



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:
 351-1169
 MassDEP File # _____
 eDEP Transaction # _____
 Wrentham
 City/Town

A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):

Norfolk
 a. County _____ b. Certificate Number (if registered land) _____
 34968 _____ 559 _____
 c. Book _____ d. Page _____

7. Dates: 08/25/21 02/10/22 03/01/22
 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):

Washington Street Solar Array, 80 Washington Street, Wrentham, MA Permitting Plans
 a. Plan Title _____
 Fuss & O'Neill Kevin C. McGarry (MA PE#53182)
 b. Prepared By _____ c. Signed and Stamped by _____
 02/07/22 1" = 40'
 d. Final Revision Date _____ e. Scale _____

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) _____ 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 type="checkbox"/> Bordering Vegetated Wetland	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ 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 type="checkbox"/> Bordering Land Subject to Flooding	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ 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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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 _____ 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 351-1169 "
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):

21-35

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 Wrentham Conservation Commission hereby finds (check one that applies):
 - a. that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:
Wrentham Wetlands Protection By Law Chapter
1. Municipal Ordinance or Bylaw 375-1

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:
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):

21-35

The Wrentham Conservation Commission has denied, by a vote of 6 to 0, to issue a Special Orders of Conditions for the proposed Solar Array at 80 Washington Street, DEP# SE-351-1169, under the authority of:

- The Wrentham Wetlands Protection Bylaw (the Bylaw), Article 17.31 of Town of Wrentham General Bylaws, and
- The Massachusetts Wetlands Protection Act (the Act), M.G.L. Chapter 131, Section 40,

The Owner¹ proposed construction of a solar array on the hillside of a 28-acre property. The Project, if approved, would have altered 107,500 square feet of the wetland buffer zone and come no closer than 50-feet to the nearest Resource Area. The Wrentham Conservation Commission (the Commission) received and evaluated the following documents in forming their decision regarding the proposed Project for Work at the 80 Washington Street Solar Array Property:

- *Washington Street Solar Array, 80 Washington Street, Wrentham, MA, Permitting Plans*, Fuss & O'Neill, Inc., Quincy, MA, February 7, 2022, 23 sheets.
- *Long-Term Operation and Maintenance Plan / Long-Term Pollution Prevention Plan, Washington Street Solar Array, 80 Washington Street Wrentham, MA*, Fuss & O'Neill, Quincy, MA, February 7, 2022, 53 pages (pdf).
- *Notice of Intent, WPA Form 3, 80 Washington Street*. Signed Feb 7, 2022, 14 pages.
- *Washington Street Solar Array...* (Revised Stormwater Management Report), Fuss & O'Neill, October 8, 2021.
- *Example Work Sites*, email Communication between Conservation Agent, Darryl Luce and Dan Serber, Project Manager for NextGrid, October 7, 2021
- *Final Town of Wrentham Water System Master Plan*, Environmental Partners Group, LLC, Quincy, MA. November 2021.
- *Water Supply Master Plan Presentation to the Wrentham Board of Selectmen*, January 4, 2022.

The Wrentham Conservation Commission bases this denial on the following Findings:

With respect to the Massachusetts Wetlands Protection Act and Wrentham Wetlands Protection Bylaw the jurisdictional areas protected include: bordering vegetated wetland in the watershed of the Taunton River. The Commission believes that impacts to these areas would, given the disposition of the submitted Plans and experience of the applicant, negatively affect Crocker Pond, the two Town drinking water wells² that lie downstream, the aquifer that supplies those wells and the surface water source for the City of Attleboro.

PROJECT CONSTRAINTS AND CONSIDERATIONS:

Terrain: The area of the Project has steep, forested slopes that display no gullying or signs of overland flow indicating that precipitation is slowly infiltrated. It is covered by a mature hardwood forest and the forest floor consists of more than a 6-inch thick mat of forest duff.

¹ Capitalized terms are defined at the end of these Orders of Conditions unless they are defined within this text or the Act or Bylaw.

² Well 6 (Zone I) lies within 1,200 feet and Well 4, 1-mile.

