

Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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APR 04 2022

TOWN OF HINGHAM
CONSERVATION

MAR 30 2022

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

James and Holly Rader
c/o Donald F. Bracken, Jr., P.E.
Bracken Engineering, Inc.
49 Herring Pond Road
Buzzards Bay, MA 02532

RE: Hingham - Wetlands
Superseding Determination of
Applicability
208 Downer Avenue - Hingham

Dear Mr. Bracken:

Following an on-site inspection and in-depth review of information submitted with the above-referenced file, and in accordance with Massachusetts General Laws, Chapter 131, Section 40, the Department of Environmental Protection (Department) is issuing the enclosed Superseding Determination of Applicability. This decision affirms the Town of Hingham's Negative Determination.

The Request for Determination of Applicability asks whether the work depicted on the applicant's plans is subject to the Wetlands Protection Act.

Portions of the project site include the buffer zone to Coastal Bank, and land subject to coastal storm flowage (Zone VE, Elevation 13) as mapped on the most recent Federal Emergency Management Agency, Flood Insurance Rate Map dated July 17, 2012.

The original plan submitted by Cavanaro Consulting labeled "Site Plan 208 Downer Avenue Hingham, MA 02043" dated 8/11/21 correctly identifies a portion of the coastal banks in the vicinity of the project site. However, the plans failed to delineate a coastal bank 15 feet seaward of the proposed boat barn location. The plan submitted by Bracken Engineering labeled "#208 Downer Avenue" dated 11/8/21 correctly applied DWW Policy 92-1 to delineate the coastal bank. The coastal bank in question has a slope >10:1 and <4:1 and the top of bank is demarcated by the end of the FEMA flood zone (Zone VE, elevation 13).

The proposed project is in a jurisdictional buffer zone to a coastal bank. However, the work as proposed will not alter the resource area. Therefore, the Department has determined that the proposed work would not be an activity subject to regulation under the Wetlands Protection Act.

In the opinion of the Department, the reasons given here are sufficient to justify this Superseding Determination of Applicability. However, the Department reserves the right, should there be further proceedings in this matter, to raise additional issues and present further evidence as may be appropriate.

If you have any questions concerning this Determination, please do not hesitate to contact Nate Corcoran at (508) 946-2723, or by e-mail at Nate.Corcoran@mass.gov.

Very truly yours,



Daniel F. Gilmore, Chief
Wetlands and Waterways Program
Bureau of Water Resources

DFG/gjd

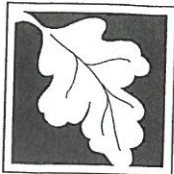
Enclosure

cc: Hingham Conservation Commission

Hingham Yacht Club, Inc
c/o John Cavanaro
Cavanaro Consulting
687 Main Street, PO Box 5175
Norwell, MA 02061
Certified Mail #7017 1450 0000 0281 4244

ecc: Jacob Braley, Hingham Yacht Club (via electronic mail)

James and Holly Rader (via electronic mail)



Massachusetts Department of Environmental Protection
Bureau of Water Resources - Wetlands
WPA Form 2 – Superseding Determination of Applicability
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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TOWN OF HINGHAM
CONSERVATION

A. General Information

From:

Massachusetts Department of Environmental Protection
Issuing Authority

To: Applicant

Property Owner (if different from applicant):

Hingham Yacht Club, Inc.

Name

Name

P.O. Box 165

Mailing Address

Mailing Address

Hingham

MA

02043

City/Town

State

Zip Code

City/Town

State

Zip Code

1. Title and Date (or Revised Date if applicable) of Final Plans and Other Documents:

Site Plan 208 Downer Avenue Hingham MA 02043 (Plan 1)

Title

8/11/21

Date

John C. Cavanaro PE (Plan 1)

Prepared by

Coastal Bank Exhibit in Hingham MA for 208 Downer Avenue (Plan 2)

Title

11/8/21

Date

Bracken Engineering Inc. (Plan 2) (Not signed or stamped)

Prepared by

2. Date Request Filed:

1/5/22

B. Determination

Pursuant to the authority of M.G.L. c. 131, § 40, the Department considered your Request for Determination of Applicability, with its supporting documentation, and made the following Determination.

Project Description (if applicable):

Demolition of existing barn. (Jurisdictional)

Construction of new barn. (Jurisdictional)

Project Location:

208 Downer Avenue

Street Address

Hingham

City/Town

11

Assessors Map/Plat Number

12

Parcel/Lot Number

Findings Under Municipal Wetlands Bylaw or Ordinance

To the extent that the Determination of Applicability is based on a municipal bylaw or ordinance, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no jurisdiction to supersede the local by-law determination.



