



December 19, 2019

Wellesley Wetlands Protection Committee
Attn: Julie Meyer, Wetland Administrator
525 Washington Street
Wellesley, MA 02482

Wellesley Zoning Board of Appeals
Attn: J. Randolph Becker, Chairman
525 Washington Street, Lower Level
Wellesley, MA 02482

Re: Notice of Intent Review
130, 136, 140 & 142 Worcester Street
Wellesley, Massachusetts
MassDEP File No. 324-0933

Dear Members of the Wellesley Wetlands Protection Committee and Zoning Board of Appeals,

On behalf of Miyares and Harrington, LLP, Lucas Environmental, LLC (LE) has conducted a review of the Notice of Intent (NOI) submitted for 130, 136, 140 & 142 Worcester Street in Wellesley, Massachusetts. The review included documents submitted for the NOI application as well as a site visit to inspect wetland resource areas, wetland delineations, and general site conditions. This review does not include an analysis of the project engineering design, proposed stormwater management system, drainage report or compliance with the MassDEP Stormwater Management Regulations.

The NOI materials, wetland resource areas and wetland delineation were reviewed in accordance with the Massachusetts Wetlands Protection Act (M.G.L. Chapter 131, Section 40), and its implementing regulations (310 CMR 10.00 et seq.) and the Wellesley Wetlands Protection Bylaw (Article 44) and Regulations. LE understands the project is being submitted under the Massachusetts Comprehensive Permit process (Chapter 40B); therefore, the Wellesley Wetlands Protection Bylaw is applicable although the Zoning Board of Appeals (ZBA) can waive its provisions.

1.0 Site Inspection and Documents Reviewed

The following documents and plans were reviewed:

- Notice of Intent, 130, 136, 140 & 142 Worcester Street, Wellesley, and accompanying materials, prepared by EcoTec, Inc., (undated). MassDEP File No. 324-0933, filed November 1, 2019.
- Plan set titled “#136 & #140 Worcester Street, Wellesley, Mass.”, prepared by Hayes Engineering, Inc., dated April 26, 2019 and last revised October 17, 2019. The plan set included the following 14 sheets:
 - Survey Plan (sheet C1),
 - Existing Conditions Plan (sheet C2),
 - Grading Plan (sheet C3),
 - Utility Plan (sheet C4),
 - Erosion Control Plan (sheet C5),
 - Layout Plan (sheet C6),
 - Photometrics Plan (sheet C7),
 - Fire Access Plan (sheet C8),
 - Garage Access Plan (sheet C8A),
 - Moving Van Access Plan (sheet C8B),
 - Detail Sheets (sheets C9 & C10),
 - Erosion Detail Sheets (sheets C11 & C12).

- Proposed Landscape Map, 136 & 140 Worcester Street, Wellesley, Mass., prepared by Hayes Engineering (Landscape Architect: Bohler Engineering), dated November 1, 2019 (sheets L-1 and L-2).
- Proposed Waiver List with respect to Wellesley Wetland Protection Bylaw and Regulations only (Revised, received by ZBA December 10, 2019).

2.0 Project Summary

According to the application, the proposed project consists of the removal of an existing barn/garage and the construction of a multi-family residential building with associated driveway, utilities, grading, landscaping, and mitigation work within the Buffer Zone to Bordering Vegetated Wetland and the outer riparian zone of the Riverfront Area. As presented in the NOI, the proposed project is located at 130, 136, 140 and 142 Worcester Street in Wellesley, Massachusetts and has been filed with the Wellesley ZBA under the Massachusetts Comprehensive Permit Act, Chapter 40B. Because the project is being submitted under Chapter 40B, the Wellesley Wetlands Protection Bylaw is applicable although the Zoning Board of Appeals can waive its provisions.

As presented in the NOI application, the following wetland resource areas are present at or near the site: Inland Bank along a perennial stream, Bordering Vegetated Wetland (BVW) located south and west of the site, Riverfront Area extending 200 feet from the perennial stream onto the southeast portion of the site, and an Isolated Vegetated Wetland (IVW) located along the eastern portion of the site. As described in the NOI application, the site contains 3,734 square feet of existing impervious area (i.e., 42% of the 8,900 square feet of Riverfront Area on the site).

