

July 10, 2025

Tyler Paslaski, Permitting Specialist  
Town of Franklin Conservation Commission  
355 East Central Street  
Franklin, MA 02038

**Re: 444 East Central Street  
MassDEP File No. Not Yet Issued  
Notice of Intent Peer Review**

Dear Mr. Paslaski:

BETA Group, Inc. (BETA) has reviewed documents and plans for the Notice of Intent (NOI) seeking approval for the construction of a 40B multifamily residential development and associated site features (the Project) at **444 East Central Street** in Franklin, Massachusetts (the Site). This letter is provided to present BETA's findings, comments and recommendations.

As noted by the Applicant, the Project's status as a 40B development precludes compliance with local bylaws if waived by the Zoning Board of Appeals. BETA has prepared this letter with the assumption that local Conservation Commission and stormwater management bylaws / regulations will be waived; therefore, compliance with these bylaws and regulations are not addressed.

## **BASIS OF REVIEW**

The following documents were received by BETA and will form the basis of the review:

- Notice of Intent entitled **Notice of Intent 444 East Central Street**; prepared by Goddard Consulting.; dated April 18, 2025. Inclusive of:
  - NOI Narrative
  - WPA Form 3
  - Local Forms
  - Order of Resource Are Delineation (File No. 159-1306) for 444 East Central Street issued on April 1, 2025
  - Restoration, Replication and Mitigation Plan
  - Regulatory Compliance Analysis
- Plans (36 Sheets) entitled **Civil Site Plans For: 40B Multi-Family Site Development**; prepared by Allen & Major Associates, INC.; dated February 11, 2025 and revised June 11, 2025; stamped and signed by Carlton M. Quinn, MA P.E. No. 49923 and Andrew J Ruggles, MA PLS. No. 58014.
- Drainage Report entitled **40B Multi-Family Site Development**; prepared Allen & Major Associates, INC.; dated February 7, 2025; ; stamped and signed by Carlton M. Quinn, MA P.E. No. 49923.
- Letter entitled **Revised Plans dated June 11, 2025**; prepared by TAG Central, LLC; dated June 12, 2025.
- Plan (4 Sheets) entitled **Comprehensive Permit Set**; prepared by Cube 3; dated June 11, 2025; signed and stamped by Aaron Bancroft, MA Registered Architect No. 20545.

Review by BETA included the above items along with the following, as applicable:

- Site Visit on June 27, 2025
- **Massachusetts Wetlands Protection Act 310 CMR 10.00** effective October 24, 2014
- **Massachusetts Stormwater Handbook** effective January 2, 2008 by MassDEP
- **Stormwater Management Chapter 153 From the Code of the Town of Franklin**, Adopted May 2, 2007
- **Wetlands Protection Chapter 181 From the Code of the Town of Franklin**, dated August 20, 1997
- **Chapter 300: Subdivision of Land From the Code of the Town of Franklin**, adopted September 29, 1986
- **Town of Franklin Best Development Practices Guidebook**, dated September 2016

## SITE AND PROJECT DESCRIPTION

The 15-acre Site is located at 444 East Central Street and consists of one (1) parcel identified as Map 284 Lot 066-000 in Franklin, Massachusetts. The Site is bounded to the north by East Central Street, to the west by commercial buildings and undeveloped forested areas, to the south by undeveloped forested areas and wetland complexes, and to the east by residential homes. The Site has historically been the operating location of Stobbart's Nurseries, Inc. and includes several associated permanent and temporary structures within the northern portion of the Site. The southern, eastern, and western portions of the Site consist of undeveloped forested areas and wetland complexes. Stone, waste/compost, and fill piles are present in various locations throughout the Site.

Resource Areas Subject to Protection under the Massachusetts Wetlands Protection Act (M.G.L. ch.131 s.40) and its implementing regulations at 310 CMR 10.00 (collectively "the Act"), as well as the Town of Franklin Wetlands Protection Bylaw (Chapter 181) and its associated regulations (collectively "the Bylaw") are present at the Site and include:

- Bank/Mean Annual High Water (MAHW);
- Bordering Vegetated Wetlands (BVW);
- Land Under Water (LUW);
- Bordering Land Subject to Flooding (BLSF);
- Riverfront Area (RA); and
- Isolated Vegetated Wetlands (IVW).

The boundaries of onsite Resource Areas were previously confirmed by an Order of Resource Area Delineation (ORAD) issued under MassDEP File No. 159-1306 on April 1, 2025. These boundaries include:

- Flags GCB1 to GCB15 (IVW);
- Flags GCC1 to GCC22 (IVW);
- Flags GCD1 to GCD31 (IVW);
- Flags GCA1 to GCA109 (BVW);
- Flags GCE1 to GCE9 (BVW);
- Flags GCMAHW A1 to GCMAHW30 (Bank/MAHW)
- Flags GCMAHW B1 to GCMAHW B19 (Bank/MAHW)
- Flags GCMAHW C1 to GCMAHW C107 (Bank/MAHW);
- Flags GCMAHW D1 to GCMAHW D4 (Bank/MAHW); and
- Portions of the onsite BLSF.

The Site is not located within any Surface Water Protection Areas (Zone A, B, or C), or Zone I, or Interim Wellhead Protection Areas. The Site is located within a Zone II Wellhead Protection Area. There are no Outstanding Resource Waters (ORWs) or Areas of Critical Environmental Concern (ACEC) present, and the most recent Natural Heritage and Endangered Species Program (NHESP) mapping does not depict any Priority Habitat of Rare Species or Estimated Habitat of Rare Wildlife at the Site. There are no NHESP-mapped Certified or Potential Vernal Pools located within 100 feet of the Site.

Natural Resource Conservation Service (NRCS) soil maps indicate the presence of the following soil type at the Site, Scarboro and Birdsall soils, 0 to 3 percent slopes with a Hydrologic Soil Group (HSG) rating of , 3 to 8 percent slopes, extremely stony slope with a Hydrologic Soil Group (HSG) rating of C/D, Freetown Muck, 0 to 1 percent slopes with a HSG rating of B/D, Merrimac fine sandy loam, 0 to 3 percent slopes with a HSG rating of A, Merrimac fine sandy loam, 3 to 8 percent slopes with a HSG rating of A, and Sudbury fine sandy loam, 2 to 8 percent slopes with a HSG rating of B.

Proposed work is associated with the construction of a 40B multi-family development consisting of four (4) residential buildings and one clubhouse buildings, surface parking, five (5) garage buildings, a dog park, two (2) stream crossings, stormwater management system, a dock, and other Site features (collectively referred to as “the Project”). More specifically, proposed activities include:

- Installation of a crushed stone-stabilized construction entrance;
- Stakeout of the grading and clearing limits and initiation of clearing;
- Installation of erosion and sediment controls;
- Demolition of existing structures;
- Removal of existing vegetation;
- Installation of the stormwater management system;
- Reuse of two (2) existing stream crossings;
- Installation of proposed roadways and pavement throughout the Site;
- Construction of the proposed buildings;
- Installation of utilities;
- Construction of a pool;
- Construction of a dock within the river;
- Construction of a wetland replication area
- Placement of loam and seed in all temporarily disturbed areas;
- Installation of Site features including lighting, bike racks, and fencing;
- Installation of plantings; and
- Removal of erosion and sediment controls following inspection by the Conservation Commission.

