



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

April 20, 2016

Christopher Claussen
2134 Sevilla Way
Naples, FL 34109

RE: WETLANDS/SUDBURY
Peter's Way
**Superseding Determination of
Applicability-Negative**

Dear Mr. Claussen:

Following an in-depth review of the file referenced above, and in accordance with the Massachusetts General Laws, Chapter 131, Section 40, the Northeast Regional Office of the Massachusetts Department of Environmental Protection Wetlands Program (MassDEP) is issuing the attached **negative** Superseding Determination of Applicability (SDA) based upon: 1) information and plans submitted; 2) information gathered during a March 10, 2016 site inspection; and 3) reasons the MassDEP has deemed necessary to protect the statutory interests identified in the Wetlands Protection Act.

The proposed project is for the construction of an access roadway off of Concord Road to a proposed Chapter 40B affordable housing development. The roadway will be constructed over an existing unpaved road. Stormwater runoff will be directed to a subsurface detention system.

Based upon a review of the project site and information contained in the file, the MassDEP has determined that the project site contains the following Areas Subject to Protection Under the Act: Bordering Vegetated Wetlands (BVW), Bank of an intermittent stream and Bordering Land Subject to Flooding (BLSF). Said Areas are presumed to be significant to protect one or more of the statutory interests of the Act. All work is proposed only in the Buffer Zones of BVW and Bank.

The applicant filed a Request for a Determination of Applicability (RDA) on January 11, 2016 for the above described work seeking a negative determination. The Sudbury Conservation Commission (SCC) held a hearing January 25, 2016 and failed to issue a Determination of

Sudbury, Peter's Way
Determination of Applicability
Page 2

Applicability (DA) indicating that they would not be issuing a DA. MassDEP received your appeal of the DA for lack of action on February 4, 2016 pursuant to 310 CMR 10.05(7)(b)4.

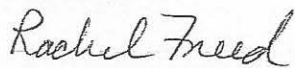
On March 10, 2016, MassDEP held a site visit that was attended by the applicant's representatives and members of the SCC. The proposed access road will be located over an existing gravel road located in the Buffer Zone of BVW and Bank of an intermittent reach of Mineway Brook. The grade of the existing road will be elevated using retaining walls to obtain the required slope for drainage. The proposed road will be 20 feet at its closest approach to the BVW bordering the brook. All stormwater will be contained within the roadway and channeled into catch basins in the proposed road and ultimately discharged into a subsurface detention system with a discharge that will be located outside of wetland jurisdiction. During construction and prior to the construction of the subsurface detention system, stormwater runoff will be discharged to a sedimentation basin located outside of wetland jurisdiction. An engineered plan showing project design, wetland resource areas, erosion control barriers, stormwater system, grading and topography was submitted with the RDA.

It is the opinion of MassDEP that the proposed project will not alter an area subject to protection under the Wetlands Protection Act.

Based upon the above findings, MassDEP hereby attaches its Negative Determination of Applicability for the Peter's Way access road. Please be advised that it is MassDEP's responsibility to address only those interests identified in the Wetlands Protection Act, M. G.L. Chapter 131, Section 40. Should you or any party dispute these findings, please direct your attention to that section of the regulations and the Superseding Determination of Applicability that specifies your rights and procedures to appeal.

If you have any questions concerning this SDA, please do not hesitate to contact Gary Bogue at (978) 694-3372.

Sincerely,



Rachel Freed, Deputy Regional Director
Bureau of Water Resources-NERO

cc: Mr. William C. Henchy, P.C., 165 Cranberry Highway, Route 6A, Orleans, MA 02653
Sudbury Conservation Commission, DPW Building, 275 Old Lancaster Road, Sudbury,
MA 01776



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

**WPA Form 2 – Superseding Determination of
Applicability**

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

A. General Information

Important:
When filling out
forms on the
computer, use
only the tab
key to move
your cursor -
do not use the
return key.



From:

Department of Environmental Protection

To: Applicant

Christopher Claussen

Name

2134 Sevilla Way

Mailing Address

Naples

FL

34109

City/Town

State

Zip Code

Property Owner (if different from applicant):

Laura B. McCarthy

Name

578 Boston Post Road

Mailing Address

Sudbury

MA

01776

City/Town

State

Zip Code

1. Title and Date (or Revised Date if applicable) of Final Plans and Other Documents

Access Road Plan for the Village at Sudbury Station

January 7, 2016

Title

Date

Title

Date

2. Date Request Filed:

January 11, 2016

B. Determination

Pursuant to the authority of M.G.L. c. 131, § 40, the Department considered your Request for Determination of Applicability, with its supporting documentation, and made the following Determination.

Project Description (if applicable):

The construction of an access road for a proposed 40B residential development. The roadway will be constructed over an existing unpaved road. Stormwater runoff will be directed to a subsurface detention system. Construction will occur in the buffer zones to BVW and Bank of an intermittent stream.

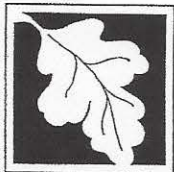
Project Location:

Peter's Way

Street Address

Sudbury

City/Town



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Map G09

Assessors Map/Plat Number

Lots 004; 0100; 0300

Parcel/Lot Number

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) 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.

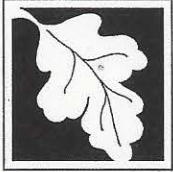
☐ 3. The work described on referenced plan(s) and document(s) is within an area subject to protection under the Act and will remove, fill, dredge, or alter that area. Therefore, said work requires the filing of a Notice of Intent.

☐ 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.

☐ 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:



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Name

Ordinance or Bylaw Citation

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:

- ☐ 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):

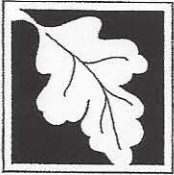
- ☐ Alternatives limited to the lot on which the project is located.
- ☐ Alternatives limited to the lot on which the project is located, the subdivided lots, and any adjacent lots formerly or presently owned by the same owner.
- ☐ Alternatives limited to the original parcel on which the project is located, 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

No further action under the Wetlands Protection Act is required by the applicant.

- ☐ 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).

1. The applicant shall hold a preconstruction meeting at which time erosion controls will be inspected and the proposed construction sequence will be reviewed. At the time of this meeting, limit of work staking shall be in place and wetland boundary flags shall be clearly visible. The applicant will notify both MassDEP and the Conservation Commission of the time and date of this meeting.
2. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in the wetland.
3. Catch basins shall be inspected and cleaned at least four times per year or whenever the depth of deposits is greater than or equal to one half the basin.



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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.

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

APR 20 2016

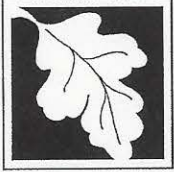
Date

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.

Issued by the Department of Environmental Protection

Signature Rachel Freed
Rachel Freed, Deputy Regional Director
Bureau of Water Resources



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

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D. Appeals

Notice of Appeal Rights:

A) Appeal Rights and Time Limits

The applicant, the landowner, any person aggrieved by the Superseding Order, Determination or other Reviewable Decision as defined at 310 CMR 10.04, who previously participated in the proceedings leading to this 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, § 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
Office of Appeals and Dispute Resolution
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:

Northeast Regional Office
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 the 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 for 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 proceeding that lead to this Reviewable Decision and sufficient written facts to



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- (e) 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 contained 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, § 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, and the relief sought, including any specific desired changes to the Department's decision;
- (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 10.04(1), 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
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 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.