



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
SOUTHEAST REGIONAL OFFICE  
20 RIVERSIDE DRIVE, LAKEVILLE, MA 02347 508-946-2700

MITT ROMNEY  
Governor

KERRY HEALEY  
Lieutenant Governor

STEPHEN R. PRITCHARD  
Secretary

ROBERT W. GOLLEDGE, Jr.  
Commissioner

20 OCT 2005

Brian J. Wooley for Wasted Away  
Neighborhood Coalition  
249 Summit Street  
New Bedford, Massachusetts 02740

RE: NEW BEDFORD--Wetlands  
DEP File No. SE 49-543,  
Superseding Order  
of Conditions--Affirmation.

Dear Mr. Wooley:


Following an in-depth review of the above-referenced file and in accordance with Massachusetts General Laws, Chapter 131, Section 40 (the Act), and its Wetlands Regulations at 310 CMR 10.00, the Department of Environmental Protection has issued the enclosed Superseding Order of Conditions (SOC). In accordance with 310 CMR 10.05(7)(i), the SOC affirms and incorporates by attachment the local Order of Conditions issued by the New Bedford Conservation Commission on September 1, 2005, with the exception of the referenced plans as revised.

This Order approves the proposed removal of contaminated soil and sediments from Bordering Vegetated Wetlands (BVW) [310 CMR 10.55] adjacent to McCoy Field and the new Keith Middle School construction site. The proposal includes temporary and permanent alteration to approximately 37,900 square feet of BVW. As proposed and conditioned by the enclosed Superseding Order, wetland resource areas shall be restored and revegetated in their entirety after the removal of contaminated sediments and underlying soil(s) as a Special Project under a Massachusetts Contingency Plan (MCP) pursuant to 310 CMR 40.0060 and 310 CMR 10.53(3)(q).

It is the Department's opinion that, as conditioned herein, the proposed project adequately protects the interests of the Act. Please be advised that the Department reserves the right, should there be further proceedings in this matter, to raise additional issues and present further evidence as may be appropriate.

If you have any questions concerning this Superseding Order of Conditions, please contact Dorothy Blickens at (508) 946-2781.


Very truly yours,

  
Elizabeth A. Kouloheras,  
Bureau of Resource Protection

K/db/

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service - 1-800-298-2207.

DEP on the World Wide Web: <http://www.mass.gov/dep>

 Printed on Recycled Paper

Enclosure.

cc: New Bedford Conservation Commission

Frederick M. Kalisz, Jr., Mayor  
 City of New Bedford  
 133 William Street  
 New Bedford, MA 02740

Jacqueline Coucci  
 City of New Bedford  
 133 William Street  
 New Bedford, MA 02740  
 CERTIFIED MAIL # 7002 2030 0006 4995 1932

Scott Alphonse, Environmental Stewardship  
 City of New Bedford  
 133 William Street  
 New Bedford, MA 02740

Alan Hanscom ✓  
 BETA Group  
 315 Norwood Park South  
 Norwood, MA 02062

Brian Valiton  
 Regulatory Division  
 Department of the Army  
 New England District, Corps of Engineers  
 696 Virginia Road  
 Concord, MA 01742-2751  
 [CENAE-R-PEA Permit Number: 2005-2131]

ecc: DEP-SERO-Attn: Gary Moran, Regional Director  
 DEP-SERO-BRP-Attn: David DeLorenzo, Deputy Regional Director  
 DEP-SERO-BWSC-Attn: Millie Garcia-Surette, Deputy Regional Director  
 DEP-SERO-BWSC-Attn: Gerard Martin, Site Management



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

DEP File Number:

SE 49-543

**A. General Information**

**Superseding Order of Conditions – Affirmation**

To: Applicant:

City of New Bedford, Jacqueline Coucci  
 Name  
133 William Street  
 Mailing Address  
New Bedford MA 02740  
 City/Town State Zip Code

Property Owner (if different from applicant):

City of New Bedford, Scott Alfonse  
 Name  
133 William Street  
 Mailing Address  
New Bedford MA 02740  
 City/Town State Zip Code

1. Project Location:

225 Hathaway Blvd.; McCoy Field.  
 Street Address  
69; 75  
 Assessors Map/Plat Number

New Bedford  
 City/Town  
125; 167  
 Parcel/Lot Number

2. General Description of Approved Project:

This Superseding Order of Conditions approves the removal of contaminated soil and sediment from the wetland area located adjacent to McCoy Field and the new Keith Middle School construction project. The proposal includes temporary and permanent alteration to approximately 37,900 square feet of Bordering Vegetated Wetland (BVW) [310 CMR 10.55]. As proposed and conditioned by this Superseding Order, wetland resource areas shall be restored and revegetated in their entirety after the removal of contaminated sediments and underlying soil(s) as a Special Project under a Massachusetts Contingency Plan (MCP) pursuant to 310 CMR 40.0060.

