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2023 00274786



**Massachusetts Department of Environmental Protection**  
**Bureau of Resource Protection - Wetlands**  
**WPA Form 5A – Restoration Order of**  
**Conditions**

Provided by MassDEP:  
232-046  
MassDEP File #

Mount Washington  
City/Town

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

**A. General Information**

**Please note:**  
this form has been modified with added space to accommodate the Registry of Deeds Requirements

- 1. From: Mount Washington Conservation Commission  
Conservation Commission
- 2. This issuance is for (check one):
  - a.  Restoration Order of Conditions
  - b.  Amended Restoration Order of Conditions

3. To: Applicant:

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

<u>Karen</u> a. First Name	<u>Lombard</u> b. Last Name
<u>The Nature Conservancy</u> c. Organization	
<u>636 West Road</u> d. Mailing Address	
<u>Sheffield</u> e. City/Town	<u>MA</u> f. State
	<u>01257</u> g. Zip Code



4. Property Owner (if different from applicant):

<u></u> a. First Name	<u></u> b. Last Name
<u></u> c. Organization	
<u></u> d. Mailing Address	
<u></u> e. City/Town	<u></u> f. State
	<u></u> g. Zip Code

5. Project Location:

<u>Becker Pond, Off East Street</u> a. Street Address	<u>Mount Washington</u> b. City/Town
<u>7</u> c. Assessors Map/Plat Number	<u>5A</u> d. Parcel/Lot Number



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

Provided by MassDEP:  
232-046  
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Mount Washington  
City/Town

### A. General Information (cont.)

Latitude and Longitude, if known: 42.058353 -73.459276  
d. Latitude (in decimal) e. Longitude (in decimal)

Note: If the Ecological Restoration Project involves work on a stream crossing, baseline photo-points that capture longitudinal views of the crossing inlet, the crossing outlet and the upstream and downstream channel beds during low flow conditions. The latitude and longitude coordinates of the photo-points shall be included in the baseline data.

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

Berkshire South

a. County

1167

c. Book

b. Certificate Number (if registered land)

165

d. Page

7. Dates: June 28, 2022 10/25/22 10/25/22  
a. Date Ecological Restoration NOI Filed b. Date Public Hearing Closed c. Issuance Date

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

Becker Pond Dam Removal, Sheets 1 through 12

a. Plan Title

Inter-fluve

b. Prepared By

August 17, 2022

d. Final Revision Date

c. Signed and Stamped by

varies

e. Scale

f. Additional Plan or Document Title

g. Date

### B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the Ecological Restoration Notice of Intent described in Section A 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 (the Act). Check all that apply:

- a.  Public Water Supply d.  Flood Control g.  Land Containing Shellfish  
b.  Private Water Supply e.  Storm Damage Prevention h.  Fisheries  
c.  Groundwater Supply f.  Prevention of Pollution i.  Wildlife Habitat



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**B. Findings (cont.)**

2. This Commission hereby finds the project, as proposed, is an Ecological Restoration Project for:

- Dam Removal
- Freshwater Stream Crossing Repair and Replacement
- Stream Daylighting
- Tidal Restoration
- Rare Species Habitat Restoration
- Restoring Fish Passageways

**Approved subject to:**

The following conditions are required in accordance with the Ecological Restoration eligibility criteria 310 CMR 10.13 (1) through (7) and performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Ecological Restoration Notice of Intent for the project described in Section A. The General Conditions in Section C and Special Conditions checked in Section D are incorporated into this Restoration Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Ecological Restoration Notice of Intent, these conditions shall control.

**Denied because:**

The proposed work does not meet the eligibility criteria in 310 CMR 10.13(1) through (7). Therefore, work on this project may not go forward unless and until a new Notice of Intent (WPA Form 3 or 3A) is submitted and a Final Order of Conditions (WPA Form 5 or 5A) has been issued. The Commission has determined that following the eligibility criteria have NOT been met.

