

Findings and Special Conditions

Findings:

- This Superseding Order of Conditions (hereinafter “Order”) applies to and involves a parcel(s) of land referred to as “11 San Souci Drive”, with a street address of 11 San Souci Drive, located within the Town of South Hadley, Hampshire County, Massachusetts, and additionally referred to as Assessor’s Map/Plat Number 43, Lot/Parcel 50 (hereinafter the Project Locus as defined at 310 CMR 10.04);
- The Activity (as defined at 310 CMR 10.04) described within the Notice of Intent will occur within the 100-foot Buffer Zone (as defined at 310 CMR 10.04) to Bank (Inland) [as defined at 310 CMR 10.54(2)] and Bordering Vegetated Wetland [as defined at 310 CMR 10.55(2)];
- The Department has reviewed and approved the boundary of the Project Site (as defined at 310 CMR 10.04) at the Project Locus, which in this case is coterminous with the “limit-of-work” boundary and proposed erosion and sedimentation barrier shown on the plan(s) of record. The Department has determined that the boundaries (as defined at 310 CMR 10.04 Boundary) of Resource Areas (as defined at 310 CMR 10.04) within the Project Site, and which cast boundaries into the Project Site, are accurate, as further described below;
- The Department finds that the project, as proposed in the Notice of Intent and supplemental information, is subject to 310 CMR 10.02(2)(b)3. as, in the judgment of the Department, the project will Alter (as defined at 310 CMR 10.04) Bank (Inland) and Bordering Vegetated Wetland **if not** properly conditioned per this Order;
- The Department finds that the project, as proposed in the Notice of Intent and supplemental information, and as conditioned within this Order per the Department’s authority at 310 CMR 10.05(7), will meet the General Performance Standards for Bank (Inland) and/or Bordering Vegetated Wetland per 310 CMR 10.05(6)(b), and therefore meets the provision at 310 CMR 10.53(1) per the burden of proof at 310 CMR 10.03(1)(a)3.;
- Per 310 CMR 10.53(1), the Department finds that the project, as proposed in the Notice of Intent and supplemental information, and as conditioned within this Order, will not result in an adverse impairment to Bank (Inland) in accordance with 310 CMR 10.54(4)(a) or (b) and the provision at 310 CMR 10.05(6)(b);
- Per 310 CMR 10.53(1), the Department finds that the project, as proposed in the Notice of Intent and supplemental information, and as conditioned within this Order, will not result in an adverse impairment to Bordering Vegetated Wetland in accordance with 310 CMR 10.55(4)(a) and the provision at 310 CMR 10.05(6)(b);
- The Department has determined that Bank (Inland) [as defined at 310 CMR 10.54(2)], Bordering Vegetated Wetland [as defined at 310 CMR 10.55(2)], and Land Under Water Bodies and Waterways [as defined at 310 CMR 10.56(2)] occur on the parcel in question and beyond the Project Site. The boundaries (as defined at 310 CMR 10.04 Boundary) of all Resource Areas beyond the Project Site have not been determined by the Department in this Order, save where specified herein;
- The boundary of Bank (Inland) (as defined at 310 CMR 10.04) on the parcel in question is demarcated via flags “B-1” through and including “B-7” in accordance with 310 CMR 10.54(2)(c), as shown on the plan(s) of record;
- The boundary of the Bordering Vegetated Wetland(s) on the parcel in question is demarcated via flags “A1” through and including “A10”, as shown on the plan(s) of record;

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- The Activity described within the Notice of Intent will occur within the following Resource Areas: Bordering Vegetated Wetland [as defined at 310 CMR 10.55(2)] associated with an unnamed waterbody located southwest of the property.
 - Alteration of Bordering Vegetated Wetland will result in the temporary alteration of 175 square feet of said Resource Area.
- The Department has determined that the *in situ* Bordering Vegetated Wetland “Replacement Areas” described within the plan(s) of record and supporting documentation meet the General Performance Standards at 310 CMR 10.55(4)(a) and 310 CMR 10.55(4)(b)(1) through (5) and (7); and will meet the General Performance Standard at 310 CMR 10.55(4)(b)6. through implementation of this Order;
- Per 314 CMR 9.03 of the Massachusetts Clean Waters Act Regulations, this Order serves as a Water Quality Certification, and thus serves as authorization under Section 401 of the federal Clean Water Act.
- The Department has determined that this project is not subject to the Department’s Stormwater Management Regulations at 310 CMR 10.05(6)(k) through and including (q).
- In accordance with DWW Policy 91-1: “Administrative Appeals Policy for the Review of Project Plan Changes”, the Department maintains authority to issue this Order.

