



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 2 – Determination of Applicability

M2021-048

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

Scott Gibson
Name
39 High Plain Road
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 51 County Road, Andover, MA 9/28/2021
Title Date

Title Date

Title Date

2. Date Request Filed:

June 1, 2021

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):

Confirmation of wetland resource areas.

Project Location: Book 16483, Page 310

51 County Road
Street Address
83
Assessors Map/Plat Number

Andover
City/Town
46A
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.

Bordering Vegetated Wetlands (BVW), as identified on Andover Assessors Map 83, Parcel 44, were initially flagged by Norse Environmental. The wetland line was verified and confirmed by Tom Peragallo of LEC Environmental Consultants. Tom Peragallo/LEC Environmental Consultants also identified a potential vernal pool within the BVW boundaries on Andover Assessors Map 83, Parcel 44.

- 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:

Andover

Name of Municipality

Pursuant to the following municipal wetland ordinance or bylaw:

Andover Wetlands Protection By-Law

Name

By-Law

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.

51 COUNTY ROAD – SPECIAL CONDITIONS

ANDOVER, MASSACHUSETTS – DA2021-048

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

1. FINDING – This Determination of Applicability was submitted to the Andover Conservation Commission to confirm the presence or absence of any wetlands, wetland buffer zones, or other jurisdictional areas on the 51 County Road property. This property is identified as Andover Assessors Map 83, Parcel 46A.
2. PEER REVIEW – The Andover Conservation Commission is relying on a wetland line and resource area delineation peer review conducted by Tom Peragallo of LEC Environmental Consultants, Inc. This review is summarized in a letter dated September 28, 2021.
3. FINDING – The Andover Conservation Commission finds that no jurisdictional wetlands exist on the 51 County Road property (Andover Assessors Map 83, Parcel 46A). However, due to the presence of a flagged wetland on the adjacent property (Andover Assessors Map 83, Parcel 44), the following resource areas and buffer zones are located on the parcel at Map 83, Parcel 46A.
 - A) The 100 foot distance from the Bordering Vegetated Wetlands boundary, jurisdictional as a wetland buffer zone under the Massachusetts Wetlands Protection Act; and
 - B) The 100 foot distance from Bordering Vegetated Wetlands boundary, jurisdictional as a resource area under the Andover Wetlands Protection Bylaw.

The Andover Wetlands Protection Bylaw, under Section 8, reads as follows:

“Lands within 200 feet of rivers, and lands within 100 feet of other resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or watercourse, either immediately, as a consequence of construction, or over time as a consequence of daily operation or existence of those activities. In addition, such areas are often vital to the preservation of species that depend on wetlands for food or reproduction. The Commission may therefore require that the applicant maintain a continuous strip of continuous, undisturbed vegetative cover within the two-hundred-foot (or one-hundred-foot) area, unless the applicant demonstrates that the area or part of it may be disturbed without harm to the values protected by this by-law.”

- In conjunction with the 100 foot distance to a wetland being considered as a resource area, under the Andover Wetlands Protection Bylaw 50 Foot No-Build and 25 Foot No-Disturb Setbacks from Bordering Vegetated Wetlands apply.

4. POTENTIAL VERNAL POOL – During the wetland line and resource area delineation peer review process, a potential vernal pool was identified within the Bordering Vegetated Wetlands that were flagged on Andover Assessors Map 83, Parcel 44. This potential Vernal Pool exhibits the physical characteristics and appropriate water depths to function as vernal pool habitat. The proponent of any potential future activities on Andover Assessors Map 83, Parcel 46A shall either:

A) Retain a qualified wildlife biologist to confirm or deny the presence of the vernal pool under the requirements set forth in the Massachusetts Natural Heritage and Endangered Species Program (NHESP), along with the Massachusetts Wetlands Protection Act and the Andover Wetlands Protection Bylaw, over a sufficient period of time during the 2022 spring hydroperiod.

If functionality as Vernal Pool habitat is confirmed, the boundary of the vernal pool shall be delineated according to the definition of Vernal Pool Boundary in the NHESP Guidelines. This boundary, and its accompanying Bordering Vegetated Wetland boundary, shall form the basis for calculating Vernal Pool setbacks for any future development on parcels identified as Andover Assessors Map 83, Parcel 44 and Andover Assessors Map 83, Parcel 46A.

If sufficient evidence is gathered for certification within the NHESP standards, such data shall be submitted to NHESP for Certification as a vernal pool prior to filing a Notice of Intent Application for development of the site

OR

B) Fully honor the setbacks and performance standards for work conducted around vernal pools as outlined in the Andover Wetlands Protection Bylaw.

These conditions are expressed as the opinion of the Andover Conservation Commission with the information currently available to them at the time of the DA2021-048 filing and permitting process.



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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

Date

Date

November 5, 2021

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).

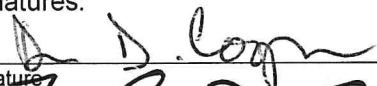


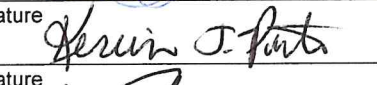

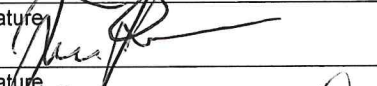
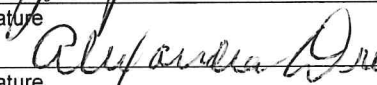


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C. Authorization (cont.)

November 2, 2021

Signatures:

Signature		Donald Cooper
Signature		Thomas Brady
Signature		Ellen Townson
Signature		Kevin Porter
Signature		Jon Honea
Signature		Floyd Greenwood
Signature		Alix Driscoll
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.