



# Watershed Protection Act Guidance Document

For Applicants of Advisory Rulings, Determinations  
of Applicability, Variances, and Exemptions of  
Tributaries

Massachusetts General Laws Chapter 92A½  
313 CMR 11.00



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Massachusetts Department of Conservation and Recreation  
Division of Water Supply Protection  
Office of Watershed Management

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The Winsor Dam holds back the Swift River to create the Quabbin Reservoir.

## **1. The Watershed Protection Act – In Brief**

The Watershed Protection Act (WsPA or the Act) regulates land use and activities within critical areas of the Quabbin Reservoir, Ware River and Wachusett Reservoir watersheds. This 1992 state law (Chapter 36 of the Acts of 1992; MGL Chapter 92A½; 313 CMR 11.00) applies only in towns and cities located within these three watersheds, and only to lands that are near specific water features in those communities. This Guidance Document provides details on the Watershed Protection Act and the processes used for its implementation. It is intended to assist the public with complying with the Act's regulations.



Quabbin Reservoir is one of the sources of drinking water protected by the Watershed Protection Act

DCR manages the watershed system in order to provide “pure water” to the Massachusetts Water Resources Authority for treatment and distribution to 2.5 million people in 51 communities. DCR regulates land near its water supplies because many aspects related to the use and development of land affects the quality of nearby streams, which then flow into the reservoirs and other water supply sources. Type of development, density, amount of paved surface, and proximity to the water contribute to the amount and types of pollutants in a stream. It is desirable to preserve a buffer zone beside open water and limit impervious surface over an aquifer; however, physical conditions on the land may allow for different rules depending on specific site factors. Utilizing careful approaches to land use and development benefits both local and regional water supplies. DCR works closely with local boards on land use issues, however it is solely DCR's responsibility for implementation of the Watershed Protection Act.

## **2. Land Areas Affected by the Act**



Choices made about land use and development practices affect the water quality in rivers and reservoirs, such as the Wachusett Reservoir.

The WsPA protects the quality of these drinking water sources by establishing two buffer zones around water resources. Within the most critical zone, the Primary Protection Zone, all physical alteration of the land is prohibited. Within the Secondary Protection Zone, some activities are prohibited, some activities have thresholds associated with them and other activities are not prohibited. There are, however, several categories of exemptions that

the law allows despite these restrictions. To determine if the parcel is jurisdictional under the Watershed Protection Act or whether an activity is allowed, a landowner may apply for a ruling from DCR. This process is explained in Section 4.

There are two main Areas of Jurisdiction regulated by the Watershed Protection Act:

***Primary Protection Zone***

The areas of jurisdiction that are most critical and are therefore more restrictive are referred to as the Primary Protection Zone. These resource areas include land within:

- 400 feet of the reservoirs
- 200 feet of tributaries and surface waters.

***Secondary Protection Zone***

The areas of jurisdiction that are generally less restrictive but still prohibit some activities, restrict other activities and allow other activities are referred to as the Secondary Protection Zone. These resource areas include:

- Land within 200-400 feet of tributaries and surface waters
- Flood plains
- Aquifers (low yield, medium yield and high yield aquifers)
- Bordering Vegetated Wetlands.

The tributaries, surface waters, flood plains, and aquifers are identified with information collected by MassGIS (the Geographic Information Systems office of the Commonwealth) from United States Geological Survey maps. Bordering vegetated wetlands are identified in a manner consistent with local Conservation Commission and Department of Environmental Protection (DEP) Determinations.

**3. Watershed Protection Act Applicability**

There are several questions that can be asked to determine if the WsPA is applicable to your parcel (subject to jurisdiction) and if so, would the proposed project be allowed or prohibited by these regulations.

