

310 CMR: Department of Environmental Protection

310 CMR 10.00 Wetlands Protection

Excerpts:

10.04:

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Date of Issuance of a Determination or Order means the date on which the Conservation Commission submits the Determination or Order to the Department electronically through eDEP or its successor system as designated by the Department, or mails to the Department by certified mail, as evidenced by a postmark, and mails the Determination or Order to the Applicant by certified mail, as evidenced by the postmark, or delivers the Determination or Order to the Applicant by hand, in accordance with 310 CMR 10.05(3)(b) or 310 CMR 10.05(6)(e). If the date the Determination or Order is submitted or mailed to the Department differs from the date it is mailed or delivered to the Applicant, the Date of Issuance shall be the later of those dates.

Date of issuance of a Superseding Order or Superseding Determination from the Department means the date mailed by certified mail, as evidenced by the postmark, or the date issued by an electronic system designated by the Department.

10.05(3)(b):

Determination of Applicability.

1. Within 21 days after the date of receipt of the Request for a Determination of Applicability, the conservation commission shall issue a Determination of Applicability, Form 2. Notice of the time and place of the public meeting at which the determination will be made shall be given by the conservation commission at the expense of the person making the request not less than five days prior to such meeting, by publication in a newspaper of general circulation in the city or town in which the land is located, and by mailing a notice to the person making the request, the owner, the board of health and the planning board of said city or town. Notice shall also be given in accordance with the open meeting law, M.G.L. c. 39, § 23B. Said determination shall be signed by a majority of the conservation commission, and a copy thereof shall at the same time be submitted electronically to the Department through eDEP or its successor system as designated by the Department, or if submittal by such means is not possible, then a copy shall be mailed to the Department by certified mail (return receipt requested). Email submittal is not an acceptable alternative. Copies of the determination shall also be sent at the same time to the person making the request and to the owner. Delivery of the copy to the person making the request shall be by hand delivery or certified mail, return receipt requested. Said determination shall not be effective until submitted or mailed to the Department in the manner prescribed above and hand delivered or mailed to the person making the request. Said determination shall be valid for three years from the date of issuance, except that a determination of the boundaries of the Areas Subject to Protection under M.G.L. c. 131, § 40, and the Buffer Zone which are to apply to such plans as are required by the Department of Agricultural Resources pursuant to 333 CMR

11.00: *Rights of Way Management*, effective July 10, 1987, shall be valid throughout the effective duration of the Vegetation Management Plan.

10.05(4)(a):

(4) Notices of Intent.

(a) Any person who proposes to do work that will remove, fill, dredge or alter any Area Subject to Protection under M.G.L. c. 131 § 40 shall file a Notice of Intent on Form 3 and other application materials in accordance with the submittal requirements set forth in the *General Instructions for Completing Notice of Intent (Form 3)*. If the applicant is not a landowner of the Project Locus, the applicant shall obtain written permission from a landowner(s) prior to filing a Notice of Intent for proposed work, except for work proposed on Great Ponds or Commonwealth tidelands. Two copies of the completed Notice of Intent with supporting plans and documents shall be sent by certified mail or hand delivery to the conservation commission, and one copy of the same shall be sent concurrently in like manner to the Department. If the project requires a 401 Water Quality Certification pursuant to 314 CMR 9.00: *401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States Within the Commonwealth* and/or is a water-dependent use project that requires a permit, license or written approval pursuant to 310 CMR 9.00: *Waterways* the applicant may file a Notice of Intent that is a Combined Application. In that event, an additional copy of the Combined Application shall be sent to the Department's Boston Office.

