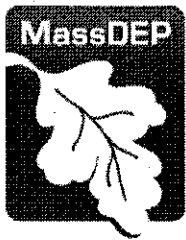


APPENDIX K CHAPTER 91 RDA



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

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

JAN 28 2019

Fort Point Associates, Inc.
c/o Julie Conroy, ACIP
31 State Street, 3rd Floor
Boston, MA 02109

RE: Jurisdictional Determination - Waterways Application Number JD19-5434
Town of Scituate, 430 Chief Justice Cushing Highway, Waters of First Herring Brook
(Tack Factory Pond & Scituate Reservoir), Scituate, Plymouth County

Dear Ms. Conroy:

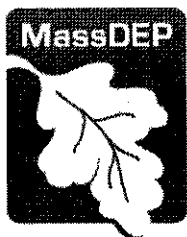
Enclosed is the Determination of Applicability for the referenced application issued pursuant to Waterways Regulations 310 CMR 9.06. This Determination may be recorded at the Plymouth County Registry of Deeds and a copy will be maintained in the Department files.

If you have any questions, please contact Susan You of my staff at (617) 556-1198 or via email at susan.you@mass.gov.

Sincerely,

Ben Lynch
Section Chief
Waterways Regulation Program

Cc: Kevin Cafferty, Director, Department of Public Works, Town of Scituate
Scituate Board of Selectmen
Scituate Planning Board
Scituate Conservation Commission



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

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Martin Suuberg
Commissioner

File No: JD19-5434

Municipality: Scituate, Plymouth County

DETERMINATION OF APPLICABILITY- 310 CMR 9.00

To: Town of Scituate
Department of Public Works
c/o Kevin Cafferty
600 Chief Justice Cushing Highway
Scituate, MA 02066

Location of Site: 430 Chief Justice Cushing Highway
Scituate, MA 02066
Tax Assessor's Map No. not listed
Parcel No. not listed

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

- The Determination is Negative:** A portion of the above referenced site 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.
- The Determination is Positive:** A portion of the above referenced site for which this determination is issued includes a waterway subject to jurisdiction under M.G.L Chapter 91 and its regulations at 310 CMR 9.00.

Fort Point Associates, Inc. has requested a Determination of Applicability on behalf of the Town of Scituate (the "Applicant") regarding proposed dam improvements located in Waters of Tack Factory Pond and the Scituate Reservoir located within the First Herring Brook Watershed at 430 Chief Justice Cushing Highway, Scituate, Plymouth County (the "project site").

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

Printed on Recycled Paper

Further documentation in support of this request included:

- 1) Cover letter and narrative in support of this request, dated December 27, 2018;
- 2) Copy of the Locus Map, derived from USGS Topographic Map, 2018, showing the project site;
- 3) Copy of an aerial image, derived from Google map 2018, entitled "Aerial View Showing RDA Area" delineating the range of the RDA area;
- 4) Copy of a map, overlaid USGS 1941 map on Google map 2018, entitled "RDA Area Overlay", delineating the scope of the RDA area; and
- 5) Copy of a notice of RDA application and notification list to local, state, and federal agencies and abutters.

The Applicant contends that the subject area, comprising of Tack Factory Pond and the Scituate Reservoir, is not subject to Chapter 91 jurisdiction because: 1) First Herring Brook is not a navigable waterway upon review of National Oceanic and Atmospheric Administration Nautical Charts (the "NOAA Charts") and North & South Rivers Watershed Association Canoe and Kayak Guide (the "NSRWA Guide"); 2) Tack Factory Pond is not listed on the Great Pond list published by the Department; and 3) the existing reservoir is not subject to Chapter 91 jurisdiction due to impoundment by damming.

The Department examined historical maps, surveyed orthographic photos, and analyzed other available information, and found that dating back as early as 1831, First Herring Brook was depicted on a Scituate Map surveyed by A. Robbins and S. A. Turner and according to USGS Historical Topographic Maps, Tack Factory Pond was a hydrologically connected enlarged segment of First Herring Brook as early as 1880 and further altered by man in the following century. Although the downstream segment of the First Herring Brook which connects with the North River and empties into the Atlantic Ocean is tidal, the upstream segment of the First Herring Brook, including both Scituate Reservoir and Tack Factory Pond, is not tidally influenced based on FEMA Flood Profiles and from the river-gage operated by the Massachusetts Division of Ecological Restoration located on First Herring Brook at Eisenhower Lane in Scituate, MA.

Accordingly, the Department concurs that Tack Factory Pond is not a Great Pond because it was less than 10-arces in area in its natural state. Both the NOAA Charts and the NSRWA Guide reviewed by the Applicant only have coverage of the North River and the tidal portion (downstream) of First Herring Brook¹ and do not provide any recommendations on navigability for the upstream portion of First Herring Brook, which is the area in question.

