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Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

DEP File Number:

WPA Form 5 – Order of Conditions

78-522

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



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A. General Information

Important:
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



From: West Newbury
1. Conservation Commission

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

3. To: Applicant:

Andrew Nichols
a. First Name b. Last Name c. Company

208 Goodale Road
d. Mailing Address

Baltimore Md 21212
e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

Holly Nichols Privitera
a. First Name b. Last Name c. Company

1141 E. Rockefeller Lane
d. Mailing Address

Hernando Fla 34442
e. City/Town f. State g. Zip Code

5. Project Location:

Off Dole Place West Newbury
a. Street Address b. City/Town

Map R-1 Lot 58 & 60
c. Assessors Map/Plat Number d. Parcel/Lot Number

Latitude and Longitude, if known (note: electronic filers will click for GIS locator):
e. Latitude f. Longitude

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

Essex
a. County b. Certificate (if registered land)

25386 192
c. Book d. Page

7. Dates: June 5, 2006 July 17, 2006 September 5, 2006
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):

Definitive Subdivision and Open Space Preservation Development Off Dole Place (12 sheets)
a. Plan Title

Cammatt Engineering Lee Thibodeau
b. Prepared By c. Signed and Stamped by

4/13/06 20
d. Final Revision Date e. Scale

Detention Basin Site Plan 6/21/06
f. Additional Plan or Document Title g. Date



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B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application 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. 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.

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 these interests, 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).**

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

3.	<input checked="" type="checkbox"/> Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available)			<u>25</u>	a. linear feet
	Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4.	<input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5.	<input type="checkbox"/> Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
6.	<input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet	b. square feet	c. square feet	d. square feet
		e. cu.yd dredged	f. cu.yd dredged		



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 78-522"



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:

Three pages Standard and three pages Special Conditions

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



WPA Form 5 – Order of Conditions

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

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:

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



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WPA Form 5 – Order of Conditions
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DEP File Number:
78- 522

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.

Sept. 5, 2006
1. Date of Issuance
five
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 Signatures]

Notary Acknowledgement

Commonwealth of Massachusetts County of Essex
On this 17th of July 2006
Month Year
Before me, the undersigned Notary Public, personally appeared The above named signers
Name of Document Signer

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

Massachusetts License
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 West Newbury Conservation Commission
City/Town

[Handwritten Signature]
Signature of Notary Public
Jay B. Smith
Printed Name of Notary Public
April 5, 2007
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 September 5, 2006
Date
 by certified mail, return receipt requested, on _____
Date



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

DEP File Number:

78-522

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.

SPECIAL CONDITIONS, DEP #78-522
Subdivision off Dole Place
Map R-1, Lot 58&60

1. All work shall conform to the following approved plans and documents: Definitive Subdivision and Open Space Preservation Development off Dole Place (12 sheets), revised 4/13/06, Detention Basin Site Plan, 6/21/06, Maintenance Plan, Stormwater Pollution Prevention Plan/Erosion and Sedimentation Control Plan, 2/15/06.
2. Due to the proximity of the development to wetlands and in order to maintain the integrity of the resource area, a naturally vegetated area extending twenty-five (25) feet from the wetlands delineated in the above referenced plan shall remain in place, undisturbed. There shall be no application of fertilizers, pesticides, herbicides, insecticides or other chemicals in the natural vegetation area.
3. Pesticides, insecticides and herbicides shall not be used on site within 100 feet of a resource area. Fertilizer used for landscaping and lawn care shall be low in nitrogen content and shall be used in moderation.
4. Erosion control measures shall be installed by the applicant and shall be inspected and approved by the WNCC prior to any other work under this Order. Erosion control shall consist of staked silt fence backed by hay bales installed using West Newbury guidelines.
5. Fill materials outside the septic system fill limit but in the buffer zone shall be ordinary borrow, free from masonry stumps, wood, tree branches, organic materials (other than topsoil), construction debris, refuse, trash and other similar materials.
6. A construction schedule shall be submitted to the WNCC at least 72 hours prior to the commencement of any site work.
7. A conservation restriction on the areas designated as conservation and/or open space shall be granted to the WNCC and approved by the required local and state authorities prior to the commencement of any work under this order.
8. The required reports of maintenance and inspection procedures set out on pages 12 and 13 of the Stormwater Pollution Prevention Plan/Erosion and Sedimentation Control Plan dated 2/15/06 and included in the NOI shall also be provided to the WNCC.
9. A complete operation and maintenance plan for the developed facilities, including the vegetated swales, sediment forebay and detention basin, shall

