

### Introduction

This memorandum is submitted in response to a request by the Zoning Board of Appeal to address issues raised at the July 21, 2016, hearing regarding an appeal from a Cease and Desist Order issued by the Commissioner of Buildings to Anthony R. DeCosta.

The specific issues that the Board requested be addressed are: (1) grandfathering; (2) changes in activity at the site three years ago; (3) materials filed with the Conservation Commission; (4) whether the business has a Title 5 EPA air quality permit.

#### **1. The current use of the property is grandfathered.**

Under the “grandfathering” provisions of state law and the city code, a zoning ordinance “shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing” on such ordinance. G.L. c. 40A § 6; and Ordinances, City of New Bedford, c. 9 § 2410 (2003).

A-1 Asphalt has been operating its business on the property at 1861 Shawmut Avenue, New Bedford since 1963. The business operates out of a garage that was built on that site pursuant to a building permit obtained in 1932. A-1 has utilized that garage since the inception of the business, and uses the property primarily as its contractor's yard. (Mr. DeCosta also lives in the house which has been on the property since before the first zoning ordinance.)

The property on which A-1 Asphalt is located is designated Industrial Zone B, under the City’s zoning code. The Code in effect, when the business started, in 1963, identifies: (1) three types of residential zones; (2) a business zone; (3) and three industrial zones. In that Code, each of the zone classification except Industrial Zone B, shares similar prefatory language: “no premises shall be used . . . for other than one or more of the following specified purposes.” Each zone, other than Industrial Zone B, then lists specific permitted uses. Ordinances, City of New Bedford, c. 9 §§ 208, 218, 228, 239, 246, 260 (1963).

Conversely, Industrial Zone B includes an entirely different opening clause: “any use otherwise lawful shall be permitted.” Ordinances, City of New Bedford, c. 9-253 (1963). The Uses clause of Industrial Zone B does not include any limiting language or any reference to the uses permitted in other zones. According to its plain wording, under the code in effect in 1963, any lawful use, such as a contractor’s yard, is a permitted use of property in Industrial Zone B. Even today, a contractor's yard is expressly permitted as a use in the Industrial “B” zone. Ordinances, City of New Bedford, c. 9, Appendix A (2003).

To the extent the current zoning ordinance adopts the procedures of the State Building Code; A-1's current use of the property is grandfathered. The use of the property by A-1 preexisted the state building code, and it preexisted any zoning ordinance that relies on the state building code.

When A-1 Asphalt began using the property as a contractor's yard in 1963, there was no State Building Code. The State Building Code did not come into effect until 1975. See An Act Establishing the State Building Code Commission for the Adoption and Promulgation of a State Building Code, 1972 Mass. Acts 802. Accordingly, the provisions of the city zoning ordinance at Sec. 5110 (which itself did not come into effect until 2003) regarding the "issuance of a Building Permit or Certificate of Use and Occupancy where required under the Commonwealth's State Building Code" cannot apply to a prior existing, conforming use.

Use of the property as a contractor's yard was, and is, a use as of right. There has been no change in the principal use of the garage or of the property as a contractor's yard since 1963. Because the use as a contractor's yard began before the creation of the State Building Code, the code's requirement of a permit under the State Building Code is not applicable.

If Mr. DeCosta's father had submitted a change of use notice in 1963 indicating his intent to change the use of the property from a farm to a contractor's yard, the building department would have had no discretion. The proposed use was allowed then, just as it is allowed now. The issuance of the "permit" would have been a ministerial act, one that the building department would have been required to perform. <sup>1</sup>

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<sup>1</sup> The Building Commissioner's suggestion that he might have discretion to refuse a change of use "permit" is contrary to the underlying principal of zoning. As the Appeals Court ruled in SCIT, Inc. V. Planning Board Of Braintree et al., 19 Mass.App.Ct. 101,107-108 (1984) (Zoning by-law which subjected all uses in a zone to special permit ruled illegal):

"Section 4 of c. 40A provides that "[a]ny zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted." The basic assumption underlying the division of a municipality into zoning districts is that, in general, each land use will have a predictable character and that the uses of land can be sorted out into compatible groupings. See Leahy v. Inspector of Bldgs. of New Bedford, 308 Mass. 128, 132, 31 N.E.2d 436 (1941). Based upon this assumption, certain uses are permitted as of right within each district, without the need for a landowner or developer first to seek permission which depends upon the discretion of local zoning authorities. The uniformity requirement is based upon principles of equal treatment: all land in similar circumstances should be treated alike, so that "if anyone can go ahead with a certain development [in a district], then so can everybody else." 1 Williams, American Land Planning Law § 16.06 (1974).

A-1 Asphalt's ongoing rock and concrete crushing operations are also not a prohibited use of the property because that specific use is grandfathered. A-1 has been engaged in crushing stone and concrete in its yard since the 1990's. At that time, the applicable zoning ordinance provided that:

"Within any Industrial "B" District, as indicated on the building zone map, any use otherwise lawful shall be permitted except a building or structure intended or designed to be used in whole or in part for residential purposes or for use as a fish fillet plant or fish processing plant." Ordinances, City of New Bedford, c. 9-253 (1981).

