

**Record of Decision  
MASSDEVELOPMENT  
MACPHERSON WATER TREATMENT FACILITY  
44 MacPherson Road (Parcel ID#35-00-700)  
Devens (Ayer), MA  
December 3, 2020**

**1. Owner/Applicant:**

MassDevelopment Finance Agency, 99 High Street, Boston, MA 02110.

**2. Premises and Proposed Project:**

The applicant is seeking a Level 2 Unified Permit for Site Plan Approval and a Wetland Notice of Intent for the construction of a new water treatment facility for the treatment of Per- and polyfluoroalkyl substances (PFAS), along with associated grading, drainage and utilities. The project is located at 44 MacPherson Road (Parcel ID #35-00-700; Deed Reference: Bk 26317 pg. 3) in Devens (Ayer), MA 01434 within the Open Space and Recreation Zone and within a Zone 1 Water Resources Protection Overlay District and 100-year floodplain. Portions of the project are also located within 100 feet of wetlands and within a Priority Habitat Area subject to the Natural Heritage Endangered Species Program (NHESP).

**3. Submission:**

The application includes the following, which all become part of the record:

1. DEC Completed Application Form (D20-087);
2. Notice of Intent, dated October 2020: MacPherson Well Improvements, Devens; WSE Project No. 2190356; prepared by Weston and Sampson, 55 Walkers Brook Drive, Suite 100, Reading, MA 01867; (164 pages);
3. Letter from Everose Schlüter, Division of Fisheries and Wildlife, to Jim Moore, dated August 17, 2020 Re: NHESP Tracking No.: 09-26799 (2 pages);
4. Abutters List from Devens Assessor ,dated 10/8/20;
5. Public Hearing Notice to abutters and interested parties (including certified mail return receipts) dated October 19, 2020;
6. Public Hearing legal notice publication memo to Nashoba Publications, dated October 19, 2020 (publication dates October 23 and 30, 2020);
7. Public Hearing Notice to Board of Selectman and Planning Boards, Towns of Ayer, Harvard and Shirley, dated October 21, 2020, from Peter Lowitt, Director DEC.
8. Determination of Completeness, dated October 21, 2020.
9. Public Hearing Notice to Town Clerks of Ayer, Harvard, Shirley, Lancaster, MassDevelopment, dated October 27, 2020, from Peter Lowitt/Kate Clisham.
10. Community Cable Advisory Committee notice, dated October 27, 2020, to run October 27 – November 17, 2020;
11. Public Hearing Notice to the Secretary of State, dated October 27, 2020.
12. NOI Signature Page (signed 10/20/20 and 10/8/20);
13. MacPherson Well Determination of Completeness Response With Plans – Letter dated November 4, 2020 from Blake Martin to Neil Angus (42 pages);
14. Design review Letter from MassDevelopment to Peter Lowitt, dated November 9,

- 2020 (MacPherson Well PFAS Treatment Facility Design Review) (1 page);
15. Retaining wall example drawing (11/11/20);
  16. DEC Staff Report, dated 11/12/20 (3 Pages);
  17. Wetland order of Conditions Form 5 (draft);
  18. Draft Record of Decision – MacPherson Well, dated 12/3/20 (6 pages);
  19. Email correspondence as follows:

Date	From	To	Subject
10/19/20	Devin Batchelder	Neil Angus	MacPherson Well NOI Submission
10/19/20	Blake Martin	Neil Angus	FW: Attached Image
10/30/20	Peter Lowitt	Jim Moore	Re: MacPherson PFAS WTP Level II Permit Fee
11/4/20	Devin Batchelder	Neil Angus	MacPherson Well DEC Determination of Completeness Response Submission
11/9/20	Ed Starzec	Neil Angus	Design Review Sign-Off for MacPherson Well PFAS Treatment Facility
11/16/20	Paige Simmons	Neil Angus	RE: MacPherson Well
11/17/20	MA DEP	Jim Moore	MassDEP NOI File Number
11/12/20	Linh Phu	Neil Angus	Re EXTERNAL MacPherson Well SUP approval #53512-20-04
8/17/20	Linh Phu	Jim Moore	Re EXTERNAL Natural Heritage Letter
12/2/20	Blake Martin	Neil Angus	RE: Patton Well Startup RDA
12/2/20	Kyle Hay	Neil Angus	RE: MacPherson Well Plan Set

20. Staff Report dated 12-1-20 Re: MacPherson Well Permanent Water Treatment Upgrades – Continued Public Hearing, prepared by Neil Angus (2 pgs);
21. Mullin rule affidavit from Melissa Fetterhoff, dated 11-25-20;
22. Revised Site Plans entitled: MacPherson Well PFAS treatment Project, 44 MacPherson Road, Devens, Massachusetts”; dated October 7, 2020, revised December 2, 2020.; (10 Sheets); prepared by Weston and Sampson, 55 Walkers Brook Drive, Suite 100, Reading, MA 01867.