- A. Is the *property* in a community that contains land within the DCR/MWRA watersheds?**
- B. Is the *property* within the DCR/MWRA watersheds?**
- C. Is the *property* affected by the Watershed Protection Act?**
- D. If the property is under WsPA jurisdiction, is the proposed *activity* allowed, prohibited or exempt?**

You most likely can answer the first two questions with the following information. **DCR will provide the answers to the last two questions.**

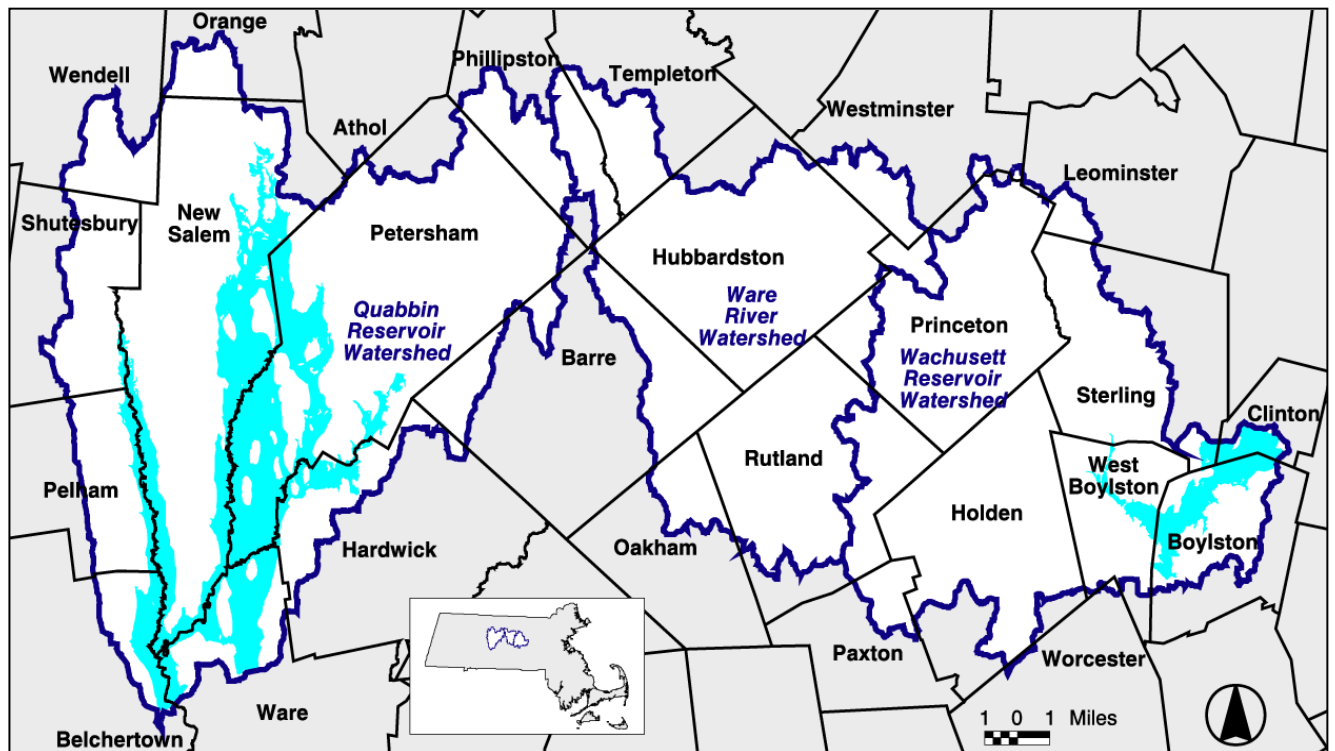
**A. Is the property in a community that contains land within the DCR/MWRA watersheds?**

Below is a list of towns that have some or all of their land within the Quabbin, Ware or Wachusett watershed. If the property is not within one of these 26 towns, it is not affected by the Watershed Protection Act and you do not need to communicate further with DCR about the WsPA.

Athol	New Salem	Shutesbury
Barre	Oakham	Sterling
Belchertown	Orange	Templeton
Boylston	Paxton	Ware
Clinton	Pelham	Wendell
Hardwick	Petersham	West Boylston
Holden	Phillipston	Westminster
Hubbardston	Princeton	Worcester
Leominster	Rutland	