There is nothing that suggests that crushing rock and concrete was not an "otherwise lawful" business operation (i.e. - no other law prohibited a person from being in the business of crushing stone and concrete). In fact, when the zoning ordinance was amended, by the Ordinance of 12-23-03, the definition of manufacturing was changed to expressly prohibit stone processing, suggesting that until that change, stone crushing was an allowed industrial use.

The present zoning ordinance took effect in 2003. Crushing stone and concrete was, until that time, an allowed use in the Industrial "B" zone. See Ordinances, City of New Bedford, c. 9 § 1200 (2003). As such, pursuant to state law and the city code, as cited above, that use is a prior existing non-conforming use, and the provisions of the 2003 zoning code do not apply to A-1 Asphalt's rock and concrete crushing operations.

## **2. Activity at the site has decreased since three years ago.**

In 1981, thirty-five years ago, A-1 Asphalt started accepting asphalt and concrete from excavation work being done at road and construction projects. Since at least 1991, A-1 has been continually performing crushing operations on the property. The crushing operation has remained consistent for years, with sporadic increases in volume caused by participation in large construction projects that arise from time to time. Upon completion of any such project,

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These principles underpin § 4 of c. 40A, and have long constituted a limitation on municipal zoning power. As was said on the subject in Everpure Ice Mfg. Co. v. Board of Appeals of Lawrence, 324 Mass. 433, 439, 86 N.E.2d 906 (1949): "A zoning ordinance is intended to apply uniformly to all property located in a particular district ... and the properties of all the owners in that district [must be] subjected to the same restrictions for the common benefit of all."

the volume of crushing operations decreases. Three years ago, A-1's business reached a higher volume than in the previous few years because it was accepting asphalt and concrete from construction jobs at the New Bedford Airport, and at Faunce Corner Road in Dartmouth. A-1's business volume has since decreased. The number of trucks travelling the road has decreased, and the number of employees at the business has decreased from 10 to 7.

### **3. Proceedings before the Conservation Commission.**

A-1 has submitted plans to the Conservation Commission for approval of a wetlands restoration project, which also includes improvements to the property intended to control dust and noise created by the business operation. Documents submitted include: Massachusetts Department of Environmental Protection WPA Form 3- Notice of Intent, See "Exhibit A" and site plan schematics. See "Exhibit B," and "Exhibit C."

To address the issue of noise, A-1 intends to construct a ten foot tall earthen berm alongside the crushing machinery. By creating this berm between the crusher and the street, sound will be absorbed and deflected back toward the property and away from the residences across the street. See Site Plan Detail- Earthen Berm, "Exhibit D."

To keep the street free of mud and dust when trucks exit the property, A-1 intends to construct a new driveway. The current driveway lies directly across the street from neighboring residences. That driveway routes trucks across an unimproved open area, allowing the trucks to track dirt into the street. To address that concern, A-1 proposes to construct a new driveway that routes trucks across an engineered mud trap. This mud trap will provide an area to wash down the trucks and tires before the trucks leave the property. Any dust or mud picked up by the trucks will be washed off and the sediment will be collected and handled on site. This system will allow the trucks to exit the property with clean tires, and avoid tracking mud or dust onto the street. Another benefit of the new driveway is that it will be located further away from the residences across the street. See Site Plan Detail- Mud Trap, "Exhibit E."

### **4. Whether the business has a Title 5 EPA air quality permit**

Owners of major sources of air pollution are required to obtain Operating Permits under Title V of the Clean Air Act when emissions of toxic air pollutants exceed regulatory thresholds (generally 50 tons or more per year of a specific material). There is no indication that A-1's business operation creates or emits airborne pollutants at the thresholds that would require EPA permitting. Mass DEP agents have toured the property, and have not issued any notice that A-1's operations are in violation of state or federal air quality or emissions regulations.

## **Conclusion**

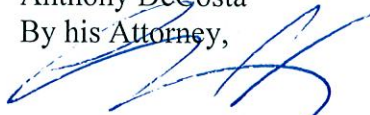
For the reasons stated above, A-1 Asphalt's right to use its property for its present operation is grandfathered by law, and it is not subject to the requirement of a permit.

The focus of the Building Commissioner's Cease and Desist Order is whether A-1 filed a change of use notice in 1963, despite the fact that during the ensuing fifty years, his department approved multiple building permits for the very same property. The Building Department has known of the business operations conducted at the property during the company's long existence, yet at no earlier time has this or any prior Building Commissioner ever raised the issue of whether the business had filed notice of a change of use.

The underlying motivation for the Building Commissioner's new-found concern is the complaints by neighbors (notably including his assistant building inspector) of the A-1 property about dust and noise caused by the business. It should be noted that the complaints of noise and dust, are among the very same issues that A-1 has been working to address and which it is seeking to mitigate further, with the approval of the Conservation Commission. As stated above, A-1 proposes to create an earthen berm to contend with sound, and a reengineered exit to prevent the trucks from tracking mud or dust off site.

The Building Commissioner has not attempted to work with A-1 to resolve the noise and dust issues at the property, but, has instead, vengefully determined to shut down the business. The proper course of action is to try to resolve any disturbance from noise or dust under the pertinent sections of the City Code, and not to pursue the inequitable termination of an established, locally owned business that provides jobs for members of the community.