Furthermore, public funds were expended in the late 1960's to construct the Scituate Reservoir, connecting with Tack Factory Pond via a culvert beneath Chief Justice Cushing Highway (a/k/a "Rout 3A"). Therefore, pursuant to 310 CMR 9.04(1)(e), any non-tidal river or stream on which public funds have been expended, either upstream or downstream within the river basin is subject to licensing by the Department under Chapter 91 and 310 CMR 9.00. Accordingly, the Department hereby concludes that First Herring Brook, which includes Tack Factory Pond and the Scituate

¹ License history research yielded that a few Chapter 91 licenses were issued for structures located downstream of First Herring Brook.

First Herring Brook (Tack Factory Pond & Scituate Reservoir), Scituate, Plymouth County

Reservoir, is a non-tidal navigable waterway and subject to Chapter 91 jurisdiction pursuant to 310 CMR 9.04(1)(e).

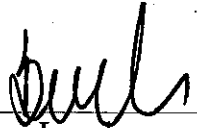
Although the area in question has been determined to be subject to Chapter 91 jurisdiction, one component of the proposed project is not subject to licensing, one component may not be subject to licensing, and the other remaining components are subject to licensing as further described below.

The proposed fish ladders (or other devices to allow fish passage) in a non-tidal river or stream is not subject to licensing pursuant to 310 CMR 9.05(3)(g)(2) provided a final Order of Conditions is issued by the Scituate Conservation Commission for said work. The proposed placement of riprap along the banks of Tack Factory Pond for the purpose of bank stabilization may not be subject to licensing if it meets 310 CMR 9.05(3)(g)(4). In order to determine if the placement of riprap is subject to licensing or not, the Applicant must submit additional information with supporting plans to the Department for review. Lastly, the work associated with the proposed spillway is not identified in 310 CMR 9.05(3)(g) as the type of structure and/or fill that is not subject to licensing, therefore it is considered a new structure pursuant to 310 CMR 9.05(1)(a). Accordingly, the Applicant must file a Chapter 91 Waterways License Application, and obtain a Chapter 91 Waterways License, prior to installation of the proposed spillway structure (and for the placement of riprap if said work does not meet 310 CMR 9.05(3)(g)(4)).

This Determination does not relieve the Applicant/Licensee from complying with all other applicable Federal, State, or local 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 28th day of January in the year two thousand nineteen.



Ben Lynch
Section Chief
Waterways Regulation Program

Encl: Notice of Appeal Rights

NOTICE OF APPEAL RIGHTS

Who has the right to appeal?

The following persons shall have the right to an adjudicatory hearing concerning this decision by the Department to grant or deny a license or permit, in accordance with 310 CMR 9.17(1): (a) an Applicant who has demonstrated property rights in the lands in question, or which is a public agency; (b) any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period; (c) ten (10) residents of the Commonwealth who, pursuant to M.G.L. Chapter 30A, § 10A, have submitted comments within the public comment period with at least 5 of the 10 residents residing in the municipality(s) in which the license or permitted activity is located. The appeal shall clearly and specifically state the facts and grounds for the appeal and the relief sought, and each appealing resident shall file an affidavit stating the intent to be part of the group and to be represented by its authorized representative; (d) the municipal official in the affected municipality who has submitted written comments within the public comment period; and (e) MassCZM, for any project identified in 310 CMR 9.13(2)(a) for MassCZM participation or, in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period.

How can I request an adjudicatory hearing?

A person requesting an adjudicatory hearing must submit a "Notice of Claim" to the Department, with a copy of the MassDEP Adjudicatory Hearing Fee Transmittal Form and include the details specified below, within twenty-one (21) days of the date of issuance of this decision. The MassDEP Transmittal Form is available at the following website: <http://www.mass.gov/eea/docs/dep/service/adr/adjherfm.doc> The Notice of Claim must be made in writing and sent by certified mail or hand delivery to:

MassDEP
Case Administrator
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the complete Notice of Claim must be sent at the same time by certified mail or hand delivery to: (1) the Applicant, (2) the municipal official of the city or town where the project is located, and (3) the issuing office of the MassDEP, which in this case is located at:

MassDEP
Waterways Regulation Program
One Winter Street, 5th Floor
Boston, MA 02108

The MassDEP Adjudicatory Hearing Fee Transmittal Form and a valid check payable to "The Commonwealth of Massachusetts" in the amount of one hundred dollars (\$100) must be mailed to:

MassDEP
Commonwealth Master Lockbox
P.O. Box 4062
Boston, MA 02211

What information must be included in the hearing request?

