

**From:** Adrienne Dunk  
**To:** [Grover, Mary \(DEP\)](#); [Nstevens@mcgregorlaw.com](mailto:Nstevens@mcgregorlaw.com); [Chief Paciorek](#); [JMartin@pullcom.com](mailto:JMartin@pullcom.com); [Daniel Nitzsche](#); [Jay Talerman](#); [lisa@mtclawyers.com](mailto:lisa@mtclawyers.com); [Building Assistant](#)  
**Cc:** [Foulis, David \(DEP\)](#); [Parent, Heather \(DEP\)](#); [Harrington, Brian D \(DEP\)](#)  
**Subject:** RE: MassDEP Wetlands File No. 142-0226 Request for Information #3 – Possible Water Quality Certification Jurisdiction  
**Date:** Friday, October 14, 2022 2:18:55 PM  
**Attachments:** [image001.png](#)  
[A-10 Upland.pdf](#)  
[A-10 Wetland.pdf](#)  
[NAF-2022-01444-20220614-SV.pdf](#)  
[Upland 2 Soils.pdf](#)  
[Upland 1 Soils.pdf](#)

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Good Afternoon,

Please find our response to this request for information in [blue text](#) below each of your requests below. Please also find attached:

- A pair of wetland determination data forms near flag A-10;
- The Self-Verification Notification Form with the US Army Corp file number; and
- Two additional upland soil characterizations which were performed near the wetland boundary.

Thank you,

Adrienne

**Adrienne Dunk**  
**Project Manager**

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**From:** Grover, Mary (DEP) <mary.grover@state.ma.us>  
**Sent:** Tuesday, September 13, 2022 2:03 PM  
**To:** [Nstevens@mcgregorlaw.com](mailto:Nstevens@mcgregorlaw.com); [Paciorek, Jr., John <jpaciorek@police.deerfield.ma.us>](mailto:Paciorek, Jr., John <jpaciorek@police.deerfield.ma.us>); [JMartin@pullcom.com](mailto:JMartin@pullcom.com); [Adrienne Dunk <Adrienne.Dunk@gza.com>](mailto:Adrienne.Dunk@gza.com); [Daniel Nitzsche <daniel.nitzsche@gza.com>](mailto:Daniel.Nitzsche@daniel.nitzsche@gza.com); [Jay Talerman <jay@mtclawyers.com>](mailto:Jay.Talerman@mtclawyers.com); [lisa@mtclawyers.com](mailto:lisa@mtclawyers.com); [bldgasst@town.deerfield.ma.us](mailto:bldgasst@town.deerfield.ma.us)  
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**Subject:** [EXTERNAL] MassDEP Wetlands File No. 142-0226 Request for Information #3 – Possible Water Quality Certification Jurisdiction

**Please acknowledge receipt of this correspondence by return email.**

Dear Recipients:

Within the Notice of Intent filed under MassDEP Wetlands File Number 142-0226, the Applicant indicated that there are Waters of the United States located within the subject parcel, which are not subject to the Massachusetts Wetlands Protection Act. MassDEP is requesting the following information regarding the establishment of jurisdiction under 314 CMR 9. MassDEP has determined that the Boundary (as referenced at 314 CMR 9.02) shown on a set of site plans submitted for its review has not been adequately documented or justified per 314 CMR 9.02. Therefore, please provide the following additional information.