As reported by the Applicant, Project will result in direct impacts to the following Resource Areas:

- 385 square feet of impacts to Bordering Land Subject to Flooding;
- 211,010 square feet of impacts to Riverfront Area;
- 7,145 square feet of impacts to Isolated Vegetated Wetlands; and
- 100-foot Buffer Zone to BVW.

The Project proposes 1,682 square feet of compensatory flood storage to mitigate fill within BLSF and also proposes 7,145 square feet of wetland replication to mitigate for the fill of IVW.

## ADMINISTRATIVE AND PLAN COMMENTS

The plan set (as identified above) is missing information and requires additional information for clarity.

**Table 1. NOI Plan**

NOI Plan Requirements	Yes	No
North Arrow	✓	
Registered PLS Stamp (Existing Condition Plans Only)	✓	
Assessors' Reference	✓	
Abutting Property Assessors' Reference	✓	
Survey Benchmark	✓	
Existing Conditions Topography (with source and date of survey)	✓	
Accurate Plan Scale	✓	
Plan Scale 1" = 40' or smaller	✓	

## PLAN AND GENERAL COMMENTS

- A1. The Massachusetts Department of Environmental Protection (MassDEP) has not issued a DEP file number as of this writing.
- A2. The proposed tree line is currently only depicted on the Layout & Material Plan. Depict the proposed tree line on all sheets.
- A3. Resource Area impacts (both permanent and temporary) should be clearly labeled on the Project plans.
- A4. Provide a note on the plans referencing the approved ORAD in effect for the Site.
- A5. Update the WPA Form 3 to include the proposed amount of fill within BLSF. The supporting calculations for BLSF fill should be summarized in a single table that discloses proposed fill, proposed cuts, and the resulting flood storage capacity at each elevation. The plan sheets depicting flood storage volumes are helpful but need to be summarized for the Commission to fill out an Order of Conditions.

## WETLAND RESOURCE AREAS AND REGULATORY REVIEW

BETA has completed a regulatory review of the submitted documents and plans, focusing on compliance with the regulations set forth in the Act.

The NOI application includes narrative information describing the Project and plans depicting the proposed work. BETA recommends that the Applicant review and address the comments in this letter related to the delineation of degraded RA, compliance with the RA Performance Standards, mapping of BLSF, and compliance with the BLSF Performance Standards prior to addressing other comments as these may have impacts of the proposed design. The proposed design also presents some constructability challenges that may result in additional Resource Area impacts and therefore warrants a closer review of grading and realistic limits of work. The Applicant will also be required to provide additional information on specific Project aspects such as the proposed dock, as the associated Resource Area impacts have been omitted from analysis in the NOI.

The Applicant has proposed several mitigation measures including the use of erosion controls, installation of a stormwater management system, construction of a wetland replication area even when not required by the Act, management of invasive species, planting of native vegetation, and preservation of land for conservation purposes. However, the submitted information documenting the proposed mitigation measures including the management of invasive species is not detailed enough to provide meaningful metrics for implementation or success and require additional consideration by the Applicant.

At this time, the Applicant has not provided sufficient information to demonstrate compliance with the provisions of the Act.

## CONSTRUCTION COMMENTS

- W1. The Project, as currently depicted, will disturb more than one (1) acre of land; therefore, a Notice of Intent (NOI) must be submitted to the Environmental Protection Agency (EPA) under the Construction General Permit (CGP) and a Stormwater Pollution Prevention Plan (SWPPP) must be prepared. The Commission could consider a Special Condition within the Order of Conditions that requires the submission of the SWPPP for review and approval prior to the commencement of work.
- W2. The construction stockpile/staging area is currently depicted within the 200-foot RA with erosion controls surrounding a portion of the area. The construction stockpile/staging should be relocated out of the Resource Areas. If this is not feasible, erosion controls should be depicted around the entire stockpile/staging area within Resource Areas.
- W3. The Applicant should provide further information on the proposed construction of the dock within the perennial stream including how the dock will be constructed and details on the structures proposed within the stream/LUW; any permanent and temporary impacts to Resource Areas (Bank, LUW, and BVW) associated with the construction of the dock; and how the dock will be maintained. Sufficient information has not been provided to permit the construction of the dock.
- W4. The proposed location of erosion controls conflict with proposed structures/grading at the following locations:
- FES1;
  - FES5;
  - FES6;
  - FES7;
  - The proposed dock;
  - Retaining wall construction north of flag C50;
  - The riprap proposed along FES8; and
  - The grading near flag A10.

The proposed work and/or locations of erosion controls should be revised as necessary to resolve these conflicts.

- W5. The proposed work does not appear constructable without some level of temporary and/or permanent impacts to facilitate access and sufficient space to work at the following locations:
- FES1;
  - The retaining wall north of C50;
  - FES4;

- The proposed dock;
- The grading north of flag A40;
- FES3;
- FES5; and
- The placement of riprap north of flag A90.

The proposed design should be revised to either avoid impacts at these locations, or the associated impacts should be disclosed and appropriately mitigated. Particular attention should be given to the proposed retaining wall, as over excavation is required to install the leveling pad and place impervious fill per the detail provided.

- W6. The Project will require a significant area of earthwork. Provide a phasing plan to supplement the erosion control plan that limits the total area of disturbance at the Site at any time, with provisions to temporarily stabilize previous phases as appropriate before further advancing work.
- W7. Proposed snow storage is shown within the 100-foot Buffer Zone of the A Series wetland. Relocate snow storage outside of the 100-foot Buffer Zone to wetlands where feasible.
- W8. The work proposed over the existing southern stream crossing (i.e., north of flag C50) depicts proposed linework that appears to denote a new culvert. The Applicant should clarify the intent at this location. If no new crossing is proposed, provide a cross section that demonstrates that proposed utilities can be installed without conflicting with the existing pipe. Should the Applicant propose a new crossing, documentation of compliance with the Massachusetts Stream Crossing Standards to the extent practicable is required, and the plans will need to be supplemented with additional details, water control provisions, etc.
- W9. The northern stream crossing is proposed to be reused, and the existing piping will remain in place. BETA recommends that the engineer of record provide a statement certifying the condition of the pipe and the structural capacity to support the loading of the pavement courses, vehicular traffic, and construction equipment.
- W10. Use of silt fencing is traditionally not accepted by the Franklin Conservation Commission. BETA concurs with the use of the 12-inch compost filter tube as noted in the details. Additional controls will be required should the dock construction be pursued.

## MITIGATION COMMENTS

- W11. The Applicant has stated that invasive species including common reed (*Phragmites australis*), glossy buckthorn (*Frangula alnus*), Japanese knotweed (*Fallopia japonica*), and bittersweet (*Celastrus orbiculatus*) are present at the Site. During BETA's Site visit, these species and the following additional species were observed: purple loosestrife (*Lythrum salicaria*), multiflora rose (*Rosa multiflora*), garlic mustard (*Alliaria petiolata*), Norway maple (*Acer platanoides*), autumn olive (*Elaeagnus umbellate*), winged euonymus (*Euonymus alatus*), and bush honeysuckle (*Lonicera spp.*). These species were observed in areas proposed for development, but no formal invasive species removal plan has been provided for these species. The Applicant should provide information regarding the removal<sup>1</sup> of all invasive species at the site to ensure further spread does not occur during construction.

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<sup>1</sup> Where invasive species removal/control/management is referenced in these comments, it is understood that complete long-term eradication is not intended by the Applicant's proposal.

