Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection
One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

May 10, 2021

City of Haverhill Department of Public Works
c/o Sara Simoni - Wright-Pierce, Inc.
169 Main Street, 700 Plaza Middlesex
Middletown, CT 06457

Re: Jurisdictional Determination - Waterways Application Number JD21-WW04-0004
309 East Broadway, Installation of Radial Collector Well; City of Haverhill
Flowed Tidelands of the Merrimack River, Haverhill, Essex County

Dear Ms. Simoni:

Enclosed is the Determination of Applicability for the referenced application issued pursuant to Waterways Regulations 310 CMR 9.06. This Determination may be recorded at the Southern Essex County District Registry of Deeds and a copy will be maintained in the Department files.

If you have any questions, please contact Susan You of the Waterways Regulation Program at susan.you@mass.gov.

Sincerely,

Daniel J. Padien
Program Chief
Waterways Regulation Program

Cc: Haverhill Conservation Commission
Robert Wart, City of Haverhill DPW
Joyce Hill, 309 East Broadway, Haverhill MA 01830

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.
TTY# MassRelay Service 1-800-439-2370
MassDEP Website: www.mass.gov/dep

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File No: JD21-WW04-0004

Municipality: Haverhill, Essex County

DETERMINATION OF APPLICABILITY- 310 CMR 9.00

Applicant:
City of Haverhill Department of Public Works
c/o Robert E. Wart
131 Amesbury Road
Haverhill, MA 01830

Location of Site:
309 East Broadway
Haverhill, MA 01830
Tax Assessor's Map & Parcel Nos:
469-188-5 & 469-188-6

Pursuant to 310 CMR 9.06, the Department of Environmental Protection Waterways Regulation Program (the "Department") has considered your request for a Determination of Applicability and its supporting documentation, and has made the following determination:

[X] **The Determination is Positive:** A portion of the above referenced site for which this determination is issued includes Filled and/or Flowed Tidelands subject to jurisdiction under M.G.L Chapter 91 and its regulations at 310 CMR 9.00.

[ ] **The Determination is Negative:** The above referenced property for which this determination is issued includes lands not subject to jurisdiction under M.G.L Chapter 91 and its regulations at 310 CMR 9.00.

Wright-Pierce, Inc. has requested a Determination of Applicability (RDA) on behalf of the City of Haverhill Department of Public Works (the "Applicant") regarding whether the proposed installation of collector pipes under a portion of the Merrimack River associated with a radial collector well to be constructed at 309 East Broadway in Haverhill, Essex County (the "project site") is subject to authorization under M.G.L Chapter 91 and the Waterways Regulations at 310 CMR 9.00.

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Documentation submitted in support of this request included**:**

1) Application Form WW04 signed by the Applicant;
2) Cover letter and project narrative in support of the request, dated March 5, 2021;
3) Copy of Conceptual Site Plan & Radial Collector Well Caisson Section View prepared by Wright-Pierce, dated October 2017; and
4) Copy of mailing distribution list of this RDA Application.

Specifically, the proposed project includes the installation of a 19-foot diameter radial collector well on the project site, adjacent to the Merrimack River, and includes six (6) lateral collector pipes that will be drilled approximately 35-40 feet deep by approximately 250 feet in length, beneath the riverbed to span said waterway.

The Applicant contends that the portion of the Merrimack River fronting the project site is non-tidal, and therefore pursuant to 310 CMR 9.05(3)(g)(3) the pipe crossing entirely embedded under the river is not subject to licensing under M.G.L. Chapter 91.

Geographically, the head of tide for the Merrimack River is in Haverhill. Therefore, west of Haverhill, the Merrimack River has been determined to be non-tidal, however from Haverhill east to Newburyport, the Merrimack River has been determined to be tidal. Therefore, the portion of the Merrimack River in question is defined as Flowed Tidelands, and any filling thereto is considered Filled Tidelands, as defined in 310 CMR 9.02.

The proposed installation of said collector pipes under a tidal waterway requires a Chapter 91 License pursuant to 310 CMR 9.05(1)(a) as the pipes/pipeline is considered a structure that is intended to permanently remain in place under Flowed Tidelands of the Merrimack River.

Upon review of the referenced request and supporting documents, the Department hereby determines that lands under the tidal portion of the Merrimack River are considered Flowed Tidelands subject to jurisdiction under M.G.L. Chapter 91 and the proposed installation of said collector pipes thereunder are subject to licensing pursuant to M.G.L. Chapter 91 and 310 CMR 9.00.

Please note, that the Applicant will need to perform Chapter 91 License history research to determine the extent of Filled Tidelands on the project site, prior to submitting a Chapter 91 Waterways License Application to the Department.

This Determination does not relieve the Applicant from complying with all other applicable local, state, or federal statutes, ordinances, by-laws, or regulations.

Issued by the Department of Environmental Protection Waterways Regulation Program.

IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set their hands this 10th day of May in the year 2021 .



Daniel J. Padien
Program Chief
Waterways Regulation Program

Encl: Notice of Appeal Rights

NOTICE OF APPEAL RIGHTS

This Determination is an action of the Department. If you are aggrieved by this action, you may request an adjudicatory hearing. A request for a hearing must be made in writing and postmarked within twenty-one (21) days of the date this determination was issued.

Contents of Hearing Request

Under 310 CMR 1.01(6)(b), the request must clearly and concisely state the facts which are the grounds for the request, and relief sought. Additionally, the request must state why the determination is not consistent with applicable laws and regulations.

In addition, pursuant to 310 CMR 9.17(3), any notice of claim for an adjudicatory hearing must include the following information: the Waterways Application File Number; name of the applicant and address of the project; the complete name, address, and telephone number of the party filing the request and, if represented by counsel, the name, address and telephone number of the attorney and, if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found in section 9.02; a clear statement that a formal adjudicatory hearing is being requested; a clear and concise statement of the specific objections to the Department's determination, and the relief sought through the adjudicatory hearing; and a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located. The original request and a copy of the check must be sent to:

Case Administrator
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

Filing Fee and Address

The hearing request along with a valid check 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
P.O. Box 4062
Boston, MA 02211

At the same time, pursuant to 310 CMR 9.17, a copy of this appeal shall be sent by certified mail or hand delivery to the applicant, and other parties to this proceeding, if any, and to the municipal official of the city or town where the project is located. The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver as described below.

Exceptions

The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority.

Waiver

The Department may waive the adjudicatory hearing filing fee for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file, together with the hearing request as provided above, an affidavit setting forth the facts believed to support the claim of undue financial hardship.