

**Record of Decision**  
**US Fish and Wildlife Service**  
**78 Hospital Road**  
**(Parcel ID: 004.0-0399-0200.0)**  
**Devens (Harvard), MA**  
**Unified Permit**  
**February 4, 2021**

**1. Owner/Applicant:**

The Applicant is the U.S. Fish and Wildlife Service, 73 Weir Hill Road, Sudbury, MA 01776. The Owner is the U.S. Government, 300 Westgate Center Drive, Hadley, MA 01035.

**2. Premises and Proposed Project:**

The Applicant is seeking a Level 2 Unified Permit application including an Amended Wetland Order of Conditions and Amended Site Plan approval for of the installation of an Americans with Disabilities Act compliant boardwalk to access the Nashua River and the existing canoe launch. The project is located at 78 Hospital Road, Devens (Harvard), MA, (Deed Reference: Bk: 17907 Pg: 1), within the Oxbow National Wildlife Refuge. Property Zoned Open Space and Recreation District and Aquifer Water Resources Protection District.

**3. Submission:**

The following is a list of exhibits included as part of the record for this Application:

1. Unified Permit Application (#D20-108), dated November 18, 2020, submitted by SWCA Environmental Consultants, and including the following:
  - Cover Letter dated November 18, 2020 Amended Notice of Intent;
  - Completed MA DEP WPA Form 3 – Notice of Intent;
  - USGS Map showing project location, dated 9-13-11
  - Project Narrative;
  - Appendix A: Plans and Figures: Original Approved Plan entitled: “Revised Site Layout, Grading, Drainage, and Erosion Control Plan Riverfront Access Area”, sheet SK-C4; scale 1”=10’, dated 11/13/12, revised 12/17/12; prepared by Oak Point Associates.
  - Boardwalk Plan entitled: “Oxbow National Wildlife Refuge ADA Access Ramp, Nashua River, Hospital Rd., Devens, MA; dated 7-24-20; prepared by FWM Inc.
  - Appendix B: Original Wetland Order of Conditions (DEP file 352-0052); dated October 5, 2011.
2. Determination of Completeness Issued December 11, 2020;
3. Public Hearing Notice Memo to Town Clerks of Ayer, Harvard, Shirley, Lancaster and MassDevelopment, from Peter Lowitt, dated December 21, 2020, Subject: Level 2 Unified Permit Application and Public Hearing for US Fish and Wildlife Service;
4. Public Hearing Legal Notice e-mail to Nashoba Publications, from Peter Lowitt, dated December 17, 2020 – to be published December 25, 2020 and January 1, 2021;
5. Copies of Legal notices from December 25, 2020 and January 1, 2021 from Nashoba Valley Voice;
6. Public Hearing Notice emailed to Community Service Cable Committee, from Peter Lowitt/Kate Clisham, dated December 21, 2020;
7. Memo dated December 21, 2020 from Peter Lowitt to Towns of Ayer, Harvard and Shirley Board of Selectman and Planning Board; Subject: Level 2 Unified Permit Application – US Fish & Wildlife Service, including return receipts;

8. Memo dated December 21, 2020 from Peter Lowitt to Abutters and Interested Parties; Subject: Level 2 Unified Permit Application – US Fish & Wildlife Service, including return receipts;
9. Public Hearing Notice to Secretary of State, from Peter Lowitt, dated Dec. 21, 2020;
10. Devens Assessors Abutters List for 78 Barnum Road, dated 12/11/20;
11. Staff Report dated 1/25/21, To Devens Enterprise Commission, from Neil Angus; Re: USFWS Canoe Launch ADA Boardwalk Modification (3 pages);
12. E-mail correspondence as follows:

Date	From	To	Subject
11/24/20	Neil Angus	Mickey Marcus	RE EXTERNAL RE Oxbow National Wildlife Refuge- Amended NOI for ADA Boardwalk
11/30/20	Mickey Marcus	Neil Angus	Oxbow Boardwalk
11/12/20	Mickey Marcus	Neil Angus	Oxbow National Wildlife Refuge- Amended NOI for ADA Boardwalk
12/17/20	Neil Angus	Mickey Marcus	RE: Oxbow National Wildlife Refuge- Amended NOI for ADA Boardwalk
1/25/21	Neil Angus	Tom Eagle	ADA Boardwalk Public Hearing
1/28/21	Neil Angus	Tom Eagle	RE: [EXTERNAL] RE: ADA Boardwalk Public Hearing
1/27/21	Mickey Marcus	Neil Angus	RE ADA Boardwalk Public Hearing

13. Draft Record of Decision dated 2/4/21 (5 pages);
14. MA DEP wpaform5 - Amended Wetland Order of Conditions (16 pages);
15. Staff Report, dated 2/2/21 (1 page);
16. ADA Access Ramp Drawing with trees to be removed, dated 2/3/21.

