



WPA Form 2 – Determination of Applicability

DA 2017-068

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:

Andover
Conservation Commission

To: Applicant

James Watson
Name
43 Lowell Junction Road
Mailing Address

Andover MA 01810
City/Town State Zip Code

Property Owner (if different from applicant):

Sasha Associates Trust
Name
276 North Main Street
Mailing Address

Andover MA 01810
City/Town State Zip Code

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

Andover MiMap Sept. 25, 2017
Title Date

Title Date

Title Date

2. Date Request Filed:

October 19, 2017

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):

Installation of 2 electronic gates and trenching for utilities.

Project Location:

276 North Main Street
Street Address
53
Assessors Map/Plat Number

Andover
City/Town
4
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.

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:

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 attached conditions

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.

276 North Main Street – gates and trenching

ANDOVER, MASSACHUSETTS DA 2017-068

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 **NOT** subject to jurisdiction under Article XIV, ANDOVER WETLANDS PROTECTION BY-LAW. (Pre-1999)

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 PROTECTION MEASURES. **The Andover Conservation Commission hereby finds that the construction, as depicted on the approved plan, shall be WITHIN the protected bufferzone. The work cannot be performed in a different location. The footings for the gate will be a temporary disturbance. No work is permitted for the wetland itself. All excavated material shall be stockpiled on the roadway, removed from the site, or used to fill the excavated trench. Under no circumstances shall it be cast into the wetland or buffer.**

6 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

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.

12 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.

13 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.

14 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.



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
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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 8, 2017

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 <http://www.mass.gov/eea/agencies/massdep/about/contacts/find-the-massdep-regional-office-for-your-city-or-town.html>) and the property owner (if different from the applicant).

Signatures:

Bob Cooper
[Signature]
[Signature]
[Signature]

Kevin J. Pintos
[Signature]
Alexandra Dussell

November 7, 2017

Date



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

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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 <http://www.mass.gov/eea/agencies/massdep/about/contacts/find-the-massdep-regional-office-for-your-city-or-town.html>) 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.