Pursuant to 310 CMR 9.17(3), any Notice of Claim requesting an adjudicatory hearing must include the following:

First Herring Brook (Tack Factory Pond & Scituate Reservoir), Scituate, Plymouth County

- (a) the MassDEP Waterways Application File Number;
- (b) the complete name, address, fax number and telephone number of the Applicant;
- (c) the address of the project;
- (d) the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- (e) if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found in 310 CMR 9.02;
- (f) a clear statement that a formal adjudicatory hearing is being requested;
- (g) a clear statement of the facts which are the grounds for the proceedings, the specific objections to the MassDEP's written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- (h) 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.

Dismissal of request

The request for appeal will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a waiver.

Exemptions

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 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.



Reservoir Dam Water Storage

Scituate, Massachusetts

Request for Determination of Applicability

December 27, 2018

submitted to **Massachusetts Department of Environmental Protection**

submitted by **Town of Scituate**

prepared by **Fort Point Associates, Inc.**



Fort Point Associates, Inc.
Urban Planning Environmental Consulting Project Permitting



Fort Point Associates, Inc.

Urban Planning Environmental Consulting Project Permitting

A TETRA TECH COMPANY

December 27, 2018

Frank Taormina
Department of Environmental Protection
Waterways Regulation Program
1 Winter Street, 5th Floor
Boston, MA 02108

Re: Request for Determination of Applicability; Reservoir Dam Water Storage;
430 Chief Justice Cushing Highway, Scituate, MA; **Transmittal No. X281949**

Dear Frank:

This letter is submitted on behalf of the Town of Scituate (the "Applicant") to Request a Determination of Applicability ("RDA") from the Department of Environmental Protection for the above-named site. The purpose of this filing is to establish the limits of Chapter 91 jurisdiction within this RDA Area and the applicability of MGL Chapter 91, the Public Waterfront Act, and the regulations implementing that Act, 310 CMR 9.00.

If you have any questions, please contact me at (617) 357-7044 x205.

Sincerely,

Julie Conroy, AICP

Cc: Thomas Cook, P.E., TetraTech
Kevin Cafferty, Director, Department of Public Works, Town of Scituate
Dan Smith, P.E., Department of Public Works, Town of Scituate

Enclosure: RDA Application Package

TABLE OF CONTENTS

TRANSMITTAL FORM

REQUEST FOR DETERMINATION OF APPLICABILITY (RDA) APPLICATION

NARRATIVE

SECTION 1: INTRODUCTION.....	1
SECTION 2: RDA AREA	1
2.1 HISTORY OF THE RDA AREA AND VICINITY	2
2.2 PROPOSED PROJECT	2
SECTION 3: RDA ANALYSIS.....	3
3.1 APPLICABLE JURISDICTIONAL STANDARDS	3
3.2 DESCRIPTION OF DOCUMENTS REVIEWED	4
3.3 DESCRIPTION OF REGISTRATION METHODOLOGY.....	4
SECTION 4: FINDINGS	5

EXHIBITS

- Exhibit 1 Locus Map
- Exhibit 2 Aerial Showing RDA Area
- Exhibit 3 RDA Area Overlay

APPENDIX

- Notification List and Letter

Request for Determination
of Applicability

TRANSMITTAL FORM



Enter your transmittal number

X281949

Transmittal Number

Your unique Transmittal Number can be accessed online:

<http://www.mass.gov/eea/agencies/massdep/service/approvals/transmittal-form-for-payment.html>

Massachusetts Department of Environmental Protection

Transmittal Form for Permit Application and Payment

1. Please type or print. A separate Transmittal Form must be completed for each permit application.

2. Make your check payable to the Commonwealth of Massachusetts and mail it with a copy of this form to: MassDEP, P.O. Box 4062, Boston, MA 02211.

3. Three copies of this form will be needed.

Copy 1 - the original must accompany your permit application. **Copy 2** must accompany your fee payment. **Copy 3** should be retained for your records

4. Both fee-paying and exempt applicants must mail a copy of this transmittal form to:

MassDEP
P.O. Box 4062
Boston, MA
02211

* **Note:**
For BWSC Permits, enter the LSP.

A. Permit Information

BRP WW04

1. Permit Code: 4 to 7 character code from permit instructions

Water-dependent Use

3. Type of Project or Activity

Request for Determination of Applicability

2. Name of Permit Category

B. Applicant Information – Firm or Individual

Town of Scituate

1. Name of Firm - Or, if party needing this approval is an individual enter name below:

2. Last Name of Individual

600 Chief Justice Cushing Highway

5. Street Address

Scituate

6. City/Town

Kevin Cafferty

11. Contact Person

3. First Name of Individual

NA

7. State

02066

8. Zip Code

(781) 545-8732

9. Telephone #

4. MI

10. Ext. #

kcafferty@scituatema.gov

12. e-mail address

C. Facility, Site or Individual Requiring Approval

Reservoir Dam Water Storage Facility

1. Name of Facility, Site Or Individual

430 Chief Justice Cushing Highway

2. Street Address

Scituate

3. City/Town

MA

4. State

02066

5. Zip Code

6. Telephone #

7. Ext. #

8. DEP Facility Number (if Known)

9. Federal I.D. Number (if Known)

10. BWSC Tracking # (if Known)

D. Application Prepared by (if different from Section B)*

Fort Point Associates, Inc.

