



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

August 25, 2016

Anthony Delapa
Delapa Properties
511 Washington Street
Norwood, MA 02062

RE: WETLANDS/WESTWOOD
DEP File# 338-0594
42 Mill Street
**Superseding Order of
Resource Area Delineation**

Dear Mr. Delapa:

The Northeast Regional Office of the Massachusetts Department of Environmental Protection, Wetlands Program (MassDEP), has completed its review of the above-referenced file in preparation to issuing a Superseding Order of Resource Area Delineation. Pursuant to the provisions of Massachusetts General Laws, Chapter 131, Section 40, MassDEP is issuing the attached Superseding Order of Resource Area Delineation (SORAD), confirming the delineated wetland boundaries on the site as inaccurate based upon a review of the information contained in the file and observations made during site evaluations. In addition, Mill Brook is determined to be a perennial stream.

The Westwood Conservation Commission (WCC) issued an Order of Resource Area Delineation (ORAD) on November 9, 2015, finding the delineation of the Bordering Vegetated Wetland (BVW) as inaccurate and also finding Mill Brook as a perennial stream. The WCC also indicated that there might be a potential vernal pool on the site.

On November 20, 2015, you appealed the ORAD claiming that the WCC had no basis in fact to make their decision. Your claim that Mill Brook is intermittent is based on four photographs covering the dates of September 1-4, 2014 showing a dry stream bed at the outlet below the dam of the impoundment. No photographs were taken of the impoundment and its inlet at this time. You also claim that a portion of the intermittent stream channel along the driveway to the 44 Mill Street residence is not a BVW and therefore not jurisdictional.

On December 16, 2015, MassDEP conducted a site inspection and met with your consultant and representatives of the WCC. At this time, water was observed in the impoundment and Mill

Brook. Additionally, two more site visits were made with this group to confirm wetland boundaries at the site using soils and vegetation.

The undeveloped site contains approximately half of a 2.55 acre shallow impoundment of Mill Brook and both wooded upland and BVW. An existing driveway from Mill Street to 44 Mill Street is parallel to the 42 Mill Street property line. An intermittent stream channel that was probably originally dug for drainage runs alongside the driveway on the 42 Mill Street property and joins Mill Brook. The intermittent stream flows through a small, partially-blocked culvert under what appeared to be a vehicle crossing from the driveway. Flowing water was not observed in the intermittent stream channel during any of the site visits.

The Riverfront regulations at 310 CMR 10.58(2) define a perennial stream using different criteria depending on the information known about the stream and its watershed. Specific criteria include the following: the stream is shown as perennial on a USGS topographic map, has a watershed size greater than or equal to one square mile, has a watershed area of at least one-half (0.50) square miles and a predicted flow rate greater than or equal to 0.01 cfs at the 99% flow duration using the USGS StreamStats program, and is perennial under natural conditions. This definition is further refined by 10.58(2)(a)1.d. which specifies that streams significantly affected by drawdown from withdrawals of water supply wells, direct withdrawals, impoundments, or other man-made flow reductions or diversions, then it shall be considered perennial.

Mill Brook is shown as a perennial stream on the 1985 Norwood Mass USGS Quadrangle and is within the Neponset River watershed. There are three impoundments on Mill Brook which includes the impoundment on the site. Two of the impoundments are located above the site impoundment. Historically, based on a 1941 USGS Norwood topographic quadrangle, there is no impoundment at 42 Mill Street but just the brook flowing through a wetland area. Furthermore, there is only one impoundment located along Mill Brook on this map.

The USGS StreamStats program calculated the drainage area of Mill Brook to be 1.36 square miles from the dam outlet on the site. The predicted flow rate was calculated at 0.0241 cubic feet per second at the 99% flow duration. Mill Brook enters the impoundment through a shallow channel of wetland vegetation and then flows approximately 400 feet through the impoundment to the dam outlet.

A significant portion of Mill Brook including the impoundment at the site is within the Interim Wellhead Protection Area of a Public Water Supply (PWS) well at Buckmaster Pond in Westwood. In the absence of an approved Zone II recharge area, DEP has adopted the Interim Wellhead Protection Area (IWPA) as the primary, protected recharge area for PWS groundwater sources. The IWPA radius for the PWS well at Buckmaster Pond is 0.5 miles.