be submitted to and approved by the WNCC prior to the commencement of work under this Order and shall include the following measures:

a. Street sweeping will be performed immediately following winter snowmelt, when road sand and other accumulated sediment are washed off the roadways, and at other times deemed necessary by the Town. The sweepings shall be disposed of offsite in accordance with all applicable local, state and federal regulations. The WNCC shall be notified within a week after completion of the sweeping and disposal.

b. Any snow on site shall be stored either in the vegetated areas along the proposed roadways or in locations where snow melt will be directed to the storm water basin, but shall not be stored in the basin. Non sodium based deicers shall be used on roadways and driveways and its specifications shall be submitted to the WNCC prior to use.

c. Deep sumps and hooded catch basins shall be inspected and cleaned at least two times per year. Sump and catch basin sediments and debris shall be disposed of at an approved DEP landfill.

d. The sediment forebay shall be inspected every three months and after any 25 year storm event. Inspection shall include checking for erosion within the forebay, condition of the riprap and amount of sediment and debris in the forebay. Any eroded/damaged areas shall be promptly repaired and revegetated. Any accumulated debris shall be removed at the time of inspection. Sediment shall be removed when it accumulated to half the design volume (which level shall be marked by a permanent marker in the basin) or more frequently if deemed necessary by the Town. Sediments removed during cleaning shall be disposed of at an approved DEP landfill.

e. Vegetation in the detention basin shall remain at least four (4) inches in height. The detention basin shall be mowed twice a year or more often if deemed necessary by the Town to maintain the vegetation at the appropriate height (not less than 4 inches). All grass clippings shall be removed and disposed of outside the 100 buffer zone extending from all wetland resource areas.

f. The detention basin shall be inspected every three months and after any 25 year storm event. Inspection shall include checking the slope integrity and soil stability of the basin embankment, condition of the riprap at the inlet and outlet, vegetative health, sedimentation buildup and overall condition of the outlet and headwall. Any eroded /damaged areas shall be promptly repaired and revegetated. Any accumulated debris shall be removed at the time of inspection. Sediment shall be removed when it accumulates to half the design volume (which level shall be marked by a permanent marker in the basin) or more frequently if deemed necessary by the Town.

g. If standing water remains within the basins 72 hours after a storm event, the basins shall be inspected immediately and any maintenance or repair necessary to correct the deficiency shall be undertaken after notification of the proposed maintenance /repair measure to the WNCC.

h. Vegetated swales shall be inspected every three months and after any 25 year storm event. Inspection shall include checking for slope integrity and soil stability of the basin embankment, condition of the riprap at the inlet and outlet, vegetative health, sedimentation buildup and overall condition of the outlet and headwall. Any eroded/damaged areas shall be promptly repaired/revegetated. Any accumulated debris shall be removed at the time of inspection. Sediment shall be removed when it accumulates to half the design volume (which level shall be marked by a permanent marker in the basin) or more frequently if deemed necessary by the Town.

10. Conditions #2, #3, #7, #8 and #9 shall run with the land and shall remain in full force and effect after the issuance of a Certificate of Compliance.

The following Conditions are issued pursuant to Mass. General Laws c. 131 S40 and 301 CMR 10.00 et seq, and regulate those activities conducted in a Resource Area or Buffer Zone thereto.

STANDARD ORDER OF CONDITIONS

PROCEDURES:

