and Regulations, and may require any information, measurements, photographs, observations and/or materials or may require the submittal of any data or information deemed necessary by this Commission for that evaluation. Further, work shall halt on the site if the Commission, agent, or DEP determines that any of the work is not in compliance with any of the above. Work shall not resume until the Commission is satisfied that the work will comply, and has so notified the applicant in writing.
3. Approval of this application does not constitute compliance with any law or regulation other than MGL Chapter 131, Section 40, and Wetlands Regulations 310 CMR 10.00 or the Beverly Wetlands Protection Ordinance and Regulations.
4. This Order shall apply to any successor in control or successor in interest of the property described in the Notice of Intent and accompanying plans. These obligations shall be expressed in covenants in all deeds to succeeding owners or portions of the property.
5. This Order, in its entirety, shall be recorded at the Registry of Deeds after the expiration of the 10-day appeal period and within 30 days of issuance if no appeals have been filed. A copy of the stamped form shall be submitted to the Commission within 21 days of recording and prior to commencement of any activities subject to the Order of Conditions.
6. Prior to any work commencing, a sign no less than 2 square feet or more than 3 square feet, visible from the street shall be displayed reading "**MA DEP File #5-1127**", and not placed on a living tree.
7. 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 the property that takes place prior to issuance of the Certificate of Compliance.
8. It is the responsibility of the applicant to procure all other applicable federal, state and local permits and approvals required for this project, and **no work within the Commission's jurisdiction shall commence until all permits, approvals, and**

variances required by the City of Beverly have been obtained. This is to ensure that impact to jurisdictional areas are avoided in the case that any such permit is denied or withheld for any period of time, thereby maintaining the integrity of the resource area or buffer zone until such time all approvals are granted.

9. If there are conflicting conditions within this Order, the stricter condition(s) shall rule.
10. All work shall be performed so as to ensure that there will be no sedimentation into wetlands and surface waters during construction or after completion of the project.
11. The Commission and its Administrator shall have the discretion to modify the erosion/siltation control methods and boundary during construction if necessary.
12. All work shall be performed in accordance with this Order of Conditions and approved site plan(s). No alteration of wetland resource areas or associated buffer zone, other than that approved in this Order and approved plan, shall occur on this property without prior approval from the Commission.
13. If any changes are made in the above-described plan(s) which may or will alter an area subject to protection under the Wetlands Protection Act M.G.L. Ch. 131, Section 40, or its regulations 310 CMR 10.00, or the Beverly Wetlands Protection Ordinance or its Regulations the applicant shall inquire with this Commission in writing, prior to their implementation in the field, whether the change(s) is significant enough to require the filing of a new Notice of Intent. Any error in the plans or information submitted by the applicant shall be considered changes and the above procedures shall be followed. A copy of such request shall at the same time be sent to the Department of Environmental Protection.
14. In conjunction with the sale of this property or any portion thereof before a Certificate of Compliance has been issued, the applicant or current landowner shall submit to the Commission a signed statement by the buyer that he/she is aware of an outstanding Order of Conditions on the property and has received a copy of the Order of Conditions.

PRIOR TO CONSTRUCTION

15. Prior to commencement of any activity on this site, there shall be a **PRE-CONSTRUCTION MEETING** between the project supervisor, the contractor responsible for the work, and a member of the Commission or its administrator to ensure that the requirements of the Order of Conditions are understood.
16. **Prior to the pre-construction meeting and commencement of any activity on this site** the following tasks and/or deliverables shall be ready for submission to and inspection by a member of the Commission or the Conservation Administrator:
 - Compliance with Special Condition #1;
 - Proof that the Order of Conditions has been recorded at the Registry of Deeds;

- Proof that all other applicable permits have been secured for the project;
- Sedimentation and erosion control barriers shall be installed as shown on the approved plan(s) and detail drawings. Haybales and/or silt fence must be staked, or silt sock shall be secure; Erosion control barriers shall constitute the limit of work;
- DEP File Sign shall be installed per Standard Condition # 6;
- Location of where the Order of Conditions and approved plans will be stored on site per Standard Condition # 23;
- A work sequence/construction schedule shall be submitted in writing to the Commission for its file;
- Names and phone numbers of all responsible parties shall be registered with the Commission at the pre-construction meeting;
- The limits of wetland resource areas closest to construction activity shall be flagged with surveyor's tape and shall remain in place during construction.