**4. Unified Permit Components and Actions:**

The Unified Permit request includes an Amended Wetland Order of Conditions and Amended Site Plan Approval for the installation of an Americans with Disabilities Act compliant boardwalk to access the Nashua River and the existing canoe launch.

**5. Process:**

The application was submitted on December 8, 2020 (#D20-108) and a Determination of Completeness was issued on December 11, 2020. Copies of the application were received by the surrounding Towns on December 29, 2020. Legal notices were placed in Nashoba Publications on December 25, 2020 and January 1, 2021. All abutters were notified by certified mail. The 30-day Town comment period expired on January 28, 2021. No comments were received. The Public Hearing opened on January 26, 2021 and was continued to February 4, 2021 and closed at that same meeting.

**6. Waivers**

No waivers requested as part of this Unified Permit.

**7. Findings**

The DEC made the following findings:

1. The proposed use is a permitted public access use in the Open Space and Recreation Zoning District as per Exhibit D of the Devens Bylaws.
2. This is a Limited Project under 310 CMR 10.53(j) The Massachusetts Wetlands Protection to be constructed on posts and will continue to permit the unobstructed flowage of water and adequate light to maintain vegetation growth. Therefore, no compensatory flood storage is required.
3. Regarding the approval criteria listed in 974 CMR 3.03(2):
  - (a) The Site Plan complies with 974 CMR 3.00 and with the applicable provisions of the By-Laws.

- (b) The development lies on a lot that is recorded at the Registry of Deeds;
- (c) The application is Complete.
- (d) All drives, parking lots, loading areas, paths, sidewalks, and streets are designed to provide for safe vehicular and pedestrian travel.
- (e) Access and site circulation will enable prompt fire, police, and emergency response.
- (f) Adequate capture, treatment, infiltration and discharge of stormwater and surface water runoff and compliance with applicable portions of the "Devens Stormwater Pollution Prevention Plan", has been included in the design.
- (g) There are no proposed connections with utility, power and communication systems.
- (h) Facilities required under the Water Resources Protection Bylaw and the related Design Standards have been included.
- (i) The plans, with conditions, are in compliance with the Landscaping Design Standards 974 CMR 3.04(8).
- (j) An amended Wetland Order of Conditions has been issued for this project.
- (k) Industrial Performance Standards do not apply.
- (l) Sufficient parking for current needs is being provided.
- (m) There are no traffic impacts.
- (n) The proposed development is not required to participate in the Devens traffic management association.
- (o) Adequate water supply exists for fire protection.
- (p) No connection to sanitary sewers is required.
- (q) The facilities are not required to meet any design standards as established by Mass Development.
- (r) Soil investigations indicate that the soils are capable of supporting proposed development.
- (s) The development has been designed with due consideration for public health.
- (t) Adequate climate change mitigation, adaptation and greenhouse gas emissions mitigation measures have been incorporated in accordance with 974 CMR 4.11.

**8. Conditions:**

The DEC voted to impose the following conditions:

1. In accordance with the Devens By-Laws, Article III, Section K 1. a., no soil, loam, sand, gravel, or other earth materials shall be permanently removed from any lot within Devens, except in accordance with the Devens Soil Management Policy and approval from the DEC.
2. Prior to commencing any intrusive earth work within Devens (due diligence, construction of otherwise) all personnel to be on site shall view an Unexploded Ordinance/Munitions of Explosive Concern (UXO/MEC) video briefing provided by the Devens Fire Department.
3. Any permits/approval required by the US Army Corps of Engineers and/or the US Environmental Protection Agency shall be obtained prior to commencement of any activity.