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Special Conditions:

Administrative and Procedural Requirements

- 20. These Special Conditions do not supersede or negate the requirements of the General Conditions above. All successors and assigns in interest or control of the property subject to this Order and any contractor or other person performing work conditioned by this Order shall adhere to ALL applicable procedural and technical conditions in this Order.**
21. This Order specifically prohibits any Activity (as defined at 310 CMR 10.04) other than that specifically authorized by this Order, on a Bank (Inland) [310 CMR 10.54(2)] or within Bordering Vegetated Wetland [310 CMR 10.55(2)] or within Land Under Water Bodies and Waterways [310 CMR 10.56(2)] as delineated on the plan(s) of record and demarcated on the Project Site (as defined at 310 CMR 10.04), or as found at the Project Locus (as defined at 310 CMR 10.04) governed by this Order. Any proposed activity above and beyond that described in the Notice of Intent and supplemental information within Resource Areas and their Buffer Zones (each as defined at 310 CMR 10.04) must be preceded by a negative Determination of Applicability or an Order of Conditions from the Conservation Commission, unless said activity is a “minor exempt activity” as defined at 310 CMR 10.58(6)(b) and 310 CMR 10.02(2)(b). Failure to abide by this Special Condition may result in an enforcement action by and at the discretion of the Department, and possibly other regulatory agencies.
22. The contractor(s) employed to execute vegetation removal, earth-moving, demolition, and/or motorized vehicle operation activities on the property subject to this Order must be provided a copy of this Order prior to the commencement of any such activities. Said contractor(s) may be held responsible with the permittee and property owner for violations by the contractor and may be subject to penalties authorized by law and/or regulation for those violations.
23. The permittee shall arrange to procure and submit a good resolution electronic copy of the plans of record (as referenced above, and as modified adding the correct paper size for printing to retain scale) by close-of-business on Wednesday, April 5, 2023. Upon review and acceptance of these plans of record by the Department, the permittee will affix a prominent “Approved by MassDEP on Month Date 2023” label upon each sheet and shall electronically resubmit the plans to the Department. A copy shall be retained by the Department as a permanent record, and a copy shall be retained by the permittee and the general contractor (or equivalent) and made available on appropriately sized paper when requested. Thereafter, all work conducted per this Order shall fully and completely comply with these plans of record, save when the permittee requests modifications thereof, and the Department agrees to such modifications at its sole discretion. In the event of such a modification, the Department reserves the right to add, strike, or amend Special Conditions herein in accordance with the General Performance Standards for each affected Resource Area.
24. Prior to the initiation of activities permitted by this Order, the permittee shall arrange for a videoconference to be held with the Department’s Western Region Wetlands Program. It shall be the responsibility of the permittee to propose a platform for this videoconference, with whatever security protocols they may require; and to ensure that their representative(s)

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(if any), as well as the general contractor, all appointed compliance monitors and environmental consultants required within this Order (if any), and all other pertinent firms or persons, are in attendance. The permittee shall also ensure that all plans of record, contracts, and other pertinent documents are made available and viewable at this videoconference. No activities otherwise permitted by this Order may proceed until this videoconference has been held.

25. Should contractors not be able to build according to the plan(s) of record (or any sheet, detail, schematic, or collar note therein) approved in this Order, because said plans do not accurately reflect site conditions (or standard construction methodologies, or practical construction considerations), the Department maintains the right to require an immediate cessation of work, in whole or in part. Should the Department, at its sole discretion, require such cessation, it shall do so in writing to the permittee, and such notice shall require adequate interim erosion and sedimentation controls and the submittal of proposed plan revisions that address the inadequacies, and result in the same or reduced alterations to Resource Areas as approved in the plan(s) of record. Activities shall not recommence until written approval to proceed has been issued by the Department.
26. Refueling, servicing, and repair of motorized construction vehicles shall take place outside of all Resource Areas and related Buffer Zones. Equipment operators shall be prepared to immediately respond to accidental releases of fuel, motor oil, and other liquids through containment. There shall be located on-site absorbent materials for use in containing accidental spills. If any release of fuel, motor oil, lubricating oils, etc. occurs, the permittee and other responsible parties identified at Special Condition #20 and #22 of this Order, in addition to all obligations under MGL c. 21E (Massachusetts Oil and Hazardous Material Release Prevention and Response Act) and the Massachusetts Contingency Plan (MCP), shall immediately notify the Department's Western Regional Office at 1-413-784-1100. Any response action or cleanup shall be conducted pursuant to MGL c. 21E and the MCP.
27. Upon completion of the project, the permittee shall submit with their request for a Certificate of Compliance, an affidavit prepared by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts, stating that the Site has been developed in accordance with the requirements of this Order and the referenced plan(s) of record.