3. Final Approved Plans and Other Documents (if different from those listed in Order of Conditions):

Report 1: "Wetlands Remediation and Restoration Project for New Keith Middle School Site, New Bedford, Massachusetts, <i>BID #SCH-5-C04</i> "; and, "Addendum Number One <i>SCH-5-C04</i> , Wetlands Remediation and Restoration Project New Keith Middle School Site"	8/2005 revised through 8/31/2005
Title	Date
Plan 1: "Wetlands Sediment Remediation Area A (South), McCoy Field/New Keith Middle School", Sheet 1; and, "Wetlands Sediment Remediation Areas B & C (North), McCoy Field/New Keith Middle School", Sheet 2	7/2005 revised through 8/16/05
Title	Date
Plan 2: "Wetlands Sediment Remediation Profiles, McCoyField/New Keith Middle School", Sheet 3	8/15/2005
Title	Date
Plan 3: "Wetlands Sediment Restoration Area A (South), McCoy Field/New Keith Middle School", Sheet 4; and, "Wetlands Sediment Restoration Areas B & C (North), McCoy Field/New Keith Middle School", Sheet 5	8/16/2005
Title	Date

4. Final Plans and Documents Signed and Stamped by:

Report 1: BETA Group, Inc. and City of New Bedford, Procurement Office; Plans 1, 2 & 3: BETA Group, Inc.  
 Signed and Stamped by

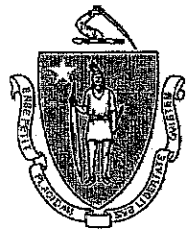
5. This Order is issued to the applicant as follows:

by hand delivery on

by certified mail on

Date

Date 7002 2030 0006 4995 1932



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

DEP File Number:

SE 49-543

**B. Findings**

The Department hereby finds that the project as proposed is **approved subject to the following conditions:**

In accordance with 310 CMR 10.05(7)(i), this Superseding Order of Conditions affirms the Order of Conditions issued by the New Bedford Conservation Commission on September 1, 2005. The Order of Conditions is attached and is incorporated by reference with the exception of the referenced reports and plans which have been revised.

1. All work shall comply with the conditions contained in the attached Order of Conditions, subject to the following modifications:
  - a. The work shall comply with the plans referenced in this Superseding Order, if different from those listed in the Order of Conditions.
  - b. The work authorized hereunder shall be completed within three years from the date of this Superseding Order unless otherwise specified below by the Department.
  - c. Requests for extensions in accordance with General Condition #5 shall be submitted to the Department.
  - d. Proof of recording in accordance with General Condition #8 shall be submitted to the Department.**
  - e. Requests for a Certificates of Compliance in accordance with General Condition #11 shall be submitted to the Department, and wetland boundary flags shall remain in place pursuant to General Condition #16 until a Certificate of Compliance has been issued by the Department.
  - f. The Department makes no findings and imposes no conditions pursuant to a municipal bylaw or ordinance.
  - g. Other- Special Conditions: **See attached Special Conditions Nos. 1 through 19.**

**C. Issuance**

Issued by the Department of Environmental Protection

Signature Elizabeth A. Koulouheras  
 Elizabeth A. Koulouheras, Bureau of Resource Protection

On this 20<sup>th</sup> day of October, 2005 before me, the undersigned Notary Public, personally appeared Elizabeth A. Koulouheras, known to me based on personal knowledge of his/her identity, and known to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

[Signature]  
 Notary Public

February 4, 2011  
 My commission expires

**APPEAL RIGHTS ARE ATTACHED**

**Notice of Appeal Rights:**

**For Notices of Intent filed BEFORE March 1, 2005:**

**Appeal Rights, Time Limits, Filing Fee and Address**

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 file a Notice of Claim for an Adjudicatory Appeal (Notice of Claim) pursuant to M.G.L. c. 30A, sec. 10.