The project design includes 557 square feet of direct impacts (fill) to the IVW and 3,682 square feet of impervious area within the outer Riverfront Area, which is a slight reduction from the existing 3,734 square feet of impervious area. Additionally, the project proposes impacts to the 100-Foot Buffer Zone and local 25-foot No Disturbance Zone. As mitigation, the project proposes on-site replication of 558 square feet of IVW, restoration of 3,428 square feet of IVW, primarily off-site, and restoration of 1,055 square feet of Riverfront Area on site.

3.0 Comments and Requests for Additional Information

After reviewing the documents listed above and conducting a site inspection, LE offers the following comments and recommendations.

Site Inspection/Wetland Delineation Review

1. LE Wetland Scientist, Joseph Orzel, conducted a site inspection on December 16, 2019. Also present at the site were the Wellesley Wetlands Protection Committee (WPC) Administrator Julie Meyer, Pete Jones of the WPC and Scott Jordan of EcoTec, Inc. During the inspection general site conditions were observed and the wetland delineation was reviewed with respect to existing vegetation, soils and hydrology.

2. LE is in agreement with the types of wetland resource areas described to be present at or near the site in the NOI. In addition, Land Under Water Bodies and Waterways is present within the off-site perennial stream.
3. LE is in agreement with the delineation of the Mean Annual High Water Line (MAHW)/Inland Bank along the perennial stream as depicted on the site plans by the R-series flagging. The stream bank is generally well defined.
4. LE is in substantial agreement with the BVW delineation as depicted on the site plans by the A-series flagging. However, one revision is recommended to the BVW delineation, which is the addition of wetland flag A-10A at a location between and upgradient of flags A-10 and A-11. Flag A-10A is located 14 feet at a bearing of 310° from flag A-10, and 16 feet at a bearing of 010° from flag A-11. The site plan should be revised to show the BVW line connecting from flag A-10, to additional flag A-10A, to flag A-11.
5. LE is in substantial agreement with the IVW delineation as depicted on the site plans by the I-series flagging. However, one revision is recommended to the IVW delineation, which is the replacement of wetland flag I-13 with flag I-13R. Flag I-13R is located 31 feet upgradient at a bearing of 305° from flag I-13. The site plan should be revised to show the IVW line connecting from flag I-12 to revised flag I-13R, to flag I-14.
6. The IVW appears to be isolated. The area between the IVW and BVW did show evidence of a buried A-horizon in some spots, indicating the presence of fill; however, the soils below did not indicate a presence of hydric soils which would suggest wetland fill. A clear connection consisting of wetland vegetation, hydric soils, or other indicators of hydrology was not observed. If the WPC has concerns regarding the fill in this area, the fill piles could be removed and a test pit can be completed to further evaluate the soils, if necessary.
7. LE understands that the WPC has concerns over prior alteration between the IVW and BVW and what the implications may be if a current or previous owner filled between the IVW and the BVW. Unauthorized fill requires restoration if it occurred after the Wetlands Protection Act went into law in 1972, regardless of when the impact is observed. Based upon LE's site observations, there are some large upland trees consisting of black locust (*Robinia pseudoacacia*) growing between the IVW and BVW, estimated at approximately 70 to 80 years old; therefore, it appears that the separation predates the Wetlands Protection Act and would not be considered unauthorized. However, some fill piles present near the edge of the IVW and at the rear (south end) of the site appear to be much more recent.
8. The IVW may be federally regulated under Section 404 of the Clean Water Act, and would require the Applicant to verify that it meets the Self-Verification requirements under the Massachusetts General Permits with the U.S. Army Corps of Engineers.
9. MassDEP Wetland Delineation Data Forms were submitted for the BVW delineation (A-series flags) but not for the IVW (I-series flags) with the initial application. The site plans indicate that upland and wetland soil test pits (plots) were conducted for the IVW and LE is in receipt of the data forms for the IVW.
10. The MassDEP Wetland Delineation Data Forms submitted for the BVW indicate the same soil profile at both the upland and wetland plots. This was not observed in the field. LE recommends that the Applicant verify whether this is a typographical error and if so correct the soil data.