Site Stabilization Requirements

28. This Order prohibits the discharge of any amount of untreated sediment-laden stormwater at any time from within the Project Site to any Buffer Zone or Resource Area outside the demarcated limit-of-work, as shown on the plan(s) of record. This prohibition applies regardless of any structural or nonstructural stormwater best management practices otherwise required by this Order or any other regulatory authority; and despite any singular precipitation event, climactic pattern, or related phenomena. Discharges of untreated sediment-laden stormwater in violation of this Special Condition may result in an enforcement action by and at the discretion of the Department, and possibly other regulatory agencies.
29. Prior to commencement of any work on the Site, adequate erosion and sedimentation control measures shall be implemented, including any necessary controls not specifically referenced in the plan(s) of record, and they shall be maintained in effect throughout the entire project,

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and until the Project Site has become stabilized with an adequate vegetative or landscaping cover. Structural failure of the erosion and sedimentation controls required by this Order would constitute a violation of this Order and may result in an enforcement action by and at the discretion of the Department, and possibly other regulatory agencies.

30. Prior to the commencement of any earth-moving activity, a double-staked weed-free straw bale barrier (end to end) shall be placed along the limit of activity between all disturbed areas and Resource Areas, regardless of what is shown on the plan(s) of record. Each bale shall be properly bound with at least two (2) lengths of twine or wire and shall be entrenched to an excavated depth of at least four (4) inches, but no greater than six (6) inches. Excavated spoils from entrenching shall be deposited on the up-gradient side of the barrier. Bales shall be tightly butted against each other. A geotextile siltation fence shall be placed on the down-gradient side of the straw/hay bale barrier and shall be entrenched in a like manner such that the base of the fabric lies below grade extending at least six (6) inches away from the fence. This fence shall be located no further than twelve (12) inches from the down-gradient side of the straw bale barrier. These erosion and sedimentation controls shall be constructed per this Special Condition and shall be maintained in proper functioning condition until all disturbed areas have been stabilized, or until the Department has determined that the control measures are no longer necessary. The geotextile siltation fence shall constitute a limit-of-work-line. No work shall be permitted on the down-gradient side (the Resource Area side) of this line under this Order.
31. All final grades of unconsolidated material within Buffer Zones that are proposed (in the Notice of Intent and subsequent submittals) to be stabilized with turf or landscaping material, shall be stabilized by the application of loam and turf and/or landscaping material within three (3) business days of completion of the project. Within thirty (30) calendar days of final grading, or within 30 calendar days after the commencement of the following growing season if the project is completed after October 31st, all disturbed areas shall be permanently stabilized with rapidly growing cover and sufficient topsoil and/or landscaping material to assure long-term stabilization of disturbed areas. Maintenance of these areas in a manner that assures permanent stabilization and precludes any soil erosion shall be the responsibility of the owner of record of the property subject to this Order.
32. Stockpiles of soils, aggregate, or any other unconsolidated construction materials permitted by this Order within Buffer Zones shall be covered with tarpaulins when not being worked with. Stockpiles in place for greater than twenty-four (24) hours shall be ringed with an entrenched hay bale barrier and covered by properly secured tarpaulins at the close of each workday. The areas of construction shall remain in a stable condition at the close of each construction day. Erosion controls shall be inspected daily and maintained or reinforced if necessary.

Compliance Monitoring Requirements

33. Within ten (10) business days of the issuance date of this Order, the permittee shall nominate one or more compliance monitors in writing, who shall be accepted in writing by the Department. Nominated compliance monitors shall have adequate and relevant education, training, and/or experience necessary to understand and perform the duties described herein, and the Department reserves the right to accept nominees based upon its review of such

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education, training, and/or experience, as documented in resumes submitted to the Department. The approved compliance monitor(s) shall personally observe all “construction activity” at all times within all Resource Areas permitted by this Order and subject to it (said compliance monitor can be the same person identified at Special Condition #34 of this Order). For purposes of this Order, “construction activities” are all activities (as defined at 310 CMR 10.04 Activity) within Resource Areas which result or could result in the "alteration" (as defined at 310 CMR 10.04 Alter) of said Resource Areas, including but not restricted to:

- a. vegetation removal;
- b. earth-moving and mechanical soil disturbance;
- c. demolition of structures and impervious surfaces;
- d. pouring of concrete and other flowable substances;
- e. placement and extraction of erosion prevention and sedimentation controls;
- f. motorized vehicle operation activities where such operation could result in soil disturbance, release of flowable substances, etc.;
- g. the removal or placement of any material or substance from or into any Resource Area for purposes of mitigation which is required in this Order.