There is the potential for adverse stormwater effects from runoff once the original forest cover is removed and the soil disturbed. The proposed Project features large surface water collection devices that transmit runoff quickly to basins 50-feet from wetlands with overflow and discharge features to the buffer zones. No non-native, invasive species were found during site walks.

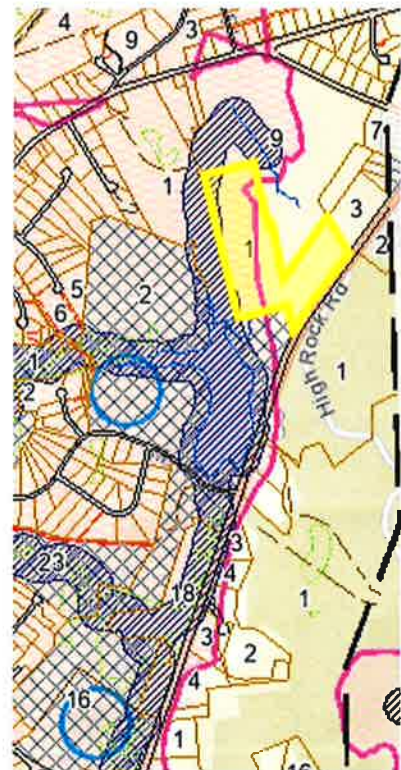
- The Commission finds the proposed Project would do irreparable damage to the environment. The Commission finds the value of maintaining the existing forested slope exceeds the value of the proposed Project to the local environment. Maintaining the current hydrology with the existing forested environment protects:
 - The Town of Wrentham's DEP Zone I Wellhead Protection Area for Well #6 which lies 1,200-feet from the Site.
 - Wrentham's DEP Zone II Wellhead Protection Zone for both drinking water Wells 4 and 6. The Zone II Area underlies the Site.
 - The City of Attleboro's surface water supply and its Zone A Surface Water Protection Area that borders the Site.
 - Wrentham and downstream communities by providing a resilient environment to the increasing impacts of climate change.

Rivers Act: The Rivers Protection Act does not apply to these Orders.

50-foot No-Build: The applicant has met the requirements by staying out of the 50-foot buffer.

Compensation / Replication Areas: none were proposed.

Significant natural resources & Features: The area contains significant wetlands and waterways to include Crocker Pond. The map at right is from the Wrentham Assessors Map with DEP data superimposed through the website's mapping function. The map is oriented with North at the top, Route 1 angling downward from right to left and Route 140 at the top. The Work site is highlighted in yellow and Crocker Pond lies just to the southwest. The blue circles are the DEP Zone I Wellhead Protection Areas for two of Wrentham's drinking water wells. The Zone II Aquifer Protection Area is shown as a pink, cross-hatched area bordered by a thicker pink line. The Zone A Surface Water Protection Area is shown as dark blue, diagonal lines. Water flows from Crocker Pond southward on the west side of Route 1 to the Taunton River and is a significant resource for the City of Attleboro's water supply.



- The Commission finds that the proposed Project does not allow for adequate infiltration into the groundwater supply in the Zone II Aquifer Protection Area. The submitted Plans show large channels that collect and send stormwater runoff rapidly to basins that then discharge the stormwater to Crocker Pond. At present, this water slowly infiltrates the ground. Groundwater supply issues are a recent concern as the members had attended presentations on the Wrentham Water Master Plan.

The solar array will likely be highly visible from the Crocker Pond Recreation Area. In addition to the hardwood forest, there are stone walls along the boundary of the project with abutters. As part of the building buffer envelopes, these walls will not be altered.

