



September 1, 2022

Project 22020

Mr. Joe Teixeira, Chairman  
Newburyport Conservation Commission  
Newburyport Office of Planning and Development  
60 Pleasant Street  
Newburyport, Massachusetts 01950

RE: Request for Determination of Applicability  
Seasonal Outdoor Event Area – Oldies Marketplace  
35-41, 43 Water Street  
Newburyport, Massachusetts

Dear Mr. Teixeira:

On behalf of Newburyport Manager, LLC (Owner), Oak Consulting Group, LLC (OCG) is submitting the following Request for Determination of Applicability (RDA) to install seasonal outdoor event accommodations within the former B&M Railroad right of way adjacent to Oldie’s Market Place at 35-41 and 43 Water Street in Newburyport, Massachusetts. Enclosed please find:

- WPA Form 1 – Request for Determination of Applicability;
- Site Plan C-1; and
- RDA Filing Fee and advertising check in the amount of \$250.

## **PROJECT DESCRIPTION**

The project site is an approximately 4,000 sf area along the former B&M Railroad right-of-way adjacent to the current Oldies Marketplace. Currently, the project site is not in active use and is occupied by sparse ground cover vegetation which has been established in the fill material placed over the former railroad tracks. The site is abutted to the north by the City of Newburyport Clipper City Rail Trail with a steel bulkhead to the Merrimack River beyond. The project site is located between 16 to 60 feet from the Merrimack River and predominantly within the AE 13 Flood Zone. A portion of the project site closest to the Merrimack River is located within the VE Flood Zone.

The project proposes to improve the area by providing a space to support seasonal outdoor events. As shown on the enclosed Site Plan, amenities will include a beer tent supported by seated and standing tables as well as a game area for activities such as Corn Hole and Bocce. Portable toilets and a hand washing station are also proposed. To accommodate these improvements, some regrading will be required to provide a more level surface. The beer tent and primary table area will be surface with crushed stone. The game and restroom areas beyond will be seeded with grass.

Events will be open to the public and public access will be facilitated by the project site’s adjacency to the Clipper City Rail Trail. Wood panels from portions of the existing solid wood fence between the Clipper City Rail Trail and the project site will be removed and the fence will be reconstructed with an alternative fence style such as post and rail or ropes to maintain a barrier but provide a visual connection to the Clipper City Rail Trail. The existing fence posts will remain and be reused.

Mr. Joe Teixeira, Chairman  
Newburyport Conservation Commission

Portable toilets will be provided and maintained by a portable toilet rental company. Pump-outs will be performed as needed with access from the Oldies site. The hand washing station will consist of a sink, soap dispenser, and paper towels configured for this use only. Hand sanitizer may also be provided. Water will be provided to the hand washing sink by a hose from the Oldies facility. The water will either drain to a tank beneath the sink, to be emptied when full, or discharged to the ground surface. Beer will be dispensed with disposable cups. No dishwashing or other water services are proposed for the beer tent. Trash barrels will be provided and emptied at least daily when the facility is in use.

The proposed tables, beer tent, portable toilets, and other amenities will be seasonal and portable. They will be removed from the site during the off-season months when the facility is not in use. They may also be removed from the site if a coastal storm is forecast which could subject the project site to flooding.

Drainage patterns will not be affected the project. The site currently drains to a low-lying area in the center where it infiltrates to the subsurface with little, if any, off-site runoff. Although some regrading will be performed to provide a more level surface, runoff will still flow toward the center of the site and infiltrate to the ground beneath subsurface. Adding crushed stone and grass surface will help stabilize the site surfaces and improve stormwater management.

Existing topsoil will be removed from site prior to regrading the fill material beneath and resurfacing with stone or loam and seed as shown on the project plans. Some fill material may be imported to achieve the proposed site grades. However, no tree cutting is proposed. The existing tree within the project site fence will remain.

## **LSCSF PERFORMANCE STANDARDS**

The project site is located within Land Subject to Coastal Storm Flowage (LSCFS) associated with the Merrimack River. Although a Notice of Intent is not being filed, a discussion on how the project meets the City of Newburyport performance standards for LSCSF is provided below. Each of the performance standards are restated below in italics. Discussion of how these standards have been addressed are provided in standard font.

- a) *Any activity shall not have an adverse effect by increasing the elevation or velocity of flood waters or by increasing flows due to a change in drainage or flowage characteristics (e.g. change in direction) on the subject site, adjacent properties, or any public or private way.*

The project does not propose changes which would affect the elevation or velocity of flood waters. Existing drainage patterns to the subsurface, will remain. Removing wooden panels from portions of the perimeter fence will help disperse flood waters onto the project site and minimize impacts to the adjacent Clipper City Rail Trail.