1. All work must conform to the plans submitted and to the Notice of Intent unless otherwise stipulated in the Order of Conditions or authorized by the West Newbury Conservation Commission.
2. This Order of Conditions must be recorded at the Registry of Deeds, with the recording information submitted to this Commission, prior to the commencement of site work or construction, or within 60 days of the issuance of this Order if construction is not commenced.
3. If the applicant is not the record owner of the property subject to this Order of Conditions, the applicant must, prior to the recording of this Order, provide to this Commission, a written, notarized statement, executed by the owner of the property approving the recording of the Order of Conditions at said Registry of Deeds.
4. The Conservation Commission shall be notified, in writing, at the time of all transfers of title on this property that occur prior to the issuance of a Certificate of Compliance.
5. In conjunction with the sale of any lot with a resource area under an Order of Conditions, the applicant shall submit to the WNCC a signed statement by the buyer that he is aware of an outstanding Order of Conditions on the property.
6. The applicant or his successor shall notify the WNCC, in writing, and before site work begins, of the name, address, business and home phone numbers of the project supervisor responsible for compliance with this Order.
7. This Order shall be made part of all general and subcontractors' (responsible for site work) written contract.
8. Any modifications or revisions to the referenced plans and/or Notice of Intent shall be submitted to the WNCC for review and to determine if a new Notice of Intent is required. The WNCC reserves the right to require the applicant to file a new Notice of intent for any appropriate plan changes or submittals.
9. No additional new construction or disturbance of the wetland as defined by vegetation, or the 100ft. buffer zone around the wetland, shall be permitted on this site until the Commission has made a determination.

10. Issuance of this condition does not in any way imply or certify that the site or downstream areas will not be subject to flooding, storm damage, or any other form of damage due to wetness.
11. Upon completion of work, and in order to receive a Certificate of Compliance, the applicant shall submit an as-built plan of all areas within jurisdiction of the Wetlands Protection Act. The professional engineer of record, certifying compliance with this Order of Conditions, shall sign the plan. The plan shall include:
 - a. As-built elevations of all drainage ways constructed within 100ft. of any wetland resource area.
 - b. As-built elevations and grades of all filled or altered wetland resource areas, buffer zones and replicated wetland areas.
 - c. Distances to all structures within 100ft. of any wetland resource area.

SITE WORK

12. Erosion and siltation prevention measures must be properly installed before construction. Securely installed silt fence backed with doubly staked hay bales, both embedded a minimum of 6" into existing grade, shall be placed between construction areas and wetland areas. Unless otherwise specified. Prior to installation of these devices, the Conservation Agent shall be contacted for instruction as to proper installation. Both hay bales and silt fence shall be maintained throughout the project until all disturbed areas have been mulched, seeded and stabilized to prevent erosion.
13. There shall be no disturbance of the wetland past the hay bale and silt fence line. The demarcated wetland line shall indicate the limit of construction.
14. If during the course of construction, it is found that further erosion or siltation is needed, the WNCC shall direct the applicant upon its placement.
15. Upon completion of construction and grading, all disturbed areas located outside resource areas shall be stabilized permanently against erosion. This shall be done either by sodding, or by loaming, seeding, and mulching according to Soil Conservation Service standards. If the latter course is chosen, stabilization will be complete when the surface shows complete vegetative cover.
16. Unless otherwise stipulated herein, all work within a resource area, or the 100ft. buffer zone, shall cease on October 15th of any given year, and the site shall be stabilized either with winter rye, mulch hay or other suitable material by November 1st. No work in the above stated areas should recommence until April 15th, of the following year.
17. Before hay bales or silt fences are removed, after the area in question has been stabilized by revegetation or at the completion of a project, all accumulated silt

behind the fences shall be carefully removed and placed sufficiently far from the wetland area that it cannot wash into the wetlands.

18. No earthen embankment in any buffer zone area shall have a slope steeper than 2:1.
19. Dust control, if required, shall be limited to water; no salts or other wetting agents shall be used.
20. No dirt stockpiles, construction materials, spoils of construction, or equipment shall be stored, placed or operated in the wetland areas, unless specifically allowed by the Order of Conditions.
21. Fill stored within 100ft. of the wetland of the must have adequate erosion control measures surrounding it.
22. Only clean fill shall be used on this site, as indicated in General Condition #6.
23. No construction site bury holes shall be located within 100ft. of the wetland.
24. Any on-site dumpster shall not be located within 100ft. of the wetland.
25. During and after work on this project, there shall be no discharge or spillage of fuel, oil, construction debris, or other pollutants into any wetland area.
26. Petroleum products, toxic materials, and construction debris shall be disposed of off site.
27. Since the underground storage of petroleum products cannot be effectively monitored for loss, and presents a hazard to ground water and wetland resources, such storage is prohibited. This condition shall be included with the Certificate of Compliance so as to run with the land.