- W12. The Applicant should provide the locations and areal extent of invasive species proposed for removal and provide additional details on the means and methods of removal in the submitted invasive species management plan. Dense stands of common reed are present along the Banks of the River and will require specific access and treatment considerations. Significant invasive species control efforts will be required along the River to ensure that the adjacent native plantings and restoration areas are not compromised. It is recommended that areas subject to invasive species management be monitored for at least three (3) growing seasons to document the efficacy of the control efforts.
- W13. Areas proposed to be vegetated with native, herbaceous species should be monitored for at least three (3) growing seasons to demonstrate successful establishment and limited invasive species pressure. This could be conducted concurrently with the recommended invasive species control monitored noted above.
- W14. A monitoring protocol should be submitted by the Applicant to address the recommendations above for the Commission's review and approval. This protocol should include monitoring frequency, methodologies, corrective actions, metrics for success, and reporting schedule.
- W15. It is recommended that areas subject to native plantings/restoration be mowed only once per year during late fall; this could be included as a Special Condition. If so, it is recommended that signage be required to demarcate these areas and this requirement in the field.
- W16. The species proposed for planting throughout the Site have been provided; however, the proposed quantity of native shrubs, native ferns & grasses, and native herbaceous plants should be provided within the plant schedule.
- W17. The species include in the proposed seed mixes that will be used for stabilization should be provided on the plans.
- W18. Provide additional information on the preservation of land at the Site, including the legal means of preserving the land; the responsible entity for monitoring compliance with any deed restrictions or conservation restrictions; and an Operation and Maintenance Plan that ensures protection of Areas Subject to Protection/Jurisdiction under the Act. Any related Project facets that may be required to support this endeavor (i.e., establishing trails and posting signage) should also be disclosed.
- W19. BETA offers the following comments regarding the wetland replication area:
- a. The Applicant should provide the species within the proposed seed mix to be used in the Wetland Replication Area.
  - b. The access point to the proposed wetland replication area should be demarcated on the plans to ensure the adjacent wetland is not impacted.
  - c. Erosion controls should be depicted around the northern and eastern side of the wetland replication area to ensure sedimentation from adjacent grading work does not enter the existing wetland complex.
  - d. A note should be provided requiring the Wetland Scientist to contact the Commission for review and approval of the final grades and proposed planting stock prior to planting. This could be included as a Special Condition in the OOC.

- e. The Applicant is proposing the reuse of the soil within the IVW that is proposed to be filled; however, the NOI states that invasive species are present within the existing IVW. It is recommended that the soil used in the wetland replication area be invasive species free to ensure the success of the wetland replication area.
- f. The monitoring requirements should include a requirement to document development of hydric soils and hydrology. In addition, the monitoring protocol should include corrective actions as necessary to ensure success of the area. BETA recommends that the monitoring period occur over three (3) growing seasons.

### **WPA PERFORMANCE STANDARDS COMMENTS**

According to WPA Form 3, the Project proposes 385 square feet of alteration to Bordering Land Subject to Flooding and 211,010 square feet of alteration to Riverfront Area (98,400 within the 0-100 foot RA and 112,610 within the 100- 200 foot RA) and is required to comply with the applicable Performance Standards set forth in the Act. Additionally, the Project proposes the installation of a dock within the onsite BVW, Bank, and LUW.

W20. Invasive species proposed for removal including common reed and Japanese knotweed are present within the BVW and Bank associated with the onsite perennial stream. The Applicant should clarify if temporary impacts to Resource Areas will occur as a result of removing this vegetation. The Applicant should also clarify if supplemental plantings are proposed within Resource Areas where vegetation is removed.

#### *BANK (310 CMR 10.54)*

W21. Impacts to Bank associated with the installation of the proposed dock should be quantified and details regarding how the Project complies with the Performance Standards set forth in Act should be provided. Construction of a dock is considered a Limited Project under 10.53(3)j if all applicable standards are met.

#### *BORDERING VEGETATED WETLAND (310 CMR 10.55)*

W22. Impacts to BVW for the installation of the proposed dock should be quantified and details regarding how the Project complies with the Performance Standards set forth in Act should be provided. Construction of a dock is considered a Limited Project under 10.53(3)j if all applicable standards are met.

#### *LAND UNDER WATER (310 CMR 10.56)*

W23. Impacts to LUW for the installation of the proposed dock should be quantified and details regarding how the Project complied with the Performance Standards set forth in the Act should be provided. Construction of a dock is consider a Limited Project under 10.53(3)j if all applicable standards are met.

#### *BORDERING LAND SUBJECT TO FLOODING (310 CMR 10.57)*

W24. The Applicant should provide further information regarding how the extent of BLSF at the Site was determined, as the ORAD only approved portions of the BLSF at the Site. Given the number of stream crossings / hydraulic restrictions present at the Site, this evaluation should be prepared by a Professional Engineer with experience in hydraulics. The Commission may require more up to date engineering information than what is provided by FEMA per (310 CMR

10.57(2)(a)3., particularly given the presence of a Zone A with no published base flood elevation.

- W25. The Applicant stated that no significant wildlife habitat is present in the area of proposed work within BLSF. However, according to 310 CMR 10.57(1)(a)3, areas of BLSF located within the 10-year floodplain or within 100 feet of a Bank or BVW (whichever is further away) are presumed to be significant to the protection of wildlife, unless they have been extensively altered by human activity as defined in the regulations. While some portions of the BLSF within 100 feet of the Bank and BVW appear to meet the definition of “altered”, portions of BLSF where work is proposed do not. Therefore, the Applicant should depict the 10-year floodplain boundary and quantify impacts to BLSF as appropriate to determine if a wildlife habitat evaluation is warranted.

#### *RIVERFRONT AREA (310 CMR 10.58)*

- W26. The Applicant should provide further information regarding the assertion that 153,170 square feet of the existing RA is degraded. BETA agrees that some areas of the RA are considered degraded as pavement, debris piles, and absence of topsoil were observed; however, several areas that are shown as degraded by the Applicant were determined to be non-developed/not degraded, as topsoil and vegetation are present. It is recommended that the Applicant reassess vegetated areas of the RA to determine if topsoil is present in all areas currently depicted as degraded. MassDEP precedent has established that the presence of topsoil can be a primary determining factor of whether RA is degraded<sup>2</sup>. BETA has attached a field sketch with photographs to this letter for reference.

Compliance with Performance Standards should be reevaluated once these revisions are complete.

- W27. Areas of the RA that are not considered degraded are subject to the Performance Standards at 310 CMR 10.58(4). Details regarding how the Project complies with these Performance Standards set forth in the Act should be provided. As noted in the Superseding Order of Conditions referenced in Comment W26, a single Site can be evaluated under both 310 CMR 10.58(4) and (5) depending on the degraded status of different areas.

## **STORMWATER MANAGEMENT REVIEW**

The proposed stormwater management design consists of six proposed underground infiltration systems (UIS) to be located throughout the development. Stormwater runoff will be conveyed to these systems via a closed drainage system consisting of catch basins, manholes, water quality units, trench drains, and roof drains. Overflow from the systems will be conveyed through outlet control structures to new outfalls which discharge to the existing perennial stream that flows across the property (A, B, and C Series wetlands).

### **GENERAL**

- SW1. Identify rim elevations on drain structure tables and ensure that adequate separation is provided between the rim and invert elevations.