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

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**B. Findings (cont.)**

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

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input checked="" type="checkbox"/> Bank	1,260 a. linear feet	1,260 b. linear feet	1,260 c. linear feet	1,260 d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
6. <input checked="" type="checkbox"/> Land Under Waterbodies and Waterways	29,200 a. square feet. 525+/- e. c/y dredged	29,200 b. square feet 525+/- f. c/y dredged	13,200 c. square feet	13,200 d. square feet
7. <input checked="" type="checkbox"/> Bordering Land Subject to Flooding	530 (temp) a. square feet	530 (temp) b. square feet	0 c. square feet	0 d. square feet
Cubic Feet Flood Storage	43,100 dam capacity	43,100 dam capacity	0 g. cubic feet	0 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	0 (no existing)	0 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)

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
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. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	<b>Note:</b> No armoring of a Coastal Dune or Barrier Beach is permitted. 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 nourishment	d. c/y nourishment



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**WPA Form 5A – Restoration Order of**  
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 MassDEP File #

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

Mount Washington  
 City/Town

**B. Findings (cont.)**

14.  Coastal Dunes  
 a. square feet      b. square feet      c. <sup>c/y</sup> nourishment      d. <sup>c/y</sup> nourishment

**Note:** No armoring of a Coastal Dune or Barrier Beach is permitted.

15.  Coastal Banks  
 a. linear feet      b. linear feet

16.  Rocky Intertidal Shores  
 a. square feet      b. square feet

17.  Salt Marshes  
 a. square feet      b. square feet      c. square feet      d. square feet

18.  Land Under Salt Ponds  
 a. square feet      b. square feet  
 c. c/y dredged      d. c/y dredged

19.  Land Containing Shellfish  
 a. square feet      b. square feet      c. square feet      d. square feet

20.  Fish Runs  
 Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above

a. c/y dredged      b. c/y dredged

21.  Land Subject to Coastal Storm Flowage  
 a. square feet      b. square feet

\* If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here

22.  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

23.  Restoration/Enhancement \*:  
 a. square feet of BVW      b. square feet of salt marsh      263,700 (Riverfront Area and BLSF)  
 c. square feet of other wetland resource areas

24.  Stream Crossing(s):  
 a. number of new stream crossings      b. number of replacement stream crossings



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Bureau of Resource Protection - Wetlands

## WPA Form 5A – Restoration Order of Conditions

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

Provided by MassDEP:

232-046

MassDEP File #

Mount Washington

City/Town

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

The following conditions are 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 Restoration Order of
2. The Restoration 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 Restoration 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 Restoration 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 Restoration 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 Restoration Order.
5. This Restoration 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 Restoration Order.
6. If this Restoration Order constitutes an Amended Restoration Order of Conditions, this Amended Restoration Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Restoration Order will expire on \_\_\_\_\_ unless extended in writing by the Department.
7. 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.
8. This Restoration Order is not final until all administrative appeal periods from this Restoration Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Restoration 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 Restoration 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 Restoration 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 the Conservation Commission on the form at the end of this Restoration Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

## WPA Form 5A – Restoration Order of Conditions

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

Provided by MassDEP:

232-046

MassDEP File #

Mount Washington

City/Town

### C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

10. 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, "MassDEP"]

"File Number            232-046            "
11. Where the Department of Environmental Protection is requested to issue a Superseding Restoration Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 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.
15. 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 Restoration Order at reasonable hours to evaluate compliance with the conditions stated in this Restoration Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Restoration Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Restoration Order and to any contractor or other person performing work conditioned by this Restoration Order.
17. 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.
18. 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 Restoration Order.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

## WPA Form 5A – Restoration Order of Conditions

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

Provided by MassDEP:  
232-046  
MassDEP File #

Mount Washington  
City/Town

### C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

#### General Conditions for all Ecological Restoration Projects

19. The project shall be conducted in accordance with any preliminary written determination obtained from the Natural Heritage and Endangered Species Program as set forth in 310 CMR 10.11(2) and any time of year restrictions or other conditions recommended in writing by the Division of Marine Fisheries (for projects in coastal Resource Areas) and the Division of Fisheries and Wildlife (for projects in inland Resource Areas) as set forth in 310 CMR 10.11(3), (4) and (5).
20. The applicant shall implement the plan submitted with the Notice of Intent as approved by the Issuing Authority to prevent and control invasive species.
21. If the project involves the dredging of 100 cubic yards or more in a Resource Area or dredging of any amount in an Outstanding Resource Water, the dredging and Dredged Material management shall be performed in accordance with the Water Quality Certification submitted with the Notice of Intent.
22. If the project involves infrastructure, the owner shall operate and maintain the infrastructure in accordance with the operation and maintenance plan submitted with the Notice of Intent as approved by the Issuing Authority. Implementation of the operation and maintenance plan as approved by the Issuing Authority shall be a continuing condition that shall be set forth in the Certificate of Compliance.
23. The work associated with this Order (the "Project")
  - (1)  is subject to the Massachusetts Stormwater Standards
  - (2)  is NOT subject to the Massachusetts Stormwater Standards