Although not a declared drought during the period of time that the photographs were taken of a dry channel below the dam, the region was experiencing a dry period as evidenced by low stream flows and groundwater tables. Data from the USGS for the Water Year 2014 that ran from

October 1, 2013 to September 30, 2014 showed very low flows for the Neponset River and low groundwater levels at a USGS Norfolk well during September of 2014. The US Drought Monitor showed the region that includes Mill Brook and its watershed as being abnormally dry on September 2, 2014.

Based on the above information that Mill Brook is shown as a perennial stream on a USGS topographic map with a watershed area greater than one square mile, a predicted flow rate greater than 0.01 cfs, is within the recharge area of a PWS, has two impoundments above the site, and observations were made during an abnormally dry season with below average stream flows and groundwater levels in the area, it is MassDEP's opinion that Mill Brook is a perennial stream subject to the Riverfront regulations pursuant to 310 CMR 10.58.

It is also MassDEP's contention that the impoundment at 42 Mill Street is a run-of-the river impoundment and has primarily riverine characteristics based on its extremely shallow depth (estimated average depth of about 2 feet), small impoundment size compared with its watershed (341 times smaller than the watershed), the short distance between the brook inlet and the dam outlet (approximately 400 feet) which effectively short-circuits the impoundment; and the 1941 USGS quad shows a channel through a wetland area with no impoundment on the site. Therefore, it is MassDEP's opinion that the impoundment is subject to the riverfront regulations at 310 CMR 10.58.

The intermittent channel begins in a wetland area designated by flag D6 on the revised plan dated June 13, 2016 and continues to wetland flag GC52-1 (note that the intermittent channel from D6 to GC54 is located outside of the site's property line). The intermittent stream channel banks were examined for hydric soils and wetland vegetation. Hydric soils were found as well as wetland vegetation along the entire channel with the exception of a short section approximately 10 feet long where the channel lost its definition and then picked up again at its confluence with Mill Brook. It was clear, however, that the entire channel from D6 to its confluence with Mill Brook conveys water during large storm events along its entire length. It is MassDEP's opinion that the intermittent stream channel has bank with BVW.

Concerning vernal pools on the site, there are no confirmed potential or designated vernal pools registered by the Natural Heritage Program.

Please be advised that it is MassDEP's responsibility to address only those interests identified in the Wetlands Protection Act, M.G.L. Chapter 131, Section 40. However, the MassDEP reserves the right, should there be further proceedings in this case, to raise additional issues and present further evidence as may be appropriate. Should any party dispute these findings, please consult the language in the SORAD that specifies your rights and procedures for appeal.

If you have any questions concerning this SORAD, please do not hesitate to contact Gary Bogue at 978-694-3372.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Rachel Freed', with a stylized flourish at the end.

Rachel Freed, Deputy Regional Director
Bureau of Water Resources

cc: Westwood Conservation Commission, 50 Carby Street, Westwood, MA02090
Scott Goddard, Goddard Consulting, 291 Main Street, Suite 8, Northborough, MA 01532
Brian Donahoe, Goldman Environmental Consultants, 60 Brooks Drive, Braintree, MA 02184



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

WPA Form 4B – Superseding Order of Resource Area Delineation

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

DEP File Number:

338-0594

Provided by DEP

A. General Information

From:

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Issuing Authority

This Issuance is for (check one):

☒ Superseding Order of Resource Area Delineation

☐ Amended Superseding Order of Resource Area Delineation

To: Applicant:

Property Owner (if different from applicant):

Anthony Delapa

Name

Salvatore Vinci

Name

Delapa Properties

511 Washington Street

Mailing Address

67 Hazelwood Drive

Mailing Address

Norwood

City/Town

MA

State

02062

Zip Code

Norwood

City/Town

MA

State

02062

Zip Code

1. Project Location:

42 Mill Street

Street Address

Westwood

City/Town

28

Assessors Map/Plat Number

013

Parcel /Lot Number

2. Title and Revised Date of Final Plans and Other Documents:

"Wetland Delineation Plan 42 Mill Street Westwood, MA"

Title

Last revised

Date 6/13/2016

3. Final Plans and Documents Signed and Stamped by:

Joyce Hastings, PLS

Name

4. Dates:

11/10/2014

Date ANRAD Filed

11/9/2015

Date Public Hearing Closed

11/9/2015

Date of Local Order

5. \$200

Total Filing Fee Paid

\$87.50

State Fee Paid

\$112.50

City/Town Fee Paid.