EROSION CONTROL

17. Appropriate erosion control devices shall be in place prior to the beginning of any phases of construction, and shall be maintained during construction in the wetland areas and buffer zones. The erosion control specification provided in the Notice of Intent and the erosion control provision in the Order will be the minimum standards for this project; the Commission may require additional measures.
18. All construction equipment, construction materials, waste products, grubbed stumps, slash, etc. shall be stored/stockpiled at least 100 feet from wetland resource areas if at all possible, or at a location which will prevent sediment carried by surface runoff from entering designated resource areas. At no time shall any debris or other material be buried or disposed of within that line marked on the referenced plans as resource areas.
19. The areas of construction shall remain in a stable condition at the close of each construction day.
20. Any de-watering of trenches or other excavations required during construction shall be conducted so as to prevent siltation of wetland resource areas. All discharges from de-watering activities shall be filtered through haybale sediment traps, silt filter bags or other means approved by the Commission or its Administrator.
21. Within thirty days of completion of construction on any given portion of the project, all disturbed areas in the completed portion of the site shall be permanently stabilized with rapidly growing vegetative cover, using sufficient top soil to assure long-term stabilization of disturbed areas.
22. If soils are to be disturbed for longer than two months, a temporary cover of rye or other grass should be established to prevent erosion and sedimentation. If the season is not appropriate for plant growth, exposed surfaces shall be stabilized by other appropriate

erosion control measures, firmly anchored, to prevent soils from being washed by rain or flooding.

DURING CONSTRUCTION

23. A copy of this Order of Conditions, construction plans, and copies of the documents and reports cited as approved in this Order, shall be on the site upon commencement and during any site work for contractors to view and adhere to. These documents shall be protected from the elements but easily assessable to contractors and agents of the City.
24. Erosion and sedimentation control devices shall be inspected after each storm event and repaired or replaced as necessary. Any accumulated silt adjacent to the barriers shall be removed.
25. Only clean fill, free of masonry, stumps, asphalt, and any other kind of waste material shall be used on the site.
26. Cement trucks shall not be washed out in any wetland resource or buffer zone area. Any deposit of cement or concrete products into a buffer zone or wetland resource area shall be removed by hand.
27. No fuel, oil, or other pollutants shall be stored in any resource area or the buffer zone thereto, unless specified in this Order of Conditions.
28. There shall be no pumping of water from wetland resource areas.
29. During construction, all drainage structures shall be inspected regularly and cleaned as necessary.
30. Immediately following drainage structure installation, all inlets shall be protected by hay bales and/or silt bags in order to filter silt from stormwater before it enters the drainage system.
31. The project shall not cause an increase in run-off onto adjacent properties, either during construction or when completed.
32. The applicant is hereby notified that failure to comply with all requirements herein may result in the issuance of enforcement actions by the Conservation Commission including, but not limited to, civil administrative penalties under M.G.L. Chapter 40, Section 21D.

POST CONSTRUCTION

33. All disturbed areas, slopes and proposed landscape areas shall be stabilized through the use of season-appropriate methods. No disturbed areas or stockpiled material will be left unprotected or without erosion controls during the winter.

34. Upon completion of construction, the applicant or current landowner shall submit the following to the Commission to request a Certificate of Compliance:
- (1) A letter requesting a Certificate including the following information:
 - a. Name and address of current landowner;
 - b. Name and address of the individual/trust or other entity to whom the Certificate is to be issued;
 - c. Street address and lot number for the project; and
 - d. DEP file number
 - (2). A letter from a Registered Professional Engineering or Land Surveyor certifying compliance of the property with this Order of Conditions
 - (3) An "As-Built" plan signed and stamped by a Registered Professional Engineer showing post-construction conditions and:
 - a. As-built elevations of all drainage ways constructed within 100 feet of any wetland resource area;
 - b. As-built elevations and grades of all filled or altered wetland resource areas, buffer zones and replicated areas; and
 - c. Distances to all structures within 100 feet of any wetland resource area.
35. When issued, the Certificate of Compliance must be recorded at the Essex County Registry of Deeds.
36. Erosion control devices shall remain in place and properly functioning until all exposed soils have been stabilized with final vegetative cover and the Commission and/or its Administrator has authorized their removal.

PERPETUAL CONDITIONS

37. There shall be no dumping of leaves, grass clippings, trash or any kind of refuse in the resource area. Compliance with this condition shall be the perpetual responsibility of the individual homeowners whose lots contain wetland resources and/or buffer zones as well as the Homeowners Association where land containing wetland resource areas and/or buffer zones is located within the protected open space under the ownership of the Homeowners Association.
38. Herbicides, pesticides or fungicides shall not be applied within 100 feet of the wetland. Compliance with this condition shall be the perpetual responsibility of the individual homeowners whose lots contain wetland resources and/or buffer zones as well as the Homeowners Association where land containing wetland resource areas and/or buffer zones is located within the protected open space under the ownership of the Homeowners Association.

39. No sodium-based products shall be used for control of ice or snow within 100 feet of the wetland. Compliance with this condition shall be the perpetual responsibility of the individual homeowners whose lots contain wetland resources and/or buffer zones as well as the Homeowners Association where land/roadway containing wetland resource areas and/or buffer zones is under the ownership of the Homeowners Association.
40. Prevention of flooding, erosion and sedimentation are ongoing and do not expire at the end of three (3) years or with the issuance of the Certificate of Compliance. Compliance with this condition shall be the perpetual responsibility of the individual homeowners whose lots contain wetland resources and/or buffer zones as well as the Homeowners Association where land containing wetland resource areas and/or buffer zones is under the ownership of the Homeowners Association.
41. The following additional conditions shall remain in force in perpetuity beyond the issuance of a Certificate of Compliance: Special Condition #'s 3, 4 & 7.