Massachusetts Department of Environmental Protection

Bureau of Water Resources - Wetlands

WPA Form 2 – Superseding Determination of Applicability

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

B. Determination (cont.)

The following Determination(s) is/are applicable to the proposed site and/or project relative to the Wetlands Protection Act and regulations:

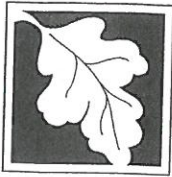
Positive Determination

Note: No work within the jurisdiction of the Wetlands Protection Act may proceed until a final Order of Conditions (issued following submittal of a Notice of Intent or Abbreviated Notice of Intent) has been received from the issuing authority (i.e., Conservation Commission or the Department of Environmental Protection).

- ☐ 1. The area described on the referenced plan(s) is an area subject to protection under the Act. Removing, filling, dredging, or altering of the area requires the filing of a Notice of Intent.
- ☒ 2a. The boundary delineations of the following resource areas described on the below referenced plan(s) are confirmed as accurate. Therefore, the resource area boundaries confirmed in this Determination are binding as to all decisions rendered pursuant to the Wetlands Protection Act and its regulations regarding such boundaries for as long as this Determination is valid.

Coastal Bank Exhibit in Hingham MA for 208 Downer Avenue by Bracken Engineering Inc.

- ☐ 2b. The boundaries of resource areas listed below are not confirmed by this Determination, regardless of whether such boundaries are contained on the plans attached to this Determination or to the Request for Determination.
- ☐ 3. The work described on referenced plan(s) and document(s) is within an area subject to protection under the Act and will remove, fill, dredge, or alter that area. Therefore, said work requires the filing of a Notice of Intent.
- ☐ 4. The work described on referenced plan(s) and document(s) is within the Buffer Zone and will alter an Area subject to protection under the Act. Therefore, said work requires the filing of a Notice of Intent.
- ☐ 5. If a Notice of Intent is filed for the work in the Riverfront Area described on referenced plan(s) and document(s), which includes all or part of the work described in the Request, the applicant must consider the following alternatives. (Refer to the wetland regulations at 10.58(4)c. for more information about the scope of alternatives requirements):
- ☐ Alternatives limited to the lot on which the project is located.
 - ☐ Alternatives limited to the lot on which the project is located, the subdivided lots, and any adjacent lots formerly or presently owned by the same owner.
 - ☐ Alternatives limited to the original parcel on which the project is located, the subdivided parcels, any adjacent parcels, and any other land which can reasonably be obtained within the municipality.
 - ☐ Alternatives extend to any sites which can reasonably be obtained within the appropriate region of the state.



Massachusetts Department of Environmental Protection
Bureau of Water Resources - Wetlands
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B. Determination (cont.)

Negative Determination

Note: No further action under the Wetlands Protection Act is required by the applicant. Work may proceed at the owner's risk even if a request for an adjudicatory hearing has been made. Requirements for requests for adjudicatory hearings are listed at the end of this document.

- ☐ 1. The area described in the Request is not an area subject to protection under the Act or the Buffer Zone.
- ☐ 2. The work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, said work does not require the filing of a Notice of Intent.
- ☒ 3. The work described in the Request is within the Buffer Zone, as defined in the regulations, but will not alter an Area subject to protection under the Act. Therefore, said work does not require the filing of a Notice of Intent, subject to the following conditions (if any).

- ☐ 4. The work described in the Request is not within an Area subject to protection under the Act (including the Buffer Zone). Therefore, said work does not require the filing of a Notice of Intent, unless and until said work alters an Area subject to protection under the Act.
- ☐ 5. The area described in the Request is subject to protection under the Act. Since the work described therein meets the requirements for the following exemption, as specified in the Act and the regulations, no Notice of Intent is required:

Exempt Activity (cite applicable statutory/regulatory provisions)

C. Authorization

This Determination is issued to the applicant and delivered as follows:

- ☒ by certified mail

Date

CERTIFIED MAIL # 7017 1450 0000 0281 4244

This Determination is valid for **three years** from the date of issuance (except Determinations for Vegetation Management Plans which are valid for the duration of the Plan). This Determination does not relieve the applicant from complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.