Anthony DeCosta  
By his Attorney,



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Thomas P. Crotty, Esq., BBO #106800  
5 Dover Street, Suite 102  
New Bedford, MA 02740  
Telephone: 508-990-9101  
Facsimile: 508-990-9108  
Email: tomcrotty@tcrottylaw.com

Dated: August 18, 2016

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**Massachusetts Department of Environmental Protection**  
Bureau of Resource Protection - Wetlands

Provided by MassDEP:

**WPA Form 3 – Notice of Intent**

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

MassDEP File Number

Document Transaction Number

New Bedford  
City/Town

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



**Note:**  
Before completing this form consult your local Conservation Commission regarding any municipal bylaw or ordinance.

**A. General Information**

1. Project Location (**Note:** electronic filers will click on button to locate project site):

1861 Shawmut Ave. New Bedford 02747  
a. Street Address b. City/Town c. Zip Code  
Latitude and Longitude: 41d40'36" 70d58'03"  
d. Latitude e. Longitude  
124 27  
f. Assessors Map/Plat Number g. Parcel /Lot Number

2. Applicant:

Anthony R. DeCosta  
a. First Name b. Last Name  
dba A-1 Asphalt Company  
c. Organization  
1861 Shawmut Avenue  
d. Street Address  
New Bedford MA 02747  
e. City/Town f. State g. Zip Code  
h. Phone Number i. Fax Number j. Email Address

3. Property owner (required if different from applicant):  Check if more than one owner

Anthony R. DeCosta  
a. First Name b. Last Name  
c. Organization  
same  
d. Street Address  
e. City/Town f. State g. Zip Code  
h. Phone Number i. Fax Number j. Email address

4. Representative (if any):

Rick Charon, P.E.  
a. First Name b. Last Name  
Charon Associates, Inc. - Engineers  
c. Company  
323 Neck Road  
d. Street Address  
Rochester MA 02770  
e. City/Town f. State g. Zip Code  
508-763-8362 charonengineers@comcast.net  
h. Phone Number i. Fax Number j. Email address

5. Total WPA Fee Paid (from NOI Wetland Fee Transmittal Form):

\$7,985.00 \$487.50 \$7,497.50  
a. Total Fee Paid b. State Fee Paid c. City/Town Fee Paid



**A. General Information (continued)**

6. General Project Description:

Improvements to soil & aggregate re-cycling facility to mitigate noise and control dust; movement of soil stockpiles to 50' away from bordering wetlands; provision of minimum 10-ft. wide grass strips at limits of alteration; and provision of drainage swales to convey storm water to new sediment forebay to be added to existing retention basin.

7a. Project Type Checklist:

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Single Family Home                | 2. <input type="checkbox"/> Residential Subdivision                   |
| 3. <input type="checkbox"/> Limited Project Driveway Crossing | 4. <input checked="" type="checkbox"/> Commercial/Industrial          |
| 5. <input type="checkbox"/> Dock/Pier                         | 6. <input type="checkbox"/> Utilities                                 |
| 7. <input type="checkbox"/> Coastal Engineering Structure     | 8. <input type="checkbox"/> Agriculture (e.g., cranberries, forestry) |
| 9. <input type="checkbox"/> Transportation                    | 10. <input type="checkbox"/> Other                                    |

7b. Is any portion of the proposed activity eligible to be treated as a limited project subject to 310 CMR 10.24 (coastal) or 310 CMR 10.53 (inland)?

1.  Yes  No If yes, describe which limited project applies to this project:

2. Limited Project

8. Property recorded at the Registry of Deeds for:

Bristol	_____	b. Certificate # (if registered land)	_____
a. County	_____	309	_____
5664	_____	d. Page Number	_____
c. Book	_____		

**B. Buffer Zone & Resource Area Impacts (temporary & permanent)**

- Buffer Zone Only – Check if the project is located only in the Buffer Zone of a Bordering Vegetated Wetland, Inland Bank, or Coastal Resource Area.
- Inland Resource Areas (see 310 CMR 10.54-10.58; if not applicable, go to Section B.3, Coastal Resource Areas).

Check all that apply below. Attach narrative and any supporting documentation describing how the project will meet all performance standards for each of the resource areas altered, including standards requiring consideration of alternative project design or location.

For all projects affecting other Resource Areas, please attach a narrative explaining how the resource area was delineated.

Resource Area	Size of Proposed Alteration	Proposed Replacement (if any)
a. <input type="checkbox"/> Bank	1. linear feet	2. linear feet
b. <input checked="" type="checkbox"/> Bordering Vegetated Wetland	None 1. square feet	2. square feet
c. <input type="checkbox"/> Land Under Waterbodies and Waterways	1. square feet 3. cubic yards dredged	2. square feet





**WPA Form 3 – Notice of Intent**

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

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**B. Buffer Zone & Resource Area Impacts (temporary & permanent) (cont'd)**

