



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

May 29, 2015

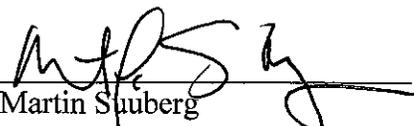
In the Matter of  
Molumco Development Corp. &  
Calvin Moore, Trustee of Cowfield Trust

Docket No. WET-2015-003  
File No. 100-0363  
Ayer

## FINAL DECISION

I have reviewed the attached Settlement Agreement signed by the applicant Calvin Moore, on March 11, 2015, by William Daniels, for the Town of Ayer on March 30, 2015, and by Lee Dillard Adams, Regional Director for the Department on March 19, 2015. The Department issues this Final Decision incorporating the Settlement Agreement and Final Order of Conditions, which I have also reviewed.

Under the terms of 310 CMR 1.01(8)(c), these proceedings are dismissed with the parties waiving whatever rights they may have to further administrative review before the Department as well as appeal to court.

  
Martin Suuberg  
Commissioner

**SERVICE LIST**

In The Matter Of: Molumco Development Corp. &  
Calvin Moore, Trustee of Cowfield  
Trust

Docket No. WET-2015-003 File No. 100-0363  
Ayer

Representative

Party

Molumco Development and  
Calvin Moore, Trustee of  
Cowfield Trust  
c/o Calvin Moore  
39 Main Street, Suite 304  
Ayer, MA 01432  
[calvinm@needtogohunting.com](mailto:calvinm@needtogohunting.com)

APPLICANT/PETITIONER

Elizabeth Kimball  
Mass DEP Office of General  
Counsel  
One Winter Street  
Boston, MA 02108  
[Elizabeth.Kimball@state.ma.us](mailto:Elizabeth.Kimball@state.ma.us)

DEPARTMENT

MaryAnne Dipinto  
MassDEP – Central Regional  
Office  
8 New Bond Street  
Worcester, MA 01606  
[Maryanne.dipinto@state.ma.us](mailto:Maryanne.dipinto@state.ma.us)

ANALYST

Ayer Conservation Commission  
1 Main Street  
Ayer, MA 01432  
[concom@ayer.ma.us](mailto:concom@ayer.ma.us)

CONCOM

Date: May 29, 2015



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

DEP File Number:

100-0363

**A. General Information**

1. From: MassDEP - Central Region  
 Regional Office of the Department of Environmental Protection (the Department)

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

3. To: Applicant:  
Calvin Moore, Trustee Molumco Development  
 a. Name b. Company  
39 Main St. Suite 204  
 c. Mailing Address  
Ayer MA 01432  
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):  
Cowfield Trust Calvin Moore, Trustee  
 a. First Name b. Last Name  
same  
 c. Mailing Address  
 d. City/Town e. State f. Zip Code

5. Project Location:  
Nashua St. Extension Ayer  
 a. Street Address b. City/Town  
Map 13 Parcel 10 & 11  
 c. Assessors Map/Plat Number d. Parcel/Lot Number  
 Latitude and Longitude, if known: 42.56867 71.5817  
 e. Latitude f. Longitude

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):  
Middlesex South 43024 136  
 a. County b. Book c. Page

d. Certificate (if registered land)  
 7. Dates: 9/6/13 12/22/14 Final OC:  
 a. Date Notice of Intent Filed b. Date SOC Site Meeting c. Date of SOC Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):  
Definitive Subdivision Plan sheets 1.1 to 6.1, 7.1 - 7.2, 8.1 - 8.3  
 a. Plan Title  
Goldsmith, Prest & Ringwall, Inc. Douglas E. Miller, P.E.  
 b. Prepared by c. Signed by  
3/6/15 1"=40' or as noted  
 d. Final Revision Date e. Scale

Long Term Pollution Prevention Plan rev. 2/24/15; Stormwater Management Report rev. 3/6/15  
 f. Additional Plan or Document Title  
 9. Total WPA Fee Paid: 3000.00 1487.50 1512.50  
 a. Total Fee Paid b. State Fee Paid c. City/Town Fee Paid



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**B. Findings**

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent, 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 checked="" type="checkbox"/> Bordering Vegetated Wetland	480	480	725	725
	a. square feet	b. square feet	c. square feet	d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet	b. square feet	c. square feet	d. square feet
	e. cu.yd dredged	f. cu.yd dredged		



**B. Findings (cont'd)**

Resource Area:	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
7. <input type="checkbox"/> Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	e. cubic feet	f. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	a. square feet		
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront area	a. total square ft	a. total square ft		
Sq ft within 100 ft	c. square feet	c. square feet		
Sq ft between 100-200 ft	e. square feet	e. square feet		

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

(only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - a. the work is a maintenance dredging project as provided for in the Act; or
  - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended Superseding Order of Conditions, this Amended Superseding Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Superseding Order will expire on **3/ /2018** 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 Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.



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and Wetland Regulations 310 CMR 10.00

DEP File Number:

100-0363

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

9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the DEP Regional Office on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.

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      100-0363 "

11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before DEP.

12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Department of Environmental Protection

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 Department of Environmental Protection 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 Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.

16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.

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 the Department of Environmental Protection has issued a Certificate of Compliance.

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 Department, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.



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

19. The work associated with this Order (the "Project") is (1)  is not (2)  subject to the Massachusetts Stormwater Policy 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;
    - 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 BMPs 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.