Signature:

Daniel F. Gilmore, Chief, Wetlands & Waterways Program, Bureau of Water Resources

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Bureau of Water Resources - Wetlands

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D. Appeals

The applicant, the landowner, any person aggrieved by the Superseding Order, Determination or other Reviewable Decision as defined at 310 CMR 10.04, who previously participated in the proceedings leading to this Reviewable Decision, the conservation commission, or any ten (10) residents of the city or town where the land is located if at least one resident was previously a participant in the permit proceeding, are hereby notified of their right to appeal this Reviewable Decision pursuant to M.G.L. c.30A, § 10, provided the request is made by certified mail or hand delivery to the Department, along with the appropriate filing fee and a MassDEP Fee Transmittal Form within ten (10) business days of the date of issuance of this Superseding Order or Determination, and addressed to:

Case Administrator
Office of Appeals and Dispute Resolution
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the request (hereinafter also referred to as Appeal Notice) shall at the same time be sent by certified mail or hand delivery to the Conservation Commission, the applicant, the person that requested the Superseding Order or Determination, and the issuing office of the MassDEP at:

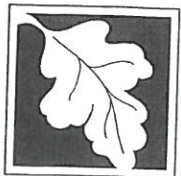
MassDEP
20 Riverside Drive
Lakeville, MA 02347

In the event that a ten resident group requested the Superseding Order or Determination, the Appeal Notice shall be served on the designated representative of the ten-resident group, whose name and contact information is included in this Reviewable Decision (when relevant).

Contents of Appeal Notice

An Appeal Notice shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6) and 310 CMR 10.05(7)(j), and shall contain the following information:

- (a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;
- (b) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative;
- (c) if a ten residents group, the same information for the group's designated representative; if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;
- (d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceeding that led to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;
- (e) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;
- (f) a clear and concise statement of the alleged errors contained in the Department's decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c.131, § 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision, and the relief sought, including any specific desired changes to the Department's decision;



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Bureau of Water Resources - Wetlands

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- (g) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;
- (h) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and
- (i) if asserting a matter that is Major and Complex, as defined at 310 CMR 10.04(1), a statement requesting that the Presiding Officer make a designation of Major and Complex, with specific reasons supporting the request.

Filing Fee and Address

A copy of the Appeal Notice along with a MassDEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

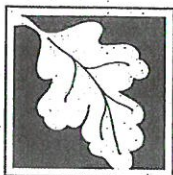
Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

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

DEP File Number: **4**

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

Email Address

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

Email Address

4. DEP File Number:

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



B. Instructions

1. When the Departmental action request is for (check one):

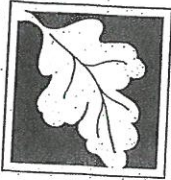
☐ Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)

☐ Superseding Determination of Applicability – Fee: \$120

☐ Superseding Order of Resource Area Delineation – Fee: \$120

Send this form and check or money order, payable to the *Commonwealth of Massachusetts*, to:

Department of Environmental Protection
Box 4062
Boston, MA 02211



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

**Request for Departmental Action Fee
Transmittal Form**

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

DEP File Number: **4**

Provided by DEP

B. Instructions (cont.)

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.

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**TOWN OF HINGHAM
CONSERVATION**



Massachusetts Department of Environmental Protection
One Winter Street, Boston MA 02108 • Phone: 617-292-5751

Communication For Non-English Speaking Parties - 310 CMR 1.03(5)(a)



1 English:

This document is important and should be translated immediately. If you need this document translated, please contact MassDEP's Diversity Director at the telephone numbers listed below.



2 Español (Spanish):

Este documento es importante y debe ser traducido inmediatamente. Si necesita este documento traducido, por favor póngase en contacto con el Director de Diversidad MassDEP a los números de teléfono que aparecen más abajo.



3 Português (Portuguese):

Este documento é importante e deve ser traduzida imediatamente. Se você precisa deste documento traduzido, por favor, entre em contato com Diretor de Diversidade da MassDEP para os números de telefone listados abaixo.



4(a) 中國 (傳統) (Chinese (Traditional)):

本文件非常重要，應立即翻譯。如果您需要翻譯這份文件，請用下面列出的電話號碼與MassDEP的多樣性總監聯繫。



4(b) 中国 (简体中文) (Chinese (Simplified)):

本文件非常重要，應立即翻譯。如果您需要翻譯這份文件，請用下面列出的電話號碼與MassDEP的多樣性總監聯繫。



5 Ayisyen (franse kreyòl) (Haitian) (French Creole):

Dokiman sa-a se yon bagay enpòtan epi yo ta dwe tradui imedyatman. Si ou bezwen dokiman sa a tradui, tanpri kontakte Divèsite Direktè MassDEP a nan nimewo telefòn ki nan lis pi ba a.



