



SECTION 4: ANALYSIS AND RECOMMENDATIONS

Results! Why, man, I have gotten a lot of results. I know several thousand things that won't work.

Thomas Edison

4.1 Wetland Replication Analysis Summary

As described in Section 3, a total of twelve projects comprising fourteen replication areas were assessed as part of this project. Table 2 on the following page provides a summary overview assessment of these replication areas. Although the relatively small number of sites involved in this study limits the ability to draw broad or statistically significant conclusions about the regulatory compliance of wetland replications in general, the overall results draw attention to several important points:

- In total, the fourteen sites were required to replicate 64,346 square feet of wetland. The total area of wetland replication actually constructed (minus the area of Site #1, which did not develop wetland characteristics) was 43,695 square feet. For the fourteen sites, this equals a net loss of 20,651 square feet of wetland, roughly one-third (32%) of the required replication area.
- Only half (7) of the fourteen sites were determined to be constructed in substantial compliance with the approved replication plan. These sites included the following:
 - Site #3 appears to be thriving and offers excellent wildlife habitat and flood storage functions. However, it is worth noting that most of this successful site was graded substantially (6-9 inches) lower than the adjacent wetland.
 - Site #5 appears to have been built to specification, but 70% of its area was recently filled as part of a development project on an adjacent parcel. Despite apparently being built according to plan, this site does provide its intended function as vernal pool habitat.
- Of the seven sites that were determined to be sub-standard:
 - Four sites exhibited wetland characteristics (dominant wetland vegetation and hydric soils) but did not comply with the approved plan due to being significantly undersized, having inadequate grading, or both. "Undersized" replications were defined as sites which were less than 90% of their approved size. One of the undersized sites (Site 9) had one of the most diverse and vigorous wetland herbaceous communities of the sample set.
 - Two of the replication areas (Sites #2 and #10) were never built.
 - Site #1 was undersized and failed to develop wetland features due to poor grading and lack of sufficient hydrology.
- Overall, the "success" rate and functional performance of the wetland replication assessments for this study were generally consistent with a statewide study published in



Table 2: Wetland Replication Assessment Summary Table

Site #	Year Permitted	Approved Size (sf)	Estimated Constructed Size (sf)	% of Approved Size (sf)	Is Replication a Wetland?	Does Replication Substantially Comply with Approved Plan?	Comments
1	1987	4,500	2,015	45%	No	No	Undersized, poor grading and hydrology, lacking hydric soils and dominant wetland plants
2	1989	1,621	0	0%	No	No	Replication area not built.
3	1991	6,000	5,826	97%	Yes	Yes	Excellent habitat and flood storage. Excavated to lower elevation than immediately adjacent wetland.
4	1994	13,100	9,722	74%	Yes	No	Poor grading, undersized.
5	1994	1,170	391*	33%	Yes	Yes*	Construction appears to comply, but 67% of area has since been filled. <i>Does not</i> support intended vernal pool function
6	1995	7,700	3,916	51%	Yes	No	Substantially undersized.
7	1995	3,000	2,993	99.8%	Yes	Yes	Diverse, dense herbaceous community.
8	1995	4,960	4,560	92%	Yes (marginal)	No	Inadequate grading.
9	1999	14,945	10,437	70%	Yes	No	Undersized, although replication area is thriving.
10	1996	1,500	0	0%	No	No	Replication area not built.
11-a	1997	1,600	1600	100%	Yes	Yes	Thriving wet meadow community. Majority of planted shrubs are dead or missing.
11-b	1997	1,000	1,000	100%	Yes	Yes	Excellent survival of planted trees and shrubs.
11-c	1997	2,900	2,900	100%	Yes	Yes	Excellent wildlife habitat. Many tree/shrub plantings failed due to conditions being too wet.
12	1998	350	350	100%	Yes	Yes	Transitional wetland community ...lower elevation would have improved hydrology/function.
Total Area of Approved Wetland Replication: 64,346 sf Total Area of Wetland Replication Constructed: 45,710 sf (71% of approved area) Total Area of Wetland Successfully Replicated: 43,695 sf (68% of approved area) Overall "Success" Rate (replication complies substantially with approved plan): 50% (7 of 14 replications) * <i>* Wetland #5 appears to have been built according to plan, but has since been filled / altered.</i>							



1998 by the University of Massachusetts (Brown and Veneman, *Compensatory Wetland Mitigation in Massachusetts*,) and other similar studies. The UMass study assessed 114 wetland replication sites and found that just over half of all sites (54%) were not in regulatory compliance for a variety of reasons, including no attempt to build the project, insufficient size or hydrology, or insufficient cover of wetland plants.

