

**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 \_\_\_\_\_ to grant \_\_\_\_\_ 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. Gutters shall be removed from building and replaced with a stone drip edge around building (except over porous pavement areas).
  - ii. Plans showing revised limits of clearing and grading.
  - iii. Conformance with Registry of Deeds filing requirements.
  - iv. Existing vs proposed conditions table (including required and proposed setbacks) on C-102.
  - v. Wedge-2 LED light fixture color temperature specified to be 3000K and have photocell and motion sensor capabilities to reduce potential light pollution.
  - vi. 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”.

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 \_\_\_\_\_