**If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:**

- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
  - i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 5A – Restoration Order of  
Conditions**

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

Provided by MassDEP:  
232-046  
MassDEP File #

Mount Washington  
City/Town

**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

- ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
  - iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;
  - iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
  - v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.
- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:
- i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and
  - ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Restoration Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 5A – Restoration Order of  
Conditions**

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

Provided by MassDEP:  
232-046  
MassDEP File #

Mount Washington  
City/Town

**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.
- g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
  2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
  3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Restoration Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 5A – Restoration Order of  
Conditions**

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

Provided by MassDEP:  
232-046  
MassDEP File #

Mount Washington  
City/Town

**D. Special Conditions for Ecological Restoration Projects**

**Dam Removal**

This project involves dam removal and the following special conditions shall apply in addition to the general conditions set forth in 310 CMR 10.14(1):

- a) An as-built plan and a written statement from a registered professional engineer or other environmental professional expert in ecological restoration certifying substantial compliance with the design plan and construction specifications approved in the Restoration Order of Conditions shall be submitted to the Issuing Authority within 90 days of completion of the dam removal.
- b) The applicant shall monitor the dam removal site during the first two years following completion of the dam removal. Said monitoring shall include a topographic survey of the longitudinal profile and stream cross-sections from downstream of the former dam through the upstream end of the former impoundment. The survey reference point shall comprise a permanent marker or recoverable survey point with known coordinates, such as a fixed point shown on the as-built plan, an existing bench mark, or a new benchmark. That marker should be identified or referenced on the plans and on the as-built plans. The applicant shall establish at least two photo-points for pre- and post-restoration monitoring at the dam removal site. At least one photo-point location shall be chosen to document a view of the dam pre-restoration and to document the same site after the dam is removed. A second location shall be chosen to document a view of the impoundment pre- and post-restoration. Photos shall be taken for two years after the dam removal is completed.
- c) The applicant shall submit a report detailing the results of this monitoring within six months of the completion of the two year post-construction monitoring period, or within 30 months after the dam removal is complete whichever is sooner. The report shall include a comparison of post-restoration survey data with pre-restoration survey data as illustrated by the photos taken during the monitoring period.

**Freshwater Stream Crossing Repair and Replacement Projects**

The project involves one or more freshwater crossing repair or replacement and the following special conditions in addition to the general conditions apply:

- a) An as-built plan and/or a written statement from a registered professional engineer or other environmental professional expert in ecological restoration certifying substantial compliance with the design plans and construction specifications approved in the Restoration Order of Conditions shall be completed within 90 days of completion of construction. The as-built plan shall include the dimensions of the structure, the invert elevation of the upstream and downstream ends of the structure and the road or other surface elevation above the structure.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

## WPA Form 5A – Restoration Order of Conditions

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

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MassDEP File #

Mount Washington  
City/Town

### D. Special Conditions for Ecological Restoration Projects (cont.)

- b) The applicant shall monitor the site by collecting sufficient data within 12 months after construction is complete to evaluate the effect of the structure. At a minimum, when a Certificate of Compliance is requested, the applicant shall provide post-construction photo-points that capture longitudinal views of the crossing inlet, the crossing outlet and the upstream and downstream channel beds during low flow conditions. The photo-points shall be located at the same geographic photo-point latitude and longitude coordinates as required in the Notice of Intent per 310 CMR 10.12(1)(n). The applicant shall submit a report to the Issuing Authority detailing the results of this monitoring within 18 months after construction is complete. The report shall include a comparison of the post-restoration data with pre-restoration data.