The following Sections 4.2 to 4.4 provide a more detailed discussion of the wetland replications with regard to (1) site grading and hydrology, (2) establishment of wetland vegetation, and (3) wetland functions and values. Recommendations for future wetland replication design, permitting, construction and monitoring are provided in Section 4.5.

4.2 Wetland Replication Site Grading / Hydrology

Site grading, and the site assessment and elevation design which precedes it, are perhaps the most critical aspects of any wetland replication project. Site grading will determine if a replication has ample hydrology to sustain a wetland vegetation community and perform fundamental wetland functions such as flood flow alteration. As stated in the Massachusetts Inland Wetland Replication Guidelines, *"Inadequate hydrology is often a result of inadequate evaluation of the replication site before construction, particularly when sites depending on ground water are not excavated deeply enough to provide water in adequate quantity and at appropriate seasons."*

A summary of permit requirements for the replication areas and a general assessment of site grading/ hydrology (with respect to these requirements) is provided in the Tables 3 and 4 below:

Table 3: Site Grading/Hydrology Categories

Grading / Hydrology Assessment	# of Sites
Site not built	2
Elevation too high / Site too dry	1
Site undersized	2
Site too dry <u>and</u> undersized	3
Grading in general compliance with permit	6



Table 4: Replication Grading/Hydrology Assessment Summary

Site #	Summary of Permit Specifications Related to Grading / Hydrology	Summary Assessment of Site Grading / Hydrology
1	Only wetland replication size and location specified.	Undersized, poor grading and hydrology.
2	Finished grade of the replication to be as close as possible to the adjacent wetlands.	Replication area not built.
3	Excavate to 6" below adjacent wetland and backfill with loam or other organic materials. To extent possible, original wetland soils from disturbed area to be used for backfilling replication. Replication to have unrestricted hydraulic connection to adjacent wetland. The groundwater and surface elevation of the replication shall be approximately equal to that of the lost area.	Excavated 6"-9" lower elevation than immediately adjacent wetland. Ample hydrology for emergent low marsh community and good flood storage function.
4	Excavate to 6" below adjacent wetland, and backfill with hydric peat soils.	Poor grading, undersized. Uneven grading with south side "wetter" than north. Significantly higher elevation than adjacent forested wetland.
5	Areas to be graded "as shown on plans" (design elevation specified)	Construction appears to have complied with plan design elevation.
6	Excavate to 6" below finished grade (shown on plans), and backfill with hydric soils from on-site disturbed wetlands or peat from off site.	Substantially undersized and noticeably uneven grading resulting in marginal wetland community.
7	Top 12" of hydric soil to be stripped from impact area for use in replication. Any additional required topsoil will be a mix of 2 parts peat to 3 parts loam. Topsoil to be placed in a minimum of 2 layers, to 4" above final grades (on plans) to allow for settling.	Site appears to have been well designed and constructed.
8	Grading shall incorporate topographic variations, slopes and drainage pattern to match those of the <i>filled</i> wetland.	Elevation higher than adjacent wetland, and significantly higher than that of the filled area. Overall, inadequate replication of required slopes, topography and drainage.
9	Excavate to one foot below final grade (on plans). Replace topsoil with "mature dark brown loam or a mix of 50% peat and 50% sand by volume".	Undersized, although the properly graded portion (70% of required area) is thriving.
10	Excavate to approx. 2 feet below proposed final grade. Replace topsoil with that of filled wetland or 50/50 mix of peat and sand. Grade/shape wetland for adequate slope and proper drainage, similar to that of the adjacent wetlands.	Replication area not built.
11-a 11-b 11-c	Excavate replication area floor to 12" below finished grade (on plans) and side slopes to 6" below. Spread 6" of loam on replication floor and spread wetland topsoil to establish final grade. Final grade shall be "compatible" with and shall provide hydrologic connection to adjacent wetland elevations. * Design elevations incorporate required compensatory flood storage.	These sites appear to comply with permit design requirements. Sites 11-a and 11-c are graded lower than the immediately adjacent wetlands (to achieve required flood storage volumes), but are consistent with other areas of the wetland to which they have a direct hydrologic connection.
12	Soil over replication to be removed by machine to a depth not less than 12" above original grade. Final 12 inches to be removed with hand tools after ground has thawed.	In compliance...slightly lower elevation would have improved hydrology / function.