Complete adjudicatory appeal applications require the submittal of a Notice of Claim and an Adjudicatory Appeal Fee Transmittal Form. A completed Fee Transmittal Form (available at: <http://www.mass.gov/oaa/feetrans.htm>) including an appeal fee payment of \$100.00, must be mailed to the DEP Lockbox at:

Department of Environmental Protection  
Box 4062  
Boston, MA 02211

The Notice of Claim (including a copy of the \$100.00 appeal fee payment check and a copy of the Fee Transmittal Form) must be sent by certified mail or be hand delivered to the Department within ten business days after the date of issuance of this Superseding Order or Determination. The Notice of Claim must be addressed to:

Case Administrator  
Department of Environmental Protection  
One Winter Street – 2<sup>nd</sup> Floor  
Boston, MA 02108

A copy of the Notice of Claim shall, at the same time, be sent by certified mail or hand delivery to the Conservation Commission, the applicant, any other parties involved in the proceeding, and the issuing office of DEP at: DEP SERO 20 Riverside Drive, Lakeville, MA 02347.

**Contents of Claim**

The Notice of Claim shall clearly and concisely set forth the facts related to the proceeding, the reasons the Superseding Order or Superseding Determination is considered to be inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in M.G.L. c. 131, § 40, and the relief sought through the adjudicatory appeal, including the changes desired in the Superseding Order or Superseding Determination. The Notice of Claim must include a copy of the document subject to the appeal and set forth: the Department Wetlands File Number; the name of the applicant and address of the project; the complete name, address, telephone and telefax (if any) numbers of the party filing the request, and, if represented by counsel, the name, address, telephone and telefax (if any) numbers of the attorney; the names, addresses, telephone and telefax (if any) numbers of all other parties, if known; and a statement that a copy of the request has been sent to the applicant, the conservation commission and each other party or representative of such party, if known. In addition, any person filing a Notice of Claim must also set forth sufficient facts to demonstrate their status as a person aggrieved, an abutter, or a ten residents group. Failure to submit all necessary information may result in a dismissal by the Department of the Notice of Claim for an Adjudicatory Hearing. Any ten persons may intervene in an adjudicatory proceeding pursuant to M.G.L. c. 30A, s. 10A.

## APPEAL RIGHTS ARE ATTACHED

### Notice of Appeal Rights:

#### For Notices of Intent filed AFTER March 1, 2005:

The applicant or landowner, the conservation commission; any person aggrieved by this Superseding Order if previously a participant in the permit proceedings, any owner of land abutting the land subject to this Superseding Order if previously a participant in the permit proceedings, or any ten residents of the city or town where the land is located, if any one resident was previously a participant in the permit proceedings, are hereby notified of their right to file a Notice of Claim for an Adjudicatory Appeal (Notice of Claim) pursuant to M.G.L. c. 30A, sec. 10. Previous participation in the Superseding Order permit proceedings means the submission of written information to the Conservation Commission prior to the close of the public hearing, filing a Request For A Superseding Order with the Department, or providing written information to the Department prior to issuance of a Superseding Order.

#### Appeal Rights, Time Limits, Filing Fee and Address

Complete adjudicatory appeal applications require the submittal of a Notice of Claim and an Adjudicatory Appeal Fee Transmittal Form. A completed Fee Transmittal Form (available at: <http://www.mass.gov/oa/feetrans.htm>) including an appeal fee payment of \$100.00, must be mailed to the DEP Lockbox at:

Department of Environmental Protection  
Box 4062  
Boston, MA 02211

The Notice of Claim (including a copy of the \$100.00 appeal fee payment check and a copy of the Fee Transmittal Form) must be sent by certified mail or be hand delivered to the Department within ten business days after the date of issuance of this Superseding Order or Determination. The Notice of Claim must be addressed to:

Case Administrator  
Department of Environmental Protection  
One Winter Street – 2<sup>nd</sup> Floor  
Boston, MA 02108

A copy of the Notice of Claim shall, at the same time, be sent by certified mail or hand delivery to the Conservation Commission, the applicant, any other parties involved in the proceeding, and the issuing office of DEP at: DEP SERO 20 Riverside Drive, Lakeville, MA 02347.

#### Contents of Claim

The Notice of Claim shall clearly and concisely set forth the facts related to the proceeding, the reasons the Superseding Order is considered to be inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in M.G.L. c. 131, § 40, and the relief sought through the adjudicatory appeal, including the changes desired in the Superseding Order. The Notice of Claim must include a copy of the document subject to the appeal and set forth: the Department Wetlands File Number; the name of the applicant and address of the project; the complete name, address, telephone and telefax (if any) numbers of the party filing the request, and, if represented by counsel, the name, address, telephone and telefax (if any) numbers of the attorney; the names, addresses, telephone and telefax (if any) numbers of all other parties, if known; and a statement that a copy of the request has been sent to the applicant, the conservation commission and each other party or representative of such party, if known. In addition, any person filing a Notice of Claim must also set forth sufficient facts to demonstrate their status as a person aggrieved, an abutter, or a ten residents group, and provide documentation to demonstrate previous participation, where required. Failure to submit all necessary information may result in a dismissal by the Department of the Notice of Claim for an Adjudicatory Hearing. Any ten persons may intervene in an adjudicatory proceeding pursuant to M.G.L. c. 30A, s. 10A.