1. Name of Firm Or Individual

31 State Street, 3rd Floor

2. Address

Boston

3. City/Town

Julie Conroy

8. Contact Person

MA

4. State

02109

5. Zip Code

(617) 357-7044

6. Telephone #

205

7. Ext. #

9. LSP Number (BWSC Permits only)

E. Permit - Project Coordination

1. Is this project subject to MEPA review? yes no
If yes, enter the project's EOE file number - assigned when an Environmental Notification Form is submitted to the MEPA unit:

15711

EOEA File Number

F. Amount Due

Special Provisions:

- Fee Exempt (city, town or municipal housing authority)(state agency if fee is \$100 or less).
There are no fee exemptions for BWSC permits, regardless of applicant status.
- Hardship Request - payment extensions according to 310 CMR 4.04(3)(c).
- Alternative Schedule Project (according to 310 CMR 4.05 and 4.10).
- Homeowner (according to 310 CMR 4.02).

DEP Use Only

Permit No:

Rec'd Date:

Reviewer:

Check Number

Dollar Amount

Date

Request for Determination
of Applicability

BRP WW04 FORM



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Waterways
BRP WW 04 Request for Determination of
Applicability

X281949
 Transmittal Number

Request for Determination of Applicability

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



I, the undersigned, hereby request that the Department of Environmental Protection make a determination as to whether MGL Chapter 91, the Public Waterfront Act, and the regulations implementing that Act, 310 CMR 9.00, presently apply to the area of land, water, or activity thereon described below.

1. Applicant:

Town of Scituate
 Name
 600 Chief Justice Cushing Highway
 Mailing Address
 Scituate Plymouth MA 02066
 City/Town County State Zip Code
 781-545-8732
 Day Telephone #

2. Property Information (all information must be provided):

Owner Name (if different from applicant)
 N/A (None listed within assessor's database.)
 Tax Assessor's Map and Parcel Numbers
 430 Chief Justice Cushing Highway Scituate
 Location (street address) City/Town
 Plymouth 02066 42° 11' 12" N 70° 45' 37" W
 County Zip Code Longitude Latitude

3. Name of the water body:

First Herring Brook Watershed; Tack Factory Pond/Scituate Reservoir

4. Summary of the Project/Activity:

Determination of Ch 91 jurisdiction.

5. Detailed description of existing and/or proposed fill, structure, dredging or uses(s) (attach additional paper, if necessary and see #6 for plan requirements):

The proposed project is aimed at improving water storage capacity within the Scituate Reservoir and restoring a critical anadromous fish run via improvements to the Reservoir Dam, and construction of a fish passageway. Structures include the Reservoir Spillway, the Dam, and fish passage structures. Please see attached narrative for further details.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Waterways
**BRP WW 04 Request for Determination of
Applicability**

X281949

Transmittal Number

Request for Determination of Applicability (Cont.)

6. Attached is a plan or plans showing:
 - a. an appropriately scaled site location map;
 - b. references to any previous Chapter 91 licenses, permits or other authorizations for existing structures, fill, or dredging at the site, including the license number(s) and the date(s) the license(s) was recorded at the Registry of Deed or Land Court;
 - c. appropriately scaled principal dimensions and elevations of proposed and existing fill, structures, or dredging in waterways;
 - d. any historic dredging, filling, or impoundment at the site; and
 - e. a delineation of the present high and low water marks, and the historic high and low water marks.Please note the source information for all items provided in Section 6.

7. At the same time that this request was submitted to the Department of Environmental Protection, I submitted copies of it to all persons identified in 310 CMR 9.13(1)(a), and have attached their names and addresses to this form.

8. I understand that the Department of Environmental Protection may, at its discretion, require that a public hearing be held and that a newspaper notice be published at my expense regarding this request.

9. I understand that any person may submit written comments to the Department of Environmental Protection on this request within twenty-one (21) days of the date the request is received by the Department or the newspaper notification date, if applicable. I hereby certify under the pains and penalties of perjury that the foregoing statements, information and accompanying material are true and complete to the best of my knowledge.