Since topographic surveys were not part of this project's scope of work, GeoSyntec's assessment of grading compliance was based on field observation of the replication area and adjacent wetland, and comparison of the replication area's current surface area (field-delineated and located with a GPS unit) with the proposed site plan. Although Site #3 was determined to be graded to an elevation 6-9 inches *lower* than specified (in relation to the immediately adjacent wetland area), we consider this site to be in general compliance with permit specifications because (1) this lower grading was consistent with other portions of the same wetland to which the replication has unrestricted hydraulic connection, and (2) the replication area exhibits a thriving wetland herbaceous community and excellent wetland functions.

4.3 Wetland Replication Vegetation / Plantings

The Massachusetts Wetlands Protection Act regulations at 310 CMR 10.55 require that wetland replication areas must have at least 75% cover of native wetland plants within two growing seasons. Even at the sites where final elevations and grading appeared to be inadequate in reference to permit specifications, most of the constructed replication sites developed a vegetation community that was dominated by wetland plants (FAC or wetter, as defined by the Massachusetts Wetlands Protection Act). In fact, only one of the fourteen constructed wetland replication areas failed to develop a wetland plant community, although several of these were quite marginal and dominated by transitional wetland species as a result of grading problems.

Surprisingly, non-native invasive species were generally quite scarce at the replication sites and were notable at only two of the sites. The replication monitoring plot at Site #7 had "abundant" (26-50%) coverage of Purple Loosestrife, although overall native wetland plant coverage for the entire site exceeded the 75% regulatory criteria and the diversity of vegetation (28 species) growing on the site was excellent. Site #11-c had "common" (6-25%) coverage of Purple Loosestrife, but also exhibited a vigorous and diverse herbaceous community (17 species) that exceeded the 75% native wetland species requirement. It is worth noting that the wetland adjacent to replication #11-c had abundant Purple Loosestrife which may contribute to the increased spread and dominance of this plant within the replication area in years to come.

As further described in Table 5 on the following page, the planting plans for the fourteen replication sites can be categorized as follows:

Eleven of the sites had planting plans that included including specifications for species, quantity and location (or planting density) of planted trees and shrubs.

Two of the sites specified the use of a seed mixture and re-use of seed stock from disturbed wetland soils.

For one site, only the replication area size and location were specified in the permit and plan documents available from the Franklin Conservation commission files.

4.4 Monitoring Protocols and Construction Corrections

No records or reports related to post-construction wetland replication monitoring (a permit requirement for most of the projects) were found in the project files kept by the Franklin Conservation Commission. In addition, there are no known records of any construction adjustments made in the field during construction, which could have allowed for corrections and greater project success.