<u>Resource Area</u>	<u>Size of Proposed Alteration</u>	<u>Proposed Replacement (if any)</u>
d. <input checked="" type="checkbox"/> Bordering Land Subject to Flooding	None 1. square feet 3. cubic feet of flood storage lost	2. square feet 4. cubic feet replaced
e. <input type="checkbox"/> Isolated Land Subject to Flooding	1. square feet 2. cubic feet of flood storage lost	3. cubic feet replaced
f. <input type="checkbox"/> Riverfront Area	N/A 1. Name of Waterway (if available) 2. Width of Riverfront Area (check one): <input type="checkbox"/> 25 ft. - Designated Densely Developed Areas only <input type="checkbox"/> 100 ft. - New agricultural projects only <input type="checkbox"/> 200 ft. - All other projects	
3. Total area of Riverfront Area on the site of the proposed project:		None square feet
4. Proposed alteration of the Riverfront Area:		
a. total square feet	b. square feet within 100 ft.	c. square feet between 100 ft. and 200 ft.
5. Has an alternatives analysis been done and is it attached to this NOI?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6. Was the lot where the activity is proposed created prior to August 1, 1996?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3. <input type="checkbox"/> Coastal Resource Areas: (See 310 CMR 10.25-10.35)		

Check all that apply below. Attach narrative and supporting documentation describing how the project will meet all performance standards for each of the resource areas altered, including standards requiring consideration of alternative project design or location.

Online Users:  
Include your document transaction number (provided on your receipt page) with all supplementary information you submit to the Department.

<u>Resource Area</u>	<u>Size of Proposed Alteration</u>	<u>Proposed Replacement (if any)</u>
a. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below	
b. <input type="checkbox"/> Land Under the Ocean	1. square feet 2. cubic yards dredged	
c. <input type="checkbox"/> Barrier Beach	Indicate size under Coastal Beaches and/or Coastal Dunes below	
d. <input type="checkbox"/> Coastal Beaches	1. square feet	2. cubic yards beach nourishment
e. <input type="checkbox"/> Coastal Dunes	1. square feet	2. cubic yards dune nourishment



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MassDEP File Number \_\_\_\_\_

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**B. Buffer Zone & Resource Area Impacts (temporary & permanent) (cont'd)**

	<u>Size of Proposed Alteration</u>	<u>Proposed Replacement (if any)</u>
f. <input type="checkbox"/> Coastal Banks	1. linear feet _____	
g. <input type="checkbox"/> Rocky Intertidal Shores	1. square feet _____	
h. <input type="checkbox"/> Salt Marshes	1. square feet _____	2. sq ft restoration, rehab., creation _____
i. <input type="checkbox"/> Land Under Salt Ponds	1. square feet _____	
	2. cubic yards dredged _____	
j. <input type="checkbox"/> Land Containing Shellfish	1. square feet _____	
k. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above	
	1. cubic yards dredged _____	
l. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	1. square feet _____	
4. <input type="checkbox"/> Restoration/Enhancement	If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.2.b or B.3.h above, please enter the additional amount here.	
	N/A _____	
	a. square feet of BVW _____	b. square feet of Salt Marsh _____
5. <input type="checkbox"/> Project Involves Stream Crossings		
	N/A _____	
	a. number of new stream crossings _____	b. number of replacement stream crossings _____

**C. Other Applicable Standards and Requirements**

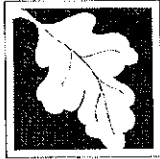
**Streamlined Massachusetts Endangered Species Act/Wetlands Protection Act Review**

1. Is any portion of the proposed project located in **Estimated Habitat of Rare Wildlife** as indicated on the most recent Estimated Habitat Map of State-Listed Rare Wetland Wildlife published by the Natural Heritage and Endangered Species Program (NHESP)? To view habitat maps, see the *Massachusetts Natural Heritage Atlas* or go to [http://www.mass.gov/dfwele/dfw/nhosp/regulatory\\_review/priority\\_habitat/online\\_viewer.htm](http://www.mass.gov/dfwele/dfw/nhosp/regulatory_review/priority_habitat/online_viewer.htm).

a.  Yes  No **If yes, include proof of mailing or hand delivery of NOI to:**

Mass. GIS:  
2/16/2016 \_\_\_\_\_

Natural Heritage and Endangered Species Program  
Division of Fisheries and Wildlife  
100 Hartwell Street, Suite 230  
West Boylston, MA 01583



**C. Other Applicable Standards and Requirements (cont'd)**

If yes, the project is also subject to Massachusetts Endangered Species Act (MESA) review (321 CMR 10.18). To qualify for a streamlined, 30-day, MESA/Wetlands Protection Act review, please complete Section C.1.C, and include requested materials with this Notice of Intent (NOI); OR complete Section C.1.d, if applicable. *If MESA supplemental information is not included with the NOI, by completing Section 1 of this form, the NHESP will require a separate MESA filing which may take up to 90 days to review (unless noted exceptions in Section 2 apply, see below).*

1. c. Submit Supplemental Information for Endangered Species Review\*

1.  Percentage/acreage of property to be altered:

(a) within wetland Resource Area \_\_\_\_\_ percentage/acreage

(b) outside Resource Area \_\_\_\_\_ percentage/acreage

2.  Assessor's Map or right-of-way plan of site

3.  Project plans for entire project site, including wetland resource areas and areas outside of wetlands jurisdiction, showing existing and proposed conditions, existing and proposed tree/vegetation clearing line, and clearly demarcated limits of work \*\*\*\*

(a)  Project description (including description of impacts outside of wetland resource area & buffer zone)