**4. Unified Permit Components and Actions:**

The Unified Permit for this project includes Site Plan Approval and a issuance of a Wetland Order of Conditions for the construction of a new water treatment facility for the treatment of PFAS, along with associated grading, drainage and utilities. The project also includes NHESP approval and conditional authorization from USFWS for temporary activity on their adjacent parcel.

**5. Process:**

Weston and Sampson, on behalf of MassDevelopment Utilities Department, submitted a Level II Unified Permit application package, including the application, Wetland Notice of Intent, and site plans on October 19, 2020 and the Determination of Completeness was issued on October 21, 2020. Copies of the application were received by the surrounding Towns on October 22, 2020. Legal notices were placed in Nashoba Publications on October 23 and 30, 2020. All abutting property owners were duly notified by certified mail. The 30-day Town comment period expired on November 21, 2020. No comments were received. The public hearing opened on November 17, 2020 and was continued to December 3, 2020. The Commission closed the public hearing on and voted on the Permit at its December 3, 2020 regular meeting.

**6. Waivers:**

This Applicant requested the following waivers as part of this application:

*974 CMR 3.04(1)(a) 25ft Rear Yard Setback and 10ft Side Yard Setback.*

A 20ft waiver from rear yard setback and a 0.5ft waiver from the side yard setback are requested to minimize disturbance in these sensitive resource areas and avoid additional tree clearing and floodplain impacts by locating the new filter building adjacent to the existing building and only 5ft from the rear property boundary and 9.5ft from the side property boundary.

*974 CMR 3.04(3)(a)(1)(h) There shall be bicycle storage facilities provided on-site for all developments.*

This proposed project is an extension of an existing facility that is not open to the public, and will not require full time on site staff. The facility will only be accessed by emergency and maintenance crews who require maintenance vehicles to service the facility.

The Commission voted unanimously to grant both requested waivers.

**7. Findings:**

The DEC finds that:

1. The proposed use is a permitted municipal use in the Open Space and Recreation Zoning District as per Exhibit D of the Devens Bylaws.
2. The project is located within a Zone I Water Resources Protection District. The final plans, with the conditions listed herein, comply with the Stormwater Management Provisions and Water Resource Protection District Regulations in 974 CMR 4.08 to protect the ground and surface water resources through the implementation of best management practices during construction as well as long-term.
3. Site lighting for the facility, with conditions, has been minimized and the proposed municipal use requires intermittent illumination between 11 p.m. and 7 a.m for public safety, operations, and maintenance.
4. 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 access is designed to provide for safe vehicular and pedestrian travel.
  - (e) Access and circulation enables prompt fire, police, and emergency response.
  - (f) Adequate capture and discharge of stormwater and surface water runoff and compliance with applicable portions of the "Devens Stormwater Pollution Prevention Plan" has been achieved.
  - (g) Connections with Devens utility, power and communication systems exist and new connections will be approved by MassDevelopment.

- (h) Facilities required under the Water Resources Protection Bylaw and the related Design Standards have been included.
- (i) The plans comply with Landscaping Design Standards through the preservation of existing specimen trees and wooded areas to the maximum extent feasible.
- (j) A Wetland Order of Conditions has been issued by the DEC.
- (k) Industrial Performance Standards will be adhered to as per the final plans.
- (l) The proposed use provides sufficient parking for the intended use;
- (m) The project will not interfere with existing traffic patterns.
- (n) The project will not generate any additional vehicular traffic.
- (o) Adequate water supply exists in terms of quantity, quality, and water pressure for domestic needs and fire protection.
- (p) The project is already connected to sanitary sewer.
- (q) The building design meets the minimum standards as established by Mass Development for the district in which the lot is located.
- (r) Soil testing indicates that the soils are capable of supporting the proposed development;
- (s) The development has been designed with due consideration for public health;
- (t) Adequate climate change mitigation, adaptation and greenhouse gas emission mitigation measures have been incorporated in accordance with 974 CMR 4.11.