[Handwritten Signature] on behalf of Kevin Cafferty, Town of Scituate
Applicant's signature
Julie Conroy, Fort Point Associates, Inc.
Applicant's Name

Request for Determination of Applicability

NARRATIVE

SECTION 1: INTRODUCTION

Pursuant to 310 CMR 9.06 of the Chapter 91 Waterways Regulations (the “Regulations”), Fort Point Associates, Inc. is submitting this Request for a Determination of Applicability (the “RDA”) to the Massachusetts Department of Environmental Protection (“MassDEP”) Waterways Regulation Program, on behalf of the Town of Scituate (the “Applicant”). The purpose of this RDA is to request that MassDEP formally determine whether the Waterways Regulations (the “Regulations”) presently apply to Tack Factory Pond and flows to/from First Herring Brook (the “RDA Area”), and subsequently; the Town’s proposed water capacity project for the existing Scituate Reservoir. Obtaining an RDA was a requirement of the Certificate of the Secretary of Energy and Environmental Affairs on the Environmental Notification Form for the Project that was issued on July 7, 2017 (EEA # 15711).

An analysis of historic maps, surveys, aerial photographs, and planning documents conclude that the RDA Area does not currently include areas subject to Chapter 91. Tack Factory Pond is not designated as a Great Pond, and First Herring Brook is not a navigable waterway (per 310 CMR 9.02). Additionally, the existing Reservoir Dam is not subject to Chapter 91 jurisdiction. Therefore, the Applicant respectfully requests that MassDEP issue a determination that the RDA Area is not subject to Chapter 91 jurisdiction. An explanation of the RDA Area analysis and conclusions are included within the following sections.

SECTION 2: RDA AREA

The RDA Area primarily consists of inland surface waterbodies that are not currently, nor were historically, subject to the ebb and flow of the tide. The Area consists of an approximately 52-acre subwatershed of the First Herring Brook Watershed, within the Town of Scituate, Massachusetts. This subwatershed includes segments of First Herring Brook, Tack Factory Pond, the Scituate Reservoir, and surrounding upland areas; all within the Town’s Water Resources Protection District (see Exhibit 1. Locus Map, and Exhibit 2. Aerial View Showing RDA Area). The Brook flows south/southeast into the Pond and passes through the Reservoir Dam. The Brook then continues south toward Old Oaken Bucket Pond, where the Town’s water treatment system is located.

The Reservoir Dam was installed in the late 1960’s to impound First Herring Brook, which flows through upstream Tack Factory Pond, beneath Route 3A causeway via a culvert and into the Scituate Reservoir (the “Reservoir”). Route 3A acts as a causeway that separates the Reservoir and Tack Factory Pond. Reservoir Dam was constructed as a storage reservoir for the Town of Scituate’s public water supply. Specifically, the reservoir was created to supplement well water delivery to the water treatment plant at downstream Old Oaken Bucket Dam. The Reservoir Dam is an approximately 45-foot high earthen embankment with a concrete core wall, ogee spillway, low level outlet, and a pool and weir fishway.

2.1 HISTORY OF THE RDA AREA AND VICINITY

The RDA Area was historically comprised of inland wetland resources and upland forested areas. The Area was not developed until after 1900, coinciding with the advent of the automobile, according to the Town's historic records. The chronology below lists key developments adjacent to the subwatershed between 1870 and 1970.

- 1868: Construction of Duxbury and Cohasset Railroad through nearby Greenbush village created a gradual shift of development focus away from Scituate Harbor to inland portions of the Town, including RDA Area;
- 1870: A Rubber cement factory became in operation along First Herring Brook;
- 1870's: Cranberry bog operations and several spring-water bottling firms began during this decade;
- 1893: Scituate Water Company was started as a private enterprise;
- 1900's: A few homes were constructed along Country Way – just north of current Scituate Reservoir;
- 1920's: The Scituate Water Company was taken over by the Town of Scituate;
- 1930's: Cushing Highway (Route 3A) constructed;
- 1960's: Residential development – area south of current Reservoir, and the Reservoir Dam was constructed to create the Scituate Reservoir;
- 1969: Reservoir Dam Constructed; and
- 1970's: Residential development – area south of current Reservoir.

2.2 PROPOSED PROJECT

The Town of Scituate suffered a severe water shortage in 2016 due to drought conditions, despite aggressive water use reduction efforts. Therefore, the Town is currently proposing to improve water storage capacity within the Reservoir, which is fed by First Herring Brook and Tack Factory Pond, located approximately at 430 Chief Justice Cushing Highway (the "Project Site"). The Project would increase the Town's water storage by approximately 28 days, and restore a critical anadromous fish run via improvements to the Reservoir Dam and construction of a fish passageway.

The Reservoir storage capacity will be maximized through modifications to the spillway and fishway without affecting dam safety. Since the Dam is classified as a Class I high hazard dam, modifications to the spillway are proposed to increase the discharge capacity for the design

flood equal to one-half the Probable Maximum Flood, in accordance with Massachusetts General Law c.253, Section 46 and 301 Code of Massachusetts Regulations (CMR) 10.07. Modifications to the dam, spillway, and fishway conform to the dam safety regulations and will be approved by the Department of Conservation and Recreation, Office of Dam Safety. Maintaining higher level pools would enhance fish passage during the spring upstream migration and fall out-migration periods. The Scituate DPW will continue to perform the Interim Operational Plan (IOP) developed by the North and South Rivers Watershed Association until the spillway and fishway modifications are implemented and a new operating plan is developed.