(b)  Photographs representative of the site

(c)  MESA filing fee (fee information available at: [http://www.mass.gov/dfwele/dfw/nhesp/regulatory\\_review/mesa/mesa\\_fee\\_schedule.htm](http://www.mass.gov/dfwele/dfw/nhesp/regulatory_review/mesa/mesa_fee_schedule.htm)).  
 Make check payable to "Commonwealth of Massachusetts - NHESP" and **mail to NHESP** at above address

*Projects altering 10 or more acres of land, also submit:*

(d)  Vegetation cover type map of site

(e)  Project plans showing Priority & Estimated Habitat boundaries

d. OR Check One of the Following

1.  Project is exempt from MESA review.  
 Attach applicant letter indicating which MESA exemption applies. (See 321 CMR 10.14, [http://www.mass.gov/dfwele/dfw/nhesp/regulatory\\_review/mesa/mesa\\_exemptions.htm](http://www.mass.gov/dfwele/dfw/nhesp/regulatory_review/mesa/mesa_exemptions.htm); the NOI must still be sent to NHESP if the project is within estimated habitat pursuant to 310 CMR 10.37 and 10.59.)

2.  Separate MESA review ongoing. \_\_\_\_\_ a. NHESP Tracking # \_\_\_\_\_ b. Date submitted to NHESP

\* Some projects not in Estimated Habitat may be located in Priority Habitat, and require NHESP review (see <http://www.mass.gov/dfwele/dfw/nhesp/nhesp.htm>, regulatory review tab). Priority Habitat includes habitat for state-listed plants and strictly upland species not protected by the Wetlands Protection Act.

\*\* MESA projects may not be segmented (321 CMR 10.16). The applicant must disclose full development plans even if such plans are not required as part of the Notice of Intent process.



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 3 – Notice of Intent**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

MassDEP File Number

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New Bedford

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**C. Other Applicable Standards and Requirements (cont'd)**

3.  Separate MESA review completed.  
 Include copy of NHESP "no Take" determination or valid Conservation & Management Permit with approved plan.

2. For coastal projects only, is any portion of the proposed project located below the mean high water line or in a fish run?

a.  Not applicable – project is in inland resource area only

b.  Yes  No If yes, include proof of mailing or hand delivery of NOI to either:

South Shore - Cohasset to Rhode Island, and the Cape & Islands:

North Shore - Hull to New Hampshire:

Division of Marine Fisheries - Southeast Marine Fisheries Station  
 Attn: Environmental Reviewer  
 1213 Purchase Street – 3rd Floor  
 New Bedford, MA 02740-6694

Division of Marine Fisheries - North Shore Office  
 Attn: Environmental Reviewer  
 30 Emerson Avenue  
 Gloucester, MA 01930

Also if yes, the project may require a Chapter 91 license. For coastal towns in the Northeast Region, please contact MassDEP's Boston Office. For coastal towns in the Southeast Region, please contact MassDEP's Southeast Regional Office.

3. Is any portion of the proposed project within an Area of Critical Environmental Concern (ACEC)?

a.  Yes  No If yes, provide name of ACEC (see instructions to WPA Form 3 or MassDEP Website for ACEC locations). **Note:** electronic filers click on Website.

b. ACEC

4. Is any portion of the proposed project within an area designated as an Outstanding Resource Water (ORW) as designated in the Massachusetts Surface Water Quality Standards, 314 CMR 4.00?

a.  Yes  No

5. Is any portion of the site subject to a Wetlands Restriction Order under the Inland Wetlands Restriction Act (M.G.L. c. 131, § 40A) or the Coastal Wetlands Restriction Act (M.G.L. c. 130, § 105)?

a.  Yes  No

6. Is this project subject to provisions of the MassDEP Stormwater Management Standards?

a.  Yes. Attach a copy of the Stormwater Report as required by the Stormwater Management Standards per 310 CMR 10.05(6)(k)-(q) and check if:

1.  Applying for Low Impact Development (LID) site design credits (as described in Stormwater Management Handbook Vol. 2, Chapter 3)

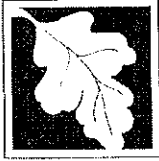
2.  A portion of the site constitutes redevelopment

3.  Proprietary BMPs are included in the Stormwater Management System.

b.  No. Check why the project is exempt:

1.  Single-family house

Online Users:  
 Include your document transaction number (provided on your receipt page) with all supplementary information you submit to the Department.



**C. Other Applicable Standards and Requirements (cont'd)**

- 2.  Emergency road repair
- 3.  Small Residential Subdivision (less than or equal to 4 single-family houses or less than or equal to 4 units in multi-family housing project) with no discharge to Critical Areas.

**D. Additional Information**

Applicants must include the following with this Notice of Intent (NOI). See instructions for details.

**Online Users:** Attach the document transaction number (provided on your receipt page) for any of the following information you submit to the Department.

- 1.  USGS or other map of the area (along with a narrative description, if necessary) containing sufficient information for the Conservation Commission and the Department to locate the site. (Electronic filers may omit this item.)
- 2.  Plans identifying the location of proposed activities (including activities proposed to serve as a Bordering Vegetated Wetland [BVW] replication area or other mitigating measure) relative to the boundaries of each affected resource area.
- 3.  Identify the method for BVW and other resource area boundary delineations (MassDEP BVW Field Data Form(s), Determination of Applicability, Order of Resource Area Delineation, etc.), and attach documentation of the methodology.
- 4.  List the titles and dates for all plans and other materials submitted with this NOI.