**8. Conditions:**

The DEC voted to impose the following conditions:

- 1) The MA DEP File #352-0045 Wetland Order of Conditions, Massachusetts Division of Fisheries & Wildlife Approval (NHESP Tracking No. 09-26799), and USFWS SUP approval #53512-20-04 shall be adhered to and become part of this approval. All other applicable federal, state, and local permits necessary for construction must be obtained prior to the start of construction. Copies of permits issued by those other than the DEC must be filed with the DEC. Should any of these approvals require significant plan changes, the Applicant will be required to amend this unified permit.
- 2) The Applicant shall notify the DEC in writing seven or more days prior to the completion of the following construction milestones:
  - a. completion of the site grading and site work;
  - b. completion of all site improvements as shown on the approved site plan;
  - c. final site stabilization.
- 3) 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.
- 4) 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.

- 5) Once the appeal period has expired, the Applicant shall submit final approved plans to the DEC for endorsement. The Applicant shall file the endorsed plans and the final Record of Decision with the Registry of Deeds and proof of recordation shall be submitted to the DEC prior to commencement of construction.
- 6) Prior to commencement of construction, limits of disturbance shall be flagged in the field and all necessary erosion controls and wildlife barriers/gates shall be installed and inspected by DEC Staff.
- 7) The Applicant shall provide a copy of their updated Facility Operations and Maintenance Plan to the DEC prior to issuance of a Certificate of Occupancy for the building. This plan should include monitoring and maintenance of all new and existing equipment, as well as the prohibition of parking and storage of materials on porous pavement areas.
- 8) Prior to DEC endorsement, the following revisions shall be made to the plans:
  - i. Note regarding prohibition of parking and storage of materials on porous pavement areas.
  - ii. Conformance with Registry of Deeds filing requirements.
  - iii. Existing vs proposed conditions table (including required and proposed setbacks) on C-102.
  - iv. Wedge-2 LED light fixture color temperature specified to be 3000K and have photocell and motion sensor capabilities to reduce potential light pollution.
  - v. The name of the professional Wetland Scientist who completed the wetland delineation data forms.

**9. Decision:**

The Public Hearing closed on December 3, 2020 and the DEC voted on December 3, 2020, to issue findings, including that the application complied with Approval Criteria in 974 CMR 3.03(2), to impose conditions, and to approve the Application Request to construct a new PFAS water treatment facility, and associated drainage and utilities within 100 feet of wetlands at 44 MacPherson Road, Devens MA.

**10. Building Permit:**

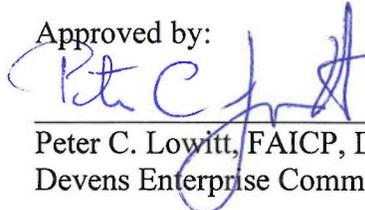
The Building Commissioner, along with the Electrical and Plumbing Inspectors, must review architectural/structural drawings and specifications and approve them in writing, prior to issuance of a building permit. All requirements in the Massachusetts Building Code, the Massachusetts Sanitary Code, and the Devens Fire Chief must be met. When this approval is obtained, the building permit may then be integrated with this Record of Decision; together they will constitute the Unified Permit for the MacPherson PFAS Water Treatment Facility, 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 or the LUA produces a written decision and approved activities are completed within two years. It is further noted that there is 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 December 4, 2020 and terminates January 4, 2021, is "at risk".

Date: 12-10-2020

Approved by:



Peter C. Lowitt, FAICP, Director  
Devens Enterprise Commission

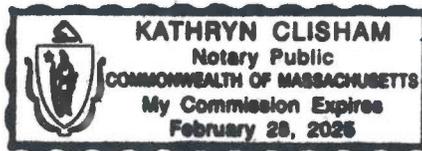
**Certification**

**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.

12/10/2020  
Date

  
Kathryn Clisham, Notary  
My Commission expires 2/28/2025





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:  
352-0045  
MassDEP File #  
eDEP Transaction #  
Devens  
City/Town

## A. General Information

**Please note:**  
this form has  
been modified  
with added  
space to  
accommodate  
the Registry  
of Deeds  
Requirements

**Important:**  
When filling  
out forms on  
the  
computer,  
use only the  
tab key to  
move your  
cursor - do  
not use the  
return key.



