



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

WPA Form 2 – Determination of Applicability

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

B. Determination (cont.)

The following Determination(s) is/are applicable to the proposed site and/or project relative to the Wetlands Protection Act and regulations:

Positive Determination

Note: No work within the jurisdiction of the Wetlands Protection Act may proceed until a final Order of Conditions (issued following submittal of a Notice of Intent or Abbreviated Notice of Intent) or Order of Resource Area Delineation (issued following submittal of Simplified Review ANRAD) has been received from the issuing authority (i.e., Conservation Commission or the Department of Environmental Protection).

1. The area described on the referenced plan(s) is an area subject to protection under the Act. Removing, filling, dredging, or altering of the area requires the filing of a Notice of Intent.

2a. The boundary delineations of the following resource areas described on the referenced plan(s) are confirmed as accurate. Therefore, the resource area boundaries confirmed in this Determination are binding as to all decisions rendered pursuant to the Wetlands Protection Act and its regulations regarding such boundaries for as long as this Determination is valid.

2b. The boundaries of resource areas listed below are not confirmed by this Determination, regardless of whether such boundaries are contained on the plans attached to this Determination or to the Request for Determination.

3. The work described on referenced plan(s) and document(s) is within an area subject to protection under the Act and will remove, fill, dredge, or alter that area. Therefore, said work requires the filing of a Notice of Intent.

4. The work described on referenced plan(s) and document(s) is within the Buffer Zone and will alter an Area subject to protection under the Act. Therefore, said work requires the filing of a Notice of Intent or ANRAD Simplified Review (if work is limited to the Buffer Zone).

5. The area and/or work described on referenced plan(s) and document(s) is subject to review and approval by:

Name of Municipality

Pursuant to the following municipal wetland ordinance or bylaw:

Name

Ordinance or Bylaw Citation



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B. Determination (cont.)

6. The following area and/or work, if any, is subject to a municipal ordinance or bylaw but not subject to the Massachusetts Wetlands Protection Act:
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7. If a Notice of Intent is filed for the work in the Riverfront Area described on referenced plan(s) and document(s), which includes all or part of the work described in the Request, the applicant must consider the following alternatives. (Refer to the wetland regulations at 10.58(4)c. for more information about the scope of alternatives requirements):

- Alternatives limited to the lot on which the project is located.
- Alternatives limited to the lot on which the project is located, the subdivided lots, and any adjacent lots formerly or presently owned by the same owner.
- Alternatives limited to the original parcel on which the project is located, the subdivided parcels, any adjacent parcels, and any other land which can reasonably be obtained within the municipality.
- Alternatives extend to any sites which can reasonably be obtained within the appropriate region of the state.

Negative Determination

Note: No further action under the Wetlands Protection Act is required by the applicant. However, if the Department is requested to issue a Superseding Determination of Applicability, work may not proceed on this project unless the Department fails to act on such request within 35 days of the date the request is post-marked for certified mail or hand delivered to the Department. Work may then proceed at the owner's risk only upon notice to the Department and to the Conservation Commission. Requirements for requests for Superseding Determinations are listed at the end of this document.

1. The area described in the Request is not an area subject to protection under the Act or the Buffer Zone.
2. The work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, said work does not require the filing of a Notice of Intent.
3. The work described in the Request is within the Buffer Zone, as defined in the regulations, but will not alter an Area subject to protection under the Act. Therefore, said work does not require the filing of a Notice of Intent, subject to the following conditions (if any).
See attached conditions
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4. The work described in the Request is not within an Area subject to protection under the Act (including the Buffer Zone). Therefore, said work does not require the filing of a Notice of Intent, unless and until said work alters an Area subject to protection under the Act.