NOI Documents Review

11. WPA Form 3 and other documentation refer to four parcels/lots at the site, 130, 136, 140 and 142 Worcester Street. The survey plan (sheet C1) indicates that there is another lot, 140R Worcester Street (Lot 3, Block 13) included in the site. LE recommends the status of this lot be described and included in the documentation if necessary. The Applicant should confirm this does not affect the abutter notifications.
12. Box C.7 on WPA Form 3 should be checked, indicating that the project is subject to MassDEP Stormwater Management Standards. Also, the date of the NHESP Map (at C.1.b.) should be revised to indicate the date of the map, not the date viewed.
13. Under section 1.6(8)(b)(4)(d) of the Bylaw Regulations, a statement from the delineator certifying that the delineation flags shown on the site plans appear to be accurate is to be submitted with the NOI. This statement was not observed in the documents reviewed.
14. Under Bylaw Regulation 1.6(8)(b)(4)(i)(2), site plans are to include all trees 5” dbh and greater within the limit of work as well as the species and whether the tree will be lost. Trees are shown on the site plan but do not include the additional information.
15. Under Bylaw regulation 1.6(8)(b)(4)(i)(3), site plans are to include the 25-foot No Disturbance Zone line and the 100-foot Buffer Zone line to all applicable wetlands. The 100-Foot Buffer Zone line to the IVW is not provided on the site plan.
16. Under Bylaw regulation 1.6(8)(b)(4)(j), an NOI checklist is to be submitted if available. No checklist was observed in the documents reviewed.
17. LE is in general agreement with the proposed Restoration and Replication Protocols with the following comments:
 - a. The plant numbers for the IVW restoration should be updated due to the recommended revised IVW flag which will increase the IVW area.
 - b. The sapling numbers for the proposed Riverfront Area restoration should be reviewed to confirm the proposed spacing is in agreement with the number proposed.
 - c. LE recommends that an invasive species management program be included in the Restoration and Replication Protocols.
 - d. LE recommends the use of downed woody material be considered within the restoration areas in addition to proposed placement of boulders.
 - e. LE recommends that the existing fill piles (soil, rocks, and asphalt) along the upland edges of the IVW be removed as part of the IVW restoration and that these areas also be restored.
 - f. The WPC may request a separate planting plan for the restoration areas showing proposed plantings.

18. As defined under 301 CMR 10.58(5), “*Redevelopment means replacement, rehabilitation, or expansion of existing structures, improvement of existing roads, or reuse of degraded or previously developed areas. A previously developed riverfront area contains areas degraded prior to August 7, 1996 by impervious surfaces from existing structures or pavement, absence of topsoil, junkyards, or abandoned dumping grounds.*” The site contains previously developed areas, and within the Riverfront Area there are degraded areas (i.e., areas containing impervious surfaces, structures, pavement or absence of topsoil) as well as areas that are previously disturbed but that contain topsoil and vegetation. Although much of the Riverfront Area at the site is previously disturbed, these areas do not all meet the definition of being previously degraded, and therefore should not be considered as previously developed areas. This is consistent with MassDEP’s review of the Riverfront Area on other projects (See Superseding Order of Conditions, MassDEP File #002-1015 as an example).

It is unclear exactly what areas were considered previously developed and/or degraded at the site; therefore, to provide clarification, LE recommends the site plans be revised to clearly differentiate the boundaries and type of all previously degraded areas within the Riverfront Area subject to 310 CMR 10.58(5) of the WPA and undisturbed/disturbed areas subject to 310 CMR 10.58(4). In addition, LE recommends that the Applicant submit a stand-alone table which identifies and quantifies all existing degraded areas within the Riverfront Area, impacts within non-degraded Riverfront Area, as well as proposed impacts to regulated wetland resource areas and proposed restoration.

