



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

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

September 16, 2021

Massachusetts Department of Transportation and Town of Sudbury
c/o Eric M. Bernardin, of Fuss and O'Neill,
150 Main Street, Suite 400
Springfield, MA 01103

RE: Jurisdictional Determination / Minor Project Modification: WW04-0000008
Bruce Freeman Rail Trail Crossings at Bridge No. S-31-007 and Bridge No. S-31-013 over
the Waters of Hop Brook and Pantry Brook, Sudbury, Middlesex County

Dear Mr. Bernardin:

Enclosed is the Determination of Applicability and approval of a Minor Project Modification for the referenced application issued pursuant to Waterways Regulations 310 CMR 9.06 and 310 CMR 9.22. This Determination may be recorded at the Middlesex County Registry of Deeds and a copy will be maintained in the Department files.

If you have any questions, please contact the Waterways Regulation Program at dep.waterways@mass.gov.

Sincerely,

Daniel J. Padien
Program Chief
Waterways Regulation Program

cc: Beth Suedmeyer, Town of Sudbury
Tim Dexter, Massachusetts Department of Transportation
Sudbury Conservation Commission



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Jurisdictional Determination: WW04-0000008

Municipality: Sudbury, Middlesex County

DETERMINATION OF APPLICABILITY- 310 CMR 9.00

To: Massachusetts Department of Transportation &
Town of Sudbury
c/o Eric M. Bernardin
1550 Main Street, Suite 400
Springfield, MA 01103

Location of Site: Bruce Freeman Rail Trail
Hop Brook Bridge No. S-31-007
Pantry Brook Bridge No. S-31-013
Sudbury, MA 01776

Pursuant to 310 CMR 9.06, the Department of Environmental Protection Waterways Regulation Program (the “Department”) has reviewed and considered your request for a Determination of Applicability and its supporting documentation, and has made the following determination:

[X] The Determination is Positive: A portion of the above referenced site for which this determination is issued includes lands subject to jurisdiction under M.G.L Chapter 91 and its regulations at 310 CMR 9.00.

[] The Determination is Negative: A portion of the above referenced site for which this determination is issued includes lands not subject to jurisdiction under M.G.L Chapter 91 and its regulations at 310 CMR 9.00.

Massachusetts Department of Transportation and the Town of Sudbury (the “Applicants”) have requested a Determination of Applicability on behalf of to determine whether the replacement of the bridges along the proposed Bruce Freeman Rail Trail crossings over the non-tidal streams of Hop Brook and Pantry Brook in Sudbury in Middlesex County (the “project site”) are subject to licensing pursuant to Chapter 91 and the regulations at 310 CMR 9.00. Documentation in support of this request included a cover letter with project descriptions and Figures 1-9 dated May 4, 2021.

The Department determines that the proposed bridge replacements described in the in the application are located within areas subject to Chapter 91 jurisdiction pursuant to the provisions of 9.04(1)(e) and are activities subject to jurisdiction pursuant to 310 CMR 9.05(1)(a). However, the regulations at 310

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

TTY# MassRelay Service 1-800-439-2370

MassDEP Website: www.mass.gov/dep

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Bruce Freeman Rail Trail Bridge Nos. S-31-007 and S-31-013, Waters of Hop Brook and Pantry Brook, Sudbury, Middlesex County
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CMR 9.05(3) further prescribe that certain maintenance, repairs, and minor modifications as described at 310 CMR 9.22 of fill or structures for which a grant or license is presently valid, or which is exempt from licensing pursuant to 310 CMR 9.05(3)(b)-(h) do not require a license.

The Department notes the applicant's assertion on page 1 of the supplemental materials referenced herein:

It is also important to note that this Rail Trail will be a linear recreation corridor, and no access to the streams or brooks will be provided. There are no water-dependent uses, such as fishing or walking the shoreline, currently or proposed at these locations.

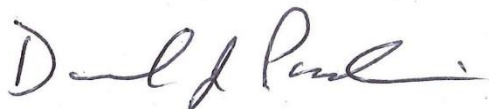
Upland areas landward of the Ordinary High-Water Line of Hop Brook and Pantry Brook are not geographic areas subject to jurisdiction of Chapter 91; the current and proposed uses of areas outside of Chapter 91 jurisdiction were not evaluated or considered as part of the Department's review of the Request for Determination of Applicability or the request for Minor Project Modification.

