



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHEAST REGIONAL OFFICE

205B Lowell Street, Wilmington, MA 01887 • (978) 694-3200

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IAN A. BOWLES
Secretary

ARLEEN O'DONNELL
Commissioner

CERTIFIED MAIL

May 17, 2007

Thomas Sciacca
31 Rolling Lane
Wayland, MA 01778

RE: WETLANDS/WAYLAND
DEP File #322-0661
264 Old Connecticut Path
**SUPERSEDING ORDER
OF CONDITIONS**

Dear Mr. Sciacca:

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

The project site is located at 264 Old Connecticut Path in Wayland, Massachusetts and entails site work associated with the development of a synthetic turf athletic field and increased bituminous concrete D-area for track and field events. As originally proposed, the synthetic turf field was located within the 100-foot Buffer Zone associated with Bordering Vegetated Wetland (BVW), and contained associated stormwater management structures discharging within the Zone I 400-foot protective radius of the Town of Wayland Public Water Supply Happy Hollow wells. The Sudbury River is located greater than 200 feet away from the proposed project. A Massachusetts Natural Heritage Priority Habitat for State Protected Rare Species (PH657) is located approximately 300 feet to the north and northeast of the site. No work is proposed within a wetland resource area.

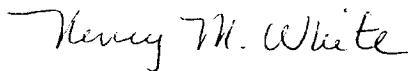
You appealed the Order of Conditions approving the project issued by the WCC on behalf of yourself and a group of residents. The primary basis of your appeal was that the proposed project failed to protect the public water supply. MassDEP accepted your appeal and conducted a site visit on January 16, 2007. Present during the site inspection were you and other residents, representatives of the Town of Wayland Boosters Association (applicant) and

representatives of the Town of Wayland (property owner), including the Wayland Conservation Commission. A staff person from MassDEP Drinking Water Program was also in attendance. During the site visit, MassDEP staff walked the site and observed the location of the proposed project, the stormwater outfall and the parking lot located in the Zone I of the Town's Happy Hollow wells.

Subsequent to the site visit, MassDEP Wetlands staff consulted with staff from the Drinking Water Program regarding the issues raised by the appellants. On February 5, 2007, MassDEP's Drinking Water Program issued a violation letter to the Town's Board of Water Commissioners, with a deadline of June 1, 2007 for response. On March 2, 2007, the MassDEP Wetlands Program issued an information request to the applicant. Information requested included: 1) A revised plan showing an alternative design relocating the outfall pipe out of the Zone I of the wellfield; 2) A profile of the infiltration trench design, including two test pits; and 3) An Operation and Management Plan. The requests were made because MassDEP had concerns that the outfall pipe location within the Zone I, as shown on the original plan, would pose a potential threat to the public water supply. On April 24, 2007, MassDEP received revised plans and supporting documentation in response to its request. The revised plans show a redesigned stormwater management system with an outfall pipe and vegetated swale located outside of the Zone I and within the 100-foot Buffer Zone associated with BVW. It is MassDEP's understanding that the Town will be addressing the Drinking Water violation letter, including the submission of plans showing a separate drainage design for the building roof runoff that will contain dry wells and will no longer tie into the existing outfall within the Zone I.

In MassDEP's opinion, the project as proposed and conditioned herein adequately protects the interests of the Act and Regulations. Please be advised that MassDEP 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, please do not hesitate to contact Nancy White at 978-694-3359.