**Special Conditions:**

1. In addition to this Superseding Order the remediation and restoration work is regulated by other local, state and federal permits including, but not limited to, the following: Massachusetts Contingency Plan (MCP) as a Special Project pursuant to 310 CMR 40.0060; Massachusetts 401 Water Quality Certificate [Transmittal Number W065206]; U.S. Department of the Army, New England District, Corps of Engineers, Category II, Massachusetts General Programmatic Permit [CENAE-R-PEA Permit Number: 2005-2131]; and, U.S. Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Permit.
2. A qualified *wetland scientist* shall be available for consultation during remediation activities as required by the New Bedford Order of Conditions (attached) and shall be present at the site during construction of the wetland restoration areas. The wetland scientist shall be responsible for supervising all wetland restoration activities including, but not limited to, wetland soil amendments, planting, monitoring; and the submittal of professional evaluations, progress reports, recommendations and certification that the wetland restoration has been completed in compliance with this Superseding Order of Conditions (SOC).
3. The applicant shall submit in writing to the Department and the New Bedford Conservation Commission the name, telephone number and address of the qualified wetland scientist (or botanist), hired to perform and/or oversee the work required by this SOC for the duration of the project.
4. The applicant, owner, and/or successor(s) and/or assignees shall not deviate from the wetland restoration actions required by this SOC unless and until the applicant, via the wetland scientist, submits to the Department adequate plans *proposing a change* to the wetland restoration actions *in writing* and *receives from the Department written approval* of such proposed changes.
5. As proposed removal of contaminated soil and sediment in wetland is approximately 37,000 square feet as shown on the plans of record. Any temporary impacts, such as that associated with access activities within the "8-foot wide temporary impact area", shall be restored to the original contour elevations, stabilized with New England wetland seed mix and, if necessary, revegetated with wetland plantings under the direction of the wetland scientist.
6. Refer to Report 1 of Record, Addendum 1, Section 02100, Page 02100-3A. The six-foot chain link security fence shall be disconnected from the posts in sections as described during the excavation portion of the remediation work. Erosion control measures such as a series of haybale lines and siltation fence, and if necessary organic jute netting, shall be installed and in place prior to removing each section of fence or as each section of fence is removed (based on site conditions). Once the remediation and restoration effort has been completed, the fence and posts shall be relocated to the upland side of the wetland replication areas created under DEP File No. SE 49-461, wetland restoration areas and wetlands as shown on the plans of record.
7. The temporary soil stockpile area as shown on Plan 1 of Record shall be lined, covered and secured with *impervious* 10 mil polyethylene sheeting.
8. Any dewatering discharge, including any that may result from the proposed truck washing activities, shall be effectively filtered or settled to remove sediment and silt prior to being discharged to waters or wetlands. Discharges from any dewatering shall not cause scouring of the wetlands or erosion of adjacent upland areas.

**Special Conditions Continued:**

9. Exposed substrate adjacent to and within the remediation and restoration areas shall be protected against erosion with a herbaceous New England wetland seed mix until the establishment of wetland vegetation. Wetland seed mix shall be spread throughout the wetland restoration areas and associated side slopes. The restoration areas shall be supplemented with nursery stock plantings as listed and described within report and plans of record.
10. Proposed wetland restoration area plantings shall be nursery stock. At no time shall any wetland plant species be translocated from adjacent wetland areas. If a particular plant species or size cannot be obtained, then the wetland scientist shall so notify the Department in writing, copy to the New Bedford Conservation Commission, on behalf of the owner/applicant or his/her successor(s) and request a modification to the planting schedule described in the previously referenced plans and this SOC prior to planting.
11. New England wetland seed mix shall be hand sown or dispersed with a hand-held spreader throughout the restoration area as described in Report 1 of Record, Addendum No. 1, Section 02265, Page 02265-6A. Hydro-seeding (which may introduce herbicides, fertilizers, or upland species seed stock) is not permitted under this SOC.
12. The use of grass, lawn, rye, conservation or highway seed mix is prohibited within any portion of the restoration areas or wetlands.
13. The application of bark mulch or wood chips (which may introduce invasive species or upland species seed stock) is not permitted in wetland resource areas, wetland replication or restoration areas.
14. As proposed and described in Report 1 of Record, Addendum No. 1, Section 02265, Page 02265-6A, an organic weed free mulch is permitted to be applied around the roots and base of woody vegetation. However the depth of mulch shall not exceed an inch (so as to not adversely affect the hydrology and elevations in the wetland).
15. After the planting has been completed within the wetland restoration areas the following documentation shall be submitted to the Department and the New Bedford Conservation Commission:
  - Final contour elevations, longitudinal cross-sectional profile(s) and square footage of the wetland remediation and restoration areas shall be shown on an *As-built plan*. A Massachusetts Registered Professional Engineer and/or Land Surveyor shall certify the Wetland Restoration as-built plan and submit a statement (signed and stamped by said Engineer and/or Land Surveyor) certifying compliance with the conditions of this SOC.
  - The wetland scientist shall submit a status report certifying that all phases of the wetland restoration area construction have been completed in compliance with the conditions of the Department's SOC; and, shall include in said report an inventory of the plants planted and relative vigor of the plants.
16. Upon completion of the project and at the end of two full growing seasons, a final progress report as described above prepared by the wetland scientist shall be submitted to the Department and the New Bedford Conservation Commission.