**Stream Daylighting**

The project involves stream daylighting and the following special conditions in addition to the general conditions apply:

- a) An as-built plan and a written statement from a registered professional engineer or other environmental professional expert in ecological restoration certifying substantial compliance with the design plan and construction specifications approved in the Restoration Order of Conditions shall be submitted to the Issuing Authority within 90 days of completion of the project. At a minimum, when a Certificate of Compliance is requested, the applicant shall provide post-construction photo-points that capture longitudinal views of the upstream and downstream channel beds of the daylighted reach during low flow conditions.
- b) The applicant shall conduct photo-point monitoring by establishing at least three photo-points for pre- and post-restoration monitoring at the stream daylighting site. One photo-point location shall be chosen to document the upstream end of the site and one photo-point location shall be chosen to document the downstream end of the site. A third photo-point shall be chosen to document conditions in the restored channel. Photos shall be taken during high flow and low (summer) flow of each year during the two years following completion of the project.
- c) Within 30 months after the completion of the project, the applicant shall submit a report describing the ecological changes observed at the project site during the two years following completion of the project, as illustrated by the photos.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

## WPA Form 5A – Restoration Order of Conditions

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

Provided by MassDEP:  
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MassDEP File #

Mount Washington  
City/Town

### D. Special Conditions for Ecological Restoration Projects (cont.)

**Tidal Restoration Projects**

The project involves restoration of tidal influence and the following special conditions in addition to the general conditions apply:

- a) If the project is a culvert or bridge replacement or repair project, an as-built plan and a written statement from a registered professional engineer or other environmental professional expert in ecological restoration certifying substantial compliance with the design plans and construction specifications approved in the Restoration Order of Conditions shall be submitted to the Issuing Authority within 90 days of completion of construction. The as-built plan shall include the dimensions of the structure, the invert elevation of the upstream and downstream ends of the structure and the road or other surface elevation above the structure.
- b) The applicant shall monitor pre- and post-construction tidal conditions upstream and downstream of the tidal restriction with water level readings measured at an interval no greater than every 10 minutes over a minimum of a one-week period that includes a spring tide. Pre- and post-construction water level readings shall be taken at approximately the same locations and shall be referenced to the same vertical elevation datum. The applicant shall prepare a report detailing the results of this monitoring within 12 months after construction is complete. The report shall include and compare pre- and post-construction tidal elevation monitoring data to assess attainment of the project's predicted post-restoration tidal conditions.

**Rare Species Habitat Restoration**

The project is a Rare Species Habitat Restoration Project and in addition to the general conditions the following special conditions apply:

- a) An as-built plan and a written statement from a registered professional engineer or other environmental professional expert in ecological restoration certifying substantial compliance with the design plan, construction specifications, and the Habitat Management Plan submitted with the Notice of Intent as approved in the Restoration Order of Conditions shall be submitted to the Issuing Authority within 90 days of completion of the project.
- b) The applicant shall establish at least two photo-points for pre- and post-restoration monitoring at the project site. Photos shall be taken for two years after construction is complete. Within 30 months of completion of the project, the applicant shall submit to the Issuing Authority a report describing the ecological changes observed at the project site as illustrated by the photos.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

## WPA Form 5A – Restoration Order of Conditions

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

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232-046  
MassDEP File #

Mount Washington  
City/Town

### D. Special Conditions for Ecological Restoration Projects (cont.)

**Fish Passageway Restoration**

The project involves the repair or replacement of a fish passageway and in addition to the general conditions the following special conditions:

- a) The property owner is responsible for maintaining and repairing the fishway in good condition so that it will support safe and efficient fish passage in accordance with an operation and maintenance plan approved by the Division of Marine Fisheries. This requirement is a continuing condition that shall be set forth in the Certificate of Compliance.
- b) a post-construction project summary using surveys, a narrative and photographs as needed, that confirm the fishway slope and entrance and exit elevations shall be submitted to and approved by the Division of Marine Fisheries, prior to submittal of a request for a Certificate of Compliance.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

# WPA Form 5A – Restoration Order of Conditions

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

Provided by MassDEP:  
232-046  
MassDEP File #

Mount Washington  
City/Town

## E. Findings Under Municipal Wetlands Bylaw or Ordinance

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

1. Municipal Ordinance or Bylaw

2. 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.

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

1. Municipal Ordinance or Bylaw

2. Citation

3. 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.

The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):  
Additional conditions 24 through 58 attached.

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Massachusetts Department of Environmental Protection  
 Bureau of Resource Protection - Wetlands  
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 Conditions**

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**F. Signatures**

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

10/25/2022  
 1. Date of Issuance  
4  
 2. Number of Signers

Please indicate the number of members who will sign this form.  
 This Restoration Order must be signed by a majority of the Conservation Commission.

The Restoration 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 and the property owner, if different from applicant.