Other Considerations:

1. Construction Experience: The Owner lacks construction experience in this setting. The Commission had asked for similar project examples that the Owner had performed. None were offered that met the specifications of a steep, forested topography. Initially, a site in Sterling, Massachusetts had been offered but was withdrawn for unknown reasons. Other sites were offered but did not meet the Commission's criteria of a forested, high-slope landscape. It is noteworthy that news articles regarding solar projects elsewhere in Massachusetts had damaged wetland Resource Areas and required enforcement actions by the State.^{3,4}
 - The Commission finds the Owner's experience is not sufficient to execute this Project without unintended consequences to the down-gradient wetlands, water resources, and Interests in the Act and Bylaw.
2. Water Supply Protection: The Project is at the upper end of the watershed for Crocker Pond. One of the Town's drinking water wells is at Crocker Pond and another a short distance downstream. Crocker Pond is co-owned by the City of Attleboro, which helped Wrentham purchase the property in the 1960's to protect the watershed for its drinking water supply.
 - The Commission finds that the Project will potentially cause degradation of the City of Attleboro's Water Supply.
 - The Commission finds that the proposed Project reduces significantly the infiltration to the ground for the drinking water pumped from the Crocker Pond and Thurston Street wells.
3. In this instance the Owner has chosen to require a future Contractor to prepare at least two, additional sets of plans prior to Work beginning. The Commission must then review and modify or approve these plans, integrating those Plans with those submitted for this application introducing complexity and lack of information as to the execution of the Project. Because no Work is allowed until approval, it is likely that the Contractor will press for a quick review and thus complicating oversight.
 - The Commission finds that the highly detailed and complex plans is evidence that such a project does not belong on such a sensitive site.

³ Daily Hampshire Gazette, AG sues solar array developer over environmental damage in Williamsburg. April 29, 2020.

⁴ Daily Hampshire Gazette, State fines Eversource, builder up to \$310,000 for solar project runoff in Southampton. April 15, 2021.

4. **Project Monitoring:** The terrain and experience of the Owner are relevant in that a Consultant, able to be present at the Project at varying times through the week, is essential to ensure that the Project follows the Orders and Plans to ensure that the Work area remains stable and the Interests in the Act and Bylaw protected. It is likely that the Consultant will be needed on a flexible basis but early in the project visiting the site at a rate of twice a week. It is expected that the Consultant will submit written reports and stay in frequent touch with the Commission’s Oversight Project Manager.
- The Commission finds that a Consultant is required to perform specialized monitoring of the Work performed by the Owner and any Contractors.

The Interests protected by the Wetlands Protection Act and the Wrentham Wetlands Protection Bylaw were not rebutted by the applicant, who offered no evidence to rebut them.

INTERESTS IN THE MASSACHUSETTS WETLANDS PROTECTION ACT	INTERESTS IN THE WRENTHAM WETLANDS PROTECTION BYLAW
<ul style="list-style-type: none"> - Protection of public and private water supply. - Protection of groundwater supply. - Flood control. - Storm damage prevention. - Prevention of pollution. - Protection of land containing shellfish. - Protection of fisheries. - Protection of wildlife habitat. 	<p>Wrentham’s Bylaw include the eight Interests in the Act and adds:</p> <ul style="list-style-type: none"> - Erosion and sedimentation control. - Protection of surrounding land and other homes and buildings. - Water pollution control. - Agriculture. - Recreation. - The historic and natural scenic character of wetland resource areas, watercourses, lakes and ponds.

The Commission had drafted Special Orders of Conditions (the Orders) that it believed necessary to perform the Work if approved. However, the extent and complexity of the proposed Project, coupled with the issues identified in the Findings, led the Commission to believe that the proposed Project would not protect the Interests in the Act or Bylaw. Following the draft Order of Conditions 21 – 35 that were drafted are two additional sections: the calculation for the bond amount in Condition 22, FINANACIAL ASSURANCE FOR WORK, and another for terms and acronyms used in the Orders, ACRONYMS AND DEFINITIONS. The draft Orders considered and rejected by the Commission because of the denial:

PRIOR TO ANY WORK

21. **Read and Understand these Orders of Conditions.** The Owner and Contractors shall read and comply with these Orders, perform the Work as described on the Plans. Failure to comply with these Orders is a violation that may subject the Owner and Contractors to fines, criminal charges, and civil action. A copy of these Orders and the Plans must be kept on the Property in a location known to all workers.