Table 5: Site Vegetation Assessment Summary

Site #	Summary of Permit Specifications Related to Vegetation and Plantings	Summary Assessment of Site Vegetation
1	Only wetland replication size and location specified.	Site dominated by upland plants.
2	Use wetland seed mixture with 2 species (Reed Canary Grass @ 20 lbs./ac, Ladino White Clover @ 1 lb./ac). Re-use soils from disturbed wetland in the replication.	Dominated by mature Staghorn Sumac - replication area not built.
3	Detailed planting plan with planting densities for 10 species in 3 layers (herb, shrub swamp and tree). Transplant plants from disturbed area to replication.	<i>None</i> of the 10 species in the planting plan were documented, although 13 other native species were thriving in vigorous emergent shallow marsh.
4	Planting plan specified 25-30 red maple saplings, 50 shrubs (Highbush Blueberry and Sweet Pepperbush) and various herbaceous layer plantings.	Significant variation of site vegetation due to inconsistent grading (south side is wetter, north side is marginal). Planted trees/shrubs either missing or dead (several red maple saplings present)
5	Planting plan specified location/quantity of 4 species & location of "typical hummock clusters". Topsoil/organic material for replication to be taken from disturbed on-site wetlands.	Herbaceous wetland vegetation is diverse and vigorous within small remaining area (2/3 of site has been filled). 3 of the 4 planted species are thriving (only Cattail not present).
6	Planting plan included hand planting of a tree layer (12 Red Maple saplings), shrub layer (Sweet Pepperbush, Highbush Blueberry) and ground layer (6 species). Spacing for plantings specified, but not locations.	Transitional, marginal wetland community, with dense herbaceous and woody shrub/sapling vegetation. Some survival of planted Red maples and Sweet Pepperbush.
7	Detailed planting plan specifying quantity/location of 6 species (1 tree species, 2 shrub species and 3 herbaceous species). Planting to occur within 7 days of replication area preparation, between April 1- May 15 or Sept. 15 – Oct. 15.	Diverse, dense wetland herbaceous community. Purple Loosestrife abundant in monitoring plot, but >75% native wetland plant coverage for entire site. Excellent diversity (28 species). Good survival of tree and herb plantings, shrubs mostly missing.
8	Transplantation of shrubs from filled wetland (plus herbaceous seed bank in transplanted soils), and/or nursery transplants and wetland seed mixture. Shrub plantings at 1 shrub per 64 s.f.	Marginal wetland dominated by pole saplings of Eastern Cottonwood (FAC), as well as gray birch and red maple. Assessment of planting success not possible due to lack of specificity in planting plan.
9	<i>Recommended</i> broadcast of wetland seed mixture to provide herbaceous diversity. Shrub planting: 1 shrub per 64 s.f, including 32 Yellow Birch, 38 Red Maple, 32 Arrowwood, 64 Highbush Blueberry, and 64 Winterberry.	Undersized, although constructed replication area has thriving and diverse wet meadow community. Many specified shrub plantings are not present...24 red maples thriving at perimeter, 1 dead.
10	Transplant shrubs/ plants from filled area to replication. Shrubs: Highbush blueberry and swamp azalea, 8' apart Plants: skunk cabbage, sensitive fern, cinnamon fern, sphagnum	Replication area not built.
11-a	Planting plan indicated location and quantity of nursery-stock shrubs for the 3 sites. Hand-plantings to occur before June 30 or after October 15, within 4 days of arrival on project site.	Thriving wet meadow community. Majority of planted shrubs are dead or missing, possibly due to conditions being too wet.
11-b	Seed basin with perennial Ryegrass (80%)/ White Clover (20%) mix and apply water soluble, quick-release fertilizer, seed between April 15 and June 30.	Excellent survival of planted trees and shrubs.
11-c		Diverse and vigorous emergent marsh/wet meadow with open water areas. Many tree/shrub plantings failed due to conditions being too wet.
12	Plant a combination of seeds such as Switchgrass (<i>Panicum virgatum</i>) and plants such as Sedge (<i>Carex spp.</i>) between April 1 and May 15 or September 5 and October 15.	Transitional wetland meadow community.



4.5 Wetland Replication Functions and Values

The Massachusetts Wetlands Protection Act regulations clearly describe the public interests and related wetland functions that must be considered when providing replication for impacted inland wetlands (public and private water supply, groundwater supply, flood control, storm damage prevention, pollution prevention, fisheries, and wildlife habitat). Although exact replication of lost wetland functions is a desirable goal, it is important to note that the Massachusetts Inland Wetland Replication Guidelines (DEP, 2002) clearly provide for flexibility in replication design to promote the maximum wetland functionality that can be achieved at the selected site. As stated in these Guidelines, “...replication efforts should focus on design characteristics that strive to maximize capacity for the functions impacted, as well as the functions the new wetland site will support. “

As described in Section 2, each of the wetland replication sites was assessed for wetland functions and values according to the methodology developed by the US Army Corps of Engineers (ACOE)-Regulatory Division and published in a booklet titled “Wetland Functions and Values – A Descriptive Approach” (see excerpts and data sheets in Appendix B). This methodology provides a qualitative assessment of wetland areas with regard to the 13 wetland function/value categories listed below in Table 6. Table 6 provides an overview of the functions/values that were considered substantially present at each of the replication sites:

Table 6: Wetland Replication Functions & Values Assessment Summary

Wetland Function / Value	Wetland Replication Site													
	1	2	3	4	5	6	7	8	9	10	11a	11b	11c	12
Groundwater Recharge / Discharge	✓		✓			✓	✓				✓			
Floodflow Alteration	✓		✓	✓					✓		✓	✓	✓	✓
Fish and Shellfish Habitat														
Sediment / Toxicant Retention				✓	✓	✓	✓	✓						
Nutrient Removal	✓		✓	✓	✓	✓	✓	✓			✓	✓	✓	✓
Production Export			✓				✓						✓	
Sediment / Shoreline Stabilization														
Wildlife Habitat			✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Recreation														
Educational / Scientific Value														
Uniqueness / Heritage														
Visual Quality / Aesthetics			✓						✓					
Endangered Species Habitat														



The ACOE wetland function/value categories most commonly present at the fourteen replication sites were Nutrient Removal (11 sites), Wildlife Habitat (11 sites) and Floodflow Retention (10 sites). Functions/Values less commonly present were Sediment/Toxicant Retention (5 sites), Production Export (3 sites), Groundwater Recharge/Discharge (3 sites) and Visual Quality /Aesthetics (2 sites).

As Table 6 shows, 6 of the 13 ACOE wetland function/value categories were not substantially present at any of the replication sites. This is not surprising, since the ACOE methodology is designed as a general wetland assessment tool and is not tailored specifically for wetland replications. For example, it is extremely unlikely that any recently constructed wetland replication would be considered to have “Uniqueness/Heritage” value, and it is also unlikely for such a site to be designed or intended to serve any type of recreational function.

Since similar pre-construction functional assessments were not conducted at any of the impacted wetlands requiring replication, it is difficult to directly compare the lost wetland functions with those currently present. To some extent, it is possible to compare wildlife habitat function of the impacted and replicated wetland areas by comparing the vegetation communities of these areas. However, it is important to bear in mind that the replication areas are quite young (most are less than ten years old) with regards to natural community succession, and can be expected to mature and change with time. As such, a comparison of natural communities provides only a snapshot of current conditions that may be predictive of future conditions as the replication matures.

The replication project site plans and other permit documents indicate that most of the projects involved impacts to forested wetland areas. With the exception of Site 8 (dominated by transitional pole saplings), these forested areas have been replicated with areas that are currently dominated by herbaceous vegetation (not including the sites 2 and 10, which were not constructed). This finding is consistent with the statewide 1998 University of Massachusetts study (Brown and Veneman). Over time and as part of a natural succession process, some of these sites (particularly sites 7, 9 and 11-b) appear to have the potential to develop into forested wetland communities similar to those they were intended to replicate. Other sites are likely to develop forested communities that have “drier”, more transitional species than the wetlands they are replacing (Sites 1, 4, 6, 8, 12). Several of the wettest sites (sites 3, 11-c) appear to have ample hydrology to sustain an emergent marsh community. In particular, sites 3 and 11-c are good examples of replication sites that do not precisely match the features of the impacted wetland, but do a very good job of maximizing wetland function in a way that is compatible with and complementary to their setting and adjacent wetlands.



4.6 Recommendations

This study indicates that wetland replication projects in the Town of Franklin over the past 15 years have had a high rate of non-compliance with permit requirements. Given the findings of previous wetland replication assessment studies involving a much larger sample sets (i.e. Brown and Veneman - University of Massachusetts), neither the incidence of non-compliance in Franklin nor the types of non-compliance documented by this study are particularly surprising. However, it is worthy of note that the replication projects assessed in this study were selected from a list of projects that had all previously been issued a Certificate of Compliance from the Franklin Conservation Commission.

The fourteen replication areas assessed in this study were permitted between the years of 1987 and 1998. In response to a growing body of evidence on the incidence of non-compliance for these types wetland replications, the Massachusetts DEP promulgated its Inland Wetland Replication Guidelines in 2002. These Guidelines provide a comprehensive discussion of the process of building and regulating a successful wetland replication, including detailed recommendations on site selection, design specifications, permit application and site plan requirements, construction, monitoring requirements, and other related regulatory issues. The Guidelines provide Conservation Commissions with a thorough template for providing appropriate regulatory oversight to ensure well-constructed and properly functioning wetland replication areas that are in compliance with permit requirements. It is not the intention of this study to develop a set of wetland replication recommendations for the Town of Franklin that duplicate the function already well-provided by the DEP Guidelines. On the contrary, it is clear that many of the regulatory compliance issues identified at the fourteen Franklin sites could have been easily avoided by following site assessment, design and monitoring protocols similar to those described in the DEP Guidelines. With that in mind, the recommendations provided in the following sections are intended to complement the DEP Guidelines and provide additional guidance with regard to the regulatory tasks of (1) developing Orders of Conditions, (2) construction oversight, and (3) issuing Certificates of Compliance.