- b) *Relative sea level rise and the landward migration of resource areas in response to relative sea level rise shall be incorporated into the design and construction of structures and other activities proposed in Land Subject to Coastal Storm Flowage.*

Proposed construction activities are limited to placement of a stone surface and temporary structures consisting of a tent, outdoor furniture, and portable toilets. These structures can be

removed and use of the area for seasonal outdoor events can be discontinued if rising sea levels impact site operations.

- c) *When the AH-Zone (or an A-Zone which is hydraulically constricted) is significant to the interests of flood control or storm damage prevention, the following additional performance standards shall apply:*

The project is not located in an AH-Zone or A-Zone that is hydraulically constricted.

- d) *When Land Subject to Coastal Storm Flowage is significant to wildlife and their habitat a proposed activity shall not impair the capacity of those portions of Land Subject to Coastal Storm Flowage to provide important wildlife habitat functions. Alterations may be permitted only if they will have no adverse effect on wildlife and their habitat.*

Alterations are limited to redeveloping a former railroad right-of-way in an enclosed area between the Clipper City Rail Trail and Oldies building. Use of this area for seasonal outdoor events will not have an adverse effect on wildlife or their habitat.

- e) *When Land Subject to Coastal Storm Flowage is significant to the prevention of pollution there shall be no adverse effects to the critical characteristic of this area to remove suspended solids and other contaminants from runoff before entering into other wetland resource areas.*

The project area's significance to preventing pollution will not be diminished. Runoff from and onto the site will continue to infiltrate to the ground below.

- f) *The following activities proposed within velocity zones (V-Zones) of Land Subject to Coastal Storm Flowage are likely to have an adverse effect on the protected interests and are therefore prohibited (unless the applicant proves with a preponderance of credible evidence that the proposed activity and resultant alteration will not have an adverse effect on said interests):*

- i. *Construction or placement of new structures, including buildings, sheds, garages, additions, and substantial improvements to existing structures supported on a solid foundation or proposed below the base flood elevation plus two (2) feet;*

No new structures are proposed on solid foundations. The proposed beer tent, toilets, and site furniture portable and can be removed from the site.

- ii. *New parallel/shear walls or vertical walls for existing structures;*

No new walls for existing structures are proposed.

- iii. *Impermeable paving for new roads, driveways and parking lots;*

No impermeable paving is proposed.

- iv. *New or proposed expansions of coastal engineering structures;*

No expansion of coastal engineering structures is proposed.

v. *New or expanded septic systems;*

No septic systems are proposed.

vi. *New or expanded stormwater management systems/discharges;*

No stormwater management systems or discharges are proposed.

vii. *New or expanded utilities;*

No utilities services are proposed.

viii. *New underground storage tanks;*

No underground storage tanks are proposed.

ix. *New activities and uses that change the physical characteristics of the land through draining, excavating, dredging, dumping, filling, removing vegetation, removing or transferring loam, peat, sand, soil or other material substance which will reduce the natural storage capacity of the land, interfere with the landward migration of coastal resources in response to sea level rise, interfere with the natural drainage/tidal patterns of any watercourse, or degrade the water quality of surface or groundwater.*

No activities are proposed which will change the physical characteristics of the land with respect to these interests.

- g) *A proposed activity within a velocity zone of a beach or coastal bank shall not destroy or otherwise impair the function of any portion of said landform and/or shall not have an adverse effect on adjacent wetland resources. Activities and their ancillary uses in velocity zones which result in alteration to vegetative cover, interruptions in the supply of sediment to other wetland resources, and/or changes to the form or volume of a dune or beach will have an adverse effect on said landform's ability to provide storm damage prevention and flood control and are therefore prohibited.*

Proposed activities within the velocity zone are limited to placing stone and reconfiguring the fence in a small area along the existing fence line. These activities will not impair the function of the site or have an adverse effect on the Merrimack River or associated LSCSF.

- h) *The following activities proposed within the AO-zone of a beach or coastal bank of Land Subject to Coastal Storm Flowage are likely to have an adverse effect on the protected interests and are therefore prohibited (unless the applicant proves with a preponderance of credible evidence that the proposed activity and resultant alteration will not have an adverse effect on said interests):*

The project is not located within the AO-Zone of a beach or coastal bank. Discussion of possible impacts for each of the nine listed activities (i-ix) are provided above for the velocity zone, performance standard (f).

Mr. Joe Teixeira, Chairman  
Newburyport Conservation Commission

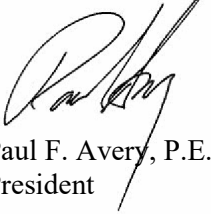
- i) Notwithstanding the provisions of (a) – (h) above, the Commission may permit the following activities provided that the applicant demonstrates, to the satisfaction of the Commission, that best available measures are utilized to minimize adverse effects on all critical characteristics of Land Subject to Coastal Storm Flowage, and provided that all other performance standards for underlying resource areas are met:*

None of the activities of this provision are proposed.

We look forward to meeting with you and discussing the project.