22. **Post the Bond:** The Owner shall post funds through a bond, tripartite agreement, or passbook savings account with the Town named as co-holder in the amount of \$163,700. The purpose of the bond is to ensure that adequate stabilization of the Property may be performed by the Commission if the Owner fails to act. The calculation of the bond is shown in the Findings Section of these Orders. Seven days after the Commission notifies the Owner to perform actions to protect any Resource Area, and the Commission believes that the Owner has not acted to prevent erosion and sedimentation, the Commission shall use the funds to stabilize the Property. The bond, or bond amount remaining after any necessary action by the Commission, will be released once the Certificate of Compliance has been issued.
23. **Record the Orders at the Registry of Deeds:** The Owner shall provide the Commission with proof of filing of these Orders with the Norfolk County Registry of Deeds. If proof is not received within 30 days, the Commission may file this Order with the Registry of Deeds and no Certificate of Compliance will be issued until the Commission is reimbursed for all related costs. These Orders are valid for three years following the date of issuance unless an extension is requested by the Owner and granted by the Commission.
24. **Plan Changes:** If, for any reason, the Plans for the Project change after the date of approval, the Owner shall submit the proposed changes to the Commission for review and approval or modification.
25. **Notice of Understanding:** Before Work begins, the Owner shall send a signed and dated letter to the Commission containing the following:
- The following statement: "I (Owner's name) have read and understood the Orders of Condition and agree to comply with them. I also agree to notify any contractors, subcontractors, or purchasers of property of all Orders of Conditions on the property and supply the Plans to those parties as needed. If I sell the subject property prior to the issuance of a Certificate of Compliance, I will send a letter to the Commission informing them of the name of the new owner."
26. **Construction Oversight:** The Commission, in its Findings, has determined that the Work requires Oversight by a Consultant that inspects the Work and reports to the Commission. The Owner shall deposit sufficient funds with the Commission to hire that Consultant pursuant to Massachusetts General Law Chapter 44 Section 53G for the purpose of monitoring Work that is within the Commission's jurisdiction or may affect such areas. The Consultant shall be supplied, by the Owner, with copies of the Plans and be provided access to all portions of the Project sufficient to ensure compliance with these Orders.
- a. **Conduct of Oversight:** The Commission has developed a Scope of Work (SOW) for its Consultant to follow. The Commission will provide a copy of that SOW to the Owner on request as well as any Work Plans that the Consultant develops with the exception of those elements the Consultant deems to be confidential business information.

- b. Consultant Funding: The Commission will pay its Consultant through funds provided by the Owner. When 75% of the funds have been expended, the Commission will notify the Owner of the need for additional funds. Once funds are 90% expended, the Commission will issue a Task Stop Order to its Consultant.
 - c. Task Start/Stop Orders: The Commission will issue a Task Start Order to the Consultant when the funds have been made available. No Work may begin on the Property until a Task Start Order has been issued to the Consultant by the Commission. A Task Stop Order, if due to the Owner refusing or unable to provide funds to the Commission for the Consultant, shall also require the Owner's Contractor to stop Work and stabilize all areas within the buffer zone, or that may adversely impact the Buffer Zone, within 72 hours. Task Stop Orders will also be issued once the Commission believes that the Project is complete and that no damage to Resource Areas will occur.
27. **Preparation for Work**: The Plans describe the measures the Owner shall perform prior to any Work. A summary of the efforts the Contractor or Owner must perform include:
- a. Prepare and submit a *Stormwater Pollution Prevention Plan* in fulfillment of Federal requirements, to the Commission for review and approval or modification.
 - b. Prepare and submit a *Detailed Construction Phasing and Logistics Plan* for each of the phases shown on the Plans, to the Commission for review and approval or modification.
 - c. Place all limit-of-work barriers and erosion and sedimentation control devices as shown on the Plans and as described in any Plans developed for phasing of the Project.
 - d. Have a professional engineer, or land surveyor, certify the correct installation of the limit-of-work barriers and erosion and sedimentation control devices installed in Order #27c., as shown on the Plans. That professional shall send to the Commission a letter or email attesting to the correct placement.
 - e. After the Commission or its Agent approves of the limit-of-work and erosion and sediment controls, the Contractor shall conduct a pre-construction meeting with Town officials and Consultants responsible for permitting and Oversight to discuss next steps and the conduct of the Work.
 - f. All earth-moving and tree clearing Contractors shall be notified of the requirements of the Federal Migratory Bird Act and comply accordingly.