4. Limits of disturbance shall be flagged in the field and all necessary erosion controls and tree protection shall be inspected by DEC Staff. Any existing trees marked for preservation that are damaged, killed or removed shall be replaced in accordance with 974 CMR 3.04(8)(d)8. Additional controls shall be implemented at the discretion of the DEC or its Staff.
5. Only those red pine trees marked for removal are permitted to be removed. These trees shall not be stumped or stockpiled within any wetland or floodplain areas and shall be dispersed so as not to impede plant growth or soil porosity. No heavy machinery is permitted with the wetland areas.
6. The Amended Wetland Order of Conditions (DEP File #352-0052) shall be adhered to as part of this approval. Invasive plants that are removed shall be properly disposed of off-site.

**9. Decision:**

The public hearing closed February 4, 2021 and the DEC approved the amended Wetland order of Conditions and voted to issue findings, including that the application complied with Approval Criteria in 974 CMR 3.03(2), to impose conditions, and to approve the site plan amendment for the installation of an Americans with Disabilities Act compliant boardwalk to access the Nashua River and the existing canoe launch located at 78 Hospital Road, Devens, MA, within the Oxbow National Wildlife Refuge.

**10. Building Permit**

The Building Commissioner must review architectural/structural drawings and specifications and approve them in writing, prior to issuance of a building permit. All requirements in the Massachusetts Building Code must be met. When this approval is obtained, the building permit may then be integrated with this Site Plan Record of Decision and Amended Wetland Order of Conditions. Together they will constitute this Amended Unified Permit, which will in turn, allow construction to commence.

**11. Permit Duration**

In accordance with 974 CMR 1.10, unified permits shall remain in effect so long as the approved activities are commenced within six months of the date of the DEC's written decision and completed within two years. It is further noted that a thirty-day "reconsideration period" during which an applicant, a Town, or an aggrieved person may request the DEC reconsider its action (By-Laws, Article IV, Sections C through F). Work performed during this period, which begins on February 4, 2021 and terminates March 6, 2021, is "at risk".

Date: 2-5-2021

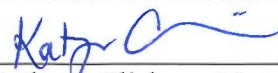
Approved by:  
  
 Peter C. Lowitt, FAICP, Director  
 Devens Enterprise Commission

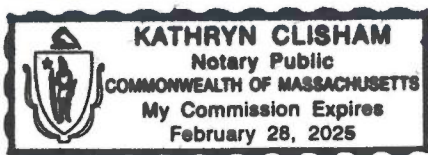
**Certification**

*Middlesex, SS*

I certify the above is a true action and record of the Devens Enterprise Commission and that Peter C. Lowitt, Devens Land Use Administrator/Director, is empowered by the Devens Enterprise Commission to sign this Record of Decision on its behalf.

Date: 2-5-2021

  
 Kathryn Clisham, Notary  
 My Commission expires 2-28-2025





**Massachusetts Department of Environmental Protection**  
**Bureau of Resource Protection - Wetlands**  
**WPA Form 5 – Order of Conditions**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:  
 352-0052  
 MassDEP File # \_\_\_\_\_  
 eDEP Transaction # \_\_\_\_\_  
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## A. General Information

**Please note:**  
 this form has  
 been modified  
 with added  
 space to  
 accommodate  
 the Registry  
 of Deeds  
 Requirements

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



1. From: Devens Enterprise Commission  
Conservation Commission
2. This issuance is for (check one):  
 a.  Order of Conditions      b.  Amended Order of Conditions
3. To: Applicant:  
Tom      Eagle  
 a. First Name      b. Last Name  
U.S. Fish and Wildlife Service  
 c. Organization  
73 Weir Hill Road  
 d. Mailing Address  
Sudbury      MA      01776  
 e. City/Town      f. State      g. Zip Code
4. Property Owner (if different from applicant):  
 \_\_\_\_\_  
 a. First Name      b. Last Name  
U.S. Government (Managed by U.S. Fish and Wildlife Service)  
 c. Organization  
300 Westgate Center Drive  
 d. Mailing Address  
Hadley      MA      01035  
 e. City/Town      f. State      g. Zip Code
5. Project Location:  
78 Hospital Road      Devens  
 a. Street Address      b. City/Town  
004.0-0399-0200.0      200.0  
 c. Assessors Map/Plat Number      d. Parcel/Lot Number  
 Latitude and Longitude, if known:      42d32'm26.4"N      71d38'm01.4"W  
 d. Latitude      e. Longitude