Concurrent with the filing of the Notice of Intent, the applicant shall provide notification to all Abutters. Notwithstanding the foregoing, the requirement to provide Abutter notification is subject to the following limits. An applicant is required to provide notification to an Abutter whose Lot is separated from the Project Locus by a public or private street or body of water only if the Abutter's Lot is within 100 feet from the property line of the Project Locus. An applicant who proposes work solely within Land under Water Bodies or Waterways, or solely within a Lot with an area greater than 50 acres, is required to provide notification only to Abutters whose Lot is within one hundred feet from the Project Site. An applicant proposing a Linear-shaped Project greater than 1,000 feet in length is required to provide notification only to Abutters whose Lot is within 1,000 feet from the Project Site. Abutter notification is not required for projects proposed by the Massachusetts Department of Transportation Highway Division pursuant to St. 1993, c. 472 as approved on January 13, 1994. The applicant shall provide notification at the mailing addresses shown on the most recent applicable tax list from the municipal assessor. Notification shall be at the applicant's expense. The notification shall state where within the municipality copies of the Notice of Intent may be examined or obtained and where information on the date, time, and location of the public hearing may be obtained. Notification provided pursuant to this provision does not automatically confer standing to the recipient to request Department action for the underlying matter, see 310 CMR 10.05(7)(a)4. To ensure compatibility with local procedures, applicants must comply with any rules of the local conservation commission pertaining to the location for examining or obtaining the Notice of Intent and information about the hearing. The applicant shall provide written notification to all Abutters required to be notified by hand delivery or certified mail, return receipt requested, or by certificates of mailing. Mailing

at least seven days prior to the public hearing shall constitute timely notice. The applicant shall present either the certified mail receipts or certificate of mailing receipts for all Abutters at the beginning of the public hearing. The presentation of the receipts for all abutters required to be notified as identified on the tax list shall constitute compliance with Abutter notification requirements. The conservation commission shall determine whether the applicant has complied with Abutter notification requirements. The Department will dismiss Requests for Action based on allegations of failure to comply with Abutter notification requirements, absent a clear showing by an Abutter seeking Department action that the applicant failed to notify the Abutter. An applicant submitting a Notice of Intent for a project that is also subject to 310 CMR 9.00: *Waterways* and/or 314 CMR 9.00: *401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States Within the Commonwealth* may provide joint public notice by appending to the public notice required by 310 CMR 9.13: *Public Notice and Participation Requirements* and/or 314 CMR 9.05: *Submission of an Application*, as applicable, notification that a Notice of Intent is pending before the issuing authority, provided the notification complies with 310 CMR 10.05(4). An applicant may provide a joint public notice, even if the Notice of Intent is not a Combined Application.

10.05(6)(e):

The Order or Notification of Non-significance shall be signed by a majority of the conservation commission and shall be mailed by certified mail (return receipt requested) or hand delivered to the applicant or his or her agent or attorney. At the same time, a copy shall be submitted electronically to the Department through eDEP or its successor system as designated by the Department, or if submittal by such means is not possible, then a copy shall be mailed to the Department by certified mail (return receipt requested). Email submittal is not an acceptable alternative. Said Order shall not be effective until mailed or hand delivered to the Applicant (or his or her agent or attorney) and submitted or mailed to the Department in the manner prescribed above. If the Order imposes conditions necessary to meet any performance standard contained in 310 CMR 10.37 or 10.59, a copy shall be mailed or hand delivered at the same time to the Massachusetts Natural Heritage and Endangered Species Program.

10.55(2)(c):

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Wetland indicator plants shall include but not necessarily be limited to those plant species identified in the Act. Wetland indicator plants are also those classified in the indicator categories of Obligate, Facultative Wetland, or Facultative in the *State of Massachusetts 2016 Wetland Plant List* (published by the U.S. Army Corps of Engineers, 2016), or plants exhibiting physiological or morphological adaptations to life in saturated or inundated conditions.

1. Areas containing a predominance of wetland indicator plants are presumed to indicate the presence of saturated or inundated conditions. Therefore, the boundary as determined by 50% or more wetland indicator plants shall be presumed accurate when:
 - a. all dominant species have an indicator status of obligate or facultative wetland and the slope is distinct or abrupt between the upland plant community and the wetland plant community;

- b. the area where the work will occur is clearly limited to the buffer zone; or the issuing authority determines that sole reliance on wetland indicator plants will yield an accurate delineation.