Very truly yours,



Nancy M. White
Environmental Analyst
Wetlands and Waterways Program



Rachel Freed
Acting Section Chief
Wetlands and Waterways Program

cc: Conservation Commission, Town Building, 41 Cochituate Road, Wayland, MA 01778
Craig Foreman, Wayland Boosters Association, 25 Rolling Lane, Wayland, MA 01778
Gale Associates, Inc., 163 Libbey Parkway, Weymouth, MA 02189
Town of Wayland Public Schools, 41 Cochituate Road, Wayland, MA 01778
James Persky, James Dillon, MassDEP NERO Drinking Water Program

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of

WAYLAND BOOSTERS ASSOCIATION

DEP Docket No. 2007-085

File No. 322-661

WAYLAND

SETTLEMENT AGREEMENT

1. The Department of Environmental Protection (“Department”) is a duly constituted agency of the Commonwealth of Massachusetts, established pursuant to M.G.L. c. 21A, §7, with a principal office located at One Winter Street, Boston, Massachusetts 02108, and a northeast regional office located at 205B Lowell Street, Wilmington, Massachusetts 01887.
2. The Applicant, Wayland Boosters Association, is a non-profit organization supporting high school athletics in the Town of Wayland (“Wayland Boosters”). Craig Forman, of 25 Rolling Lane, Wayland, Massachusetts 01778, serves as President of Wayland Boosters.
3. The Petitioner, Wayland 10-Citizen Group, is a group of ten Wayland residents represented by Kurt Tramosch, of 2 Weir Meadow Path, Wayland, Massachusetts 01778 (“Wayland 10-Citizen Group”).
4. The Intervenor, the Town of Wayland, is a duly organized municipality of the Commonwealth of Massachusetts having a mailing address of Town Building, 41 Cochituate Road, Wayland, Massachusetts 01778 (“Town”).
5. The Wayland Conservation Commission is a duly appointed municipal commission of the Town of Wayland having a mailing address of Town Building, 41 Cochituate Road, Wayland, Massachusetts 01778 (“Commission”).
6. Collectively, the Department, Wayland Boosters, Wayland 10-Citizen Group, the Town, and the Commission will hereinafter be referred to as the Parties.

7. The Parties agree to the following:

- A. The proposed turf field project to be located at the athletic field of the Wayland High School ("Field") shall be constructed as currently planned and in accordance with the terms and provisions of the proposed Final Order of Conditions attached hereto and made a part hereof ("FOC");
- B. The Town, in consultation with Wayland 10-Citizen Group, shall hire and pay for an independent consultant (other than Gale Associates, Inc. ("Gale")) to develop a testing protocol and conduct testing of the leachate from the Field for contaminants associated with leachate from synthetic turf and tires which is likely to have adverse effects on drinking water or wetland resources in the Town. Such testing shall be conducted in each of the three (3) months immediately following installation of Project tire crumb infill and in the summer of 2008. The independent consultant shall timely report its findings to the Administrator of the Town, who shall then share the findings within five (5) business days with a designated representative of Wayland 10-Citizen Group. If the independent consultant concludes that the leachate from the Field is having or is likely to have adverse effects on drinking water or adverse effects on wetlands resources in the Town, then the Town shall take such steps to remediate and/or prevent any such effects in a reasonable and timely manner;
- C. The Town, in consultation with Wayland 10-Citizen Group, shall hire and pay for an independent consultant hydrogeologist with a minimum three (3) years of low impact and sustainable development experience within four (4) months of completion of testing under Paragraph 7(B.) hereof. The independent consultant will be hired to determine whether the swale and its related components designed by Gale as part of the Project must be modified in scale, scope, and/or efficacy of contaminant removal to prevent potential adverse effects on drinking water or wetland resources, which results shall be shared within five (5) business days with a representative of Wayland 10-Citizen Group. Based upon the independent consultant's findings, the Town shall make such modifications as are reasonable and appropriate;
- D. The Town shall endeavor to use commercially available and reasonable non-toxic products in cleaning, disinfecting, maintaining, and repairing the Field, and shall notify an officer or director of the Wayland Board of Health of the application of such products; and
- E. Presiding Officer Philip Weinberg of the Department's Office of Administrative Appeals and Dispute Resolution, or his designee, will preside over any material

disputes concerning this Agreement that the Parties cannot reasonable resolve through good faith efforts among themselves.