Once the Owner has complied with the actions described in Orders 21 to 27, above, Work may begin on the Project.

WORK

28. The Owner shall maintain all erosion control barriers and limit-of-work fence during all Work. The only discharges allowed are those that are controlled as shown on the Plans. No discharge within 50-feet of a Resource Area that leaves sediment greater than 1/4-inch in any location or standing water greater than 250 NTU is allowed. The areas

outside the areas where Work is approved are to remain unaltered. No actions, to include placing of brush, debris or fill, or removing trees, other vegetation, or soil is allowed on the wetland side of the barrier or any limit-of-work barrier.

29. The Owner shall perform proper Resource Area protection practices as described in the Plans to include:
- a. All erosion and sedimentation control devices and limit-of-work barriers are inspected on a daily basis to ensure that they will prevent erosion and sedimentation. Any damaged components shall be repaired within 48 hours. Maintain a daily log on the Property that records these actions. The individual that performs these actions should be identified in this record.
 - b. Allow no stormwater flows from any altered area in a concentrated, channel that is not depicted on the Approved Plans.
 - c. Any disturbed ground within the buffer zone or within 50-feet of any stormwater structure is stabilized with erosion control blankets or jute netting within 48 hours.
 - d. Prevent the introduction of invasive plant or insect species in accordance with good horticultural practice within the parameters established by these Orders. Stands of invasive plants on the permitted property that extend onto other properties, to the extent practicable, shall be eliminated with permission of the abutting property owners.
 - e. During the months from February to May, inclusive, erosion control barriers shall be modified at least every 100-feet, by means approved by the Commission, to allow amphibians and reptiles to pass.
30. **Inspections:** The Owner shall employ appropriately trained and equipped inspectors to conduct inspections for invasive plants and insects, slope stability, and stormwater infrastructure as noted in the Long-Term Operation and Maintenance Plan. The Owner must submit the resumes to include the training and education of the inspectors to the Commission for approval or disapproval as well as a list of equipment and standards those inspectors will follow. Oversight of these inspections shall occur as follow:
- a. **During Construction:** The Owner shall notify and invite the Commission or its designated representative to attend any of the inspections that occur during Work.
 - b. **After Construction:** The Owner shall notify and invite the Commission or its designated representative to attend any of the inspections in January, April, June and September for a three-year period following completion of Work.
 - c. **Goals, criteria, response and reporting:** The Owner shall submit inspection forms for review and approval or modification by the Commission prior to use. The Commission requires these forms and focus for inspections on three components of the Project:
 - i. **Invasive species:** The goal is to ensure that the Property is, and remains, free of invasive species. Inspections shall note the type, location and prevalence of any invasive plants identified on the state Invasive and Noxious Weeds list: <https://www.mass.gov/doc/invasive-plant-list/download> or any invasive insects: <https://blog.mass.gov/blog/science/august-is-forest-pest-awareness-month->

- stay-on-the-lookout-to-help-massachusetts-trees/ and as designated by the Conservation Commission. The response to any non-native, invasive species shall be a proposal submitted to the Commission within 7 days of the inspection to eradicate the invasive species in a proper and timely manner.
- ii. **Slope stability:** The goal is to ensure that the slope remains fully vegetated. Inspections shall document any area where bare soil may be eroded. Any such areas will be stabilized by appropriate vegetation, to include sod if weather does not permit planting of seeds. In areas of potential erosion, the Owner shall use appropriate materials to keep soil in place and practices to encourage the growth of plants.
 - iii. **Stormwater Infrastructure:** The goal is to ensure that all structures and conveyances that store or transmit stormwater perform their designed function, attenuating runoff and reducing or eliminating sediment and the transport of suspended particles. The inspections shall assess the performance during and after storm events and any deficiencies must be reported to the Commission within 48 hours.