Signatures: [Signature] Mackenzie Waggaman  
[Signature] Betsy Spears  
[Signature] Andy Trainor  
[Signature] Scott Miller

by hand delivery on  
12/7/2022  
 Date

by certified mail, return receipt requested, on  
 Date





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

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### G. Appeals

The applicant, the owner, any person aggrieved by this Restoration Order, any owner of land abutting the land subject to this Restoration 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 MassDEP Regional Office to issue a Superseding Restoration 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 for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Restoration 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 Restoration Order of Conditions 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 Restoration Order, or providing written information to the Department prior to issuance of a Superseding Restoration Order.

The request shall state clearly and concisely how the project permitted under the Restoration Order which is being appealed does or does not meet the eligibility criteria in 310 CMR 10.13(1) and the relevant provisions of 310 CMR 10.13(2) through (7). To the extent that the Restoration 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.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

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City/Town

### H. Recording Information

Prior to commencement of work, this Restoration Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Restoration Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Restoration Order. In the case of registered land, this Restoration Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Restoration Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

Mount Washington

Conservation Commission

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

To:

Mount Washington

Conservation Commission

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

Becker Pond off East Street

Project Location

232-046

MassDEP File Number

Has been recorded at the Registry of Deeds of:

Berkshire South

County

Book

Page

For

Property Owner

and has been noted in the chain of title of the affected property in:

1167

Book

165

Page

In accordance with the Restoration Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant



Applicant  
Project Address  
DEP File Number

The Nature Conservancy  
Becker Pond, off East Street  
232-0046

**Summary:** The Notice of Intent requests that the Mount Washington Conservation Commission approve the removal of the Becker Pond Dam and related work including temporary and permanent access roads, staging areas, stream and site restoration. The work for this project is located within the stream bed, bordering vegetated wetland and buffer zones. The project is submitted as an Ecological Restoration Project.

This Notice of Intent is approved pursuant to the provisions of the Massachusetts Wetlands Protection Act and 310.CRM 10.00 subject to the following Additional Conditions

Additional Conditions:

24. All work shall be performed in accordance with the Notice of Intent as filed June 28, 2022 and plans dated June 28, 2022 with revisions through August 17, 2022 prepared by Inter-Fluve including 12 sheets.
25. The Mount Washington Conservation Commission will assign one of its members to manage the project, as its agent, to represent the Commission as a point of contact to the project team.
26. The Mount Washington Conservation Commission (the Commission) and its agents reserve the right to enter and inspect the subject site at reasonable times until the issuance of a Certificate of Compliance for the purpose of evaluating compliance with this Order of Conditions (the Order), the Wetlands Protection Act, 310 CMR 10.00, may obtain any information, measurements, still and video images, observations and or materials and may require the submittal of any data or information deemed necessary by the Commission for the evaluation. Further work shall be halted on the project if the Commission, or its agents, determines that any work is not in compliance with this Order. Work shall not resume until the Commission is satisfied that the work will comply and so notifies the Applicant in writing.
27. Prior to the issuance of the Certificate of Compliance this Order shall apply to any successor in control or successor in interest to the Property described in the Notice of Intent and accompanying plans; prior to the issuance of the Certificate of Compliance this Order shall be referred to in all deeds to succeeding owners in all or any portion of the Property.
28. Upon completion of this project, the Applicant shall submit the following to the Conservation Commission in order to receive the Certificate of Compliance:
  - a. DEP WPA Form 8A Request for Certificate of Compliance.
  - b. A written statement from the Applicant certifying that the work has been conducted as shown on the plan(s) and documents referenced above, and as conditioned by the Commission.
  - c. A written statement from a registered professional engineer of the Commonwealth certifying that the work has been conducted as shown on the plan(s) and documents referenced above, and as conditioned by the Commission
  - d. An "As-Built" plan prepared for the public record, signed and stamped by a registered professional engineer or land surveyor of the Commonwealth. In addition to all new construction, the "As-Built" plan shall show the edge of flagged wetlands, the boundary of the 100-foot Buffer Zone, and the limit of permanent clearing.
29. A post construction Invasive Species Management Plan may be submitted to the Commission at least sixty (60) days prior to the application for a Certificate of Compliance. The plan shall

Applicant  
Project Address  
DEP File Number

The Nature Conservancy  
Becker Pond, off East Street  
232-0046

identify the land manager's approach, schedule and methods for invasive species control related the property foot trails and access roads. Planned maintenance within the various and separate Wetland Resource Areas (buffer, riverfront, land under water) shall be subject to Commission review and approval. If approved by the Commission, the Plan will remain in place and permitted after the completion of work under this Notice of Intent and the issuance of a Certificate of Compliance. The applicant shall provide an invasive species control update to the Commission in writing by December 31 of even number