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<sup>2</sup> Superseding Order of Conditions issued under MassDEP File No. 002-1015 (Attached)

- SW2. Provide map delineating watershed areas for each of the proposed catch basins to verify data in structure table.
- SW3. Review hydraulic calculations for drainage pipes. Several pipe spans appear to be absent from the calculations. Ensure that drain pipes conveying stormwater runoff from offsite locations are adequately sized to prevent flooding of adjacent properties.
- SW4. Review hydraulic calculation for the pipe segment between DMH21WQU to DMH20. The required capacity is greater than the provided capacity.
- SW5. Provide a label and invert information for the proposed DM to be installed on top of the existing drainage line, located directly west of the proposed pool. In addition, provide the data associated with the existing stormwater facilities on the adjacent lot at 440 East Central Street to ensure that this proposed connection does not interfere with the performance of the existing stormwater facilities.
- SW6. Identify the existing invert for the existing catch basin upstream of DMH25. Confirm that the outlet invert for DMH25 has been selected to maintain positive drainage from this existing catch basin to the new outfall.
- SW7. Indicate the disposition of existing pipe segments and outfalls associated with offsite drainage connections from the west and all culvert crossings. Clearly indicate which segments are to be retained and which will be abandoned or removed.
- SW8. Provide catchbasin catchment and pipe size calculations to determine adequacy of grate inlet capacity and pipe sizes to accommodate 25-year storm event.
- SW9. Review all locations where drainage and sewer utilities cross. Inverts for the proposed sewer system appear to be at a similar elevation to the proposed drainage, and therefore conflicts may occur at crossings. Recommend depicting all inverts on a single plan to evaluate conflicts.
- SW10. Provide details for trench drain.
- SW11. BETA recommends that the proposed outfalls be pulled back to the edge of fill and allow existing vegetation to be maintained to help stabilize the area prior to discharge. In addition, invert elevations at these outfalls should be noted on the plans.
- SW12. Consider providing a grate or similar measure at outfalls and culverts to prohibit access by pedestrians and wildlife.
- SW13. Evaluate if fencing or a similar barrier is needed along the proposed retaining walls and the crest of the slope along the perennial stream for pedestrian safety.
- SW14. Indicate any existing or proposed easements for the conveyance of stormwater across property lines. The proposed stormwater management system includes piped connections from the abutting lot to the west, and the perennial stream and culverts carry stormwater runoff from offsite properties.

## **MASSDEP STORMWATER STANDARDS**

The project is subject to the Wetlands Protection Act and therefore must comply with the Massachusetts Stormwater Standards as outlined by MassDEP. Compliance with these standards is outlined below:

## **LOW IMPACT DEVELOPMENT (LID) TECHNIQUES**

The project does not include any LID techniques as identified in the MA Stormwater Handbook.

**NO UNTREATED STORMWATER (STANDARD NUMBER 1):** *No new stormwater conveyances (e.g., outfalls) may discharge untreated stormwater directly to or cause erosion in wetlands or waters of the Commonwealth.* The project proposes eight new outfalls (FES 1 thru FES-8) which will discharge to locations immediately upgradient of wetlands. Stormwater runoff to these outfalls from on-site sources will first be treated by a subsurface infiltration system. Stormwater runoff from off-site sources will typically not receive treatment. Riprap aprons are proposed to mitigate erosion potential.

SW15. Provide calculations for sizing of riprap aprons, including stone sizing

**POST-DEVELOPMENT PEAK DISCHARGE RATES (STANDARD NUMBER 2):** *Stormwater management systems must be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates.* The project proposes to mitigate increases to runoff rates with the use of subsurface infiltration systems. Calculations indicate a decrease in peak discharge rate to each study point.

SW16. Provide table comparing pre- and post-development runoff volumes for each design point.

SW17. Revise watershed plans such that the soil group labels are not obstructing important existing and proposed information.

SW18. Revise node numbers for Ponds in HydroCAD model to clarify which system is being referred to. UIS4 is titled "Underground Chamber #5" and UIS5 is titled "Underground Chamber #6".

SW19. Revise HydroCAD model to include UIS #4. This system's catchment area is anticipated to include portions of subcatchment P-2. Overflow from this system should be routed to Pond CC: Culvert Crossing.

SW20. Revise the pre-development HydroCAD model to also include Pond CC: Culvert Crossing, modified for existing grading, for consistency between the pre- and post-development models.

SW21. Provide ponding analysis at 2<sup>nd</sup> culvert crossing also to ensure that the wetlands are not providing any attenuation capability more than the existing conditions. In addition, flood levels associated with Uncas Brook should be considered in the hydraulic calculations associated with the culverts.

SW22. There are several isolated depressions on the site that should be considered in the existing conditions analysis.

SW23. Review routing for subcatchment P-13. Based on the grading and drainage plan, a portion of this subcatchment will be captured by the trench drain, but the majority of stormwater runoff will flow, unhindered, onto the Site for conveyance to UIS-1 or UIS-5.

SW24. Provide spot grades at the driveway entrance at East Central Street to confirm that roadway runoff will not be conveyed onto the Site.

SW25. Provide spot grades at internal "corners" along parking lot curbs, particularly around landscaping islands, to ensure positive drainage towards catch basins.

SW26. Review model for Subcatchment P-2. The plans indicate a paved pathway through this area that is not represented in the model.

- SW27. Review model for Subcatchments P-3, P-5, and P-6. The areas modelled as paved parking are inconsistent between the plans and the model.
- SW28. Revise subcatchments E-5, E-6, E-7, P-10, P-12, and P-13 to use actual cover types, based on aerial imagery and survey data, rather than the more generic "1/4 acre lot" cover type.
- SW29. Review soil group ratings utilized in the hydroCAD models. NRCS mapping indicates an HSGR of A for the majority of the Site, yet the hydroCAD model utilizes an HSGR of B.
- SW30. Provide calculations for time of concentration for all subcatchments, rather than assuming a minimum TC of 6 minutes or other "direct entry" values. The designer is reminded that the Tc for a watershed is the greatest travel time, not distance, especially in the existing conditions analysis.
- SW31. Identify the weir elevation for proposed outlet controls structures on the plans to ensure consistency between the hydroCAD model and the design.
- SW32. Review HydroCAD model for UIS-1, UIS-2, UIS-3, UIS-4. The outlet invert elevation, and in some cases, the pipe diameter, is inconsistent with the plans.
- SW33. Clarify outlet design for UIS-3, UIS-4, and UIS-5. The models for each system identify two 9.0" vertical orifices/grates for each system. These orifices must be identified on the plans to ensure consistency between the model and the design.
- SW34. Provide calculations for sizing of trench drain to ensure that offsite runoff will be captured, rather than bypassing the drain and flowing into UIS-1.

**RECHARGE TO GROUNDWATER (STANDARD NUMBER 3):** *Loss of annual recharge to groundwater should be minimized through the use of infiltration measures to maximum extent practicable.* NRCS soil maps indicates the presence of various soil groups predominantly including Merrimac fine sandy loam with Hydrologic Soil Group Rating (HSGR) A (high infiltration), Scarboro and Birdsall soils with HSGR A/D (high infiltration when unsaturated, very low infiltration when saturated), and Sudbury fine sandy loam with HSGR B (moderate infiltration).

