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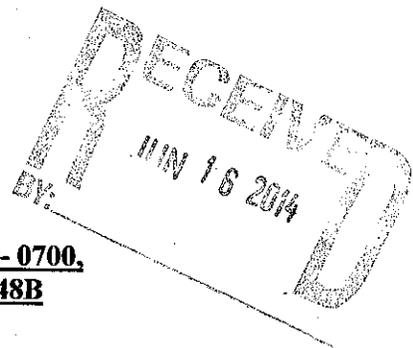
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Civil Engineers + Land Surveyors + Wetland Scientists + Soils Laboratory

June 11, 2014

Appeals Personnel
DEP Southeast Region
20 Riverside Drive
Lakeville, MA 02347



**Re: Request for Superseding Order of Conditions, DEP File # SE049-0700,
Off Maddie Drive, Map 136 Lot 501, New Bedford, Job # OE-1448B**

To Whom It May Concern:

On behalf of the property owner, Jennifer Cusson, we are requesting an appeal from the Department. We are aggrieved by the Order of Condition (OC) issued by the New Bedford Conservation Commission (NBCC) on May 20, 2014, and would like the Department to issue a Superseding Order of Conditions. This project involves new construction of a single family house on lot 4A in the subdivision known as Colby Village.

The Colby Village subdivision was reviewed at least three times by the NBCC since 2005. In 2005 the Bordering Vegetated Wetland (BVW) line was approved under DEP File # SE49-0548 and issued an OC (10/03/05). Under the order, the roadway and detention basin fall within the 100 foot buffer zone to a BVW. The roadway (binder course pavement) and basin and were partially constructed, unfortunately the road was not finished within the three year issuance.

The NBCC issued enforcement orders on 6/3/09 due to alleged drainage problems caused by the subdivision. Subsequently, meetings were held with the developer and various departments within the City of New Bedford to address drainage remediation and conformance. A Notice of Intent (NOI) was filed to address these concerns and to allow the completion of the subdivision road and drainage system. The NBCC again reviewed the project including the BVW line. They recommended moving Wetland Flag(WF) 6 further up gradient. The revision was made, WF 6 was moved and is now labeled WF 6R, as shown on the plan. An OC was issued on 7/14/2010, DEP file # SE049-0648.

Subsequently, the subdivision was foreclosed on by the lender and we understand the City of New Bedford then performed work on the subdivision roadway, under the OC DEP file # SE049-0648. However, work is not complete including remedial work required for the detention basin, and a certificate of compliance was never issued. This OC for DEP file # SE049-0648 is still valid under the Permit Extension Act.

Recently, a new NOI was filed by the applicants Phil and Debbie Rose for the construction of a single family house and the associated activities for lot 4A in the Colby Village Subdivision. The site plan submitted with the NOI incorporated the same wetland line as the 2010 filing as reviewed and approved by the NBCC. The project was denied by the NBCC, and a Denial OC was issued on May 30, 2014.

Objections to the Order of Conditions are as follows:

1. In the attached letter from the NBCC the proposed project was denied because they felt that the wetland line has changed and that Special Condition 51 of the 2010 Order of Condition (SE49-0648) allows them to modify the wetland line. Special Condition 51 *"This Order of Conditions does not permit work on lots 3A and 4A for the development of single family dwellings. Separate filings with the Conservation Commission shall be made for those two lots."* We strongly disagree with this argument.
 - a. The wetland line is still valid under the OC SE49-0648, and is extended thru the Permit Extension Act. The wetland line has already been reviewed twice by the NBCC, 310 CMR 10.05(4)(b)2. *"the boundary of bordering vegetated wetland or other resource areas may be determined through the filing of a Notice of Intent."* The BVW line was reviewed in accordance with 310 CMR 10.55(2). Logistically, it is impossible to have multiple approved wetland lines for the same BVW. The projects are in the same subdivision and the OC was issued by the NBCC for the all of the land in accordance with 310 CMR 10.05(6).
 - b. We are conforming to Special Condition 51, *"Separate filings with the Conservation Commission shall be made for those two lots."* by filing a new Notice of Intent for the construction for a single family house, for lot 4A. Additionally an RDA was filed for the construction of a single family house for lot 3A.
 - c. The project should not have been denied under 310 CMR 10.05(6)(c). The BVW line is still valid per above and an Order of Conditions should have been issued utilizing the approved wetland line and the proposed work shown on the site plan for lot 4A. Sufficient information, erosion control detail and other safeguards to protect the wetland resource area and the interest of the Wetlands Protection Act, such that conditions could be reasonably written in an OC.

We appreciate the Department's careful consideration regarding the above mentioned objections, and respectfully request the Department to issue a Superseding Order of Conditions. If you have any questions or concerns, please feel free to contact me at 508.946.9231.

Sincerely,
Outback Engineering, Inc.


Seth Dufort
Wetland Scientist

cc: New Bedford Conservation Commission
Phillip and Debra Rose
Jennifer Cusson