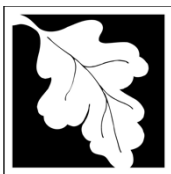
Sincerely,

OAK CONSULTING GROUP, LLC



Paul F. Avery, P.E.  
President

cc: Chris Skiba, Newburyport Manager, LLC  
Massachusetts DEP Northeast Regional Office



# WPA Form 1- Request for Determination of Applicability

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

## A. General Information

**Important:**

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



1. Applicant:

Newburyport Development cskiba@newburyportdev.com  
 Name E-Mail Address  
54 Inn Street  
 Mailing Address  
Newburyport MA 01950  
 City/Town State Zip Code  
978 465-8571  
 Phone Number Fax Number (if applicable)

2. Representative (if any):

Oak Consulting Group, LLC  
 Firm  
Paul Avery pavery.ocg@gamil.com  
 Contact Name E-Mail Address  
PO Box 1123  
 Mailing Address  
Newburyport MA 01950  
 City/Town State Zip Code  
978 312-3120  
 Phone Number Fax Number (if applicable)

## B. Determinations

1. I request the Newburyport \_\_\_\_\_ make the following determination(s). Check any that apply:  
 Conservation Commission

- a. whether the **area** depicted on plan(s) and/or map(s) referenced below is an area subject to jurisdiction of the Wetlands Protection Act.
- b. whether the **boundaries** of resource area(s) depicted on plan(s) and/or map(s) referenced below are accurately delineated.
- c. whether the **work** depicted on plan(s) referenced below is subject to the Wetlands Protection Act.
- d. whether the area and/or work depicted on plan(s) referenced below is subject to the jurisdiction of any **municipal wetlands ordinance** or **bylaw** of:

\_\_\_\_\_  
 Name of Municipality

- e. whether the following **scope of alternatives** is adequate for work in the Riverfront Area as depicted on referenced plan(s).



# WPA Form 1- Request for Determination of Applicability

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## C. Project Description

1. a. Project Location (use maps and plans to identify the location of the area subject to this request):

35-41, 43 Water Street  
Street Address

Newburyport  
City/Town

42  
Assessors Map/Plat Number

B&M  
Parcel/Lot Number

b. Area Description (use additional paper, if necessary):

Former railroad right of way adjacent to Merrimack River.

c. Plan and/or Map Reference(s):

Site Plan  
Title

8/30/22  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

2. a. Work Description (use additional paper and/or provide plan(s) of work, if necessary):

Construct temporary, seasonal, outdoor event. See narrative.



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### C. Project Description (cont.)

b. Identify provisions of the Wetlands Protection Act or regulations which may exempt the applicant from having to file a Notice of Intent for all or part of the described work (use additional paper, if necessary).

Proposed work is temporary and seasonal and will not have adverse impacts on the Merrimack River and associated resource areas.

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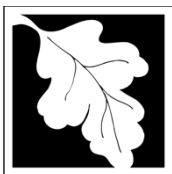
3. a. If this application is a Request for Determination of Scope of Alternatives for work in the Riverfront Area, indicate the one classification below that best describes the project.

- Single family house on a lot recorded on or before 8/1/96
- Single family house on a lot recorded after 8/1/96
- Expansion of an existing structure on a lot recorded after 8/1/96
- Project, other than a single-family house or public project, where the applicant owned the lot before 8/7/96
- New agriculture or aquaculture project
- Public project where funds were appropriated prior to 8/7/96
- Project on a lot shown on an approved, definitive subdivision plan where there is a recorded deed restriction limiting total alteration of the Riverfront Area for the entire subdivision
- Residential subdivision; institutional, industrial, or commercial project
- Municipal project
- District, county, state, or federal government project
- Project required to evaluate off-site alternatives in more than one municipality in an Environmental Impact Report under MEPA or in an alternatives analysis pursuant to an application for a 404 permit from the U.S. Army Corps of Engineers or 401 Water Quality Certification from the Department of Environmental Protection.

b. Provide evidence (e.g., record of date subdivision lot was recorded) supporting the classification above (use additional paper and/or attach appropriate documents, if necessary.)

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# WPA Form 1- Request for Determination of Applicability

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

## D. Signatures and Submittal Requirements

I hereby certify under the penalties of perjury that the foregoing Request for Determination of Applicability and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge.

I further certify that the property owner, if different from the applicant, and the appropriate DEP Regional Office were sent a complete copy of this Request (including all appropriate documentation) simultaneously with the submittal of this Request to the Conservation Commission.

Failure by the applicant to send copies in a timely manner may result in dismissal of the Request for Determination of Applicability.

Name and address of the property owner:

Newburyport Manager, LLC TRS c/o New England Development

Name

75 Park Plaza

Mailing Address

Boston

City/Town

MA

State

02116

Zip Code

Signatures:

I also understand that notification of this Request will be placed in a local newspaper at my expense in accordance with Section 10.05(3)(b)(1) of the Wetlands Protection Act regulations.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Representative (if any)

\_\_\_\_\_  
Date