Test pits conducted at the Site indicate that subsurface soils are generally sand, with some areas of loamy sand or sandy loam. A Rawls Rate of 1.02 in/hr has been utilized in design of the subsurface infiltration systems. Groundwater (weeping, standing water, and/or redoximorphic features) was detected in test pits to varying depths ranging from 1.33 feet below grade to 5.83 feet below grade.

Groundwater recharge is proposed via six new subsurface infiltration systems. The project is expected to provide a recharge volume in excess of what is required. Calculations have been provided indicating five of the six SCMs will drawdown within 72 hours.

- SW35. Recommend a condition that an agent of the town observe native soils after excavation for basins to confirm design assumptions.
- SW36. Provide plan identifying the location of previously completed test pits. Clarify if soil tests were completed in the footprint of proposed infiltration areas.
- SW37. Test pit logs identify two separate logs each for TP-112 and TP-113. Correct the labels as necessary.
- SW38. The plans indicate several boring locations throughout the Site. Clarify if these borings have been completed and provide boring logs if available.

- SW39. Test pit logs identify a depth to groundwater ranging from 1.33 ft below grade to 5.83 ft below grade. As the test pit locations are not depicted on the plans, it is unknown if shallow groundwater will conflict with the proposed systems.
- SW40. Based on the average depth to groundwater encountered the test pits, systems UIS-3, UIS-5 do not have adequate separation to groundwater. Review and revise these systems as necessary.
- SW41. BETA notes that test pits were conducted in May, outside of the period of probably high groundwater.
- SW42. Provide required mounding analysis where infiltration SCMs have less than 4 feet of separation to estimated seasonal high groundwater.
- SW43. Provide drawdown calculations for all six subsurface systems. Only five systems are represented in the calculations.
- SW44. Recommend providing separate infiltration systems for roof runoff. These typically will require less maintenance and have a longer life span.
- SW45. The proposed subsurface systems are to be installed in fill areas. Include a requirement to overexcavate the systems, as needed, to remove undesirable material such as fill.

**TOTAL SUSPENDED SOLIDS (STANDARD NUMBER 4):** *For new development, stormwater management systems must be designed to remove 80% of the annual load of Total Suspended Solids (TSS).*

The project includes the following treatment trains:

Treatment Train	SCM 1	SCM 2	Infiltration SCM	TSS Removal %
A	Deep Sump Catch Basin	Water Quality Unit	Subsurface Infiltration System	80%
B	Water Quality Unit w/ Inlet	None	Subsurface Infiltration System	80%

The project has been designed to provide at least 80% TSS removal for treated impervious areas. The proposed infiltration SCMs have been sized to treat the required 1-inch water quality volume.

Per Standards 5 and 6, the project is required to provide at least 44% TSS removal as pretreatment. Pretreatment is provided via deep sump catch basins and/or water quality units.

A Long Term Pollution Prevention Plan is included in the O&M Plan.

- SW46. Remove pretreatment devices from TSS worksheet for total TSS; the 80% TSS provided by the subsurface system is inclusive of required pretreatment.
- SW47. Provide separate TSS Removal calculations for each outfall including pretreatment at each treatment train.
- SW48. Some impervious surfaces are not draining to treatment SCMs, including subcatchments P-7, P-9, and P-14. Provide required treatment for these areas.
- SW49. Provide third party TSS removal rate documentation for proprietary water quality unit, including sizing calculations based on treatment flow rate.

SW50. Confirm that adequate water quality volume is provided for system UIS-3. As noted in a previous comment, the impervious area proposed for subcatchment P-3 appears to be greater than what has been identified in the model. As such, the required water quality volume calculation may be inaccurate as well.

SW51. Revise long-term pollution prevention narrative related to vehicle washing. There is a likelihood that residents may choose to wash their vehicles in the parking lot.

**HIGHER POTENTIAL POLLUTANT LOADS (STANDARD NUMBER 5):** *Stormwater discharges from Land Uses with Higher Potential Pollutant Loads (LUHPPLs) require the use of specific stormwater management SCMs.* The site is considered a LUHPPL and is thus required to comply with this standard. The project meets the additional treatment requirements for LUHPPLs (see standard 4). Subsurface structures are considered recommended SCMs for use in LUHPPLs. Source control and pollution prevention measures have been provided.

SW52. Provide oil grit separator, sand filter, filtering bioretention area, or equivalent for treatment trains originating in any LUHPPL area. IF the water quality units are intended to meet this requirement, demonstrate that they have similar oil and grease treatment capabilities to the aforementioned controls.

SW53. Indicate means of emergency shut-off or containment prior to discharge to an infiltration SCM.

**CRITICAL AREAS (STANDARD NUMBER 6):** *Stormwater discharges to critical areas must utilize certain stormwater management SCMs approved for critical areas.* The Site is located within a MassDEP mapped wellhead protection area – Zone II which is a critical area. The project meets the additional treatment requirements for critical areas (see standard 4). Subsurface structures are considered recommended SCMs for use in wellhead protection areas.

**REDEVELOPMENT (STANDARD NUMBER 7):** *Redevelopment of previously developed sites must meet the Stormwater Management Standards to the maximum extent practicable.* The project does not qualify as a redevelopment – **standard not applicable.**

**EROSION AND SEDIMENT CONTROLS (STANDARD NUMBER 8):** *Erosion and sediment controls must be implemented to prevent impacts during construction or land disturbance activities.* As the project proposes to disturb greater than one acre of land, a Notice of Intent will be required to file with EPA including development of a Stormwater Pollution Prevention Plan (SWPPP). A SWPPP was not provided with the submission; the narrative indicates a SWPPP will be issued prior to construction. Erosion control measures are depicted on the plans including coir logs with silt fence, inlet protection, stabilized construction entrance, erosion control blanket, and designated stockpile areas with protection,

SW54. Provide measures to protect open excavations for subsurface structures during construction.

SW55. Provide a general construction sequence including phasing of work on the plan.

**OPERATIONS/MAINTENANCE PLAN (STANDARD NUMBER 9):** *A Long-Term Operation and Maintenance Plan shall be developed and implemented to ensure that stormwater management systems function as designed.* A Stormwater Operation and Maintenance Manual was provided with the Stormwater Management Report.

SW56. Provide signature(s) of the owner(s) on the Operation and Maintenance Plan (§153-18.B(5)).

SW57. Include provision requiring a documentation submittal to the DPW confirming when maintenance

has been satisfactorily completed (§153-18.B(6)).

SW58. Provide map, drawn to scale, that shows the location of all stormwater SCMs in each treatment train and snow storage areas.

SW59. Include operation and maintenance requirements for trench drain and add to maintenance checklist.

SW60. Include operation and maintenance requirements for Pond CC: Culvert Crossing. This basin has been incorporated into the hydroCAD model and therefore must be maintained similar to a detention basin.

SW61. Maintenance inspection ports are required on all subsurface systems which should be depicted in plan view and noted in the report.

**ILLICIT DISCHARGES (STANDARD NUMBER 10):** *All illicit discharges to the stormwater management system are prohibited. An unsigned Illicit Discharge Compliance Statement was provided with the submission.*

SW62. Provide owner's signature on Illicit Discharge Compliance Statement.

## REVIEW SUMMARY

Based on our review of the NOI submittal and Project plans, the Project as proposed does not comply with the Act or the Massachusetts Stormwater Management Standards. It is recommended that the comments herein be addressed prior to the issuance of an Order of Conditions.