19. The Applicant should provide documentation of the project’s compliance with the Riverfront Area performance standards under 310 CMR 10.58(4) of the WPA.
20. Work subject to 310 CMR 10.58(4) requires an Alternatives Analysis and must meet the performance standards for work within Riverfront Area. An Alternatives Analysis was not included in the materials reviewed.
21. Although structures at the site were clearly present prior to August 1, 1996, based on review of historic aerial photographs it appears that disturbance on the eastern portion of the site was limited as of that date, and that much of the disturbance occurred after August 1, 1996. Therefore, areas that may appear degraded today would not meet the definition of ‘degraded’ if the degradation occurred after August 1, 1996, and therefore should not be considered as redevelopment. These areas should be quantified and reviewed under 310 CMR 10.58(4) unless previously authorized by the WPC.
22. The Applicant is proposing to conduct IVW restoration work on abutting town land. Owner authorization is required for any proposed work on a subject property. LE recommends the Applicant obtain the required signature from the town (i.e., landowner) to allow this restoration work on town property. Town Counsel should be consulted for the proper mechanism for the authorization of work on town owned land, and if the Order should be recorded on that land. If the town does not grant said authorization, an alternative mitigation location would be required.
23. LE understands that the WPC has inquired if MassDEP has been provided enough information to review performance standards for stormwater under 310 CMR 10.05(6)(k-q). LE did not review the stormwater analysis per the contract and would defer to the town engineer.

24. LE understands that the WPC has inquired if MassDEP received the same information related to the HydroCAD calculations. MassDEP should receive a copy of all materials submitted to the WPC by the Applicant, including supplements and any new information, prior to the close of the public hearing.
25. LE understands that the WPC has inquired if 310 CMR 10.05(6)(q) requires a Finding that the project complies with the NPDES GP permit for MS4 in the Order of Conditions. Compliance with the MassDEP Stormwater Regulations does not relieve the Applicant from the obligation to obtain other required permits.

Waiver Requests from Town of Wellesley Wetland Protection Regulations

26. *REQUIRED: Regulation(s) section 2.4(4)(a): no-touch requirement:*

The Applicant has requested a Waiver from requirements under local regulations for 557 square feet of work (fill) proposed within the IVW. The Waiver request does not follow the two-step procedure and requirements under Bylaw section 1.6(9)(b). LE is in agreement with the Applicant that the IVW does not qualify as a state wetland resource area and that replication is not required under state wetlands regulations. The Applicant is proposing 558 square feet of replication to be provided at a 1:1 ratio in the southern portion of the site. This does not meet the Bylaw requirement under 2.4(4)(b)(2)(a) for the replacement area to be at least 1.5 times the lost area; however, additional off-site IVW restoration on town land is proposed in excess of this amount. In addition, no documentation was reviewed regarding the Bylaw requirement for a wildlife habitat assessment for IVW alteration. LE is in agreement that the replicated wetland can provide for enhanced values and functions on the site upon completion due to the disturbed condition of the existing IVW.

27. *REQUIRED: Regulation(s) section 2.5(4)(a)1: 25-foot no-touch zone:*

The Applicant has requested a Waiver from requirements under local regulations for work within the 25-foot No Disturbance Zone of the IVW associated with building structures, stormwater management, grading, porous paver walkway, transformer, and a portion of the Riverfront Area restoration. The Waiver request does not follow the two-step procedure and requirements under Bylaw section 1.6(9)(b). LE is in agreement with the Applicant that the IVW does not qualify as a state wetland resource area and based on LE's site inspection, much of the 25-foot No Disturbance Zone is currently disturbed.

28. *REQUIRED: Regulation(s) section 2.5(4)(a)2: limit of 10% or 5,000 sf (whichever is less) of the 100-foot Buffer Zone important to wildlife habitat:*

The Applicant has requested a Waiver from requirements under local regulations limiting alteration of buffer zone important to wildlife habitat to 10% or 5,000 square feet (whichever is less). The Waiver request does not follow the two-step procedure and requirements under Bylaw section 1.6(9)(b). Based on LE's site inspection, much of the 100-Footer Buffer Zone is currently disturbed or degraded and LE is in agreement with the Applicant that these areas would provide limited, at best, important wildlife habitat. No request for a Waiver regarding wildlife habitat assessment within the Riverfront Area was reviewed. As noted previously, LE recommends the site plans be revised to clearly indicate the existing limits of degraded areas.

