



CITY OF SALEM CONSERVATION COMMISSION

July 17, 2012

Andrea Norton
MassDOT – Highway Division
519 Appleton Street
Arlington, Massachusetts 02476

**Re: Determination of Applicability
455 Highland Avenue—maintenance of drainage structure**

Dear Ms. Norton:

Enclosed, please find the determination of applicability for the above-referenced project. Following the 10-business-day appeal period and provided that this determination is not appealed, you may proceed with your project. All the work approved in this determination must be completed within three years from the date of issuance.

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

Sincerely,

Tom Devine
Conservation Agent/Staff Planner

Cc: DEP Northeast Regional Office



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

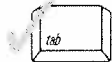
WPA Form 2 – Determination of Applicability

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

MassDOT - Highway Division
Name
519 Appleton Street
Mailing Address
Arlington MA 02476
City/Town State Zip Code

Property Owner (if different from applicant):

Commonwealth of Massachusetts
Name
10 Park Plaza
Mailing Address
Boston MA 02116
City/Town State Zip Code

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

USGS Map with notations	None
Title	Date
Comm. of MA Drainage Maintenance Work Project	5/24/2012
Title	Date
Comm. of MA Plan of Road in the City of Salem	8/26/1964
Title	Date

2. Date Request Filed:

6/1/2012

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):

Removal of debris from drainage easement per scope of work included in June 1, 2012 Request for Determination of Applicability.

Project Location:

455 Highland Avenue
Street Address
3
Assessors Map/Plat Number

Salem
City/Town
128
Parcel/Lot Number



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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.

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



WPA Form 2 – Determination of Applicability

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

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
 Bureau of Resource Protection - Wetlands
WPA Form 2 – Determination of Applicability
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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:

Maintenance and repair of a lawfully existing structure, per
 Exempt Activity (site applicable statutory/regulatory provisions)
1985 MA Appeals Court decision in Town of Berne v. Boston

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 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 by certified mail, return receipt requested on

_____ 7/17/12
 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 <http://www.mass.gov/dep/about/region.findyour.htm>) and the property owner (if different from the applicant).

Signatures: [Signature] [Signature]

7/10/12
 Date



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

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

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

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.