If we can be of any further assistance regarding this matter, please contact us at our office.

Very truly yours,  
BETA Group, Inc.



Anna Haznar  
Staff Scientist



Jonathan Niro, PWS  
Project Manager



Gary D. James, P.E.  
Senior Project Manager



Stephen Borgatti, PE, MENG  
Senior Project Engineer

cc: Amy Love, Town Planner

Enclosed: RA Site Photos,  
SOOC for MassDEP File No. 002-1015



C:\Users\Gina\Documents\Goddard Consulting, LLC\Drawings - ArcGIS\Franklin - 101\GIS - 101\_488 - 444 East Central Street\Riverfront Area\Graphics\RIA\Graphics\RIA\_Graphics\ARIA\_Graphics\CDRID\_284-66\_LINX.aprx

### Legend

Proposed Property Boundary	100-200' Existing Degraded Riverfront Area (55,085sf)
River	0-100' Existing Vegetated Riverfront Area (90,005sf)
100' Riverfront Area	100-200' Existing Vegetated Riverfront Area (100,995sf)
200' Riverfront Area (422,920sf)	0-100' Existing Degraded Riverfront Area (123,745sf)



## Existing Conditions in Riverfront Area



71.3771102°W, 42.0778722°N

Date: 06/16/2025

444 East Central Street  
Franklin, MA 02038

Parcel ID: 284-66

**Photo 1**



View of the topsoil within a vegetated area on the eastern side of the central portion of the stream — facing east.

**Photo 2**



View of the top soil within a vegetated area in the northeastern section of the site—facing east.

**PHOTOGRAPHIC DOCUMENTATION**

444 East Central Street

Franklin, Massachusetts

Photographs Documented June 27, 2025

**Photo 3**



View of the top soil on the western side of the central portion of the perennial stream—facing south.

**Photo 4**



View of the soil within the southern portion of the site on the eastern side of the perennial stream—facing east.

**PHOTOGRAPHIC DOCUMENTATION**

444 East Central Street

Franklin, Massachusetts

Photographs Documented June 27, 2025

**Photo 5**



View of the top soil within the vegetated path on the western side of the perennial stream —facing south.

**Photo 6**



View of the top soil within the vegetated area on the western side of the perennial stream —facing east.

**PHOTOGRAPHIC DOCUMENTATION**

444 East Central Street

Franklin, Massachusetts

Photographs Documented June 27, 2025



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

DEVAL L. PATRICK  
Governor

RICHARD K. SULLIVAN, JF  
Secretary

KENNETH L. KIMMELL  
Commissioner

January 30, 2013

Mr. Richard Terrill  
c/o Fafard Real Estate and Development  
120 Quarry Road  
Milford, MA 01757

RE: WETLANDS/AMESBURY  
DEP File #002-1015  
Summit Avenue and Route 150  
Superseding Order of Conditions/Denial

Dear Mr. Terrill:

The Northeast Regional Office of the Massachusetts Department of Environmental Protection Wetlands Program ("MassDEP") has completed its review of the above referenced filing in preparation to issuing a Superseding Order of Conditions (SOC). Pursuant to the provisions of the Wetlands Protection Act (the Act) under Massachusetts General Laws, Chapter 131, Section 40, MassDEP is issuing the enclosed SOC denying the project based upon; 1) information contained in the file to date and plans submitted; 2) information gathered during the July 30, 2013 site inspection by MassDEP; and 3) reasons MassDEP has deemed necessary to protect the statutory interests identified in the Act.

The project site, approximately 26.5 acres, is currently owned by the City of Amesbury and includes an area formerly utilized as a gravel pit. The site is located adjacent to Bailey's Pond to the east, residential areas to the north and east, Route 150 to the south and Interstate 495 to the west. The site is bisected by a culverted perennial stream that daylight on the northern edge of the property adjacent to Summit Avenue. The proposed project is for the construction of a 136 unit residential development with associated utilities, driveways, parking, and stormwater management systems.

MassDEP's review of the file and site inspection confirms that the project site contains the following Areas Subject to Protection of the Act: Bordering Vegetated Wetlands (BVW), Land Under Water (LUW), Bank, Bordering Land Subject to Flooding (BLSF) and Riverfront Area (RA). These areas are significant to the statutory interests listed on the attached form.

Wetland impacts associated with the entire project include temporary alteration of approximately 30 linear feet of inland Bank, 187 square feet of LUW, 307 square feet of BLSF and 120 square feet of BVW associated with a perennial stream located on the project site. Additional alterations entail approximately 1,605 square feet of alteration within the first 100 feet

of the RA and 12,554 square feet within the 200 foot RA. This project is also subject to the Stormwater Management Standards as provided in 310 CMR 10.05(6)(k) through (q).

On June 14, 2013, the Amesbury Conservation Commission (the "Commission") issued an Order of Conditions ("OOC") conditionally approving the project. In this decision, the Commission only approved the work outside of the RA. The OOC set forth the Commission's opinion that only portions of the project site met the definition of "degraded" as defined under the Wetlands Protection Act Regulations at 310 CMR 10.58 and that the project was required to meet the performance standards for work in RA under 310 CMR 10.58(4). The Commission's findings were based on its opinion that the site did not qualify as degraded because a majority of the project site is "characterized by pervious, well-vegetated land containing topsoil that provides Riverfront Area function" and that degraded status was not conferred upon the entire site. The Commission also found that the applicant had not provided an adequate alternatives analysis to demonstrate that there were no practicable and substantially equivalent economic alternatives to the work proposed within the Riverfront Area, with less adverse effects on interests protected by the Act, as required by 310 CMR 10.58(4).

On July 5, 2013, you (the applicant) submitted a request to MassDEP for the issuance of a SOC based on your opinion that the OOC was not issued within the required time period, that the OOC includes conditions that are "unreasonable and beyond the Commission's authority," and that the entire site should be reviewed under the redevelopment standards pursuant to 310 CMR 10.58(5) because the site had been utilized in the past for sand and gravel removal operations.

On July 30, 2013, MassDEP conducted a site inspection. In attendance were members of the Commission and its consultants, town officials, you and your representatives and several abutters. MassDEP staff discussed the proposed project and walked areas of the project site to observe existing conditions, including vegetative cover and soil composition. MassDEP observed that a vast majority of the site was heavily wooded with mature trees, some saplings, shrubs and some ground cover. Several test pits were dug in various areas of the project site to allow MassDEP staff to observe existing soil conditions.

It is MassDEP's opinion that the two issues to be examined are whether the site is devoid of topsoil and therefore meets the definition of degraded within the meaning of the regulations; and under which regulatory performance standards for RA should the site be evaluated.

The site has been described by all parties as an abandoned gravel pit. It is unclear how long mining operations were conducted at the site, but it is speculated that operations ceased several decades ago. You have further described the site as a dumping ground for tires, miscellaneous trash, computer monitors, furniture, propane tanks, appliances and car parts, contributing to the degraded nature of the site. You state that "some" of the site is well vegetated but that a majority of the site consists of "weedy brush and invasive species and includes areas of exposed substrate and other degraded conditions due to the extensive historical gravel mining that occurred at the site." It is your opinion that due to past mining activities, much of the site within the RA is devoid of topsoil. The Commission found and MassDEP agrees that the site at present contains pervious, well vegetated land containing topsoil that provides RA functions.