**Special Conditions Continued:**

17. Should at least 75% of the surface area of the wetland restoration areas fail to become established with greater than 50% wetland species within two years of the replication and restoration attempt [in accordance with 310 CMR 10.55(4)(b)1-7], the Department reserves the right to require additional measures necessary to achieve compliance.
18. Any future work not approved under this Superseding Order subject to jurisdiction of the Wetlands Protection Act will require the filing, at a minimum, of a Request for Determination of Applicability or a new Notice of Intent with the Conservation Commission and the Department. Prior to commencement of any such future work, receipt of a Negative Determination or valid Order of Conditions will be required.
19. Prior to the issuance of a Certificate of Compliance, a statement signed and stamped by a Registered Professional Engineer certifying compliance with the conditions of the Order shall be submitted to the Department with a copy to the New Bedford Conservation Commission.

K/db









**WPA Form 5 – Order of Conditions**

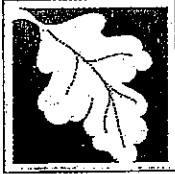
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

**B. Findings (cont.)**

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
7. <input type="checkbox"/> Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet

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

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. cu.yd dredged	d. cu.yd 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. c/y nourishmt.	d. c/y nourishmt.
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
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. cu.yd dredged	d. cu.yd 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. cu.yd dredged	b. cu.yd dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		



## WPA Form 5 – Order of Conditions

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

### C. General Conditions Under Massachusetts Wetlands Protection Act

(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. 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.
7. 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.
8. 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 this 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.
9. 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, "MA DEP"]

"File Number 49-543"



**WPA Form 5 – Order of Conditions**

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

**C. General Conditions Under Massachusetts Wetlands Protection Act**

- 10. 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 DEP.
- 11. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
- 12. The work shall conform to the plans and special conditions referenced in this order.
- 13. Any change to the plans identified in Condition #12 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.
- 14. 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.
- 15. 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.
- 16. 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.
- 17. 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.
- 18. All work associated with this Order is required to comply with the Massachusetts Stormwater Policy Standards.

Special Conditions:

See Special Conditions 19-70 (ATTACHED)

If you need more space for additional conditions, select box to attach a text document



**D. Findings Under Municipal Wetlands Bylaw or Ordinance**

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

a. Municipal Ordinance or Bylaw

b. 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.

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

a. Municipal Ordinance or Bylaw

b. Citation

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.

- c. The special conditions relating to municipal ordinance or bylaw are as follows:

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If you need more space for additional conditions, select box to attach a text document



**E. Issuance**

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

8/31/05  
 1. Date of Issuance  
4  
 2. Number of Signers

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

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

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:

[Handwritten Signature]  
[Handwritten Signature]  
[Handwritten Signature]  
[Handwritten Signature]

**Notary Acknowledgement**

Commonwealth of Massachusetts County of Bristol

On this 29th Day of August 2005

Before me, the undersigned Notary Public, personally appeared

Conservation Commissioners  
 Name of Document Signer

proved to me through satisfactory evidence of identification, which was/were

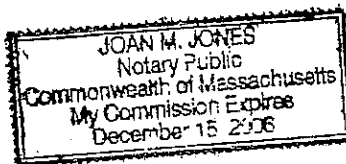
all personally known to me  
 Description of evidence of identification

to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

As member of

New Bedford  
 City/Town

Conservation Commission



[Handwritten Signature]  
 Signature of Notary Public

Joan M Jones  
 Printed Name of Notary Public

December 15, 2006  
 My Commission Expires (Date)

Place notary seal and/or any stamp above

This Order is issued to the applicant as follows:

by hand delivery on

8/31/05  
 Date

by certified mail, return receipt requested, on

Date



## WPA Form 5 – Order of Conditions

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

### 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 DEP 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 Determination, or providing written information to the Department prior to issuance of a Superseding Order or Determination.