The compliance monitor(s) are not required to be present for any work:

- h. taking place on, within, or over a structure that is being built, repaired, or maintained, where such work does not involve earth-moving and mechanical soil disturbance;
- i. taking place in areas that are not Resource Areas, including any activities taking place in areas which are Buffer Zone, provided such Buffer Zone is not coincident with Resource Areas;
- j. taking place upon the surface of construction mats after their initial placement.

In addition to the above, the compliance monitor(s) shall conduct a thorough inspection of the site within 24 hours of any rainfall which equals or exceeds 0.5 inches within 24 hours (as measured from the nearest applicable station on the NOAA “Daily Summaries Map”, see <https://www.ncei.noaa.gov/maps/daily-summaries/>); or every calendar week during active construction, whichever comes first.

While performing these duties the compliance monitor(s) shall confirm that all relevant Conditions of this Order are being complied with at all times whilst they are present. Any construction activities that occur within jurisdictional Resource Areas when there is no compliance monitor on-site, or when the compliance monitor is not directly and visually observing such construction activities, constitutes noncompliance with this Order.

While on site, the compliance monitor(s) shall sufficiently document any and all observed noncompliance with any of the Conditions of this Order. The compliance monitor(s) shall submit such electronic documentation to: thomas.gruszkos@mass.gov. This electronic documentation shall be in the form of a concise written report which adequately describes the

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noncompliant activities and/or conditions and cites the Condition(s) which have been violated and shall always be accompanied by the submittal of digital photographs, which shall clearly and adequately show the nature and extent of noncompliant activities and/or conditions and support the written report. This electronic documentation shall be submitted as such noncompliance is occurring and/or is first noted by the compliance monitor(s). If, in unusual circumstances, this is not physically possible, then the compliance monitor(s) shall submit electronic documentation within no more than four (4) hours of the initial observance of the noncompliant activity and/or condition. Within this same time, the compliance monitor(s) shall also report the noncompliant activities and/or conditions via telephone to each of the following Department staff: Tom Gruskos at 617-352-2064. Failure to comply with this Condition would constitute a violation of this Order and could result in enforcement actions taken by the Department. Failure of any compliance monitor to fulfill these duties in compliance with this Special Condition is grounds for a potential enforcement action against the permittee. The permittee, its employees, agents, successors, and assigns shall not impede the compliance monitor(s) in the performance of their duties under this Order. Any change in staffing of the compliance monitor(s) must be approved by the Department per General Condition #13 of this Order.

Provision of Bordering Vegetated Wetland Replacement Area

34. At least ten (10) business days prior to the initiation of construction, the permittee shall nominate a wetland scientist(s) in writing, who shall be accepted in writing by the Department. Nominated wetland scientist(s) shall have at least five (5) years of experience in developing “replacement area” plans for Bordering Vegetated Wetland (“BVW”) alteration per 310 CMR 10.55(4)(b)1. through 7., inclusive. The Department maintains the right to approve or deny the nominee based upon the individual’s level of experience as it relates to the successful construction and completion of BVW “replacement areas”. Any change in staffing of the wetland scientist(s) must be approved by the Department per General Condition #13 of this Order.
35. The Bordering Vegetated Wetland “Replacement Area” shall be constructed under the supervision and direction of the wetland scientist(s) per the methodology described in the plan(s) of record, and specifically the document “Restoration Plan Form Data Required for Proposed Bordering Vegetated Wetland Restoration Area” for 11 San Souci Drive in the Town of South Hadley dated February 28, 2023 (hereinafter the “Replacement Area Plan”) and attached plan(s) of record. Any deviation from the methodology approved by this Special Condition must be made in writing per General Condition #13 of this Order and must be approved by the Department. The proposed “Replacement Area” shall be initially excavated per the plan(s) of record prior to any earth moving activity otherwise permitted by this Order. Donor soil placement, organic amendments, and plantings shall not be placed within the “Replacement Area” until such time as the wetland scientist(s) has verified that the final excavated grade for the “Replacement Area” will allow the finished grade of the “Replacement Area” to be less than or equal to the elevation of the surface of the substrate of the extant Bordering Vegetated Wetland, as measured at the interface of the proposed “Replacement Area” and the present boundary of said Bordering Vegetated Wetland, and as shown on the plan(s) of record. Said plan(s) of record indicate that the finished substrate of the proposed “Replacement