Specific Project elements include:

- Raising the Reservoir Dam impoundment by 1.5 feet (ft.) above the existing maximum normal pool El. 38.9 ft. to 40.4 ft. by installing a crest gate within the spillway;
- Modifying the spillway to lower the crest to El. 36.4 ft. and install a bottom hinged crest gate;
- Raising the normal elevation of Tack Factory Pond up to 40.4 ft. from its current elevation of 39.3 ft.;
- Installing riprap along the banks of Tack Factory Pond that is adjacent to Chief Justice Cushing Highway; and
- Modifying the existing fishway at Reservoir Dam to lower the fishway exit channel into the impoundment and incorporate removable weir to provide passage of anadromous species (alewife and blueback herring) at all reservoir water levels during the spring and fall migration periods.

SECTION 3: RDA ANALYSIS

The RDA Area analysis included a series of steps to understand changes to the landscape, watershed hydrology, and development patterns over time. First a research effort was conducted to find historic information on the RDA Area including maps, historic Chapter 91 Licenses and authorizations (if any), and studies regarding structures built and hydrologic alterations to Tack Factory Pond. Historic maps were overlaid onto current aerial photography of the RDA Area to assess the natural state of the Pond versus today's conditions.

3.1 APPLICABLE JURISDICTIONAL STANDARDS

The RDA area is comprised of inland waterbodies and there are no present or former submerged lands and tidal flats lying between the present or historic high water mark. However, the Waterways Regulations (the "Regulations") apply to Great Ponds and non-tidal rivers and streams in accordance with the public trust doctrine (M.G.L. Chapter 91).

According to the Regulations, Great Ponds contain more than ten acres in its natural state, as calculated based on the surface area of lands lying below the natural high water mark. The title to land below the natural low water mark is held by the Commonwealth in trust for the public. The Regulations state that MassDEP “shall presume that any pond presently larger than ten acres is a Great Pond, unless the applicant presents topographic, historic, or other information demonstrating that the original size of the pond was less than ten acres, prior to any alteration by damming or other human activity.”

3.2 DESCRIPTION OF DOCUMENTS REVIEWED

The RDA Area Analysis was informed by a thorough review of Town assessor data, MassDEP Waterways Regulation Program files, and research into historic U.S. Geological Survey (“USGS”) topographic maps. Research into MassDEP Waterways files did not reveal historic Chapter 91 licenses or authorizations for uses within the RDA Area. The Town assessor’s data was used to gain an understanding of the development pattern surrounding Tack Factory Pond, First Herring Brook and the Scituate Reservoir. USGS maps were researched to determine when past alteration to the Pond occurred.

The U.S. Geological Survey maps are hydrographic survey maps, which are a type of topographic map used to reveal the slopes and contours of land. Hydrographic maps are specially made to survey underwater land terrain. Such maps can be used to help in investigations, oceanography studies and naval services. The 1941 USGS topographic map was the earliest known available map of the RDA Area, prior to alteration of Tack Factory Pond through construction of the Dam and the Scituate Reservoir.

Lastly, the National Oceanic and Atmospheric Administration U.S. Office of Coast Survey’s nautical charts that included Scituate were reviewed to determine the navigational opportunities within First Herring Brook. This information was cross-referenced with the North and South Rivers Watershed’s (“NSRWA”) Canoe and Kayak Guide (the “Guide”), which identifies unobstructed, navigable surface water bodies within the Watershed and connecting subwatersheds.

3.3 DESCRIPTION OF REGISTRATION METHODOLOGY

The RDA Analysis was completed via document registration; the process of aligning features of a historic map, survey, or historic plans with features that are common on recent aerial photography. For the purposes of this RDA, a 2018 aerial photograph of the relevant area was selected as a registration base due to its high resolution (50 cm) and depiction of the most recent land use conditions. Land features and patterns such as bridges and roads on historic maps/surveys are compared with the respective common feature on the base aerial to provide the appropriate scale and orientation. Registration between 2018 aerial photography and the aforementioned 1941 USGS survey map provided the primary documentation required to

compare the boundaries of the historic Tack Factory Pond with the Pond that exists today (see Exhibit 3. RDA Area Overlay).