WORK COMPLETION

31. **Phase and Project Completion:** When Work is complete in any area of phased construction or for the entire Project, all debris removed, all surfaces stabilized as shown on the Plans, and the Contractor believes the phased area or Property to pose no potential for erosion, notify the Commission in writing for an inspection. If the Commission determines that the phase or Property is stable, it will issue a written determination that the erosion control devices and limit of work fence for that phase or the Project may be removed. Prior to any Certificate of Compliance, the following standards must be met:
 - a. The vegetation inside the Buffer Zone must be monitored for three years after the Project is Completed to ensure that it is sufficient to keep the ground surface stable.
 - b. There must be no non-native invasive plant or insect species present in the buffer zone or an obvious presence outside of the Buffer Zone, on the Property, for a period of 3 years.
 - c. After 3 years of monitoring of the Site as described in the Operations and Maintenance Plan, to include any extensions, have passed, the Owner may apply for a Certificate of Compliance.

OTHER PROVISIONS

32. **Inspections:** Members and Agents of the Commission shall have the right to enter and inspect the property to evaluate and ensure the compliance with these Orders and performance standards stated in this Order, the Act, the Bylaw, and 310 CMR 10.00. The Owner must notify the Commission of any Inspections as set forth in the Operations and Maintenance Plan and invite them to accompany the inspector until a Certificate of Compliance is issued. The Commission or its Agents may acquire any information,

measurements, photographs, observation, and/or materials or may require the submittal of any data or information deemed necessary by the Commission for that evaluation.

33. **Ownership Transfer:** This Order shall apply to any successor in interest or successor in control of the Owner. Upon the transfer of the Property, the new owner shall provide an affidavit to the Commission, signed and dated by the purchaser, that states “I (the purchaser) am aware of these Orders and any superseding Order of Conditions and agree to abide by said Order of Conditions including the right of the Commission to inspect said property for compliance with these Orders.”
34. **Continuing Conditions:** These Orders include actions that should be followed after the Certificate of Compliance to be a steward of the Town’s environment. These actions include:
- a. The Owner should consult with the Commission, prior to the application of any herbicides, pesticides or fertilizers (containing greater than 5% phosphorus) at the Property.
 - b. Do not import soil to the Site or introduce plants that are on the state Invasive and Noxious Weeds list: <https://www.mass.gov/doc/invasive-plant-list/download>.
35. **CERTIFICATES OF COMPLIANCE** are required for all applications. The following are the requirements for a Certificate of Compliance:
- a. All Work set out in the Orders or subsequent amendments approved by the Commission must be complete. All erosion control devices must be removed once all surfaces are stable.
 - b. The Certificate of Compliance shall be requested using the appropriate State form and be accompanied the items in c. and d., below, prepared by a licensed professional engineer.
 - c. The Certificate of Compliance Request Letter must contain or state the following items:
 - i. That all Work is complete at the Project, specifically noting any changes or exceptions and why that work was modified or not completed. Alterations beyond the permitted work shall be quantified as to impact.
 - ii. That all areas within the Buffer Zone and any work within the Resource Areas are stable.
 - iii. That the Work performed satisfies all Orders and if not, why.
 - iv. Contact information (phone, address and email) for the person requesting the Certificate of Compliance and the Owner of the property.
 - d. The Certificate of Compliance Request must also contain an as-built plan. This plan must contain the following items:
 - i. Be at the same scale as the approved plan.
 - ii. Meet the plan standards for the Wrentham Conservation Commission.
 - iii. Show and label all Resource Areas and buffer zones on the original plan and any replication or compensation areas.
 - iv. Show the limit of Work that was performed within the buffer zone and describe its condition on the plan with contours to show terrain at a 1-foot interval and groundcover by shading or other means. Photos of the Work may also be submitted.

- v. Show all impervious surfaces and point discharges for storm water or any other water flows that have changed from the original Site conditions.
- vi. Note any required elements set forth in the Orders (i.e., bounds) or any items that were a part of the Plan within the Buffer Zone.
- e. Certificates of Compliance will be issued within 28 days of the request, providing the above criteria have been met.

END OF DRAFT ORDERS OF CONDITIONS

FINANCIAL ASSURANCE FOR WORK

To ensure protection of the Interests in the Act and Bylaw a bond is established to ensure stabilization of the site and prevent damage to the Interests cited if the Owner fails to act.