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### A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):  
 Worcester  
 a. County Worcester b. Certificate Number (if registered land) 1  
 17907  
 c. Book 17907 d. Page 1
7. Dates: December 8, 2020 February 4, 2021 February 4, 2021  
 a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance
8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):  
Oxbow National Wildlife Refuge ADA Access Ramp, Nashua River, Hospital Rd, Devens, MA  
 a. Plan Title FWM Inc. N/A  
 b. Prepared By 7/24/20 c. Signed and Stamped by NTS  
 d. Final Revision Date 7/24/20 e. Scale NTS
- f. Additional Plan or Document Title \_\_\_\_\_ g. Date \_\_\_\_\_

### B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:
- Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:
- a.  Public Water Supply b.  Land Containing Shellfish c.  Prevention of Pollution  
 d.  Private Water Supply e.  Fisheries f.  Protection of Wildlife Habitat  
 g.  Groundwater Supply h.  Storm Damage Prevention i.  Flood Control
2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

#### Approved subject to:

- a.  the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



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## B. Findings (cont.)

Denied because:

- b.  the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c.  the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
3.  Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) 0 a. linear feet

**Inland Resource Area Impacts:** Check all that apply below. (For Approvals Only)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input checked="" type="checkbox"/> Bordering Vegetated Wetland	<u>18</u> a. square feet	<u>18</u> b. square feet	<u>0</u> c. square feet	<u>0</u> d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet	b. square feet	c. square feet	d. square feet
	e. c/y dredged	f. c/y dredged		
7. <input checked="" type="checkbox"/> Bordering Land Subject to Flooding	<u>10</u> a. square feet	<u>10</u> b. square feet	<u>0</u> c. square feet	<u>0</u> d. square feet
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet



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**B. Findings (cont.)**

**Coastal Resource Area Impacts:** Check all that apply below. (For Approvals Only)

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	_____	_____		
	a. square feet	b. square feet		
	_____	_____		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	_____	_____	_____ cu yd	_____ cu yd
	a. square feet	b. square feet	c. nourishment	d. nourishment
14. <input type="checkbox"/> Coastal Dunes	_____	_____	_____ cu yd	_____ cu yd
	a. square feet	b. square feet	c. nourishment	d. nourishment
15. <input type="checkbox"/> Coastal Banks	_____	_____		
	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	_____	_____		
	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	_____	_____		
	a. square feet	b. square feet		
	_____	_____		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	_____	_____		
	a. c/y dredged	b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	_____	_____		
	a. square feet	b. square feet		
22. <input type="checkbox"/> Riverfront Area	_____	_____		
	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	_____	_____	_____	_____
	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	_____	_____	_____	_____
	g. square feet	h. square feet	i. square feet	j. square feet



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**B. Findings (cont.)**

\* #23. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23.  Restoration/Enhancement \*:

\_\_\_\_\_ a. square feet of BVW

\_\_\_\_\_ b. square feet of salt marsh

24.  Stream Crossing(s):

\_\_\_\_\_ a. number of new stream crossings

\_\_\_\_\_ b. number of replacement stream crossings

**C. General Conditions Under Massachusetts Wetlands Protection Act**

**The following conditions are only applicable to Approved projects.**

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - a. The work is a maintenance dredging project as provided for in the Act; or
  - b. The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
  - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on 2/4/24 unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.



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**C. General Conditions Under Massachusetts Wetlands Protection Act**

8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then 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 Final Order 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 the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,
 

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]  
 "File Number            352-0052 "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.