#### **Design and Pre-Construction Requirements**

30. The Stormwater Pollution Prevention Plan (SWPPP) shall be submitted to the Commission at least forty-five (45) days prior to the start of construction. During construction, each SWPPP report shall be submitted electronically to the Commission upon the report's completion.
31. The Flow Management Plan specified in Attachment E shall be submitted to the Commission at least forty-five (45) days prior to the start of construction.
32. The Erosion and Pollution Control Plan specified in Attachment E shall be submitted to the Commission for review and approval at least forty-five (45) days prior to the start of construction. In addition to the specified plan contents, the following items should be provided:
  - a. Haul road drainage swales and setting pools including cross section details, location and spacing.
  - b. Siltation fencing on the downstream side of the haul road and staging area within the bordering wetland buffers including the location and details of each type of siltation fence construction proposed,
  - c. Track out control mat at the exit point to East Street including details of construction and maintenance. The plan will include the schedule and approach for retrieving soils tracked off site onto gravel and paved roadways.
33. The 100% design drawings shall be submitted to the Commission for review and approval at least forty-five (45) days prior to the start of construction.
34. If there are any further changes to the plans as submitted, the Applicant shall have the responsibility to submit revised plans showing all changes to the Conservation Commission for review. This includes changes required by the Commission and/or other Town and/or State agencies as well as those introduced by the Applicant. After reviewing the revised plans, the Commission will make a determination as to whether the changes require an Amendment to this Order of Conditions or the filing of a new Notice of Intent. No work may start before the Commission has completed its review and notified the Applicant in writing of its determination.
35. Two alternative access points are proposed at East Street. The Applicant is proposing to adopt Alternative 2, an entrance on the subject Property to the south of the Alternative 1 access point. The Commission shall be notified if Alternative 1 is adopted.
36. No work shall commence on this project until the expiration of the 10-day appeal period, no requests for appeals having been filed with the Department of Environmental Protection, and a copy of the first page of the recorded Order of Conditions, bearing the time-stamped Registry of Deeds book and page numbers, has been submitted to the Conservation Commission.
37. The Applicant shall inform the Conservation Commission in writing of the name, mailing address, e-mail address, business and home telephone number of the project supervisor who

Applicant  
Project Address  
DEP File Number

The Nature Conservancy  
Becker Pond, off East Street  
232-0046

will be responsible for ensuring on-site compliance with this Order. The Applicant shall also provide the names and contact information for all contractors and subcontractors.

38. A complete copy of this Order, including its drawings, Special Conditions, and any amendments, shall be maintained at the work site whenever work is being performed. The Applicant shall have the responsibility to ensure that all on-site contractors, subcontractors and other personnel are fully aware of the terms and conditions of this Order and that no activity other than that authorized by this Order is permitted in areas under the jurisdiction of the Conservation Commission. A complete copy of this Order and the project plans shall be given to every contractor and subcontractor performing the work defined and described herein.
39. The Agent and Mount Washington Highway Department Foreman shall be invited to participate in a preconstruction meeting with the Project team to review the schedule, methods, and controls.
40. All equipment entering the site shall be free from soil and debris that could contain vegetation and seeds of invasive species. Construction equipment shall be pressure washed offsite prior to transport onsite.

#### **Erosion/Siltation/Sedimentation Controls**

41. Before the start of any site work (e.g. earth disturbance, vegetation clearing, etc.), the erosion/siltation/sedimentation barrier(s) as identified on approved Erosion and Pollution Control Plan and as shown on the Plans. Vegetation and soil may be disturbed as necessary for placement of the erosion/siltation/sedimentation barriers. After installation of erosion/siltation/sedimentation barriers, but prior to the start of any further work on this project, the Conservation Agent shall be notified to conduct a site inspection of the installation. Work on the project shall be permitted to commence and proceed only with the Agent's authorization after inspection of the erosion/siltation/sedimentation barriers.