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.

**Section G, Recording Information is available on the following page.**



# CITY OF NEW BEDFORD MASSACHUSETTS

## CONSERVATION COMMISSION

133 WILLIAM STREET, ROOM 309

NEW BEDFORD, MA 02740

Tel: (508) 991-6188; Fax: (508) 961-3045; TTY: (508) 979-1661

### Attachment A

#### List of Approved Plans

SE: 49-543

City of New Bedford  
Wetlands Risk-Based Cleanup  
Map 69, Lot 125 & Map 75, Lot 167

NEW BEDFORD, MA

1. Sheet 1: Wetlands Sediment Remediation Area A (South) McCoy Field/ New Keith Middle School revised date of 8/26/05.  
Prepared by BETA Group Inc. Stamped by Robert W. Kelly PE
2. Sheet 2: Wetlands Sediment Remediation Areas B & C (North) McCoy Field/ New Keith Middle School revised date of 8/26/05.  
Prepared by BETA Group Inc. Stamped by Robert W. Kelly PE
3. Sheet 3: Wetlands Sediment Remediation Profiles McCoy Field/ New Keith Middle School revised date 8/11/05.  
Prepared by BETA Group Inc. Stamped by Robert W. Kelly PE
4. Sheet 4: Wetlands Sediment Restoration Area A (South) McCoy Field/ New Keith Middle School dated 8/16/05.  
Prepared by BETA Group Inc & Gates Leighton & Associates, Inc Stamped by Wilfrid L. Gates RLA
5. Sheet 5: Wetlands Sediment Restoration Areas B & C (North) McCoy Field/ New Keith Middle School dated 8/11/05.  
Prepared by BETA Group Inc & Gates Leighton & Associates, Inc Stamped by Wilfrid L. Gates RLA

8/31/05



# CITY OF NEW BEDFORD MASSACHUSETTS

## CONSERVATION COMMISSION

133 WILLIAM STREET, ROOM 311

NEW BEDFORD, MA 02740

Tel: (508) 991-6188; Fax: (508) 961-3045; TYY: (508) 979-1661

### SPECIAL CONDITION Numbers 19-70

SE: 49-543

City of New Bedford

Wetlands Risk-Based Cleanup

Map 69, Lot 125 & Map 75, Lot 167

NEW BEDFORD, MA

19. No activity shall occur prior to obtaining all necessary and required permits, licenses, and approvals; and until copies of the same have been furnished to the Conservation Commission.
20. Any design modifications, alterations, amendments, or additions shall be subject to the approval of the New Bedford Conservation Commission. Requests for any changes shall be made in writing and shall be accompanied by a revised plan.
21. No modification to surface features, drainage or topography shall be permitted except as indicated by this Order of Conditions.
22. Contours shall remain unchanged except as permitted by this Order of Conditions.
23. There shall be no construction other than that proposed by the Notice of Intent and included on the submitted plan.
24. Immediately upon completion of the exterior construction and grading, permanent stabilization landscaping shall be carried out in order to minimize erosion.
25. All wet areas not to be altered shall be kept clear of rubbish, debris, and construction material.
26. All exposed soil or subsoil shall be replanted with vegetation such as grass, groundcover or shrubs so as to minimize erosion and siltation.
27. There shall be minimum disruption of existing grades and vegetation in order to minimize erosion.

28. No runoff shall be caused to drain on to adjoining property or on any public ways.
29. All excess material shall be removed from the site.
30. The owners shall notify the Conservation Commission of the work-start date prior to its commencement so that regular inspections may be made.
31. All work performed in accordance with said plans and this Order of Conditions shall be in compliance with the state building and/or plumbing code.
32. The Inspector and/or the Commission members shall have the right to enter upon the land for the purpose of the inspection and/or the taking of pictures to determine and evaluate compliance with this order.
33. The design engineer will certify, in writing, that this project has been complete in accordance with the above Order of Conditions before the Certificate of Compliance will be issued.
34. All facilities and equipment shall be continually operated and maintained so as to comply with this order of conditions and M.G.L. Ch. 131, S 40, the Wetlands Protection Act.
35. Certain conditions, such as maintenance or monitoring are on-going and are not to expire at the end of three years or with the issuance of a Certificate of Compliance.
36. This order of Conditions shall apply to any successor in interest or successor in control.
37. Any changes required by any other board or authority may require a new filing with the Conservation Commission.
38. At the discretion of the Conservation Commission, the applicant may be required to file with any or all of the following agencies:

**The Department of Environmental Protection  
Army Corps of Engineers  
Coastal Zone Management  
MA Division of Waterways**

39. The Conservation Commission shall not be responsible or liable for the construction, the operation, or the maintenance of any part of this project and does not warrant the safety of the same.
40. Any fill and/or construction materials shall be placed in upland areas.
41. Any mitigation and resource protection devices and measures, e.g. hay bales,

siltation fence, etc., are to be installed prior to initiation of any work under this Order of Conditions. The Conservation Agent shall be notified when in place for inspection and verification. No work to be undertaken under the Order of Conditions until written or verbal approval is received from the Conservation Commission or its Agent.

42. In accordance with Condition number thirteen (13), no activity shall take place until the applicant has furnished written documentation that the plans on file with the Conservation Commission are consistent with permits and approvals of other Town Boards.
43. Prior to any construction, an on-site inspection is to be held between the proposed contractor, the engineer, and the Conservation Commission Agent to go over the sequence of construction and all other restrictions and requirements as noted on the Order of Conditions. A written construction schedule to be received at that time.
44. All erosion control barriers shall be constructed of snow fencing, silt fencing and staked hay bales and clearly depicted on the plans, and placement shall be inspected both pre and post construction by Agent
45. Any changes in proposed drainage patterns will require written approval by the Conservation Commission.
46. Wetland flagging to remain in place until the project has been completed and Certificate of Compliance issued.
47. Notice of Intent, Order of Conditions and plans shall be retained on the site during construction and made available to all contractors.
48. All conditions are on going and do not expire until the issuance of a Certificate of Compliance.
49. The design engineer will certify, with an as-built plan, that this project has been complete in accordance with the above Order of Conditions before the certificate of Compliance will be issued.
50. The sequence of Remediation & Restoration activities shall be submitted to the Conservation Commission 24 hours prior to the initial on site inspection by the Commission or its designee (See Sheet 3 of the approved plans for sequence of inspections by the Conservation Commission).
51. The resume of the Applicant's Wetland Professional who shall oversee the wetland restoration, is to be submitted to the Conservation Commission for approval two weeks prior to initiation of restoration activities.
52. The Wetland Professional shall be responsible for immediately notifying the Conservation Commission when field conditions or activities arise that deviate from the Order of Conditions and approved plans. Verbal notification shall be verified with written notification within 24 hours.

53. The Wetland Professional shall be responsible for the marking of all trees within the "work area", which are greater than 6" in Diameter at Breast Height (DBH). ~~This Order shall require all trees with a DBH greater than 6" in-be saved. The~~ trees to be saved shall be marked in the field using "lead free" paint and the word "SAVE" or a similar designation is to be painted onto the tree in letters a minimum of 4" in height.
54. The manufacturer's specifications for the "wetland crossing mats" are to be submitted to the Conservation Commission 72 hours prior to their installation.
55. Test results of the wetland restoration soils shall be submitted to the Conservation Commission to document that they are clean and contain a minimum of 24% organic matter (12% organic content). The parameters and methods for testing of soils shall include those listed in the Contract Specifications for the Wetland Restoration Section 02265 (Section 3.02 A. 1 through 6) dated 8/16/05.
56. The organic mulch to be spread around the base of all wetland plantings shall be contaminant free. The contaminant free certification and the source of the organic mulch shall be provided to the Conservation Commission (wood chips are not permitted as mulch).
57. The species of vegetation contained in wetland seed mix shall be submitted to the Conservation Commission for approval two weeks prior to use. The labels from the wetland seed mix and all wetland tree & shrub plantings shall be submitted to the Conservation Commission.
58. Plantings of trees and shrubs shall only occur during the spring (April 15 to June 15) or Fall (September 15 to October 28) weather permitting.
59. Shrub plantings in the Restoration Area shall occur so as to mimic existing conditions as much as possible. The Wetland Professional shall submit to the Conservation Commission, the planting scheme that they shall provide to the contractor, which shall designate the locations, or clumps where applicable, of the tree and shrub plantings, the number and species and any special conditions that the Wetland Professional deems necessary to ensure success. The planting scheme shall be submitted to the Conservation Commission one week prior to undertaking plantings.
60. This Order requires that a wetland seed mix be spread over the final graded wetland restoration substrate for stabilization purposes following verification of the final restoration elevations (See Special Condition # 69). All tree and shrub plantings shall be completed by year-end 2006.
61. The manufacturer's specifications for the root barrier shall be submitted to the Conservation Commission 72 hours prior to installation. Root Barrier installation shall follow all parts of Contract Document Section 02265 entitled Wetland Restoration Section 3.01 (A through E) dated 8/16/05.