MassDEP agrees with the Commission that some limited locations within the trail footprint (located within the RA) qualify as degraded. However these limited areas of degradation do not confer a degraded status on the entire RA.

The Commission's opinion of site characteristics is based mainly on an evaluation of soils conducted on April 3, 2013 by the Commission's peer reviewer, The BSC Group (BSC), in conjunction with Oak Consulting Group (OCG), your consultant, Hughes Environmental Consulting (HEC), and Jack Tremblay from the Commission. According to a letter from BSC, dated April 22, 2013, the team dug approximately eleven (11) soil pits and one auger hole in various locations on the site within RA. A majority of the test pits were conducted in forested areas on the site. One was dug in an area with herbaceous and shrub vegetation and two others were dug in existing trails that are currently un-vegetated and utilized by ATVs. BSC's conclusion states:

"While significant portions of the RA on the project site appear to have been mined for sand and gravel (based on aerial photograph and OCG/HEC comments) many decades ago, it also appears that the RA has recovered from that disturbance in the intervening time and has become a largely forested area since then, with a functioning RA, herbaceous, shrub and tree layers, and development of topsoil/A horizon within extensive rooting. In some trail locations, the over-use of the trails by ATVs has resulted in the erosion of the topsoil/A horizon. In these specific locations, BSC finds that the absence of topsoil criteria can be met."

BSC found that in some locations the topsoil/A horizon was shallow, ranging from 0.5 inches to 2 inches, but affirms that neither the Act nor the Regulations define the term "topsoil" nor specify a minimum required depth. They cite the definition widely accepted by soil scientists that topsoil is a mineral soil, formed at the surface or below an O horizon with little remnant rock structure, and one or more of the following properties: 1) accumulation of humified organic matter but dominated by mineral matter, and not dominated by E or B horizon properties; 2) properties resulting from cultivation, pasturing, or similar disturbance; or 3) morphology resulting from surficial processes different from the underlying B or C horizons. BSC finds that soils found at the site in the RA are "dark brown colors" observed in an A horizon indicating the presence of organic material. The texture of the soils was sandy loam to loamy sand indicating the presence of a mineral component. Rooted vegetation was also observed within the soil.

In response to BSC's evaluation, your consultant, HEC, submitted a letter to the Commission on May 1, 2013 disagreeing with BSC's conclusions. In this letter HEC disputes that test pit information obtained during the April 3, 2013 site inspection demonstrates evidence of "functioning topsoil." No further arguments or other data are presented in this letter which disputes the actual findings of the soil profiles as determined at the site inspection and as presented in BSC's letter.

During MassDEP's site inspection on July 30, 2013, the parties discussed, and disputed, the evidence discovered during the April 3, 2013 evaluation of soils on the project site. At this site visit several additional samples of the soils were dug by auger within the vicinity of test pits 1, 3, 7, 8 and 9. A separate test pit was dug within the vicinity of test pit 4. Based on soil

profiles and characteristics observed on the project site, and as described in BSC's letter of April 22, 2013, it is MassDEP's opinion that a majority of the site does in fact contain evidence of topsoil as well as a productive vegetative cover. MassDEP did not find that the amount of discarded "debris" on the site, which could be easily carried away, constituted a junk yard or an abandoned dumping ground.

It is MassDEP's opinion that the only areas of the RA that do not contain topsoil are the trails located in the area of test pits 2 and 3. The trails do not appear to include any organic material or vegetation. The remainder of the site appears to have a darker soil layer at the surface that includes organic material and supports vegetation and is therefore not degraded within the meaning of 310 CMR 10.58(5).

The Commission states in its OOC that, "With the exception of some limited portions of trails, the Riverfront Area in the Project site is not degraded, within the meaning of the DEP Regulations for Riverfront Area. Therefore, the project is subject to the performance standards of 310 CMR 10.58(4), and not the standards for redevelopment of a degraded area under 310 CMR 10.58(5)." The Commission allows that locations within "trail footprints" lack topsoil and are un-vegetated and would therefore qualify as degraded, but do not "confer degraded status upon the entire site."

In its letter of April 22, 2013, BSC concurs with the Commission that, with the exception of some existing trails on the project site, the remaining RA contains topsoil, is well vegetated and supports RA functions. Therefore, the project should be reviewed under both 310 CMR 10.58(4) and 10.58(5). In support of this, BSC cites several decisions in which MassDEP concluded that, although a site had been previously developed, current conditions provided evidence of topsoil and vegetative cover which support functions of a RA. They also cite decisions in which MassDEP determined that a site could be reviewed under both performance standards for redevelopment and new development depending on current site conditions.

You state in your appeal to MassDEP that, "the Applicant disputes many of BSC's factual and regulatory conclusions because they are premised on a flawed interpretation and application of the Massachusetts Wetlands Protection Regulations." It is your opinion that applying two different sets of standards within the same RA is not consistent with the RA Regulations. You assert that the performance standards of 310 CMR 10.58(4) apply only to work within a previously developed Riverfront Area when "no portion of the riverfront area is degraded..." Therefore, you believe that the performance standards of 310 CMR 10.58(4) do not apply to any aspect of proposed work in a RA that also contains areas that meet the definition of degraded.

The Regulations under 310 CMR 10.58(5) state that, "Redevelopment means replacement, rehabilitation or expansion of existing structures, improvements of existing roads, or reuse of degraded or previously developed areas." Degraded areas are those areas of a RA that contain impervious surfaces from existing structures or pavement, absence of topsoil, junkyards, or abandoned dumping grounds. While MassDEP is aware that the site was previously altered for mining activities, based on recent observations a majority of the site contains topsoil and is not covered by impervious surfaces such as structures or pavement. These portions of the site

should be reviewed under the performance standards for new development pursuant to 310 CMR 10.58(4). As mentioned earlier, MassDEP concurs that areas of trails on the site that are devoid of topsoil and vegetation would qualify for review under the redevelopment standards pursuant to 310 CMR 10.58(5).

It has been MassDEP's practice to apply both 310 CMR 10.58(4) and 310 CMR 10.58(5) to sites that contain degraded and non-degraded areas. MassDEP does not agree with your conclusions that if any portion of a site contains degraded areas, then the entire site is allowed to be reviewed under the redevelopment standards.

When a site is reviewed under the standards for new development (310 CMR 10.58(4)), the applicant is required to provide an alternatives analysis to demonstrate that there is no practicable and substantially equivalent economic alternative to the proposed project with less adverse effects on the interests of the Act. Several documents and narratives are included with the NOI which explain various design changes that have been made to the project since 2004 as a result of comments from the Amesbury Planning Board and the Commission. However, the NOI filed with the Commission in 2011 does not contain an alternatives analysis for work proposed in the RA. On January 29, 2013, BSC noted that the applicant was required to submit a RA alternatives analysis pursuant to 310 CMR 10.58(4). Although OCG continues to assert that the site qualifies as degraded it submitted a "Supplemental Alternatives Analysis" to the Commission. In this analysis, the applicant reiterates those changes made to the project since its inception. Reference is made to the "Terrasphere Alternative" report conducted in 2001, alternatives proposed in 2004, 2010, 2011 and 2012 as well as a no-build alternative. With regard to examining alternative locations for the building proposed within the RA, OCG states that, "Reducing the number of buildings at this project is not consistent with the project purposes..." and that "if the building was removed from the project the mitigation proposed to compensate for that building would be removed." MassDEP finds the level of detail of the Supplemental Alternatives Analysis lacking. The applicant does not address the requirements of an alternatives analysis as outlined under 310 CMR 10.58(4)(c) which states that evidence be provided demonstrating that there are no practicable and substantially equivalent economic alternatives with less adverse effects on the interests protected under the Act. No evaluation was provided based on cost, existing technology or logistics within the scope of alternatives as set forth in 310 CMR 10.55(4)(c). As the project is for a housing complex, the area under consideration for practicable alternatives extends to the original parcel and the subdivided parcels, any adjacent parcels, and any other land which can reasonably be obtained within the municipality; therefore submittal of an alternatives analysis is a critical component of the RA regulations. Based on the absence of a complete and detailed alternatives analysis and lack of local review and input, MassDEP cannot request further information for which the Commission had no prior chance to review.