1. Please clarify if the Applicant has filed with the US Army Corps of Engineers under Section 404 of the Clean Water Act, either under the *General Permits for the Commonwealth of Massachusetts*, or with an individual Department of the Army Permit; and provide a copy of any such filing. [A Self-Verification Notification Form \(SVNF\) was filed with the US Corps of Engineers. The File Number, NAE-2022-0144-20220614-SV was issued on June 14, 2022. A copy of the application is attached to this response email.](#)
2. Please clarify if all Waters of the United States within the Commonwealth within the subject parcel are adequately delineated and disclosed in the Notice of Intent. The Request for Determination of Applicability indicated that an Isolated Vegetated Wetland (Flag Series C) is located along the northern parcel boundary; however, this is not disclosed in the Notice of Intent “Wetland Resource Map” or on the Project Plans, titled “Proposed Municipal Park & Fields, North Main Street, South Deerfield, MA.” [All Waters of the United States \(WOTUS\) Within the Commonwealth within the subject parcel were identified on the property. At the time of the issuance of the Determination of Applicability, the Isolated Vegetated Wetland was not jurisdictional under the Corps definition of a WOTUS; therefore, GZA requested that the isolated wetland be removed from the Notice of Intent site plans.](#)
3. Delineation of Bordering and Isolated Vegetated Wetlands
  1. Please submit fully completed “Wetland Determination Data Forms – Northcentral and Northeast Region” [as found within US Army Corps of Engineers. 2012. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region, ed. J. S. Wakeley, R. W. Lichvar, and C. V. Noble. ERDC/EL TR-12-1. Vicksburg, MS: U.S. Army Engineer Research and Development Center (Version 2.0)] (hereinafter the “Regional Supplement”), for transects of a sufficient number to fully describe the boundary of Bordering Vegetated Wetland per 314 CMR 9.02 (for vegetated wetlands, including both “Bordering” and “Isolated”). Forms shall be completed per the methods detailed within the Regional Supplement. Plants shall be identified to the species level and scientific nomenclature shall follow *The Vascular Plants of Massachusetts: A County Checklist-First Revision*, by Melissa Dow Cullina, Bryan Connolly, Bruce Sorrie and Paul Somers (Natural Heritage & Endangered Species Program of the Massachusetts Division of Fish and Wildlife, 2011), or an equivalent acceptable to the Department. Soil profiles shall be prepared using the Regional Supplement. Digital color photographs for each transect, both for plant community composition and hydric soil characteristics, shall be submitted as part of this information. This information shall be collected by a wetland scientist with at least two (2) years experience in interpreting hydric soil profiles and characteristics, as allowed per the Department’s authority. Please refer to and provide information addressing Difficult Wetland Situations per the Regional Supplement, Chapter 5, “Difficult Wetland Situations in the Northcentral and Northeast Region” and its

subpart, “Lands used for agriculture and silviculture.” [A completed, paired set of Wetland Determination Data Forms is attached.](#)

2. All Persons (as defined at 314 CMR 9.02) to this matter are duly notified that, upon receipt of the above information from the applicant, any further challenge to the position of the boundary of Bordering (and/or Isolated) Vegetated Wetland established per 314 CMR 9.02 shall be made by a “competent source” and shall be based upon “credible evidence”. Such “credible evidence” shall consist of:
  1. “Wetland Determination Data Forms” of a sufficient number to establish the presence of a vegetated wetland beyond the presently mapped boundary of Bordering (and/or Isolated) Vegetated Wetland; or
  2. “Wetland Determination Data Forms” of a sufficient number to establish the presence of a vegetated upland within the presently mapped boundary of Bordering (and/or Isolated) Vegetated Wetland (or a revised boundary based upon receipt of requested information from the applicant); or
  3. A least one (1) transect composed of at least two (2) Observation Plots recorded on “Wetland Determination Data Forms” which demonstrate that the position of a particular or representative boundary flag presently located at the Site is not supported by data collected for that transect;
  4. Supporting annotated photographs illustrating pertinent characteristics documented in any “Wetland Determination Data Forms” submitted per the above;
  5. Collateral data such as maps, aerial and satellite imagery, historic documents, hydrologic data, or other relevant data which further support data collected on “Wetland Determination Data Forms” submitted per the above.
  6. Such “credible evidence” shall be collected by a “competent source” identified to the Department by name and qualifications. Written permission from the site owner to access the subject property to collect “credible evidence” shall be sought in writing by the party represented by the “competent source” within five (5) business days of the receipt of the applicant’s response to this letter. A written response from the site owner shall be sent within five (5) business days, and a copy shall be simultaneously sent to the Department. [No response is required from the Applicant at this time as this request item pertains to future challenges to the wetland delineation.](#)
4. Based on the results of the information requested above, please provide updated plans of record containing all Waters of the United States within the Commonwealth and the minimum requirements listed in the attached document entitled, “Western Region-Bureau of Water Resources-Division of Wetlands and Waterways Plans of Record Requirements.” [There is no change to the plans of record based upon the results of the requested and provided information.](#)

Please provide the requested additional information by October 14, 2022. If you believe you need additional time, please contact the Department for an extension. MassDEP reserves the right to and will request additional information in relation to the project.

Mary H. Grover, PWS  
Environmental Analyst  
MassDEP – Division of Wetlands and Waterways  
436 Dwight Street  
Springfield, MA 01103

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