**B. Is the property within the DCR/MWRA watersheds?**

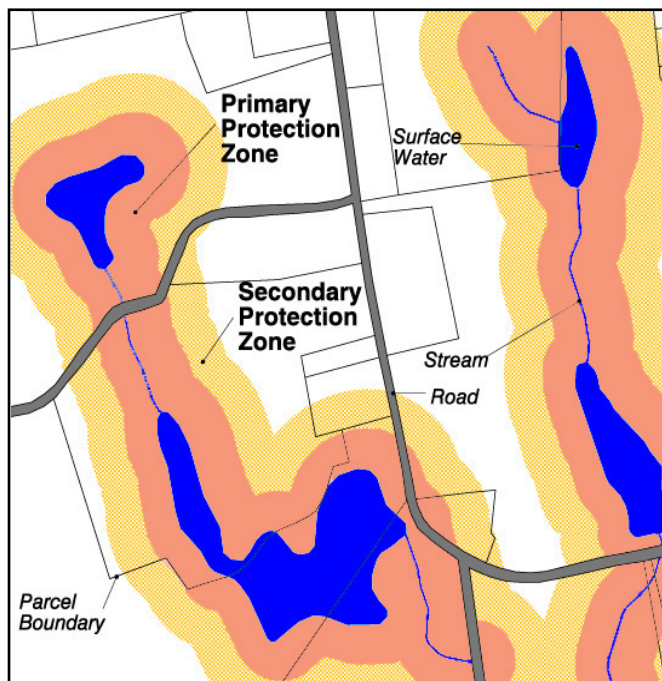
A watershed is the basin within which water flows to the source (stream, wetland, lake or pond). The three DCR water supply watersheds are shown below. It may be obvious from this map to determine that the property is not inside the DCR water supply watersheds. If not obvious, contact the appropriate DCR office (see page 11) or consult the Watershed Protection Act maps (see page 4).



The WsPA Watersheds: Quabbin Reservoir, Ware River, and Wachusett Reservoir.

***C. Is the Property located within a WsPA Area of Jurisdiction?***

**DCR will answer this question.** DCR will issue a written response to this question after you submit either a Request for Advisory Ruling or the Request for Watershed Determination of Applicability form (see page 5). As stated in Section 2, there are two protection zones established by the WsPA. These zones are based on proximity to water features and aquifers. ***DCR will assist you with determining if your property is located within an area of jurisdiction.***



A sample of a Watershed Protection Act map is shown at the left. The Primary Protection Zone, shown in orange, is the land within 400 feet of the reservoirs' shoreline and 200 feet from tributaries and surface waters. The Secondary Protection Zone, shown in yellow, is the area between 200 and 400 feet from tributaries and surface waters, on land within flood plains, over some aquifers and within bordering vegetated wetlands.

You may not even realize there is an area of jurisdiction near your property. The resource area does not have to be located on your property in order to affect your lot. The tributary, for example, may be located on your neighbors' property. Or your property may be located over an

aquifer which is not visible. Field checking may reveal that parcels not shown as affected are in fact under WsPA jurisdiction, or conversely, property that is included is actually outside the affected area.

There are copies of the WsPA maps available for review at the Town Hall in each watershed community as well as the DCR field offices. Please make sure you are looking at the map dated 2011, which displays lots that were created between 1990 and 2010. There is also an online data viewer hosted by MassGIS: [http://maps.massgis.state.ma.us/map\\_ol/dcr\\_wspa.php](http://maps.massgis.state.ma.us/map_ol/dcr_wspa.php). ***Please be aware, however, that these maps may not include some properties that would be regulated on the basis of bordering vegetated wetlands, affected public properties, and properties for which individual parcel information was ambiguous.*** It is recommended that you contact DCR if you have any questions about the applicability of the WsPA to a piece of property.

***D. If the property is under WsPA jurisdiction, is the proposed activity Allowed, Prohibited, or Exempt?***

**DCR will answer these questions.** DCR will issue a written response after you submit either a Request for Advisory Ruling or the Request for Watershed Determination of Applicability form (see page 5). All information submitted will be reviewed in conjunction with the location of the activity and its proximity to the Primary Protection Zone and Secondary Protection Zone jurisdictional areas. DCR will require information about any proposed activity, such as the location and size of the proposed structure, the use of the proposed structure, septic flows, etc.

## **Prohibitions and Exemptions in Brief**

### ***Activities prohibited within the Primary Protection Zone***

Any Alteration is prohibited in the Primary Protection Zone. Alteration is not simply construction, but is broadly defined to include: draining, dumping, discharging, excavating, filling, grading, reconstruction, paving, diversions, and changing run-off characteristics.