8. Pursuant to M.G.L. c.30A and 310 CMR 1.01 (8)(c), the Parties agree to the issuance of a Final Decision incorporating this Settlement Agreement and the attached proposed FOC (collectively, the "Settlement Agreement") and submit this Settlement Agreement for approval as required by 310 CMR 1.01(8)(c) in order to finally resolve the above-referenced adjudicatory proceeding as set forth in this Settlement Agreement and to dismiss this appeal forthwith with prejudice. This Settlement Agreement settles and releases all claims of the Parties raised in this adjudicatory proceeding. Upon the issuance of such Final Decision, the Parties hereby agree that any right to additional administrative review before the Department and to appeal to any Court shall be waived.
9. Wayland 10-Citizen Group, including each of its members, agrees that it will bring no further administrative or legal actions relating to the construction of the Project under Chapter 194 of the Town's Wetlands and Water Resources By-law or under the Wetlands Protection Act, M.G. L. c.131, § 40.
10. No provision of this Settlement Agreement shall be construed as or operate as barring, diminishing, adjudicating, or in any way affecting any legal or equitable right of the Department to enforce this Settlement Agreement, or in any way affecting any other claim, action, suit, cause of action, or demand that the Department may initiate regarding any act or omission not addressed in this Settlement Agreement.
11. This Settlement Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter of this Settlement Agreement.
12. The provisions of this Settlement Agreement and any amendments hereto shall be binding upon the Parties and their respective successors in interest.
13. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts.
14. This Settlement Agreement may be executed in counterparts, each of which when executed and delivered to the Department shall be an original. All counterparts shall constitute one and the same instrument.
15. The Parties voluntarily enter into this Settlement Agreement because each has mutually agreed that settlement of this matter without costly and protracted litigation is in the best interest of the citizens of The Commonwealth and of the Parties and that execution of this Settlement Agreement without such litigation is the most appropriate means of resolving this matter.
16. Applicant shall allow both the Department and the Commission, and their authorized representatives, to enter and inspect the Site as deemed necessary by the

Department's authority established under the regulations, at all reasonable times for the purpose of investigating, sampling, or inspecting any records, condition, equipment, practice or property relating to activities subject to this Settlement Agreement

17. The Department is not a party to, and does not assume any liability for, any agreement or other binding obligation entered into by or on behalf of Wayland Boosters, as Applicant, in performing the actions and undertaking the responsibilities assigned to Wayland Boosters, as Applicant, by this Settlement Agreement.
18. All signatories to this Settlement Agreement certify by the signature(s) below that she/he is duly authorized to execute this Settlement Agreement and legally bind their respective parties.
19. The Parties understand that any Final Decision incorporating this Settlement Agreement shall not be subject to 310 C.M.R. 1.01(14)(b).

IN WITNESS WHEREOF the Parties have duly executed this Settlement Agreement.

OF **MASSACHUSETTS DEPARTMENT**
ENVIRONMENTAL PROTECTION

Date: _____

Richard J. Chalpin, Regional Director
Northeast Regional Office

WAYLAND BOOSTERS ASSOCIATION
By its Attorneys,

Date: _____

Harvey J. Wolkoff
Matthew P. Garvey
Brian R. Blais
Ropes & Gray LLP
One International Place
Boston, MA 02110-2624

WAYLAND 10-CITIZEN GROUP
By its Representative,

Date: _____



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5A – Superseding Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
 and Wetland Regulations 310 CMR 10.00

DEP File Number:
322-661

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.