37 BAILEY ROAD – SPECIAL CONDITIONS

ANDOVER, MASSACHUSETTS – DA2017-042

The attached Determination of Applicability is issued by the Andover Conservation Commission subject to the following conditions:

1. FINDING - NOTICE OF JURISDICTION UNDER THE MASSACHUSETTS WETLANDS PROTECTION ACT, M.G.L.c. 131, § 40. The Andover Conservation Commission hereby finds that all or part of the property on which the work authorized by this Determination of Applicability is proposed is subject to jurisdiction under the Massachusetts Wetlands Protection Act, M.G.L.c. 131, § 40. The owner is hereby notified of his or her responsibility to comply with the provisions of that statute. **This condition shall remain in effect in perpetuity.**

2. FINDING – NOTICE OF JURISDICTION UNDER ARTICLE XIV, ANDOVER WETLANDS PROTECTION BY-LAW. The Andover Conservation Commission hereby finds that all or part of the property on which the work authorized by this Determination of Applicability is proposed is **NOT** subject to jurisdiction under Article XIV, ANDOVER WETLANDS PROTECTION BY-LAW. **(Property is pre-1999)**

3. COMPLIANCE. Failure to comply with all conditions stated in this Determination of Applicability shall be deemed cause for revocation. Failure to comply with all the terms and conditions of this Determination of Applicability may be deemed to be a violation of the Massachusetts Wetlands Protection Act, M.G.L.c. 131, § 40, and/or Article XIV, ANDOVER WETLANDS PROTECTION BY-LAW.

4. FINDING – WAIVER OF SUBMISSION REQUIREMENTS. The Andover Conservation Commission hereby waives a portion of their submission requirements at the applicant's request **(Plan Requirements of the CONSERVATION COMMISSION APPLICATION POLICIES Revised through MAY 6, 2008)**.

5. FINDING - 25 FOOT PERMANENT BUFFER STRIP PROTECTED. The Andover Conservation Commission hereby finds that the limit of construction, as depicted on the approved plan, shall remain in effect in perpetuity. Unless depicted otherwise, the limit of construction shall be at a minimum distance no less than 25 feet from the wetland boundary as depicted on the approved plan. No building or alteration is to occur in this restricted area. The condition will be enforceable by the Andover Conservation Commission against the owner and /or its successors. This condition shall remain in effect in perpetuity.

Non-disturbance zones as marked on the referenced plan(s) shall be marked in the field with permanent markers as approved by the Commission affixed to Berntsen Feno Driveable Survey Markers. Information regarding these markers may be obtained through the Conservation Office.

The plans referenced in this Determination of Applicability shall be recorded with the Determination of Applicability and cross referenced thereto in the Essex County Registry of Deeds and/or the Essex County Registry District.

Any Deed (as defined below) for all or any portion of the property subject to this Determination of Applicability which includes a non-disturbance zone shall contain the following language " This property is subject to a non-disturbance zone in which no alteration of land or vegetation may occur. The non-disturbance zone is shown on the plans entitled "___(title of plans ___) recorded at the Essex County Registry of Deeds, North District, at Book ___, Page ___, and/or registered with the Land Registration Office of the Essex County Registry District as Document No. _____ and as described in the Determination of Applicability recorded in the same Registry at Book ___, Page ___, and/or in the same Registry District as Document _____. In accordance with said Determination of Applicability, this language shall be incorporated in full into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the property or a portion thereof is conveyed (a"Deed").

6. RECORDATION. No work shall be undertaken until this Determination of Applicability 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 Determination of Applicability 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 registered land, the Determination of Applicability shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. The recording information shall be submitted to the Andover Conservation Commission prior to commencement of work. This section shall not be construed to require the issuance of a Certificate of Compliance. However, the Conservation Commission will issue a written statement of satisfactory completion upon receipt of a written request for same, pending satisfactory completion of work.

In the event that the original Determination of Applicability is lost prior to recordation the applicant shall either file a new Request for Determination of Applicability, or alternatively, the applicant shall pay a fee of one hundred dollars to the Town of Andover in order to obtain a certified copy for recording.

7. EROSION CONTROL. Prior to commencement of work the applicant shall install a row of staked straw wattles for siltation control on the subject site in accordance with the above-referenced plan. A written request for inspection of the erosion control shall be submitted to the Conservation Commission, and a satisfactory inspection performed before any land disturbing activity may commence. **No erosion control inspection will be scheduled until such time as proof of recording is received by the Conservation Commission, as required above.** Other sediment controls may be required by the Conservation Commission or its agents as field conditions warrant. The siltation control devices shall not be removed until the commission or its agent has reviewed and found satisfactory the stabilization of the disturbed area.