Calculation of Bond			
Activity	Rate	Amount	Cost
Erosion Control Barrier	\$12/linear foot.	1,600 ft.	\$19,200
Erosion Control Barrier on steep slopes ¹	\$24/linear foot.	2,500 ft.	\$45,000
Grading inside the buffer zone	20¢/ft ²	7,500 ft ²	\$1,500
Grading on slopes ²	30¢/ft ²	10,000 ft ²	\$3,000
Grading on steep slopes	50¢/ft ²	90,000 ft ²	\$45,000
Winter stabilization (sod) ³	\$1.25/ft ²	40,000 ft ²	\$50,000
Total Bond			\$163,700

¹ A steep slope is greater than or equal to 5% (a 5-foot vertical difference in 100-foot horizontal) over any slope distance greater than 10 feet.

² Slopes less than steep are those that are less than 5% and have a continuous run of 100-feet or more.

³ Sod application. The area to apply sod will include all areas within 50-feet of the resource area. The Commission will take the bond and arrange for sod to be placed should the applicant fail to stabilize the work areas as described in these Orders of Conditions. In this case sod would only be applied in the area outside of the stormwater basins.

ACRONYMS AND DEFINITIONS

Agent: The Commission's Agent or others appointed by the Commission to act on its behalf.

Consultant: A firm or individual in the employ of the Commission for oversight of the Project under MGL Chapter 44, Section 53G.

Contractor: A firm or individual in the employ of the Owner to work on the Project.

NTU: Nephelometric Turbidity Unit, a measure of suspended particles in a water sample.

Oversight: Actions taken by the Commission to ensure the Work on the Project is done according to the Orders of Conditions and protect the Interests in the Act and Bylaw.

Owner: The persons or institutions responsible for, or actual owners of, a Site where the Work is performed. This may include the Applicant or other designated representatives as shown on the Notice of Intent unless the Commission and DEP are otherwise notified.

Perimeter Controls: From the Work area, moving towards any Resource Area or property boundary, shall consist of the erosion and sediment control devices shown on the Approved Plans and a high-visibility Limit-of-Work Fence.

Plans: The plans and any documents approved by the Commission for the Work, as cited in the bullets in these Orders.

Project: The area approved for Work to occur.

Property: Shall include all properties as described in the Notice of Intent.

Scope of Work: A description of the tasks that the Consultant will perform as Oversight.

Task Start Order: Direction from the Commission that the Consultant is to begin Oversight as described in the Scope of Work.

Task Stop Order: Direction from the Commission for the Consultant to stop work as described in the Scope of Work and stop all billing.

Work: Work is any activity on the Property that alters the vegetation or ground surface.

END



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:
 351-1169
 MassDEP File #

eDEP Transaction #
Wrentham
 City/Town

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.

03-01-22
 1. Date of Issuance

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

4
 2. Number of Signers

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

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.

80 Washington Street Solar Array

Leo E. Immonen
 Signature

Leo E. Immonen
 Printed Name

Julie Garland
 Signature

Julie Garland
 Printed Name

Signature

Dianne Demarais
 Printed Name

Signature

Maria Jomides
 Printed Name

Delana Reardon
 Signature

Printed Name

Delana Reardon
 Printed Name

Signature

Printed Name

Richard Bassett
 Printed Name

Seth M. Jensen
 Signature

Printed Name

Seth M. Jensen
 Printed Name

Signature

Printed Name

Printed Name

by hand delivery on

by certified mail, return receipt requested, on

03-01-22
 Date

Date



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:
 351-1169
 MassDEP File #
 eDEP Transaction #
 Wrentham
 City/Town

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.



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
Request for Departmental Action Fee
Transmittal Form

DEP File Number:

351-1169

Provided by DEP

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

A. Request Information

1. Location of Project

80 Washington Street

a. Street Address

Wrentham, 02093

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
Bureau of Resource Protection - Wetlands
Request for Departmental Action Fee
Transmittal Form

DEP File Number:

351-1169

Provided by DEP

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

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.