Plan of Site Improvements Prepared for Anthony R. DeCosta

a. Plan Title

Charon Associates, Inc.-Engineers

Richard J. Charon, P.E.

b. Prepared By

c. Signed and Stamped by

Feb. 26, 2016

1" = 40 ft.

d. Final Revision Date

e. Scale

f. Additional Plan or Document Title

g. Date

- 5.  If there is more than one property owner, please attach a list of these property owners not listed on this form.
- 6.  Attach proof of mailing for Natural Heritage and Endangered Species Program, if needed.
- 7.  Attach proof of mailing for Massachusetts Division of Marine Fisheries, if needed.
- 8.  Attach NOI Wetland Fee Transmittal Form
- 9.  Attach Stormwater Report, if needed.



# WPA Form 3 – Notice of Intent

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## E. Fees

- Fee Exempt: No filing fee shall be assessed for projects of any city, town, county, or district of the Commonwealth, federally recognized Indian tribe housing authority, municipal housing authority, or the Massachusetts Bay Transportation Authority.

Applicants must submit the following information (in addition to pages 1 and 2 of the NOI Wetland Fee Transmittal Form) to confirm fee payment:

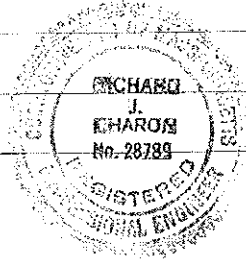
2. Municipal Check Number	19755	3. Check date	2/26/16
4. State Check Number	19754	5. Check/date	2/26/16
6. Payor name on check: First Name	A-1 ASPHALT CO., INC.		
7. Payor name on check: Last Name			

## F. Signatures and Submittal Requirements

I hereby certify under the penalties of perjury that the foregoing Notice of Intent and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge. I understand that the Conservation Commission will place notification of this Notice in a local newspaper at the expense of the applicant in accordance with the wetlands regulations, 310 CMR 10.05(5)(a).

I further certify under penalties of perjury that all abutters were notified of this application, pursuant to the requirements of M.G.L. c. 131, § 40. Notice must be made by Certificate of Mailing or in writing by hand delivery or certified mail (return receipt requested) to all abutters within 100 feet of the property line of the project location.

1. Signature of Applicant		2. Date	2/27/16
3. Signature of Property Owner (if different)		4. Date	2/29/16
5. Signature of Representative (if any)		6. Date	



### For Conservation Commission:

Two copies of the completed Notice of Intent (Form 3), including supporting plans and documents, two copies of the NOI Wetland Fee Transmittal Form, and the city/town fee payment, to the Conservation Commission by certified mail or hand delivery.

### For MassDEP:

One copy of the completed Notice of Intent (Form 3), including supporting plans and documents, one copy of the NOI Wetland Fee Transmittal Form, and a copy of the state fee payment to the MassDEP Regional Office (see Instructions) by certified mail or hand delivery.

### Other:

If the applicant has checked the "yes" box in any part of Section C, Item 3, above, refer to that section and the Instructions for additional submittal requirements.

The original and copies must be sent simultaneously. Failure by the applicant to send copies in a timely manner may result in dismissal of the Notice of Intent.

AFFIDAVIT OF SERVICE

Under the Massachusetts Wetlands Protection Act

(to be submitted to the Mass. D.E.P. and the Conservation Commission  
when filing a Notice of Intent)

I, Richard J. Charon, P.E., hereby certify under the pains and penalties of perjury that on February 29, 2016 I gave notification to abutters in compliance with the second paragraph of Massachusetts General Laws Chapter 131, Section 40, and the D.E.P. Guide to Abutter Notification dated April 8, 1994, in connection with the following matter:

A Notice of Intent filed under the Massachusetts Wetlands Protection Act

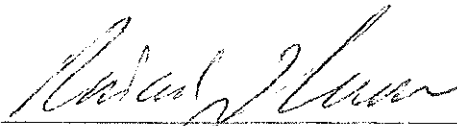
by Anthony R. DeCosta

with the New Bedford Conservation Commission

on Feb. 29, 2016 for property located

at 1861 Shawmut Avenue

The form of notification and a list of abutters to whom it was given, and their addresses, are attached to this Affidavit of Service.

  
\_\_\_\_\_  
Richard J. Charon, P.E.