SECTION 4: FINDINGS

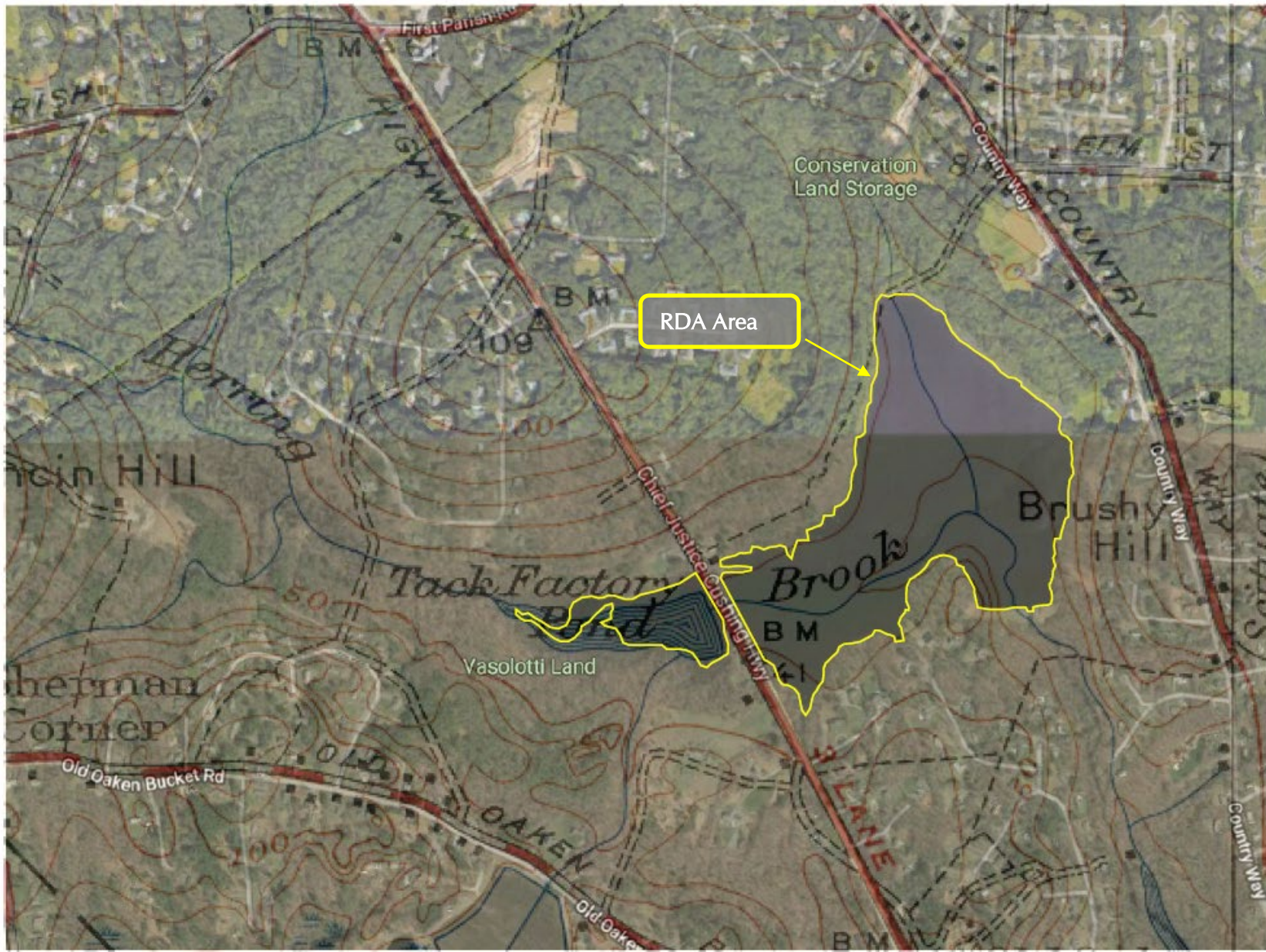
Upon review of the registered map overlay, measurements of Tack Factory Pond, taken on the 1941 USGS survey, showed the Pond to be approximately 8-acres in its natural state. Tack Factory Pond cannot be classified as a Great Pond, according to the Regulations, as it is not greater than 10 acres in its natural state. Further, the Pond was not designated as a Great Pond within the 2017 Massachusetts Great Ponds List published by the MassDEP Waterways Regulation Program. First Herring Brook is not navigable landward of the confluence of the Brook and the North River at Country Way, based upon review of NOAA Chart for Massachusetts Bay (#13267), including Scituate, and the NSRWA Guide. The 1941 survey also shows First Herring Brook running into Tack Factory Pond, and continuing in its natural state, in a sinuous path through the area that is currently occupied by the Reservoir (see Exhibit 3. RDA Area Overlay). None of these waterbodies (Tack Factory Pond or First Herring Brook) are considered Great Ponds in their natural state. Further, the Reservoir did not exist prior to alteration of the Pond via damming. Therefore, there are no surface waterbodies within this RDA area that are subject to Chapter 91.