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

WPA Form 4B – Superseding Order of Resource Area Delineation

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B. Order of Delineation

The Department has determined the following (check whichever is applicable):

- ☐ **Accurate:** The boundaries described on the referenced plan(s) above and in the Abbreviated Notice of Resource Area Delineation are accurately drawn for the following resource area(s):

☐ Bordering Vegetated Wetlands

☐ Other Resource Area(s), specifically:

- ☐ **Modified:** The boundaries described on the plan(s) referenced above, as modified by the Department from the plans contained in the Abbreviated Notice of Resource Area Delineation, are accurately drawn for the following resource area(s):

☐ Bordering Vegetated Wetlands

☐ Other Resource Area(s), specifically:

- ☒ **Inaccurate:** The boundaries described on the referenced plan(s) and in the Abbreviated Notice of Resource Area Delineation were found to be inaccurate and cannot be confirmed for the following resource area(s):

☒ Bordering Vegetated Wetlands

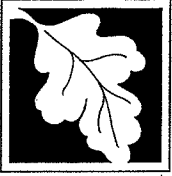
☒ Other Resource Area(s), specifically:

Riverfront Area

The boundaries were determined to be inaccurate because:

Inaccurate BVW delineation

Incorrect stream determination



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 4B – Superseding Order of Resource Area Delineation
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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B. Order of Delineation (cont.)

This Order of Resource Area Delineation determines the boundaries of those resource areas noted above and is binding as to all decisions rendered pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c.131, § 40) and its regulations (310 CMR 10.00) regarding such boundaries. This Order does not, however, determine the boundaries of any resource area or Buffer Zone to any resource area not specifically noted above, regardless of whether such boundaries are contained on the plans attached to this Order or to the Abbreviated Notice of Resource Area Delineation.

Signature: _____

Rachel Freed

Rachel Freed, Deputy Regional Director
Bureau of Water Resources, NERO

This Order is valid for three years from the date of issuance.

This Order is issued to the applicant and the property owner (if different) as follows:

☐ by hand delivery on _____

☒ by certified mail

Date

Date

8/25/2016



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

WPA Form 4B – Superseding Order of Resource Area Delineation

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

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Provided by DEP

C. Appeals

The applicant, the landowner, any person aggrieved by the Superseding Order, Determination or other Reviewable Decision as defined at 310 CMR 10.04, who previously participated in the proceedings leading to this Reviewable Decision, the conservation commission, or any ten (10) residents of the city or town where the land is located if at least one resident was previously a participant in the permit proceeding, are hereby notified of their right to appeal this Reviewable Decision pursuant to M.G.L. c.30A, § 10, provided the request is made by certified mail or hand delivery to the Department, along with the appropriate filing fee and a MassDEP Fee Transmittal Form within ten (10) business days of the date of issuance of this Superseding Order or Determination, and addressed to:

Case Administrator
Office of Appeals and Dispute Resolution
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the request (hereinafter also referred to as Appeal Notice) shall at the same time be sent by certified mail or hand delivery to the Conservation Commission, the applicant, the person that requested the Superseding Order or Determination, and the issuing office of the MassDEP at:

MassDEP – Northeast Regional Office
Wetlands Program
205B Lowell Street
Wilmington, MA 01887

In the event that a ten resident group requested the Superseding Order or Determination, the Appeal Notice shall be served on the designated representative of the ten resident group, whose name and contact information is included in this Reviewable Decision (when relevant).

Contents of Appeal Notice

An Appeal Notice shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6) and 310 CMR 10.05(7)(j), and shall contain the following information:

- (a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;
- (a) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative; if a ten residents group, the same information for the group's designated representative;
- (b) if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;
- (c) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceeding that led to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;
- (d) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;
- (e) a clear and concise statement of the alleged errors contained in the Department's decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c.131, § 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision, and the relief sought, including any specific desired changes to the Department's decision;
- (f) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;
- (g) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and if asserting a matter that is Major and Complex, as defined at 310 CMR 10.04(1), a statement requesting that the Presiding Officer make a designation of Major and Complex with specific reasons



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 4B – Superseding Order of Resource Area Delineation
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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Filing Fee and Address

A copy of the Appeal Notice along with a MassDEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.