29. **REQUIRED:** *Notification of Abutters within 300 feet of the property:*

The Applicant has requested a Waiver from requirements under local regulations requiring notification of abutters within 300 feet of the property. The Waiver request does not follow the two-step procedure and requirements under Bylaw section 1.6(9)(b). LE is in agreement with the Applicant that under the Wetlands Protection Act, only abutters within 100 feet of the site are required to be notified; however, notifying abutters within 300 feet is not an impediment to development/redevelopment of the site.

30. **REQUIRED:** *Regulation(s) section 2.5(4)(a)3: replacement of 5" dbh trees with 1.5" dbh trees, where 2.5(4)(a)2 (above) is triggered:*

The Applicant has requested a Waiver from requirements under local regulations for replacement of 5" dbh trees with 1.5" dbh trees where work occurs within Buffer Zone important to wildlife habitat. The Waiver request does not follow the two-step procedure and requirements under Bylaw section 1.6(9)(b). As indicated in the Applicant's Waiver request, an estimated 29 trees of this size within the Buffer Zone will be removed and at least 13 of these are Norway maples (*Acer platanoides*), an invasive species. Because much of the existing Buffer Zone is disturbed or degraded and contains invasive species, wildlife habitat value is limited and the Applicant is proposing well over 29 trees to be planted within the Buffer Zone. LE recommends that an invasive species management plan for controlling invasive vegetation within the 100-Foot Buffer Zone be considered by the WPC. No request for a Waiver regarding tree replacement within the Riverfront Area was reviewed.

31. **REQUIRED:** *Regulation(s) section 2.5(4)(a)4: stormwater is managed according to Section 1.6(8)(b)4.g. in addition to DEP Stormwater Standards:*

The Applicant has requested a Waiver from requirements under local regulations requiring stormwater management in addition to MassDEP Stormwater Standards. The Waiver request does not follow the two-step procedure and requirements under Bylaw section 1.6(9)(b). LE has not conducted a review of the proposed stormwater management design and has no comments regarding this waiver.

32. It does not appear that the Waiver request fee of \$500 was submitted as required under 1.6(5)(e)(4).

The comments provided above are based on the plans, documentation, and supporting information received at the time of this review. Any revision to the plans, documentations, and supporting information will require additional review. LE has no further comments as this time.

4.0 Findings & Recommendations Summary

Based on the information provided above, it is recommended that the comments above be addressed and the site plans be revised to show the modified wetland delineation flags and to clearly indicate the limit and type of existing degraded conditions within the Riverfront Area. Additionally, the following documentation should be submitted to the WPC and/or ZBA as applicable for further review:

- Clarification of the status of the lot at 140R Worcester Street,
- Obtaining land owner approval for restoration work proposed on town of Wellesley land,
- Clarification on exactly which areas of the site were considered "previously degraded",



- Alternatives analysis,
- Compliance with the Riverfront Area performance standards for new development, and
- An invasive species management protocol for the proposed restoration and replication areas.

LE has based this assessment on review of the submitted documents, and thorough field reconnaissance. If you have any questions, please do not hesitate to contact me at 617.405.4118 or jho@lucasenvironmental.net or Christopher Lucas at 617.405.4140 or cml@lucasenvironmental.net. Thank you for your consideration in this matter.

Sincerely,

LUCAS ENVIRONMENTAL, LLC

A handwritten signature in blue ink that reads 'Joseph H. Orzel'.

Joseph H. Orzel
Project Manager/Wetland Scientist

A handwritten signature in blue ink that reads 'Christopher M. Lucas'.

Christopher M. Lucas, Manager, PWS, CWS
Environmental Consultant/Soil Scientist

cc: Miyares and Harrington LLP, Christopher Heep

previously developed. In its review, MassDEP concluded that because the site was well vegetated, it was subject to review under new development standards and MassDEP subsequently required the submittal of an alternatives analysis. The Final Decision stated that, "Once the Department determined that the project did not qualify as a redevelopment project, it could not, for the first time, consider whether to permit the project under the general performance standards for work in a riverfront area because initial review of the alternatives analysis must be performed by the local conservation commission and no such analysis was submitted to the Lynnfield Conservation Commission here."