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

- 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, and 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 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.
- 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.

**Special Conditions (See the attached sheet(s) for additional conditions numbered 20 through 34)**

20. This Order supersedes all previous Orders of Conditions issued for DEP File # 100-0363.
21. Any failure of the erosion control measures that results in the presence of visibly turbid water or the deposition of any depth of sediment within wetlands or Buffer Zones (state or local) located outside of the approved limit of work shall, immediately upon discovery, be reported in writing to MassDEP and the Ayer Conservation Commission. The report shall include the location, nature, and extent of the impacts, and a description of measures proposed and undertaken to abate the situation and prevent a recurrence.
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22. The project plans include specifications for construction sequencing, including construction of infiltration basins and protecting them from further impacts including sedimentation and compaction by heavy equipment. Failure to adhere to this provision shall be considered grounds for enforcement action.
- 
23. All disturbed areas shall be loamed and seeded or sodded by September 30th of each year or otherwise stabilized before the ground freezes.
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24. There shall be no stockpiling of soil or other material within 30 feet of any resource area. Any soil stockpiled overnight shall be covered with plastic or canvas, or stabilized in a manner acceptable to the Department so as to prevent soil from entering the wetland resource areas.
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25. The approved stormwater management system includes some stormwater discharges located within wetland Buffer Zones. Therefore, any alteration of the approved stormwater management system, including the grading that determines flow of surface water to stormwater management system components, requires review and approval by MassDEP.
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26. Erosion control devices and wetland flags shall remain in place until all disturbed surfaces have been stabilized with final vegetative cover and written permission has been received from MassDEP. Siltation fencing and haybale stakes shall be removed within two (2) months following such written permission
27. Materials and equipment shall be stored in a manner and location, which will minimize the compaction of soils and the concentration of run off. Refueling or servicing of vehicles shall be in an area outside the buffer zone. If a spill occurs contaminated soils shall be removed according to guidelines established by DEP Division of Hazardous Waste.
28. Prior to commencement of any activity on the site other than the installation of erosion controls, there shall be a pre-construction onsite meeting with the project supervisor, the contractor responsible for the work, MassDEP staff and other relevant parties identified by the Applicant. Please contact the MassDEP office at (508) 767-2711 at least 72 hours prior to any activity to arrange for the pre-construction meeting.  
The meeting shall:
- Ensure that the requirements of the Final Superseding Order of Conditions are understood.
  - Check administrative requirements (DEP file number sign, registry recording, contact info. etc.).
  - Inspect or adjust if necessary, erosion control devices, installation and wetlands flagging.
29. The proposed wetland replication area of 725 square feet must meet the Performance Standards for Bordering Vegetated Wetlands, 310 CMR 10.55 (4)(b). Replication must be based on the best available information for such areas and must be supervised by a wetlands specialist who shall be a professional with experience in wetland replication and a working knowledge of botany and hydrology.
30. Wetland Regulation (310 CMR 10.55 (4)(b)(6) requires that at least 75% of the surface of the replacement area be re established with indigenous wetland plant species within two growing seasons. If monitoring data indicates that this objective cannot be met a corrective plan of action shall be submitted to the Department for approval, and implemented under the supervision of a wetlands specialist.
31. The three storm water infiltration basins shall be periodically maintained to allow the design storage volume required to exist for the basin to detain and infiltrate storm runoff and so that the basins drain within 72 hours. An as-built plan of each basin shall be submitted to this office that defines the geometry of the basin. Such a plan shall contain at least 1 cross section, showing all structure details, and be drawn at a suitable scale preferably 4 ft./in. horizontal.
32. Dewatering discharges from the work area shall be effectively filtered or settled to remove sediments prior to being discharged to waters or wetlands.
33. This project is also subject to conditions imposed under the Ayer Wetlands bylaw - see below for information regarding MassDEP involvement with the local bylaw.
34. The deed restriction proposed for Lots 6 & 7 shall include language that alerts the landowners to their responsibility to maintain the infiltration basins as noted in condition #31 above.

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Brief Project Description of Permitted Activities:

construction of an 8-lot subdivision with a wetland crossing.

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**END OF SPECIAL CONDITIONS**

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## **D. Findings Under Municipal Wetlands Bylaw or Ordinance**

To the extent that the Order is based on a municipal bylaw or ordinance, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no jurisdiction to supersede the local by-law order.



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DEP File Number:

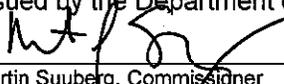
100-0363

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**E. Issuance**

This Order is valid for three years from the date of issuance, unless otherwise specified as a special condition pursuant to General Conditions #4 or #6.

Issued by the Department of Environmental Protection:

  
\_\_\_\_\_  
Martin Suuberg, Commissioner

5/29/15  
Date

Cert. mail: 7003311000016100111

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**F. Appeals**

See Final Decision.



## G. Recording Information

This 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 Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on Page 9 of this form shall be submitted to the DEP Regional Office listed below.

Central regional office - MassDEP 8 New Bond St. Worcester, MA 01606

Regional Office of the Department of Environmental Protection

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

To:

Central region - MassDEP

Regional Office of the Department of Environmental Protection

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

Project Location

DEP File Number

Has been recorded at the Registry of Deeds of:

County

Book

Page

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