

Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

DA2024-05

**WPA Form 2 – Determination of Applicability**

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

*and Andover Wetlands Protection By-Law*

**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:

Andover  
Conservation Commission

To: Applicant

Ricardo Silva  
Name

5 Chaise Circle  
Mailing Address

Andover MA 01810  
City/Town State Zip Code

Property Owner (if different from applicant):

Name

Mailing Address

City/Town State Zip Code

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

Plan of Land in Andover, Massachusetts 12/12/23, rev. 5/2/24  
Title Date

Title Date

Title Date

2. Date Request Filed:

March 26, 2024

**B. Determination**

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

Project Description (if applicable):

Construction of a swimming pool house/outdoor kitchen, landscaping, plantings, loam and seed.

Project Location:

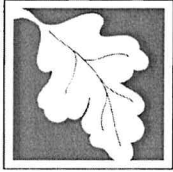
*Book 16609, Page 330*

5 Chaise Circle  
Street Address

154  
Assessors Map/Plat Number

Andover  
City/Town

8  
Parcel/Lot Number



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**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.

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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.

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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).

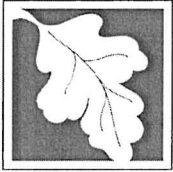
5. The area and/or work described on referenced plan(s) and document(s) is subject to review and approval by:

\_\_\_\_\_  
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:

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 Special Conditions Attached

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.

# CHAISE CIRCLE #5 – SPECIAL CONDITIONS

## Pool House-Outdoor Kitchen Construction, Landscaping, Grading, Plantings

ANDOVER, MASSACHUSETTS – DA2024-015

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** subject to jurisdiction under Article XIV, ANDOVER WETLANDS PROTECTION BY-LAW.

**Note: The Andover Conservation Commission finds that the proposed pool house/outdoor kitchen structure IS jurisdictional under the Andover Wetlands Protection Bylaw.**

**The size of the proposed pool house/outdoor kitchen (20 feet by 30 feet = 600 square feet) and its status as a free standing, standalone structure do make this project reviewable under the Andover Wetlands Protection Bylaw along with the Wetlands Protection Act.**

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.**

**6. FINDING - PERMANENT NO DISTURBANCE SIGNAGE.** The Andover Conservation Commission hereby finds that prior to resuming project activities, No Disturbance Signage with Bernsten Feno permanent medallions on red monument blocks (information can be provided by the Conservation Commission), bearing the following inscription: **“25 FOOT NON-DISTURBANCE ZONE TO WETLAND. PER ORDER OF ANDOVER CONSERVATION COMMISSION. DO NOT REMOVE.”** shall be installed at intervals not less than every 25-feet along the Non-Disturbance Boundary in the locations shown on the approved plan entitled **“Plan of Land in Andover, Massachusetts”**, dated December 12, 2023 revised May 2, 2024, as drafted/stamped/signed by Stephen E. Stapinski, R.L.S. of Merrimack Engineering Services.

**These markers shall also be identified with grade stakes to verify they are visible during the continuance of the construction phase of the project.** This condition will be enforceable by the Andover Conservation Commission against the owner and/or their successors. This signage shall be maintained in good condition. **This requirement shall remain in effect in perpetuity and shall survive the issuance of a Certificate of Compliance.**

7. 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 twenty five dollars to the Town of Andover in order to obtain a certified copy for recording.

8. EROSION/SILTATION CONTROL. The applicant shall install a row of staked in compost filter socks and silt fence for erosion/siltation control and as project limits on the subject site in accordance with the above-referenced plan. A written request for inspection of the erosion/siltation controls shall be submitted to the Conservation Commission, and a satisfactory inspection performed before any land disturbing activity may commence. **No erosion/siltation control inspection will be scheduled until such time as proof of recording is received by the**

**Conservation Commission, as required above.** Other erosion/siltation controls may be required by the Conservation Commission or its agents as field conditions warrant. The erosion/siltation control devices shall not be removed until the commission or its agent has reviewed and found satisfactory the stabilization of the disturbed area.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

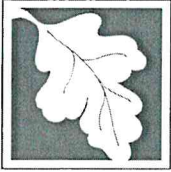
14. SURPLUS SOIL. It shall be the responsibility of the applicant to ensure that any and all surplus materials resulting from excavation, and not needed for use on the project, are lawfully disposed of outside any area subject to protection under M.G.L.c. 131, § 40, unless such area and activity are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

15. 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.

16. SOIL STOCKPILES. Soil stockpiles/surplus soil shall also be protected with erosion/siltation controls as described in Special Condition #8.

17. CONTRACTOR NOTIFICATION. It shall be the responsibility of the applicant and the property owner to inform any and all contractors, landscapers, or other personnel doing any work authorized under this Determination of Applicability of the presence of this Determination of Applicability permit and of all applicable Special Conditions listed herein, and to provide them with a copy of the Determination of Applicability permit and associated documents. The applicant and the property owner shall be held responsible for any alteration of jurisdictional wetland resource areas or buffer zones outside of the scope of work permitted under this Determination of Applicability.

18. FINDING – SITE MONITORING/CONSTRUCTION OVERVIEW BY DESIGN ENGINEER / REPORTS. In accordance with Massachusetts General Laws Chapter 44, §53G, the Andover Conservation Commission requires that the applicant provide funds **prior to commencement of work** to the Commission for the reasonable fees of a consultant with professional credentials to be selected by the Commission to review and/or approve the inspection of work thereunder.



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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.

Andover Wetlands Protection Bylaw  
Name

Ordinance or Bylaw Citation

**C. Authorization**

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

by hand delivery on

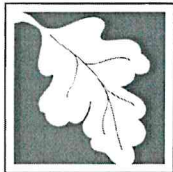
by certified mail, return receipt requested on

May 14, 2024  
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 <https://www.mass.gov/service-details/massdep-regional-offices-by-community>) and the property owner (if different from the applicant).



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**C. Authorization (cont.)**

May 7, 2024

Signatures:

Signature Donald S. Cooper

Donald Cooper

Printed Name

Signature \_\_\_\_\_

Ruby Brown

Printed Name

Signature Alix Driscoll

Alix Driscoll

Printed Name

Signature \_\_\_\_\_

Miranda Chave

Printed Name

Signature \_\_\_\_\_

Jon Honea

Printed Name

Signature \_\_\_\_\_

Floyd Greenwood

Printed Name

Signature \_\_\_\_\_

Printed Name

Signature \_\_\_\_\_

Printed Name

Signature \_\_\_\_\_

Printed Name

**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 <https://www.mass.gov/service-details/massdep-regional-offices-by-community>) 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.