Based on a review of the initial application materials and the supplemental information provided on August 31, 2021, the Department determines that the bridge replacements as proposed therein meet the exemption at 310 CMR 9.05(3)(f) and standards at 310 CMR 9.22(3)(a) and (b) and are therefore authorized as an administrative approval through a Minor Project Modification, provided there is no impact to water-dependent use of the waterways. Please retain this letter as documentation of the Chapter 91 approval for the referenced activities.

This Determination does not relieve the Applicant from complying with all applicable Federal, State, or local statutes, ordinances, by-laws, or regulations.

Issued by the Department of Environmental Protection Waterways Regulation Program.

IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set their hands this 16 day of September in the year 2021



Daniel J. Padien
Program Chief
Waterways Regulation Program

Encl: Notice of Appeal Rights

Bruce Freeman Rail Trail Bridge Nos. S-31-007 and S-31-013, Waters of Hop Brook and Pantry Brook,
Sudbury, Middlesex County
September 16, 2021

NOTICE OF APPEAL RIGHTS

Who has the right to appeal?

The following persons shall have the right to an adjudicatory hearing concerning this decision by the Department to grant or deny a license or permit, in accordance with 310 CMR 9.17(1): (a) an Applicant who has demonstrated property rights in the lands in question, or which is a public agency; (b) any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period; (c) ten (10) residents of the Commonwealth who, pursuant to M.G.L. Chapter 30A, § 10A, have submitted comments within the public comment period with at least 5 of the 10 residents residing in the municipality(s) in which the license or permitted activity is located. The appeal shall clearly and specifically state the facts and grounds for the appeal and the relief sought, and each appealing resident shall file an affidavit stating the intent to be part of the group and to be represented by its authorized representative; (d) the municipal official in the affected municipality who has submitted written comments within the public comment period; and (e) MassCZM, for any project identified in 310 CMR 9.13(2)(a) for MassCZM participation or, in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period.

How can I request an adjudicatory hearing?

A person requesting an adjudicatory hearing must submit a "Notice of Claim" to the Department, with a copy of the MassDEP Adjudicatory Hearing Fee Transmittal Form and include the details specified below, within twenty-one (21) days of the date of issuance of this decision. The MassDEP Transmittal Form and filing instructions are available at the following website: <https://www.mass.gov/how-to/file-an-appeal-with-massdeps-office-of-appeals-and-dispute-resolution>. The Notice of Claim must be made in writing and sent by certified mail or hand delivery to:

MassDEP
Case Administrator
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the complete Notice of Claim must be sent at the same time by certified mail or hand delivery to: (1) the Applicant, (2) the municipal official of the city or town where the project is located, and (3) the issuing office of the MassDEP, which in this case is located at:

MassDEP
Waterways Regulation Program
One Winter Street, 5th Floor
Boston, MA 02108

The MassDEP Adjudicatory Hearing Fee Transmittal Form and a valid check payable to "The Commonwealth of Massachusetts" in the amount of one hundred dollars (\$100) must be mailed to:

MassDEP
Commonwealth Master Lockbox
P.O. Box 4062
Boston, MA 02211

What information must be included in the hearing request?

Pursuant to 310 CMR 9.17(3), any Notice of Claim requesting an adjudicatory hearing must include the following:

- (a) the MassDEP Waterways Application File Number;
- (b) the complete name, address, fax number and telephone number of the Applicant;
- (c) the address of the project;
- (d) the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;

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- (e) if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of “aggrieved person” found in 310 CMR 9.02;
- (f) a clear statement that a formal adjudicatory hearing is being requested;
- (g) a clear statement of the facts which are the grounds for the proceedings, the specific objections to the MassDEP’s written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- (h) a statement that a copy of the request has been sent to: the Applicant and the municipal official of the city or town where the project is located.

Dismissal of request

The request for appeal will be dismissed if the filing fee is not paid unless the appellant is exempt or is granted a waiver.

Exemptions

The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority.

Waiver

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.