In the Matter of Town of Carlisle, Docket No. 97-123, the issue concerned the siting of a leaching system within the riverfront area. The proponent claimed that the project was exempt from the riverfront area performance standards because it involved work in a previously developed riverfront area. No alternatives analysis was provided to the Commission. The proponent argued that it informed the Commission and MassDEP "orally" of possible alternative locations for the leaching system and therefore demonstrated that there were no practicable alternatives. The Final Decision in this case cites the fact that the Wetlands Protection Act requires applicants to submit, with a Notice of Intent, "information sufficient to describe the site, the work, and the effect of the work on wetland interests." This information the Department deemed necessary for "the issuing authority...to fulfill its responsibility to protect the Commonwealth's wetlands resources in accordance with the Wetlands Protection Act. The role of the issuing authority is that of a reviewing agency. It is the applicant's responsibility to provide for this review." The Notice of Intent Form thus called for applicants to "clearly, completely and accurately describe, with reference to supporting plans and calculations where necessary....all measures and designs proposed to meet the performance standards set for under each resource area." Therefore, when the "Rivers Protection Act was enacted and included a performance standard requiring an applicant to show that there is no practicable alternatives to the proposed project, the responsibility fell on an applicant planning an activity in riverfront area to submit a notice of intent that included a complete and accurate description of how the proposed project met the no practicable alternatives performance standard."

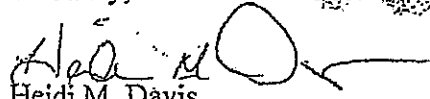
In applying these cases to the current case, it is MassDEP's opinion that the change in characterization of the riverfront area on the project site from degraded to undeveloped is a significant change in how this project should be reviewed and permitted. The applicant did not provide the Commission with a complete and thorough review of all practicable alternatives for the placement of the dwelling units and utilities within RA on the project site in order for the Commission to make an informed decision. Therefore, it is MassDEP's opinion that the applicant should re-file a Notice of Intent with the Commission as MassDEP cannot, under these proceedings, request or consider alternatives not reviewed by the Commission during the public hearing process.

It is MassDEP's opinion that the enclosed Superseding Order of Conditions denying the project as proposed serves to protect the interests of the Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40. Please be advised that it is MassDEP's responsibility to address only those interests identified in the Act. However, MassDEP reserves the right, should there be further proceedings in this case, to raise additional issues and present further evidence as

may be appropriate. Should any party dispute these findings, please consult the language in the Order that specifies your rights and procedures for appeal.

Should you have any questions, please contact Jill Provencal at (978) 694-3250.

Sincerely,



Heidi M. Davis
Acting Section Chief
Wetlands Program – NERO



Jill E. Provencal
Environmental Analyst
Wetlands Program - NERO

cc: Amesbury Conservation Commission



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 Superseding Order of Conditions-DENIAL
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

002-1015

Provided by DEP

A. General Information

From: MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

This issuance is for (check one):

Superseding Order of Conditions—DENIAL

Amended Superseding Order of Conditions

To: Applicant:

Richard Terrill, c/o Fafard Real Estate and Development

Name

120 Quarry Drive

Mailing Address

Milford MA 01757

City/Town State Zip Code

Property Owner (if different from applicant):

Mayor Thatcher Kezer, III

Name

c/o City of Amesbury, City Hall, 62 Friend Street

Mailing Address

Amesbury MA 01913

City/Town State Zip Code

1. Project Location:

Summit Avenue and Route 150

Street Address

87 and 88

Assessors Map/Plat Number

Amesbury

City/Town

7 and 50

Parcel/Lot Number

2. Property recorded at the Registry of Deeds for:

Essex South

County

Bk. 13425 and 13469

409 and 23

Page

Certificate (if registered land)

3. Dates:

April 16, 2010

Date Notice of Intent Filed

May 6, 2013

Date Public Hearing Closed

June 14, 2013

Date of Issuance (local Order of Conditions)

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

Title

Date [Revised]

Title

Date [Revised]

5. Final Plans and Documents Signed and Stamped by:

Name

6. Total Fee:

(from Appendix B: Wetland Fee Transmittal Form)



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 Superseding Order of Conditions-DENIAL
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