8. EXCAVATION DEWATERING. In the event that excavation dewatering is required within any area subject to jurisdiction of the Wetlands Protection Act the applicant shall notify the Conservation Commission in advance of such work, and shall be responsible to ensure that such water is free of suspended solids before being discharged into either a wetland or into any storm water drainage system. This condition applies to all forms of dewatering, including pumping, and trenching.

9. PLAN CHANGES. Any changes made or intended to be made to the above-referenced plan shall require the applicant or his successors in interest to inquire in writing of the Conservation Commission whether the proposed change is significant to the interests of the Wetlands Protection Act. Failure to secure prior approval for changes will, at minimum, require the owner or responsible party to file a Notice of Intent, and to obtain an Order of Conditions.

10. RIGHT TO INSPECT. Members and agents of the Andover Conservation Commission shall have the right to enter and inspect the premises to evaluate compliance with these conditions and to require the submittal of any data deemed necessary by the Commission for that evaluation.

11. GRADING AND STABILIZATION. Grading shall conform to the plans and data referenced above. Except in areas of proposed pavement (if any) final grades shall have a minimum of two inches of topsoil (measured in place) over disturbed areas. Exposed soil areas shall be stabilized with vegetation, e.g., grass or some form of ground cover plant. In no case shall wood chips, mulch, or similar covering in lieu of vegetation, be acceptable on sloping ground.

12. CLEAN FILL. All fill used in connection with this project shall be clean borrow. The following shall be prohibited: chemically contaminated material; concrete and asphalt rubble; stumps and other solid waste.

13. SURPLUS SOIL. It shall be the responsibility of the applicant to ensure that any and all surplus materials resulting from excavation, and not needed for use on the project, are lawfully disposed of outside any area subject to protection under M.G.L.c. 131, § 40, unless such area and activity are regulated under either a valid Order of Conditions or Determination of Applicability.

14. FINAL INSPECTION. Upon completion of the project the applicant or his successor shall notify the Conservation Commission in writing that all work has been completed in conformity with the above-referenced plan and conditions.

15. FINDING – EROSION CONTROLS. Prior to construction, a row of staked-in straw wattles shall be installed along the tree line between the proposed tennis court and the wetland.

16. FINDING – VEGETATED BUFFER. The forested buffer currently in place around the wetland shall be left undisturbed, with the exception of disposal of brush and lawn cuttings. The lawn margin shall not be expanded any further towards the wetland boundary.

17. FINDING – YARD WASTE. Disposal of yard waste such as brush, lawn cuttings, etc. shall cease within 25 feet of the wetland boundary.



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B. Determination (cont.)

5. The area described in the Request is subject to protection under the Act. Since the work described therein meets the requirements for the following exemption, as specified in the Act and the regulations, no Notice of Intent is required:

Exempt Activity (site applicable statutory/regulatory provisions)

6. The area and/or work described in the Request is not subject to review and approval by:

Name of Municipality

Pursuant to a municipal wetlands ordinance or bylaw.

Name

Ordinance or Bylaw Citation

C. Authorization

This Determination is issued to the applicant and delivered as follows:

- by hand delivery on by certified mail, return receipt requested on

August 18, 2017
 Date

 Date

This Determination is valid for **three years** from the date of issuance (except Determinations for Vegetation Management Plans which are valid for the duration of the Plan). This Determination does not relieve the applicant from complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.

This Determination must be signed by a majority of the Conservation Commission. A copy must be sent to the appropriate DEP Regional Office (see <http://www.mass.gov/eea/agencies/massdep/about/contacts/find-the-massdep-regional-office-for-your-city-or-town.html>) and the property owner (if different from the applicant).

Signatures:

D. D. Cooper

[Signature]

[Signature]

Kevin J. Platts

August 15, 2017
 Date



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

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D. Appeals

The applicant, owner, any person aggrieved by this Determination, any owner of land abutting the land upon which the proposed work is to be done, 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 Department of Environmental Protection Regional Office (see <http://www.mass.gov/eea/agencies/massdep/about/contacts/find-the-massdep-regional-office-for-your-city-or-town.html>) to issue a Superseding Determination of Applicability. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and Fee Transmittal Form (see 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 Determination. 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. The request shall state clearly and concisely the objections to the Determination which is being appealed. To the extent that the Determination is based on a municipal ordinance or bylaw and not on the Massachusetts Wetlands Protection Act or regulations, the Department of Environmental Protection has no appellate jurisdiction.