4.6.1 Order of Conditions

- ***Document the type of wetland being altered.***
 - a. The Conservation Commission should require the applicant to specify (1) the type of wetland being altered, and (2) the primary functions and values associated with the wetland. The Conservation should (1) confirm this information as part of a site inspection and (2) incorporate this information when issuing an Order of Conditions.
 - b. Additional documentation to be cited in the Order of Conditions should include soil profiles, approximate hydrologic budget, and dominant vegetation. A cross section of the site's microtopography is also helpful.
- ***Document the type of wetland being proposed.***
 - a. The Order of Conditions should specify the anticipated successional state of the replication area at the projected time of a filing for a Certificate of Compliance (CoC). This will help the Commission assess if the replication is "on target" to eventually provide replication for impacts to a mature wetland system (i.e. forested wetland) that may take many years to develop. For example, if a replication area that was intended to develop into a forested swamp has the



characteristics of a shallow marsh/emergent swamp at the time of the CoC filing, the applicant and Conservation Commission will know that the grading/hydrology was incorrect (too wet) and may require modification (i.e. grading “islands” with hydrology more appropriate for desired wetland tree species). The Commission’s discretion when requiring modifications to the replication area should be on a case-by case basis and should consider the overall wetland functions and values that the replication area is providing.

- b. Specific measures of success should be discussed and summarized in the Order of Conditions. Given that it takes time for a replicated area to reach a certain successional stage (2 to 20 years and more), the ability to assess the probability of functional success will be critical to the issuance of a Certificate of Compliance (flooding, soil profiles, wildlife habitat, etc.). Ask for a proposed cross section to ensure appropriate microtopography is constructed.
- **Ensure the replication is constructed.**
 - a. The Commission should specify a construction schedule (ideally discussed as part of the public hearing), and require submittal of periodic construction reporting (e.g. every week, month, etc.).
 - b. The Order of Conditions should specify that failure to submit construction reports would be considered as a cause for issuing a Cease and Desist Order (if necessary). The reports should include nursery receipts, as appropriate.
- **Ensure the replication area is constructed accurately.**
 - a. If allowed under local bylaw, require that a bond be posted to ensure compliance with plans and protocol set forth in the Order of Conditions. If not, discuss with the applicant and include in the Order a requirement that an independent wetland scientist conduct construction monitoring and reporting.
 - b. The Order of Conditions should request an As-Built plan, showing contours or spot grades, of the sub-grade of wetland replication areas, as well as finished grades.
- **Establish a monitoring protocol.** The Order of Conditions should include an approved monitoring protocol. Ideally, the monitoring protocol should be submitted as part of the Notice of Intent for discussion during the public hearing process.

4.6.2 Construction Oversight

- **Construction oversight.** During construction, the Commission should require that replication areas be staked out in the field, and the Commission should inspect the staked location.
- **Review periodic construction inspection reports.** Take action or ask questions if something is not clear. In our experience, even though items are documented and highlighted, Conservation Commissions do not always follow through on the reports.
- **Conduct periodic site inspection.** Ask questions. Compare the field conditions to the plans. Be visible. Get to know the contractor(s).



- **Cease and Desist Orders.** Learn how to discuss and issue Cease and Desist Orders, if necessary. When considering a Cease and Desist Order, be sure to evaluate site stability. Take steps to prevent sites from being left unstable for prolonged periods as a result of a Cease and Desist Order.

4.6.3 Certificate of Compliance

- ***Review the As-Built Plans and the Monitoring Reports as part of a public meeting.*** Request that the applicant be present. Request that photographs be submitted as part of the Request for Certificate of Compliance.
- ***Conduct a site visit.*** Take photographs. Do not bow to pressures that a Certificate be issued as soon as possible in order to release a bond, or remove the Order from the property for ownership transfer reasons. Consider issuing a partial Certificate, if there is a portion of the property that properly meets the Orders of Conditions.