### ***Activities prohibited within the Secondary Protection Zone***

Several kinds of land uses are banned in the Secondary Protection Zone, including: storage, disposal or use of toxic, hazardous and other materials; alteration of bordering vegetated wetlands; and certain densities of development. Even a change in use for an existing structure may be prohibited. Other activities in the Secondary Protection Zone have thresholds. For example, the amount of impervious surface is limited to either 2,500 square feet or 10% of the jurisdictional area on the lot. For a complete list of prohibited activities and thresholds, see 313 CMR 11.04(3)(b)2.

### ***Exemptions***

There are a number of exemptions to the Act which allow prohibited activities to occur in the regulated areas. The following are some of the most commonly used exemptions.

**Existing Uses:** Uses, structures and facilities lawfully existing as of July 1, 1992.

**Changes to Structures:** Non-substantial reconstructions, extensions or changes to lawfully existing structures that do not degrade water quality (as determined by DCR).

**Home on Existing Lot:** Construction of a single-family dwelling on a lot existing as such prior to July 1, 1992 provided that, where ever, possible, no alteration occurs within the Primary Protection Zone.

**Single subdivision:** Division of an owner-occupied lot to create one additional lot for a single-family dwelling.

Other WsPA exemptions cover work performed by farmers, utilities, and other government agencies.

**Agricultural:** Maintenance or improvement of agricultural land; changes in crops; use of new technologies; conversion of land to agricultural use.

**Environmental:** Work of DCR and MWRA; clean-up, prevention and mitigation of hazardous materials releases.

**Transportation:** Maintenance, repair, replacement or reconstruction of public roads and rails provided the design is the functional equivalent of and of similar alignment to that being replaced;

**Utilities:** Maintenance, repair or expansion of public utility structures or facilities.

For a complete list of possible exemptions, see 313 CMR 11.05.

## **4. Watershed Protection Act Applications**

DCR will answer questions C and D listed in Section 3. You do not need to submit more than one application for each question; DCR will answer all questions in one decision. In order to find out the answers to the questions listed above, there are different applications that can be submitted to DCR to rule on how the Watershed Protection Act may regulate a property or a proposed activity. These applications are explained in the table below. ***It is recommended that DCR be consulted at the earliest stage of any given project to ensure that the work meets the regulations and to avoid unnecessary paperwork.***

### Watershed Protection Act Applications

Type of Application	DCR Response
<b>Request for Advisory Ruling</b> The owner submits a <i>letter</i> to DCR describing the project and its location on the lot.	<b>Advisory Ruling</b> - DCR will respond with a letter indicating whether the property is affected, if the activity is prohibited, or if an exemption applies.
<b>Request for Watershed Determination of Applicability</b> The owner submits a completed <i>Request for Watershed Determination of Applicability Form (Form 1)</i> .	<b>Applicability Decision</b> - DCR will respond with an <i>Applicability Decision</i> , a form that can be recorded by the owner at the Registry of Deeds. The Decision is an indication of whether property is affected, if activity is or is not prohibited, or if there is an exemption that applies to the proposal.
<b>Application for Variance</b> The owner submits a completed <i>Application for Variance Form (Form 3)</i> .	<b>Variance Decision</b> - DCR will respond with a <i>Variance Decision</i> , a form that DCR will record at the Registry of Deeds. This form will state whether or not physical characteristics allow the law to be varied for this project without water quality degradation or harm to the public good.
<b>Exemption of a Tributary</b> The owner submits a completed <i>Request for Exemption of a Tributary Form (Form 5)</i> .	Decision whether several factors allow a tributary or portion of a tributary to be exempted without risk of water quality degradation or harm to public good.

#### A. Request for Advisory Ruling or Request for Watershed Determination of Applicability

Applicants submit either a Request for Advisory Ruling or Request for Watershed Determination of Applicability to DCR. The DCR response will be an Advisory Ruling or Determination of Applicability.

*Advisory Rulings* are informal agency opinions authorized by the state Administrative Procedure Act (MGL Ch. 30A, §8). The *Watershed Determination of Applicability* is a formal, recordable answer from DCR on the applicability of the Watershed Protection Act to a property or a proposal.

Both a Request for Advisory ruling and a Request for Watershed Determination of Applicability require the following information be submitted to DCR:

- Approval of the owner or person meeting the definition of “having an interest in the property.”
- A copy of any plans or surveys that are available.
- Any other information that may be useful in making a ruling – DCR will inform you what is necessary.