1. From: Devens Enterprise Commission  
Conservation Commission
2. This issuance is for (check one):  
a.  Order of Conditions      b.  Amended Order of Conditions
3. To: Applicant:  
Jim      Moore  
a. First Name      b. Last Name  
MassDevelopment  
c. Organization  
33 Andrews Parkway  
d. Mailing Address  
Devens      MA      01434  
e. City/Town      f. State      g. Zip Code
4. Property Owner (if different from applicant):  
Jessica      Strunkin  
a. First Name      b. Last Name  
Massachusetts Development Finance Agency  
c. Organization  
99 High Street  
d. Mailing Address  
Boston      MA      02110  
e. City/Town      f. State      g. Zip Code
5. Project Location:  
44 MacPherson Road      Devens  
a. Street Address      b. City/Town  
35-00      700  
c. Assessors Map/Plat Number      d. Parcel/Lot Number  
Latitude and Longitude, if known:      42d33m27.59s      71d36m39.84s  
d. Latitude      e. Longitude



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## A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):  
Middlesex
- |           |  |
|-----------|--|
| a. County | b. Certificate Number (if registered land) |
| 26317     | 003  |
| c. Book   | d. Page                                    |
7. Dates:      10/19/20      12/3/20      12/3/20  
                   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):  
MacPherson Well PFAS Treatment Project
- |   |                |                          |
|---|----------------|--------------------------|
| a. Plan Title   | b. Prepared By | c. Signed and Stamped by |
| Weston and Sampson                                      | 12-1-20        | James Pearson, PE        |
| d. Final Revision Date                                  | e. Scale       |                          |
| Notice of Intent - MacPherson Well Improvements, Devens | 1"=10'         |                          |
| f. Additional Plan or Document Title                    | October 2020   |                          |
|   | 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. <input checked="" type="checkbox"/> Public Water Supply | b. <input type="checkbox"/> Land Containing Shellfish          | c. <input checked="" type="checkbox"/> Prevention of Pollution        |
| d. <input type="checkbox"/> Private Water Supply           | e. <input type="checkbox"/> Fisheries                          | f. <input checked="" type="checkbox"/> Protection of Wildlife Habitat |
| g. <input checked="" type="checkbox"/> Groundwater Supply  | h. <input checked="" type="checkbox"/> Storm Damage Prevention | i. <input checked="" type="checkbox"/> 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.



Massachusetts Department of Environmental Protection  
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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) 120  
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 checked="" type="checkbox"/> Bordering Land Subject to Flooding	<u>7,937</u>	<u>7,937</u>	<u>8,024</u>	<u>8,024</u>
	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	<u>23</u>	<u>23</u>	<u>36.8</u>	<u>36.8</u>
	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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**B. Findings (cont.)**

**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 (not an amended order) 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            352-0045 "
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.



Massachusetts Department of Environmental Protection  
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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):

**Special Condition #1. This order is also subject to the conditions of approval listed in the December 3, 2020 Devens Enterprise Commission Record of Decision for the MacPherson Well PFAS Water Treatment Facility (copy attached).**

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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### 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.

12/10/20

1. Date of Issuance

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

8

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

2. Number of Signers

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.

*Peter C. Lowitt*

Signature

Peter C. Lowitt

Printed Name

Signature

Printed Name

by hand delivery on

by certified mail, return receipt requested, on

12-10-20

Date

Date



Massachusetts Department of Environmental Protection  
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## 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: \_\_\_\_\_

Provided by DEP \_\_\_\_\_

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

**A. Request Information**

1. Location of Project

_____	_____
a. Street Address	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:

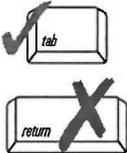
\_\_\_\_\_

**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

**Important:**  
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.





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

DEP File Number:

\_\_\_\_\_  
Provided by DEP

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

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**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.

Devens Enterprise Commission, by  
s/ 

**Peter C. Lowitt**

**Land Use Administrator/Director  
Pursuant to Certificate of Authority  
Recorded in  
Middlesex South Registry of Deeds  
Book 76756, Page 448**