#### **Construction Management**

42. The **limit of work** shall be as shown on the Plan. Workers on site shall be informed that no activity at any time is permitted beyond the limit of work within the 100-foot buffer including, but not limited to, the use of machinery, storage of machinery or materials, stockpiling of soil or construction, and littering.
43. All **erosion/siltation/sedimentation barriers** shall remain in place and be maintained in proper working order through regular cleaning, and/or replacement as necessary, during and after construction until such time that all disturbed areas under the jurisdiction of this Order have been permanently stabilized, inspected, and approved by the Conservation Commission and/or Agent. Erosion/siltation/sedimentation barriers shall be removed before the issuance of the Certificate of Compliance.
44. An adequate stockpile of erosion/siltation/sedimentation control materials shall be always kept on site for emergency or routine replacement and shall include materials to repair silt fences, hay bales, stone rip-rap filter dikes, or any other devices to be used during construction.
45. The Conservation Commission reserves the right to modify erosion/siltation/sedimentation controls based on experience at this site, or to impose additional conditions on portions of this

Applicant  
Project Address  
DEP File Number

The Nature Conservancy  
Becker Pond, off East Street  
232-0046

- project to mitigate any impacts which could result from site erosion, or any noticeable degradation of surface water quality discharging from the site.
46. Site grading and construction shall be scheduled to avoid periods of high surface water. Once begun, grading and construction shall move uninterrupted to completion to avoid erosion and siltation of wetlands.
  47. **Motorized vehicles** or any other motorized machinery involved in the work shall be permitted in Wetland Resource Areas and/or 100-foot Buffer Zone only when engaged in that work and must be kept as in the staging area for overnight and weekend storage.
  48. Maintenance or refueling of motorized vehicles shall take place in the staging area or outside Wetlands Resource Areas or 100-foot Buffer Zone. This includes, but not is not limited to, fueling, lubricating, fluid replacement, maintenance, and washing. If a spill occurs, contaminated soils shall be removed according to guidelines established by the Department of Environmental Protection, Bureau of Waste Site Cleanup. The remedial activities may be conducted in accordance with the provisions of an Immediate Response Action (IRA) or Remedial Abatement Measure (RAM) under the Massachusetts Contingency Plan. The Conservation Commission shall be provided written notice for approval of any remedial activities that are needed within the 100-foot Buffer Zone or Wetland Resource Area(s). Any damage to any Wetland Resource Area(s) caused as a direct result of this project shall be the responsibility of the Applicant to repair, restore and/or replace.
  49. Vehicles and equipment for fuel storage and refueling operations shall be parked in the staging area or an upland area outside the 100-foot Buffer Zone.
  50. Unless re-used, excavated soil shall be removed from the 100-foot Buffer Zone on a day-to-day basis. All excess excavated soil, and fill imported from off-site, shall be removed from the 100-foot Buffer Zone upon the completion of construction and final grading.
  51. No trash dumpsters shall be permitted within the 100-foot Buffer Zone during construction.
  52. All construction refuse and debris, including tree stumps, shall be removed from (i.e. not buried in) the 100-foot Buffer Zone and 200-foot Riverfront Area upon the completion of construction and final grading. This condition excludes the planned use of whole tree trunks used for stream channel development. During construction, all solid and chemical waste shall be transported from the site and disposed of in compliance with Federal, State and local requirements for waste disposal.
  53. Junk metal piles located at the northwest end of the pond shall be removed from the Wetland Resource Areas as part of the proposed work
  54. The Applicant has stated that the existing structure located on the southwest end of the pond will be removed despite the Plan "Do Not Disturb" notation.
  55. During construction, all excavations, embankments, stockpiles, haul roads, plant sites and all other work areas within and without the project boundaries shall be maintained free from dust which might cause a hazard or nuisance to others. Dust control shall be performed as the work proceeds or whenever a dust nuisance occurs.
  56. No disturbed areas or stockpiled material shall be left unprotected during the winter season.
  57. All embankments and disturbed areas within the 100-foot Buffer Zone and Riverfront Area shall be loamed, fertilized, and seeded, or rip rapped as appropriate, immediately upon completion of construction and final grading. A minimum of 4-inches of topsoil shall form the seedbed..

Applicant  
Project Address  
DEP File Number

The Nature Conservancy  
Becker Pond, off East Street  
232-0046

58. Erosion/siltation/sedimentation barriers shall remain in place until their removal is authorized by the Conservation Agent and/or Conservation Commission. After erosion/siltation/sedimentation barriers are removed as permitted by the Agent and/or Commission, areas disturbed by the barriers shall be restored to match adjacent conditions.