Request for Determination of Applicability

EXHIBITS







Appendix

NOTIFICATION

APPENDIX: NOTIFICATION

The following list provides the names and addresses of local, state, and federal agencies; and abutters, which will be notified of this RDA (per 310 CMR 9. 13(1)(a)), in consultation with the MassDEP Waterways reviewer. An example notification letter is included on page 3.

Local Agencies	
James Boudreau Town Administrator Scituate Town Hall 600 Chief Justice Cushing Highway Scituate, MA 02066	Brad Washburn Director of Planning and Development Scituate Town Hall 600 Chief Justice Cushing Highway Scituate, MA 02066
Amy Walkey Conservation Agent & Natural Resource Officer Scituate Town Hall 600 Chief Justice Cushing Highway Scituate, MA 02066	Kevin Cafferty Director of Public Works Scituate Town Hall 600 Chief Justice Cushing Highway Scituate, MA 02066
State Agencies	
Jason Burtner MA Office of Coastal Zone Management South Shore Region c/o Stellwagen Bank National Marine Sanctuary 175 Edward Foster Road Scituate, MA 02066	Environmental Reviewer Department of Fish and Game 251 Causeway Street, Suite 400 Boston, MA 02114
Federal Agencies	
Regulatory Division Army Corps of Engineers 696 Virginia Road Concord, MA 01742	
Abutters	
Robert Ryan 142 Old Forge Road Scituate, MA 02066	Shawna Fraser 136 Old Forge Road Scituate, MA 02066
WM Etal Harrington Trustees 443 Chief Justice Cushing Highway Scituate, MA 02066	Patricia Butler 439 Chief Justice Cushing Highway Scituate, MA 02066
Donald Morgan 436 Chief Justice Cushing Highway Scituate, MA 02066	David Smith and Ann-Marie Martin 401 Chief Justice Cushing Highway Scituate, MA 02066
Charles and Kim Callahan	Donald Craig

385 Chief Justice Cushing Highway Scituate, MA 02066	384 Chief Justice Cushing Highway Scituate, MA 02066
Jason Carle and Mary Mason 376 Chief Justice Cushing Highway Scituate, MA 02066	Richard Margeson 370 Chief Justice Cushing Highway Scituate, MA 02066
Andrew and Jennifer Cancellieri 33 Sherman Drive Scituate, MA 02066	David and Emily Simmer 36 Sherman Drive Scituate, MA 02066
Joseph Santos 34 Sherman Drive Scituate, MA 02066	Charles Trezise 32 Sherman Drive Scituate, MA 02066
Michael Ludlow and La'Tasha Quaita 27 Sherman Drive Scituate, MA 02066	Jay Swartz and Judith Doherty 19 Colonial Way Scituate, MA 02066
Mary Sacchitella 23 Colonial Way Scituate, MA 02066	Marc and Kristen Mercurio 28 Colonial Way Scituate, MA 02066
Gretchen Billings 175 Country Way Scituate, MA 02066	Eric and Rosanne Person 1 Ross Arnold Lane Scituate, MA 02066
David and Jennifer Laucirica 199 Country Way Scituate, MA 02066	Michael and Crystal Hoffman 205 Country Way Scituate, MA 02066
Peter Ivens 215 Country Way Scituate, MA 02066	Joseph Puleio 0 Country Way Scituate, MA 02066
John Forde 229 Country Way Scituate, MA 02066	Joseph and Gail Goodrow 235 Country Way Scituate, MA 02066
Brian Steverman 257 Country Way Scituate, MA 02066	William Krusell 275 Country Way Scituate, MA 02066
Mario Bongarzone C/O Kenton Bongarzone 0 Christopher Wren Road Scituate, MA 02066	

January XX, 2018

Attention: Interested Party

Re: Request for Determination of Applicability, DEP Transmittal No. X281949
Scituate Reservoir Dam Water Supply Project

Dear Recipient:

Please find enclosed a copy of the Request for Determination of Applicability (RDA) for the above referenced project that was submitted to the Department of Environmental Protection (DEP). The purpose of the RDA is to determine the Chapter 91 jurisdictional areas surrounding Tack Factory Pond and the Scituate Reservoir.

Any person may submit written comments to DEP at the following address:

Mr. Ben Lynch, Program Chief
Department of Environmental Protection
Bureau of Resource Protection - Waterways Regulation Program
One Winter Street, 5th Floor
Boston, Massachusetts 02108

This information has been prepared by Fort Point Associates, Inc. If you have any questions, please feel free to contact me at (617) 357-7044 x205 or via email at jconroy@fpa-inc.com.

Sincerely,

Julie Conroy, AICP

Cc: Thomas Cook, PE; TetraTech
Kevin Cafferty, Director, Department of Public Works, Town of Scituate
Dan Smith, P.E., Department of Public Works, Town of Scituate

Encl.: Request for Determination of Applicability