002-1015

Provided by DEP

B. Findings

Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, 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:

- | | | |
|---|--|---|
| <input type="checkbox"/> Public Water Supply | <input type="checkbox"/> Land Containing Shellfish | <input type="checkbox"/> Prevention of Pollution |
| <input type="checkbox"/> Private Water Supply | <input type="checkbox"/> Fisheries | <input type="checkbox"/> Protection of Wildlife Habitat |
| <input type="checkbox"/> Groundwater Supply | <input type="checkbox"/> Storm Damage Prevention | <input type="checkbox"/> Flood Control |

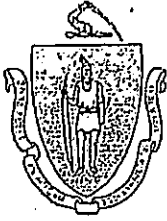
Furthermore, the Department hereby finds the project, as proposed, is:

Denied because:

- the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations to protect those interests checked above. 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.

This application for a permit to alter wetlands under Chapter 131, Section 40, is therefore denied for the following reasons:

- 1) MassDEP finds that the project is not degraded within the meaning of 10.58(5), therefore, the performance standards of 10.58(4) are applicable.
- 2) MassDEP finds that the proposed project does not meet the performance standards of 310 CMR 10.58(4)(c); subsequently, said activity is judged not to protect the interests of the Wetlands Protection Act and is, therefore, prohibited under M.G.L. Chapter 131, section 40.



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 Superseding Order of Conditions-DENIAL
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

002-1015

Provided by DEP

C. ISSUANCE

This Order is valid for three years from the date of issuance.

Issued by: **Massachusetts Department of Environmental Protection**

Signature *Heidi M. Davis*

Heidi M. Davis, Acting Section Chief, Wetlands Program, Bureau of Resource Protection

by hand delivery

by certified mail, return receipt requested on

1.30.14

Date

Date



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 Superseding Order of Conditions-DENIAL
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

002-1015

Provided by DEP

D. Notice of Appeal Rights

Appeals

A) Appeal Rights and Time Limits

The applicant, the landowner, any person aggrieved by this Superseding Order, Determination or the Reviewable Decision as defined at 310 CMR 10.04, who previously participated in the proceedings leading to the Reviewable Decision, the conservation Commission, or any ten (10) residents of the city or town where the land is located if at least one resident was previously a participant in the permit proceeding, are hereby notified of their right to appeal this Reviewable Decision pursuant to M.G.L. c.30A, S. 10, provided the request is made by certified mail or hand delivery to the Department, along with the appropriate filing fee and a MassDEP Fee Transmittal Form within ten (10) business days of the date of issuance of this Superseding Order or Determination, and addressed to

Case Administrator
Department of Environmental Protection
One Winter Street - 2nd Floor
Boston, MA 02108

A copy of the request (hereinafter also referred to as Appeal Notice) shall at the same time be sent by certified mail or hand delivery to the Conservation Commission, the applicant, the person that requested the Superseding Order or Determination, and the issuing office of the MassDEP at:

Massachusetts Department of Environmental Protection
NERO, 205B Lowell Street
Wilmington, MA 01887

In the event that a ten resident group requested the Superseding Order or Determination, the Appeal Notice shall be served on the designated representative of ten resident group, whose name and contact information is included in this reviewable Decision (when relevant)

Contents of Appeal Notice

An Appeal Notice shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6) and 310 CMR 10.05(7)(j), and shall contain the following information:

- (a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;
- (b) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative; if a ten residents group, the same information of the group's designated representative.
- (c) if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;
- (d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceedings that led to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;
- (e) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;
- (f) a clear and concise statement of the alleged errors in the Department's decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c.131, S. 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision;



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 Superseding Order of Conditions-DENIAL
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

002-1015

Provided by DEP

D. Appeals (cont.)

- (g) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;
- (h) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and
- (i) if asserting a matter that is Major and Complex, as defined at 310 CMR 10.0491), a statement requesting that the Presiding Officer make a designation of Major and Complex, with specific reasons supporting the request.

Filing Fee and Address

A copy of the Appeal Notice along with a MassDEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Massachusetts Department of Environmental Protection
Commonwealth Master Lockbox
Box 4062
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.