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Area” will be located at approximate elevations between 170 and 176 feet above mean sea level, assumed. The wetland scientist(s) shall verify in the field that these elevations will meet the requirements of this Special Condition. The Department reserves the right to modify the Replacement Area Plan and any other plan(s) necessary in order to meet the General Performance Standard at 310 CMR 10.55(4)(b)2.

36. Failure to maintain an appropriate standard of care in the installation or post-installation components of required Replacement Area, at any time, including but not limited to planting at inappropriate times of year, failure to reach appropriate subsurface hydrology, failure to restore or replicate suitable substrate conditions, failure to implement standard horticultural practices (such as irrigation, fertilization, disease and pest control), failure to maintain erosion and sedimentation controls, failure to adequately control nonindigenous invasive species, and the loss of plantings of a sufficient number to impair the success of Replacement Area may be deemed noncompliance with this Order at the sole discretion of the Department, unless identified in writing to the Department by the wetland scientist(s), or the permittee within five (5) business days of discovery. Any such written notification must include a “corrective plan of action”, which shall be implemented by the permittee according to a schedule and conditions established in writing by the Department. The Department maintains the right to take enforcement action per 310 CMR 10.08 for any such noncompliance, in addition to its right to require adherence to the several General and Special Conditions of this Order.
37. The Department hereby approves the “New England Wet Mix” specified on page 6 of the “Restoration Plan Form Data Required for Proposed Bordering Vegetated Wetland Restoration Area” for 11 San Souci Drive in the Town of South Hadley dated February 28, 2023. Any modification of species, ratios, or seeding techniques must be requested by the permittee in writing per General Condition #13 of this Order and approved by the Department. Additional applications of the approved seed mix shall be used when appropriate to maintain optimum surficial coverage of vegetation, until such time as the Replacement Area has been fully stabilized and is functioning as BVW, as determined by the wetland scientist(s) per Condition #38 of this Order.
38. The wetland scientist(s) approved by the Department shall monitor the status of the “Replacement Area” in calendar years 2024 and 2025, and then until such time as the “Replacement Area” functions in accordance with 310 CMR 10.55(4)(b)6., as established by data collected during monitoring. Monitoring shall include, at a minimum, the collection of all data required in pages 1 **and** 2 of “Wetland Determination Data Form – Northcentral and Northeast Region” [as found within US Army Corps of Engineers. 2012. *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region*, ed. J. S. Wakeley, R. W. Lichvar, and C. V. Noble. ERDC/EL TR-12-1. Vicksburg, MS: U.S. Army Engineer Research and Development Center (Version 2.0)]. All vascular plants within the proposed BVW Replacement Area, as shown on the plan(s) of record, shall be identified to the species level. Scientific nomenclature shall follow *The Vascular Plants of Massachusetts: A County Checklist-First Revision*, by Melissa Dow Cullina, Bryan Connolly, Bruce Sorrie and Paul Somers (Massachusetts Natural Heritage & Endangered Species Program, Massachusetts Division of Fish and Wildlife, 2011), or an equivalent acceptable to the Department (as established in writing). At least one (1) “Wetland Determination Data Forms” shall be completed for one (1) distinct “Observation

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Plots” within the BVW Replacement Area. Sampling shall take place at least once in each growing season in the years specified in this Special Condition. Each sampling event shall include hydrologic data garnered from “observation holes”. These “observation holes” shall be at least twenty-four inches deep, as measured from the surface of the mineral soil horizon. Alternatively, and with the permission of the Department, the wetland scientist(s) or their approved designee can establish a shallow monitoring well, directly adjacent to the one (1) Observation Plots within the BVW Replacement Area. The shallow monitoring wells shall be constructed, installed, and operated in accordance with “Installing Monitoring Wells/Piezometers in Wetlands” [US Army Corps of Engineers, Wetlands Regulatory Assistance Program, WRAP Technical Note ERDC TN-WRAP-00-02, July 2000]. During each sampling event, digital color photographs shall be taken of each of the one (1) separate Observation Plots within the BVW Replacement Area, and of the observation holes established by this Condition. All data collected during each of the years specified in this Condition shall be submitted in a written report entitled “BVW Replacement Area Monitoring Report-11 San Souci Drive, South Hadley, Massachusetts”. A draft copy shall be submitted to the Department on or before November 30th of each year specified by this Condition. A final copy shall be sent to the Department within thirty (30) calendar days of the receipt of draft comments by the Department, if any.