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**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
19. The work associated with this Order (the "Project")
- (1)  is subject to the Massachusetts Stormwater Standards
- (2)  is NOT subject to the Massachusetts Stormwater Standards

**If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:**

- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
- i.* all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
  - ii.* as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
  - iii.* any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;



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**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

- iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
- v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.
- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:
- i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and
  - ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



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**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

- g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
  2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
  3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (if you need more space for additional conditions, please attach a text document):

**New SC#1. This is an amendment to the original Wetland Order of Conditions issued to the US Fish and Wildlife Service on 9/27/2011. All original and special conditions still apply to this amended order, in addition to the following:**

- a. **Control of invasive plant species is authorized as per the Applicant's 11/11/20 submittal. This condition shall not expire as long as activities are performed using the Applicant's proposed methods and any best management practices approved by the MA Invasive Plant Advisory Group and MA DEP.**
  - b. **The Devens Enterprise Commission .Unified Permit Record of Decision dated 2/4/21.**
20. For Test Projects subject to 310 CMR 10.05(11), the applicant shall also implement the monitoring plan and the restoration plan submitted with the Notice of Intent. If the conservation commission or Department determines that the Test Project threatens the public health, safety or the environment, the applicant shall implement the removal plan submitted with the Notice of Intent or modify the project as directed by the conservation commission or the Department.



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**D. Findings Under Municipal Wetlands Bylaw or Ordinance**

1. Is a municipal wetlands bylaw or ordinance applicable?  Yes  No
2. The Devens Enterprise Commission hereby finds (check one that applies):  
 Conservation Commission
- a.  that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw \_\_\_\_\_ 2. Citation \_\_\_\_\_

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

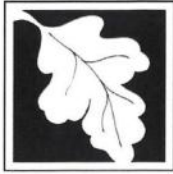
- b.  that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

Devens Bylaws - Wetlands Protection Article XII  
 1. Municipal Ordinance or Bylaw \_\_\_\_\_ 2. Citation \_\_\_\_\_

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

Refer to original Wetland Order of Conditions issued to the US Fish and Wildlife Service on 9/27/2011. All original and special conditions still apply to this amended order, in addition to the above additional one (1) special condition included in this NOI.



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### E. Signatures

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

1. Date of Issuance

Please indicate the number of members who will sign this form.

This Order must be signed by a majority of the Conservation Commission.

2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

by hand delivery on

by certified mail, return receipt requested, on

Date

Date



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## F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, 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 MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed 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 Order. 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.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.



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### G. Recording Information

Prior to commencement of work, this Order of Conditions must be 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 Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

\_\_\_\_\_  
 Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

-----

To:

\_\_\_\_\_  
 Conservation Commission

Please be advised that the Order of Conditions for the Project at:

\_\_\_\_\_  
 Project Location

\_\_\_\_\_  
 MassDEP File Number

Has been recorded at the Registry of Deeds of:

\_\_\_\_\_  
 County

\_\_\_\_\_  
 Book

\_\_\_\_\_  
 Page

for: \_\_\_\_\_  
 Property Owner

and has been noted in the chain of title of the affected property in:

\_\_\_\_\_  
 Book

\_\_\_\_\_  
 Page

In accordance with the Order of Conditions issued on:

\_\_\_\_\_  
 Date

If recorded land, the instrument number identifying this transaction is:

\_\_\_\_\_  
 Instrument Number

If registered land, the document number identifying this transaction is:

\_\_\_\_\_  
 Document Number

\_\_\_\_\_  
 Signature of Applicant





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

DEP File Number:

**Request for Departmental Action Fee  
Transmittal Form**

\_\_\_\_\_  
Provided by DEP

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

**A. Request Information**

1. Location of Project

\_\_\_\_\_  
a. Street Address

\_\_\_\_\_  
b. City/Town, Zip

\_\_\_\_\_  
c. Check number

\_\_\_\_\_  
d. Fee amount

2. 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)

3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

\_\_\_\_\_  
Name

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City/Town

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Fax Number (if applicable)

4. DEP File Number:

\_\_\_\_\_

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



**B. Instructions**

1. When the Departmental action request is for (check one):

Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)

Superseding Determination of Applicability – Fee: \$120

Superseding Order of Resource Area Delineation – Fee: \$120



Massachusetts Department of Environmental Protection  
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**Request for Departmental Action Fee  
Transmittal Form**

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

DEP File Number:

\_\_\_\_\_  
Provided by DEP

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**B. Instructions (cont.)**

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

Department of Environmental Protection  
Box 4062  
Boston, MA 02211

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

Devens Enterprise Commission, by  
s/  \_\_\_\_\_

Peter C. Lowitt

Land Use Administrator/Director  
Pursuant to Certificate of Authority  
Recorded in  
Worcester South Registry of Deeds  
Book 64287, Page 219