62. The Wetland Professional shall submit annual monitoring reports to the Conservation Commission through the year 2008. Reports shall be submitted following the growing season in '06, '07, '08. Reports shall include all documentation required to satisfy the Performance Standards for wetland replication as stipulated in 310 CMR 10.55 (4) A and B wherever such Performance Standards apply to Wetland Restoration. Annual Reports shall also provide documentation of the success/failure of the Root Barrier System in controlling *Phragmites australis* invasion into the restoration areas and recommendations for short-term and long-term maintenance.
63. Swamp mats, or a Conservation Commission approved equivalent, are hereby approved to be utilized to access the remediation areas. Solid fill (stone, rock, dirt) is prohibited within the restoration area or temporary impact area.
64. Any temporary stockpiling of contaminated material within the "Temporary Impact Area" shall be placed on an impervious liner and surrounded by staked hay bales. Contaminated soils shall not be stockpiled within Temporary Impact Areas overnight and any contaminated material, which inadvertently falls onto wetland substrate or vegetation, outside of the remediation areas, shall be immediately removed.
65. The identification of any proposed access points or temporary stockpile areas within the Temporary Impact Areas shown on the approved plans shall be identified in the field via the placement of 1" x 1" x 3' oak stakes at each corner of the proposed access location/stockpile area. The Wetland Professional shall inventory the temporary access/stockpile area(s), documenting species, size and numbers of plants and other wildlife characteristics and hydrologic indicators. Digital photos shall be submitted along with the inventory to the Conservation Commission. The Commission or its designee, shall respond within 72 hours of notification and 1. Inspect the proposed location, 2. verify that the submitted wetland inventory is complete and 3. provide written approval or denial of the proposed temporary impact location.
66. Within 7 business days of removal of any temporary impact (access roadway or stockpile) from the Temporary Impact Area, The Wetland Professional shall submit documentation to the Conservation Commission of any impacts in the Temporary Impact Area (including impacts to the BVW vegetation, soils and topography) and a Proposed Restoration Plan, as required. Any required restoration shall be completed by the end of 2006. Documentation of the restoration to All Temporary Impact Areas shall be included in the annual monitoring report (Reference Special Condition Number 62).
67. Within 14 business days of completion of all phases of restoration (soil replacement, & plantings) a Construction Summary Report shall be prepared by the Wetland Professional and submitted to the Conservation Commission. The report shall document compliance with the Order of Conditions and note any deviations from approved means and methods, their significance, and proposed remedy if appropriate. The report shall include photographic documentation. If remediation extends beyond 2005, a fall closure report shall be submitted documenting stabilization methods in place for the winter.

68. A Topographical survey (< or = 1' contour intervals) shall be prepared by a MA Registered Land Surveyor and shall be performed when all contaminated soil has been removed and prior to soil replacement. ~~This RLS stamped plan is to be submitted to the Conservation Commission 72 hours prior to placing any replacement wetland soils into the remediation area.~~
69. A Topographical survey (< or = 1' contour intervals) shall be prepared by a MA Registered Land Surveyor and shall be performed when the replacement wetland soils and wetland seeds, shrubs and trees have been planted and the site stabilized with the approved erosion controls. This survey shall be submitted to the Conservation Commission prior to or at the same time as the Construction Summary Report is submitted (Special Condition # 61). The RLS shall certify the seasonal high groundwater elevations in the restoration areas and include it on the topographical survey.
70. This Order of Conditions shall require the remediation/restoration to be performed in "the dry" whenever feasible ("the dry" defined, for this site, as when the water table is at or below the existing wetland substrate). Field conditions shall likely arise, even if done in "the dry" that require dewatering. All dewatering facilities shall be located and constructed as shown on the approved plans. The Wetland Professional shall notify the Conservation Commission prior to commencement of the dewatering of the remediation area.



# WPA Form 5 – Order of Conditions

49-543

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

## G. Recording Information

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 Page 7 of this form shall be submitted to the Conservation Commission listed below.

Conservation Commission

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

To:

New Bedford

Conservation Commission

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

Hathaway Blvd - New Bedford

Project Location

49-543

DEP File Number

Has been recorded at the Registry of Deeds of:

Bristol

County

849; 885

Book

329; 401

Page

for:

City of New Bedford c/o Jacqueline Coucci

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