2/29/16  
Date

**Notification to Abutters Under the  
Massachusetts wetlands Protection Act**

In accordance with the provisions of Massachusetts General Laws Chapter 131, Section 40, you are hereby notified of the following:

- A. The name of the applicant is: Anthony R. DeCosta  
1861 Shawmut Avenue  
New Bedford, MA 02740
- B. The applicant has filed a Notice of Intent with the New Bedford Conservation Commission seeking to perform work in an area or within the buffer zone of an area subject to protection under the Wetlands Protection Act (M.G.L. Ch. 131, S.40).
- C. The address of the lot where the activity is proposed is: 1861 Shawmut Ave.
- D. The proposed project is: Improvements to soil and aggregate re-cycling facility to mitigate noise and control dust; movement of soil stockpiles to 50' away from bordering wetlands; provision of grass strips at limits of alteration; and provision of drainage swales to convey storm water to new sediment forebay to be added to existing retention pond.
- E. Copies of the Notice of Intent may be examined at City Hall between the hours of 9 AM and 4 PM on Monday through Friday. For more information call the Conservation Commission at 508-991-6188.
- F. Copies of the Notice of Intent may be obtained from Charon Associates, Inc. – Engineers by calling 508-763-8362 between the hours of 9AM and 4 PM on Monday through Friday.
- G. Information regarding the date, time and place of the public hearing may be obtained from the Conservation Commission by calling 508-991-6188.
- H. Notice of the public hearing, including its date, time and place, will be published at least 5 days in advance in the Standard-Times and will be posted at City all at least 48 hours in advance.
- I. You may also contact the Southeast Regional office of the Mass. Department of Environmental Protection at 508-946-2800.



ABUTTERS LIST FOR: Anthony R. DeCosta  
Lot 27 of Assessors Map 124  
1861 Shawmut Ave., New Bedford, MA

Lot(s) No. Map 124

48	Thomas J. Welch & Andrea M. Welch 1878 Shawmut Ave., New Bedford, MA 02745
34	Roy Andrew 1868 Shawmut Ave., Dartmouth, MA 02747
162	James E. Butler, Jr. P.O. Box 344, Pocono Pines, PA 18350
161	Colleen M. Azevedo & Jessica L. Azevedo 1860 Shawmut Ave., Dartmouth, MA 02747
160	Jared R. Lucas 1856 Shawmut Ave., Dartmouth, MA 02747
116	City of New Bedford, New Bedford Redevelopment 131 William St., New Bedford, MA 02740
77	City of New Bedford, Airport Commission 133 William St., New Bedford, MA 02740
26	County of Bristol c/o Conservation Commission 131 William St., New Bedford, MA 02740
25	Michael West & Mary Ann West 543 State Road, Dartmouth, MA 02747

*Crashnet Cedar Swamp*

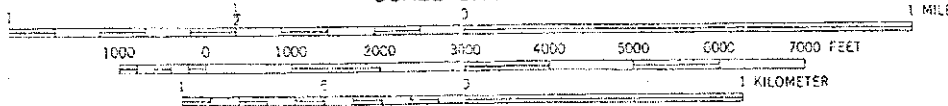
STATE RESERVATION

DARTMOUTH

NEW BEDFORD MUNICIPAL AIRPORT

Mt Pleasant

SCALE 1:25 000



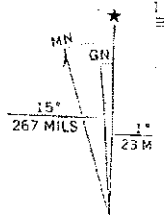
CONTOUR INTERVAL 10 FEET

DEPTH CURVES AND SOUNDINGS IN FEET— DATUM IS MEAN LOW WATER  
 SHORFLINE SHOWN REPRESENTS THE APPROXIMATE LINE OF MEAN HIGH WATER  
 THE MEAN RANGE OF TIDE IS APPROXIMATELY 3.7 FEET

NEW BEDFORD NORTH, MASS.  
 N4137.5—W7052.5/7.5

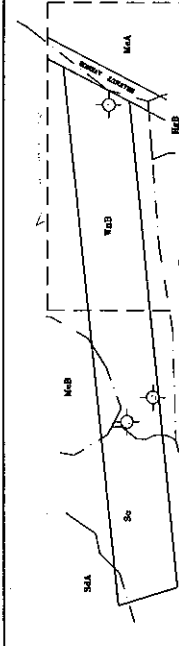
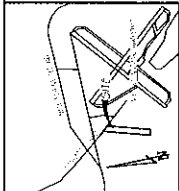
THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STAND  
 FOR SALE BY U. S. GEOLOGICAL SURVEY, RESTON, VIRGINIA  
 A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE

1979



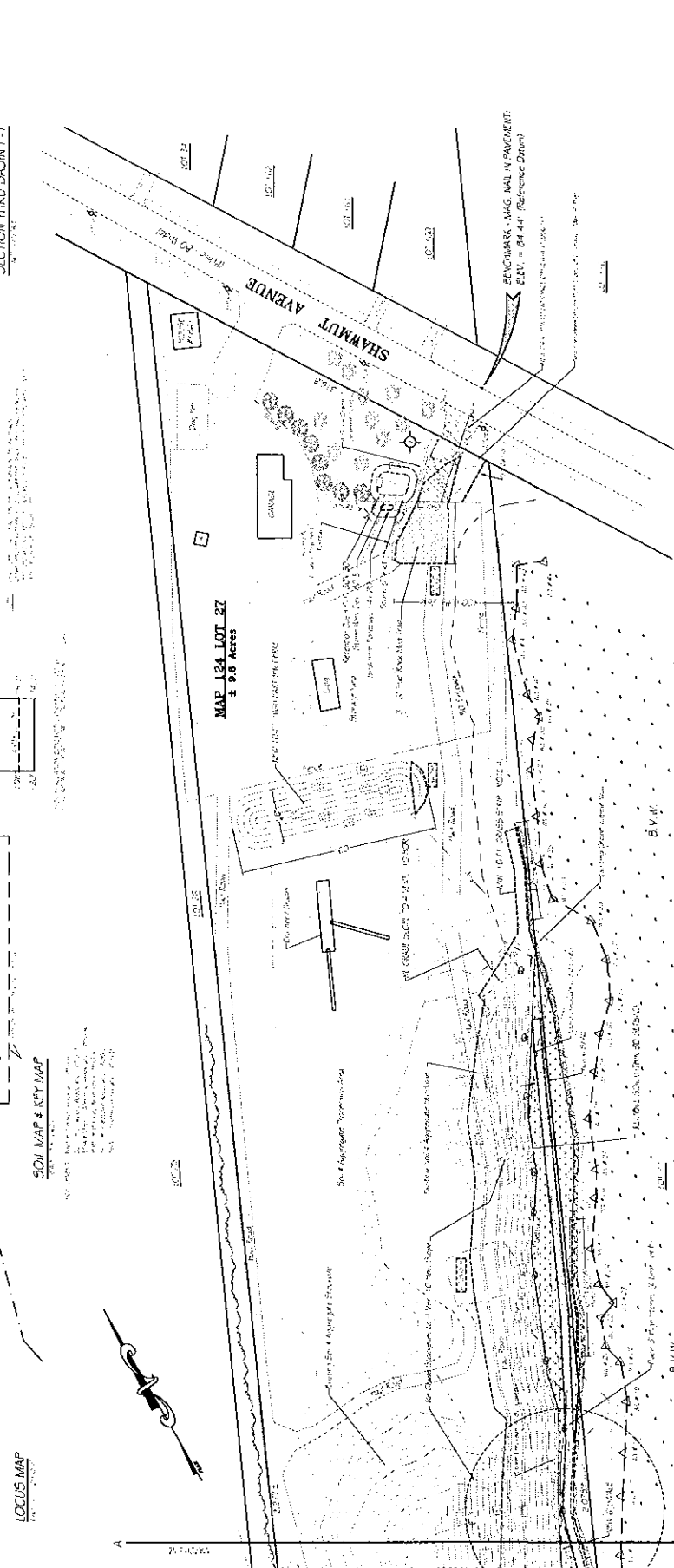
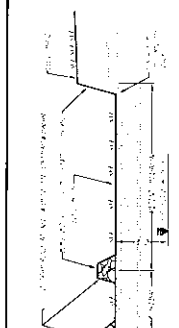
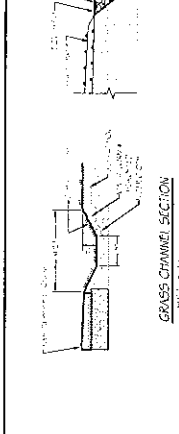
UTM GRID AND 1979 MAG  
 DECLINATION AT CENTE

B



**SOIL LOG**

DEPTH (ft)	SOIL TYPE	REMARKS
0 - 1.0	MA	Medium Sand
1.0 - 2.0	MA	Medium Sand
2.0 - 3.0	MA	Medium Sand
3.0 - 4.0	MA	Medium Sand
4.0 - 5.0	MA	Medium Sand
5.0 - 6.0	MA	Medium Sand
6.0 - 7.0	MA	Medium Sand
7.0 - 8.0	MA	Medium Sand
8.0 - 9.0	MA	Medium Sand
9.0 - 10.0	MA	Medium Sand



**PLAN OF SITE IMPROVEMENTS**  
 PREPARED FOR  
**ANTHONY R. DE COSTA**  
 dba A-1 ASPHALT CO.  
 1801 SHAWMUT AVE  
 NEW BEDFORD, MASS.

**CAI** *Chowan Associates, Inc.*  
 Consulting Engineers  
 327 Neck Road, Newhope, VA 02779  
 Tel: 606-348-8888 Fax: 606-348-8882

**SCALE:** AS SHOWN  
 MAP: 1" = 40' (Horizontal)  
 ELEV: 1" = 4' (Vertical)  
 PLS. SEE PLAN FOR DIMENSIONS

**DWG. NO.**  
 I-1

**GENERAL NOTES:**

- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION (M.D.T.) SPECIFICATIONS FOR HIGHWAYS AND BRIDGES.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL AFFAIRS (M.D.E.A.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC SAFETY (M.D.P.S.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF CONSUMER AFFAIRS (M.D.C.A.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS (M.D.L.R.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF SOCIAL SERVICES (M.D.S.S.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF EDUCATION (M.D.E.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF HEALTH CARE REGULATION (M.D.H.C.R.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF REVENUE (M.D.R.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF TAXATION (M.D.T.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF PROFESSIONAL REGULATION (M.D.P.R.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF BUSINESS REGULATION (M.D.B.R.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF STATE POLICE (M.D.S.P.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF CORRECTIONS (M.D.C.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF PAROLE AND PROBATION (M.D.P.P.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF JUSTICE (M.D.J.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF ATTORNEY GENERAL (M.D.A.G.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF CLERK AND REGISTER (M.D.C.R.) REGULATIONS.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF STATE ARCHIVES (M.D.S.A.) REGULATIONS.
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- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MASSACHUSETTS DEPARTMENT OF STATE RECORDS (M.D.S.R.) REGULATIONS.
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