#### B. Application for Variance

Granting of a *Variance*, as in other regulatory areas such as local zoning, means that DCR agrees that the law established by the Legislature may be varied. Under the WsPA, in particular, there is a presumption that varying the law is against the Act’s purposes. To grant a *Variance*, DCR must find that such a grant will not cause “substantial detriment to the public good and without



impairing the quality of water in the Watersheds.” It is up to the applicant to demonstrate this standard.

The sequence of events following the submittal of an Application for Variance ([Watershed Form 3](#)) is shown on the right; it is also more fully described in the WsPA Variance fact sheet printed on the back page. *Variance Decisions* will be made on a case-by-case basis, with each application considered individually. The Act establishes parameters that are to be used in making a decision. Section 5 lists the information an applicant is required to provide regarding those parameters as specified by regulation.

If you are proposing alteration within the Primary Protection Zone for something other than a single family dwelling, then the Massachusetts Environmental Policy Act (MEPA) requires that you submit an Environmental Notification Form (ENF) with the Executive Office of Energy and Environmental Affairs (EOEEA). See Section 8 for contact information. The WsPA *Variance*

application will not be deemed complete, and thus the official counting of 30 days towards holding the *Variance* hearing will not begin, until DCR receives a copy of the EOEEA Secretary’s Certificate stating that MEPA requirements have been fulfilled.

A copy of the Application for Variance must also be submitted to the Department of Environmental Protection (DEP). The cover page of the Application for Variance Form has the address for DEP.

A Variance denial may be appealed within 21 days of the issuance of a Decision. The procedures for an adjudicatory hearing are set by 801 CMR 1.00 et seq. DCR utilizes the services of the Executive Office of Administration and Finance’s Division of Administrative Law Appeals (DALA) as a neutral forum for holding an adjudicatory hearing.

### **Steps to a WsPA *Variance* Decision**

1. Owner or representative submits application ([Form 3](#)).
- 1A. If project is not a single family dwelling, owner or representative submits an Environmental Notification Form with the Executive Office of Energy and Environmental Affairs. **NOTE:** The *Variance* application will not be considered complete by DCR until a Certificate is obtained from EOEEA stating all Massachusetts Environmental Policy Act requirements are fulfilled.
2. Initial evaluation by DCR staff.
3. Request, if needed, for more information to complete application.
4. Set hearing date.
5. The WsPA *Variance* Hearing
  - Regional Director (Quabbin or Wachusett) is hearing officer.
  - Hearing officer reads notice of hearing and explains purpose.
  - Applicant presents proposed project.
  - Staff give their report and recommendation.
  - General public, opponents or supporters, may speak.
  - Close of Hearing.
6. Finding by DCR within 30 days.
7. Decision may be appealed within 21 days.

### *C. Exemptions of Tributaries*

The Watershed Protection Act contains a process to completely remove a tributary from its jurisdiction. Because the effect is to allow whole portions of a tributary and surrounding lands to be free from the Act's restrictions, an *Exemption of a Tributary* requires both a public hearing and more information than for a *Variance*. In the case of an *Exemption of a Tributary*, DEP must be consulted, and DCR and DEP must jointly determine that the exemption poses no significant risk to the quality of the water. The standard is stricter than that for a *Variance*.

Another difference between *Exemption of a Tributary* and other WsPA filings is the parties which are allowed to submit an application. A request for *Exemption of a Tributary* may be made by the following:

- The owner of an interest in real property within the area affected by the Act
- The Board of Selectmen, City Council, Mayor, Planning Board, or Conservation Commission of any city or town which would be affected by the exemption
- Any state agency or regional planning agency
- The Governor or any member of the General Court.

By statute, DCR and DEP must examine: the Tributary's rate of flow, slope and soil characteristics; the Tributary's proximity to the reservoir or the Ware River above the Ware River Intake; the existing level of water quality as of the initial filing date of the application; and the current degree of development.



The MWRA's Roger Lonergan Intake on the Ware River

Within 30 days of filing *Watershed Form 5* for *Exemption of a Tributary*, DCR must hold a public hearing, having given notice of the time and place to the applicant and published in a local newspaper. Within 30 days after the close of the public hearing, DCR must issue a written decision. If an *Exemption of a Tributary* is granted, DCR may impose conditions, safeguards and limitations on the decision. If it is denied, the written decision must contain an explanation; the decision may be appealed. See 801 CMR 1.00 *et seq.* for appeal procedures.