1. From: Northeast Regional Office
 Regional Office of the Department of Environmental Protection (the Department)
2. This issuance is for (check one): a. Superseding Order of Conditions
 b. Amended Superseding Order of Conditions
3. To: Applicant:
Wayland Boosters Association c/o Craig Forman
 a. Company
25 Rolling Lane
 c. Mailing Address
Wayland MA 01778
 e. City/Town f. State g. Zip Code
4. Property Owner (if different from applicant):
Town of Wayland Public Schools
 a. Company
41 Cochituate Road
 c. Mailing Address
Wayland MA 01778
 d. City/Town e. State f. Zip Code
5. Project Location:
264 Old Connecticut Path Wayland
 a. Street Address b. City/Town
37 260
 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):
Middlesex
 a. County b. Book c. Page
 d. Certificate (if registered land)
7. Dates: 08/25/2006 11/02/2006 11/21/06
 a. Date Notice of Intent Filed b. Date Hearing Closed c. Date of OOC Issuance
8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):
See Attached
 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
9. Total WPA Fee Paid: \$1,050.00 \$512.50 \$537.50
 a. Total Fee Paid b. State Fee Paid c. City/Town Fee Paid



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5A – Superseding Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
 and Wetland Regulations 310 CMR 10.00

DEP File Number:
 322-661

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent, the Order of Conditions, and information submitted with the request for the Superseding Order of Conditions, the Department finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- 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. The Department 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. The Department 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 Superseding 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. Buffer Zone Only

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		

SUPERSEDING ORDER OF CONDITIONS
DEP File Number 322-0661
Special Conditions

See the attached Order of Conditions containing Findings a – bb and Special Conditions 18 - 65, issued by the Wayland Conservation Commission, which is hereby affirmed and made part of this decision as modified by the following special conditions:

66. All work shall conform with the following plans, reports and Special Conditions:
 - a. Plan entitled, "Wayland High School Athletic Field Preservation Project, 264 Old Connecticut Path, Wayland, MA 01778, Alternative Drainage Plan," Sheet ALT1, Scale 1" = 30'. Dated: 4/20/07. Plans Prepared by: Gale Associates, Inc. Stamped by: Paul J. Tyrell, P.E. #46910.
 - b. Document entitled, "WETLANDS/WAYLAND, DEP File #322-0661, 264 Old Connecticut Path, Request for Information (including attachments: test pit data and Operation and Maintenance Plan)," Prepared by: Gale Associates, Inc. Dated April 24, 2007.
 - c. Document entitled, "Town: Wayland, PWS: Wayland Water Department, PWS ID#: 3315000, Program: Source Protection," Prepared by: Massachusetts Department of Environmental Protection, Northeast Regional Office. Dated February 5, 2007.
67. Prior to submitting a request for a Certificate of Compliance to MassDEP for file # 322-0661, the applicant shall address any outstanding issues associated with Drinking Water Source Protection outlined in the letter referenced above in Special Condition 46c [MassDEP, letter dated February 5, 2007,].
68. Upon completion of the project, the applicant shall submit to MassDEP a request for a Certificate of Compliance with an affidavit prepared by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts, stating that the site subject to the Superseding Order of Conditions has been developed in accordance with the requirements of this SOC, based upon an on-site inspection and the referenced site plans. Additionally, the applicant shall submit an as-built plan prepared by a registered professional engineer or land surveyor of the Commonwealth, for all work that has been proposed within the area of MassDEP's jurisdiction within the site subject to the SOC. Such plan shall indicate in a clear manner the final and actual conditions of the site. The date of field work shall be noted on the plan.
69. All submittals shall be made to MassDEP and copied to the Conservation Commission, with the exception of the following Special Conditions that are not applicable under M.G.L c.131, s.40 and are subject to the Wayland by-law only: Finding; bb and Special Conditions; 37.

F. Appeals (cont.)

For Notices of Intent filed AFTER March 1, 2005:

The applicant or landowner, the conservation commission, any person aggrieved by this Superseding Order or Determination if previously a participant in the permit proceedings, any owner of land abutting the land subject to this Superseding Order or Determination 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 or Determination 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 or Determination with the Department, or providing written information to the Department prior to issuance of a Superseding Order or Determination.

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 – 2nd 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, and any other parties involved in the proceeding.

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, 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.