

**Record of Decision
US Fish and Wildlife Service
78 Hospital Road
(Parcel ID: 004.0-0399-0200.0)
Devens (Harvard), MA
Unified Permit
May 6, 2021**

1. Owner/Applicant:

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

2. Premises and Proposed Project:

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

3. Submission:

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

1. Unified Permit Application (#D20-108), dated November 18, 2020, submitted by SWCA Environmental Consultants, and including the following:
 - Cover Letter dated November 18, 2020 Notice of Intent;
 - Completed MA DEP WPA Form 3 – Notice of Intent;
 - USGS Map showing project location, dated 9-13-11
 - Project Narrative;
 - Appendix A: Plans and Figures: Original Approved Plan entitled: “Revised Site Layout, Grading, Drainage, and Erosion Control Plan Riverfront Access Area”, sheet SK-C4; scale 1”=10’, dated 11/13/12, revised 12/17/12; prepared by Oak Point Associates.
 - Boardwalk Plan entitled: “Oxbow National Wildlife Refuge ADA Access Ramp, Nashua River, Hospital Rd., Devens, MA; dated 7-24-20; prepared by FWM Inc.
 - Appendix B: Original Wetland Order of Conditions (DEP file 352-0052); dated October 5, 2011.
2. Determination of Completeness Issued 3/31/21;
3. Public Hearing Notice Memo to Town Clerks of Ayer, Harvard, Shirley, Lancaster and MassDevelopment, from Peter Lowitt, dated 4/5/21, Subject: Level 2 Unified Permit Application and Public Hearing for US Fish and Wildlife Service;
4. Public Hearing Legal Notice e-mail to Nashoba Publications, from Peter Lowitt, dated 4/1/21 – to be published 4/9/21 and 4/16/21;
5. Copies of Legal notices from 4/9/21 and 4/16/21 from Nashoba Valley Voice;
6. Public Hearing Notice emailed to Community Service Cable Committee, from Peter Lowitt/Kate Clisham, dated 4/5/21;
7. Memo dated December 21, 2020 from Peter Lowitt to Towns of Ayer, Harvard and Shirley Board of Selectman and Planning Board; Subject: Level 2 Unified Permit Application – US Fish & Wildlife Service, including return receipts;
8. Memo dated 4/1/21 from Peter Lowitt to Abutters and Interested Parties; Subject: Level 2 Unified Permit Application – US Fish & Wildlife Service, including return receipts;
9. Public Hearing Notice to Secretary of State, from Peter Lowitt, dated 4/5/21;

10. Devens Assessors Abutters List for 78 Barnum Road, dated 12/11/20;
11. Staff Report dated 1/25/21, To Devens Enterprise Commission, from Neil Angus; Re: USFWS Canoe Launch ADA Boardwalk Modification (3 pages);
12. E-mail correspondence as follows:

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

13. Draft Record of Decision dated 5/6/21 (5 pages);
14. MA DEP wpaform5 - Wetland Order of Conditions (16 pages);
15. Staff Report, dated 2/2/21 (1 page);
16. ADA Access Ramp Drawing with trees to be removed, dated 2/3/21.

4. Unified Permit Components and Actions:

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

5. Process:

The application was submitted on March 31, 2021 (#D20-108) and a Determination of Completeness was issued on March 31, 2021. Copies of the application were received by the surrounding Towns on April 1, 2021. Legal notices were placed in Nashoba Publications on April 9 and 16, 2021. All abutters were notified by certified mail. The 30-day Town comment period expired on April 2, 2021. No comments were received. The Public Hearing opened on April 27, 2021 and was continued to May 6, 2021 and closed at that same meeting.

6. Waivers

No waivers requested as part of this Unified Permit.

7. Findings

The DEC made the following findings:

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

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

8. Conditions:

The DEC voted to impose the following conditions:

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

are damaged, killed or removed shall be replaced in accordance with 974 CMR 3.04(8)(d)8. Additional controls shall be implemented at the discretion of the DEC or its Staff.

5. Only those red pine trees marked for removal are permitted to be removed. These trees shall not be stumped or stockpiled within any wetland or floodplain areas and shall be dispersed so as not to impede plant growth or soil porosity. No heavy machinery is permitted within the wetland areas.
6. The Wetland Order of Conditions shall be adhered to as part of this approval. Invasive plants that are removed shall be properly disposed of off-site.

9. Decision:

The public hearing closed May 6, 2021 and the DEC approved the Wetland Order of Conditions and voted to issue findings, including that the application complied with Approval Criteria in 974 CMR 3.03(2), to impose conditions, and to approve the site plan amendment for the installation of an Americans with Disabilities Act compliant boardwalk to access the Nashua River and the existing canoe launch located at 78 Hospital Road, Devens, MA, within the Oxbow National Wildlife Refuge.

10. Building Permit

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

11. Permit Duration

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

Approved by:

Date: _____

Peter C. Lowitt, FAICP, Director
Devens Enterprise Commission

Certification

Middlesex, SS

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

Date

Kathryn Clisham, Notary
My Commission expires _____