39. The wetland scientist(s) or their approved designee shall collect data on wetland hydrology within the “Replacement Area” at least once per month during the growing season in the years specified at Special Condition #38. The wetland scientist(s) or their approved designee shall use the “observation holes” or shallow monitoring wells required by Special Condition #38 to achieve the objectives of this Special Condition. At a minimum, the wetland scientist(s) shall record depth to apparent water table and/or depth of surface inundation, both as measured from the soil surface [see *Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act* (MassDEP 1995) for a definition] during each monthly observation. This data shall be included within the report required at Special Condition #38.
40. Based upon the data collected during sampling events, the wetland scientist(s), or the Department upon its own discretionary initiative, shall render a conclusion within each report required by Special Condition #38, as to the success of the “Replacement Area” in terms of 310 CMR 10.55(4)(b)6. **and** the establishment of wetland hydrology, as required at 310 CMR 10.55(4)(b)2. If, at the end of the second growing season, the wetland scientist(s), or the Department upon its own discretionary initiative, renders a conclusion that the “Replacement Areas” have failed the Standards at 310 CMR 10.55(4)(b)2. and 6., said wetland scientist(s) shall prepare and submit a written “**corrective plan of action**” no later than the end of that calendar year to the Department for approval. The approved “corrective plan of action” shall be implemented the next growing season under the supervision of a wetland specialist approved by the Department and shall be monitored via the requirements specified in Special Condition #38 of this Order.

Trees and Shrubs Scheduled for Removal and Replacement Within the Buffer Zone

41. No work permitted by this Order may begin unless and until the permittee provides the Department with an inventory of all trees and shrubs scheduled to be removed from and

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replaced within the Buffer Zone (“Buffer Zone Replanting Plan”), as required by the plan(s) of record. All trees and shrubs scheduled to be removed from the Buffer Zone shall be replaced in-kind, except for the existing *Acer platanoides* L. (Norway Maple) or other nonnative and/or invasive species which shall be replaced with native species indigenous to Hampshire County, Massachusetts [per *The Vascular Plants of Massachusetts: A County Checklist-First Revision*, by Melissa Dow Cullina, Bryan Connolly, Bruce Sorrie and Paul Somers (Massachusetts Natural Heritage & Endangered Species Program, Massachusetts Division of Fish and Wildlife, 2011)], or an equivalent acceptable to the Department. Tree saplings shall be no less than 6 feet in height, as measured from root crown. All proposed stock and/or seed shall be verified in writing by the environmental consultant to be northeast-region genotypes.

42. Failure to maintain an appropriate standard of care in the installation or post-installation components of required Buffer Zone Replanting Plan, at any time, including but not limited to planting at inappropriate times of year, failure to restore or replicate suitable substrate conditions, failure to implement standard horticultural practices (such as irrigation, fertilization, disease and pest control), failure to maintain erosion and sedimentation controls, failure to adequately control nonindigenous invasive species, and the loss of plantings of a sufficient number to impair the success of Buffer Zone Replanting Plan may be deemed noncompliance with this Order at the sole discretion of the Department, unless identified in writing to the Department by the wetland scientist(s), or the permittee within five (5) business days of discovery. Any such written notification must include a “corrective plan of action”, which shall be implemented by the permittee according to a schedule and conditions established in writing by the Department. The Department maintains the right to take enforcement action per 310 CMR 10.08 for any such noncompliance, in addition to its right to require adherence to the several General and Special Conditions of this Order.
43. The wetland scientist(s) shall monitor the status of the Buffer Zone Replanting Plan, as required by the plan(s) of record and Special Conditions 41 and 42, for a period of at least two (2) consecutive growing seasons beginning on the first full growing season after implementation of the planting plan. The wetland scientist(s) shall complete an annual floral inventory and shall specify the percentage of tree and shrub mortality, separately. This data shall be included within the report required at Special Condition #38. If a mortality rate greater than 7% of either the trees and/or the shrubs is documented, the report shall include a draft “corrective plan of action”.