



# CITY OF SALEM CONSERVATION COMMISSION

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June 18, 2012

Nicole Wilkinson  
Dominion Resource Services, Inc.  
5000 Dominion Boulevard  
Glenn Allen, VA 23060

**Re: Determination of Applicability**  
**24 Fort Ave. (Salem Harbor Power Station), Salem, MA**

Dear Ms. Wilkinson:

Enclosed, please find the Determination of Applicability for the above-referenced project. The Commission determined that the work qualifies as maintenance and repair of a lawfully existing structure. The Massachusetts Appeals Court judged in its 1985 decision in the case of *Town of Bourne v. Austin* that such activities do not require the filing of a Notice of Intent.

Following the 10-business-day appeal period and provided that this Determination is not appealed, you may proceed with your project. This Determination is effective for three years after the date of issuance.

If you have any further questions, please feel free to contact me 978-619-5685.

Sincerely,

A handwritten signature in black ink, appearing to be "Tom Devine", written over a horizontal line.

Tom Devine  
Conservation Agent/Staff Planner

Enclosure

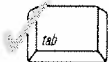
Cc: DEP Northeast Regional Office



Massachusetts Department of Environmental Protection  
 Bureau of Resource Protection - Wetlands  
**WPA Form 2 – 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:

Salem  
 Conservation Commission

To: Applicant

Dominion Resource Services, Inc.  
 Name  
 5000 Dominion Boulevard  
 Mailing Address  
 Glen Allen VA 20360  
 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:

Figure 1 - USGS Map	None
Title	Date
Figure 2 - Aerial Photo	None
Title	Date
Title	Date

2. Date Request Filed:

5/25/2012

**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):

In-kind replacement of 4 timber piles.

Project Location:

24 Fort Avenue  
 Street Address  
 41  
 Assessors Map/Plat Number

Salem  
 City/Town  
 271  
 Parcel/Lot Number



## WPA Form 2 – Determination of Applicability

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

### 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



## WPA Form 2 – Determination of Applicability

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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).

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.



Massachusetts Department of Environmental Protection  
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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:

Salem  
 Name of Municipality

Pursuant to a municipal wetlands ordinance or bylaw.

Wetlands Protection and Conservation Ordinance ch-50  
 Name Ordinance or Bylaw Citation

**C. Authorization**

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

- by hand delivery on \_\_\_\_\_  
 Date
- by certified mail, return receipt requested on 6-18-12  
 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 [http://www.mass.gov/dep/about/region\\_findyour.htm](http://www.mass.gov/dep/about/region_findyour.htm)) and the property owner (if different from the applicant).

Signatures:

[Signature]  
[Signature]  
[Signature]

[Signature]

6/14/2012  
 Date



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

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

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

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### **D. Appeals**

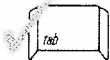
The applicant, owner, any person aggrieved by this Determination, any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate Department of Environmental Protection Regional Office (see <http://www.mass.gov/dep/about/region.findyour.htm>) 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.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**Request for Departmental Action Fee Transmittal Form**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

## A. Request Information

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



1. Person or party making request (if appropriate, name the citizen group's representative):

Name

Mailing Address

City/Town State Zip Code

Phone Number Fax Number (if applicable)

Project Location

Mailing Address

City/Town State Zip Code

2. Applicant (as shown on Notice of Intent (Form 3), Abbreviated Notice of Resource Area Delineation (Form 4A); or Request for Determination of Applicability (Form 1)):

Name

Mailing Address

City/Town State Zip Code

Phone Number Fax Number (if applicable)

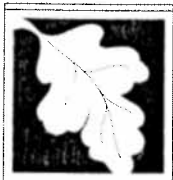
3. DEP File Number:

## B. Instructions

1. When the Departmental action request is for (check one):
- Superseding Order of Conditions (\$100 for individual single family homes with associated structures; \$200 for all other projects)
  - Superseding Determination of Applicability (\$100)
  - Superseding Order of Resource Area Delineation (\$100)

Send this form and check or money order for the appropriate amount, payable to the *Commonwealth of Massachusetts* to:

Department of Environmental Protection  
Box 4062  
Boston, MA 02211



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

## Request for Departmental Action Fee Transmittal Form

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

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### B. Instructions (cont.)

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.
3. Send a **copy** of this form and a **copy** of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office (see <http://www.mass.gov/dep/about/region/findyour.htm>).
4. 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.