## **5. Technical Information for Variance and Exemption of a Tributary Applications**

### ***A. Variance Evaluations***

In order to evaluate a *Variance* request, DCR will review: 1) physical characteristics of the property; 2) existing stream water quality; and 3) the proposed activity and associated water quality impacts associated with the use. Proximity of the project to streams/wetlands indicates greater potential for substantial detriment or impairment of water quality.

#### **1) Physical Characteristics of the Property**

The Act requires that DCR examine slope, soils, and topography in deciding whether to grant a *Variance*. The proponent is required to supply data which characterize these physical characteristics for the property.

***Slope:*** The slope of the site will influence the risk factor assessed to the area. Stormwater flows and the pollution that is carried by this runoff are directly related to the slope of the area. Pollutants naturally collect on the surface of the ground during dry weather, and are then carried in the stormwater runoff during rain events. As slope increases, runoff velocity increases. The slope of the streambed is characteristic of the risk of pollution due to scour-induced streambed and bank erosion.

***Soils:*** Erodibility and permeability are soil characteristics that greatly influence the degree of the pollution threat to the water supply. High erodibility increases the potential for sedimentation; pollutants can attach to water particles and thereby enter the water system. Therefore sediment loading to water resources, during construction and after changes in land use occur, can act as a substantial detriment to water quality. Erosion potential is based on slope, soil type, and vegetative conditions. Additional factors of texture and drainage may also be considered.

Information on soils can come from deep hole observation pits or borings or the NRCS Soil Survey (<http://websoilsurvey.nrcs.usda.gov>). The location and results of deep hole observation pits or borings will verify soil characteristics, indicate the conditions to be encountered during construction, and provide data to establish the filtering capacity of the soil as indicated by depth to groundwater and refusal. Shallow depth bedrock or a seasonally high water table can cause pollutants to flow over the ground surface instead of being absorbed and treated by the soil.

***Topography:*** Topographic characteristics of ground contour and vegetative cover are necessary to establish flow paths and flow types (sheet, rill, or concentrated), and to determine the rate, volume and erosion potential from stormwater runoff.

#### **2) Existing Stream Water Quality**

The WsPA *Variance* application requires a statement of impact on water quality. If DCR cannot make a determination based on the soils, slope, and topography data submitted with the initial application form, it may require water quality data. Some of the characteristics that would be required in a water quality analysis are fecal coliform, turbidity, and phosphorous.

### **3) Proposed Activity and Associated Water Quality Impacts**

Other characteristics also may be required based on the specific use or activity for which a *Variance* is being requested. If a water quality analysis is required, the analysis must refer to the DEP Surface Water Quality Standards for Class A Surface Waters and Outstanding Resource Waters of the Commonwealth and, where applicable, the Massachusetts Ground Water Quality Standards. The analysis must show that water quality will not be impaired by the Structure, Use, and/or Activity for which the *Variance* is being requested. In deciding whether the statutory standard of no substantial detriment to the public good or impairment of water quality has been met, DCR may need to take into account other regulations, such as DEP stormwater, Title 5, and wetlands protection regulations (see Section 8 for references).

#### ***B. Exemption of a Tributary Evaluations***

Applicants for *Exemption of a Tributary* will be required to supply a range of data, including drainage area, soils, stream slope, proximity to reservoir, fecal coliform level, turbidity, phosphorus, and/or existing impervious surfaces. Water quality monitoring in the stream for which the exemption is requested is required. At a minimum, DCR will require monthly sampling for a period of a year. DCR or DEP may require water quality sampling on a schedule which is more frequent than monthly, a period of sampling which extends beyond one year, and/or analysis of additional parameters than those described above. Most of this information must be supplied both for existing conditions and for a hypothetical case of full build-out allowed by law if the exemption were granted. As with a *Variance*, the burden is on the applicant to show that the requested exemption will pose no risk to water quality.