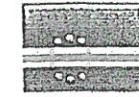
6 Việt (Vietnamese):

Tài liệu này là rất quan trọng và cần được dịch ngay lập tức. Nếu bạn cần dịch tài liệu này, xin vui lòng liên hệ với Giám đốc MassDEP đa dạng tại các số điện thoại được liệt kê dưới đây.



7 ប្រទេសកម្ពុជា (Kmer (Cambodian)):

ឯកសារនេះគឺមានសារៈសំខាន់និងគួរត្រូវបានបកប្រែភ្លាមៗ ប្រសិនបើអ្នកត្រូវបានបកប្រែឯកសារនេះសូមទំនាក់ទំនងឆ្នោតជាមួយក MassDEP នៅលេខទូរស័ព្ទដែលបានរាយនាងក្រោម។



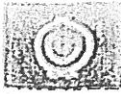
8 Kriolu Kabuverdianu (Cape Verdean):

Es documento é importante e deve ser traduzido imidiatamente. Se bo precisa des documento traduzido, por favor contacta Diretor de Diversidade na MassDEP's pa es numero indicode li d'boche.



9 Русский язык (Russian):

Этот документ должен быть немедленно. Если вам нужна помощь при переводе, свяжитесь пожалуйста с директором по этике и разнообразие в MassDEP по телефону указанному ниже.

**10 العربية (Arabic):**

هذه الوثيقة الهامة وينبغي أن تترجم على الفور. إذا كنت بحاجة إلى هذه الوثيقة المترجمة، يرجى الاتصال مدير التنوع في MassDEP على أرقام الهواتف المدرجة أدناه.

**11 한국어 (Korean):**

이 문서는 중요하고 즉시 번역해야 합니다. 당신이 번역이 문서가 필요하다면 아래의 전화 번호로 MassDEP의 다양성 감독에 문의하시기 바랍니다.

**12 հայերեն (Armenian):**

Այս փաստաթուղթը շատ կարևոր է եւ պետք է թարգմանել անմիջապես. Եթե Ձեզ անհրաժեշտ է այս փաստաթուղթը թարգմանվել դիմել MassDEP բազմազանությունը տնօրեն է հեռախոսահամարների թվարկված են ստորև.

**13 فارسی (Farsi [Persian]):**

این سند مهم است و باید فوراً ترجمه شده است.

اگر شما نیاز به این سند ترجمه شده، لطفاً با ما تماس تنوع مدیر MassDEP در شماره تلفن های ذکر شده در زیر.

**14 Français (French):**

Ce document est important et devrait être traduit immédiatement. Si vous avez besoin de ce document traduit, s'il vous plaît communiquer avec le directeur de la diversité MassDEP aux numéros de téléphone indiqués ci-dessous.

**15 Deutsch (German):**

Dieses Dokument ist wichtig und sollte sofort übersetzt werden. Wenn Sie dieses Dokument übersetzt benötigen, wenden Sie sich bitte Diversity Director MassDEP die in den unten aufgeführten Telefonnummern.

**16 Ελληνική (Greek):**

Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως. Αν χρειάζεστε αυτό το έγγραφο μεταφράζεται, παρακαλούμε επικοινωνήστε Diversity Director MassDEP κατά τους αριθμούς τηλεφώνου που αναγράφεται πιο κάτω.

**17 Italiano (Italian):**

Questo documento è importante e dovrebbe essere tradotto immediatamente. Se avete bisogno di questo documento tradotto, si prega di contattare la diversità Direttore di MassDEP ai numeri di telefono elencati di seguito.

**18 Język Polski (Polish):**

Dokument ten jest ważny i powinien być natychmiast przetłumaczony. Jeśli potrzebujesz tego dokumentu tłumaczone, prosimy o kontakt z Dyrektorem MassDEP w różnorodności na numery telefonów wymienionych poniżej.

**19 हिन्दी (Hindi):**

यह दस्तावेज़ महत्वपूर्ण है और तुरंत अनुवाद किया जाना चाहिए. आप अनुवाद इस दस्तावेज़ की जरूरत है, नीचे सूचीबद्ध फोन नंबरों पर MassDEP की विविधता निदेशक से संपर्क करें.