## **6. WsPA Monitoring and Enforcement Procedures**

The Office of Watershed Management makes every attempt to allow property owners to conform to the law without enforcement action. Development in the watershed communities is monitored, however, by means of staff attendance at meetings of municipal boards and committees, review of legal advertisements and other information in local newspapers, as well as windshield surveys and field visits. Apparent WsPA violations will be identified to owners. If legal compliance does not appear to be forthcoming, further enforcement action may be taken by DCR and the Department of Environmental Protection, which has jurisdiction to enforce WsPA violations.

## **7. Resources and References**

### ***A. Further Information on the Watershed Protection Act***

#### **1) Quabbin Reservoir and Ware River Watersheds**

Contact the Quabbin Field Office if you have questions about property in: Athol, Barre, Belchertown, Hardwick, Hubbardston, New Salem, Oakham, Orange, Pelham, Petersham, Phillipston, Rutland, Shutesbury, Templeton, Ware, Wendell, and Westminster.

DCR, Division of Water Supply Protection  
Office of Watershed Management  
Attn: Environmental Planning  
485 Ware Road  
Belchertown, MA 01007

(413) 323-6921 ext 501  
[www.mass.gov/dcr/wspa](http://www.mass.gov/dcr/wspa)

#### **2) Wachusett Reservoir Watershed**

Contact the Wachusett Field Office if you have questions about property in: Boylston, Clinton, Holden, Leominster, Paxton, Princeton, Sterling, West Boylston, and Worcester

DCR, Division of Water Supply Protection  
Office of Watershed Management  
Attn: Environmental Quality  
180 Beaman Street  
West Boylston, MA 01583.

(508) 792-7806 ext 314  
[www.mass.gov/dcr/wspa](http://www.mass.gov/dcr/wspa)

### ***B. Other Watershed Resource Protection Regulations***

#### **1) Watershed Protection Rules and Regulations**

The Office of Watershed Management's general rules and regulations, 313 CMR 11.09, prohibit any type of use or development that degrades water quality.

#### **2) Massachusetts Environmental Policy Act (MEPA)**

Massachusetts Environmental Policy Act  
Executive Office of Energy and Environmental Affairs  
100 Cambridge St.  
Boston, MA 02114.

617-626-1020  
[www.mass.gov/eea/agencies/mepa/](http://www.mass.gov/eea/agencies/mepa/)

### 3) Other State and Local Laws and Regulations

Projects that receive Decisions under the WsPA are still subject to other state laws and the regulations and bylaws of local boards often affect land use development. Compliance with these laws is ultimately the responsibility of the landowner. The Watershed Protection Act is in addition to the Wetlands Protection Act – it does not replace the Wetlands Protection Act. Approval under one regulation does not mean a project is approved under any other law or regulation.

For a thorough list of state environmental laws, Refer to the Matrix of Primary Massachusetts Environmental Statutes and Regulations on Department of Environmental Protection website, [www.mass.gov/eea/agencies/massdep/service/regulations/](http://www.mass.gov/eea/agencies/massdep/service/regulations/) or contact DCR at the numbers listed above.

#### C. Legal References

- Watershed Management Regulations (313 CMR 11):  
[www.mass.gov/eea/docs/dcr/legal/3131100.pdf](http://www.mass.gov/eea/docs/dcr/legal/3131100.pdf)
- Watershed Management General Laws (MGL c. 92A½):  
[www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXIV/Chapter92A1~2](http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXIV/Chapter92A1~2)
- Watershed Protection Act (Chapter 36 of the Acts of 1992):  
<http://archives.lib.state.ma.us/actsResolves/1992/1992acts0036.pdf>
- Massachusetts Environmental Policy Act regulations (301 CMR 11.00):  
[www.mass.gov/eea/agencies/mepa/about-mepa/statute-and-regulations/mepa-regulations.html](http://www.mass.gov/eea/agencies/mepa/about-mepa/statute-and-regulations/mepa-regulations.html)
- Standard Adjudicatory Rules of Practice and Procedure:  
[www.lawlib.state.ma.us/source/mass/cmr/cmrtxt/801CMR1.pdf](http://www.lawlib.state.ma.us/source/mass/cmr/cmrtxt/801CMR1.pdf)

Official copies of state regulations may be purchased from the Secretary of State, either on-line at [www.sec.state.ma.us/spr/sprcat/contents.htm](http://www.sec.state.ma.us/spr/sprcat/contents.htm), or in person at the following locations:

State Bookstore  
Room 116  
State House  
Boston, MA 02133  
(617) 727-2834

Western Office of the  
Massachusetts Secretary of State  
436 Dwight Street  
Springfield, MA 01103  
(413) 784-1376



# Watershed Protection Act (WsPA)

## Application for Variance

### Information Sheet

### 313 CMR 11.06(3)

#### Resources

- 1) Telephone  
Wachusett: 508-792-7806 x314  
Quabbin/Ware: 413-323-6921 x501
- 2) On-line at [www.mass.gov/dcr/wspa](http://www.mass.gov/dcr/wspa)  
*WsPA Application for Variance and WsPA Guidance Document.*

#### Submittal of Application

An original, signed *Application for Variance* is submitted to DCR where an initial review for completeness will be done by DCR staff. A copy of the application also needs to be sent to the Department of Environmental Protection. Contact information for DEP is included with the form's instructions.

#### MEPA

If the proposal involves alteration within 200 feet of a tributary (the Primary Protection Zone) and is not associated with one single family dwelling, then the project requires a filing with the Executive Office of Energy and Environmental Affairs (EOEEA) under the Massachusetts Environmental Policy Act (MEPA). The filing with the DCR under the WsPA is considered incomplete until a final Certificate is issued by MEPA that allows the project to move forward. MEPA's website is [www.mass.gov/eea/agencies/mepa](http://www.mass.gov/eea/agencies/mepa).

#### Complete

The 30 day time period to hold a public hearing begins if the Application is complete when submitted to DCR.

#### Incomplete

If the Application is incomplete, a letter will be sent to the owner and/or applicant that details the information needed to complete the Application. This request for additional information does not mean that other information will not be asked for later; it only is seeking information necessary to complete the application. The 30 day time clock for holding a public hearing will begin once the requested information is received that completes the Application.

#### Request for Additional Information

As the process moves along, additional information may be requested to clarify issues, but this request does not imply or intend approval of the project.

## Hearing

DCR staff will contact the owner and/or applicant to schedule the hearing. The public hearing will be held at a mutually agreed upon date and time between the hours of 8:30 am and 3:00 pm in a DCR office at either 180 Beaman Street, West Boylston, MA (for Wachusett towns) or 485 Ware Road, Belchertown, MA (for Quabbin and Ware towns).

A legal advertisement is required to be published in one of the local newspapers where the activity is proposed. DCR staff will arrange for this publication. The legal ad must be published at least five (5) days before the public hearing and copies of the legal advertisement are sent by DCR to your local Building Inspector, Board of Health, Conservation Commission, etc. The owner and applicant listed on the Application will also receive a copy of the advertisement. A bill will be sent from DCR with instructions on payment of the legal advertisement.

During the hearing, the owner/applicant will make a presentation about the project. DCR staff will then ask questions regarding the project, its effect on water quality, and mitigation methods. If all information that is needed to make a decision has been presented, the hearing officer can close the public hearing. DCR then has 30 days from the close of the hearing to issue a Variance Decision. If additional information is needed, the applicant may request that the public hearing be continued to another date. If this occurs, DCR will send a follow up letter to the owner and/or the applicant reiterating the information that is needed that was discussed at the hearing.

## The Decision

A copy of the Decision will be mailed to the owner and applicant either approving or denying the project. If the project is approved, it will contain a list of conditions or requirements that must be followed before, during, and after construction of the project. If the project is denied, a statement of reasons will be included that details the reasons of the denial.

## Appealing the Decision

Only the owner and/or applicant can appeal a Variance Decision. Details on the appeal process are located at the back of the Decision. This appeal must be done within twenty one (21) days from the date of issuance of the Variance Decision. A Notice of Claim for an Adjudicatory Proceeding must be sent to the address located at the back of the Decision.

## Recording the Decision

The owner and/or applicant will initially only receive a copy of the Decision. DCR takes the original Decision to the appropriate District Registry of Deeds after the appeal period has expired to have it recorded on the deed. The original Decision will be mailed to the owner or representative after it has been recorded.

Department of Conservation  
Division of Water Supply Protection  
Wachusett Field Office: 180 Beaman Street, West Boylston, MA 01583  
Quabbin Field Office: 485 Ware Road, Belchertown, MA 01007