In the Matter of Crystal Motor Express, Inc., Docket No. 2001-017 and 2001-019, a similar circumstance occurred where the applicant, Crystal Motors, filed a Notice of Intent with the Lynnfield Conservation Commission (LCC) for the construction of a truck terminal within the 200 foot riverfront area of the Saugus River. The applicant asserted that the project was proposed to be located within an area subject to the redevelopment standards. The LCC eventually denied the project based on its opinion that the site did not qualify as degraded or

previously developed. In its review, MassDEP concluded that because the site was well vegetated, it was subject to review under new development standards and MassDEP subsequently required the submittal of an alternatives analysis. The Final Decision stated that, "Once the Department determined that the project did not qualify as a redevelopment project, it could not, for the first time, consider whether to permit the project under the general performance standards for work in a riverfront area because initial review of the alternatives analysis must be performed by the local conservation commission and no such analysis was submitted to the Lynnfield Conservation Commission here."

In the Matter of Town of Carlisle, Docket No. 97-123, the issue concerned the siting of a leaching system within the riverfront area. The proponent claimed that the project was exempt from the riverfront area performance standards because it involved work in a previously developed riverfront area. No alternatives analysis was provided to the Commission. The proponent argued that it informed the Commission and MassDEP "orally" of possible alternative locations for the leaching system and therefore demonstrated that there were no practicable alternatives. The Final Decision in this case cites the fact that the Wetlands Protection Act requires applicants to submit, with a Notice of Intent, "information sufficient to describe the site, the work, and the effect of the work on wetland interests." This information the Department deemed necessary for "the issuing authority...to fulfill its responsibility to protect the Commonwealth's wetlands resources in accordance with the Wetlands Protection Act. The role of the issuing authority is that of a reviewing agency. It is the applicant's responsibility to provide for this review." The Notice of Intent Form thus called for applicants to "clearly, completely and accurately describe, with reference to supporting plans and calculations where necessary....all measures and designs proposed to meet the performance standards set for under each resource area." Therefore, when the "Rivers Protection Act was enacted and included a performance standard requiring an applicant to show that there is no practicable alternatives to the proposed project, the responsibility fell on an applicant planning an activity in riverfront area to submit a notice of intent that included a complete and accurate description of how the proposed project met the no practicable alternatives performance standard."

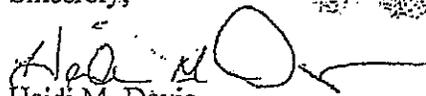
In applying these cases to the current case, it is MassDEP's opinion that the change in characterization of the riverfront area on the project site from degraded to undeveloped is a significant change in how this project should be reviewed and permitted. The applicant did not provide the Commission with a complete and thorough review of all practicable alternatives for the placement of the dwelling units and utilities within RA on the project site in order for the Commission to make an informed decision. Therefore, it is MassDEP's opinion that the applicant should re-file a Notice of Intent with the Commission as MassDEP cannot, under these proceedings, request or consider alternatives not reviewed by the Commission during the public hearing process.

It is MassDEP's opinion that the enclosed Superseding Order of Conditions denying the project as proposed serves to protect the interests of the Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40. Please be advised that it is MassDEP's responsibility to address only those interests identified in the Act. However, MassDEP reserves the right, should there be further proceedings in this case, to raise additional issues and present further evidence as

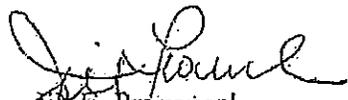
may be appropriate. Should any party dispute these findings, please consult the language in the Order that specifies your rights and procedures for appeal.

Should you have any questions, please contact Jill Provencal at (978) 694-3250.

Sincerely,

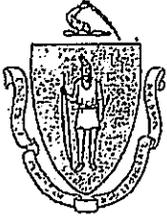


Heidi M. Davis  
Acting Section Chief  
Wetlands Program – NERO



Jill E. Provencal  
Environmental Analyst  
Wetlands Program - NERO

cc: Amesbury Conservation Commission



Massachusetts Department of Environmental Protection  
 Bureau of Resource Protection - Wetlands  
**WPA Form 5 Superseding Order of Conditions-DENIAL**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

002-1015

Provided by DEP

**A. General Information**

From: MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

This issuance is for (check one):

- Superseding Order of Conditions—DENIAL
- Amended Superseding Order of Conditions

To: Applicant:

Richard Terrill, c/o Fafard Real Estate and  
 Development  
 Name  
 120 Quarry Drive  
 Mailing Address  
 Milford MA 01757  
 City/Town State Zip Code

Property Owner (if different from applicant):

Mayor Thatcher Kezer, III  
 Name  
 c/o City of Amesbury, City Hall, 62 Friend Street  
 Mailing Address  
 Amesbury MA 01913  
 City/Town State Zip Code

1. Project Location:

Summit Avenue and Route 150 Street Address	Amesbury City/Town
87 and 88 Assessors Map/Plat Number	7 and 50 Parcel/Lot Number

2. Property recorded at the Registry of Deeds for:

Essex South County	Bk. 13425 and 13469	409 and 23 Page
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Certificate (if registered land)

3. Dates:

April 16, 2010 Date Notice of Intent Filed	May 6, 2013 Date Public Hearing Closed	June 14, 2013 Date of Issuance(local Order of Conditions)
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4. Final Approved Plans and Other Documents (attach additional plan references as needed):

Title	Date [Revised]
Title	Date [Revised]

5. Final Plans and Documents Signed and Stamped by:

Name

6. Total Fee:

(from Appendix B: Wetland Fee Transmittal Form)



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 5 Superseding Order of Conditions-DENIAL**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

002-1015  
Provided by DEP

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## B. Findings

Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, the Department finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Public Water Supply  | <input type="checkbox"/> Land Containing Shellfish | <input type="checkbox"/> Prevention of Pollution        |
| <input type="checkbox"/> Private Water Supply | <input type="checkbox"/> Fisheries                 | <input type="checkbox"/> Protection of Wildlife Habitat |
| <input type="checkbox"/> Groundwater Supply   | <input type="checkbox"/> Storm Damage Prevention   | <input type="checkbox"/> Flood Control                  |

Furthermore, the Department hereby finds the project, as proposed, is:

Denied because:

- the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations to protect those interests checked above. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect these interests, and a final Order of Conditions is Issued.

This application for a permit to alter wetlands under Chapter 131, Section 40, is therefore denied for the following reasons:

- 1) MassDEP finds that the project is not degraded within the meaning of 10.58(5), therefore, the performance standards of 10.58(4) are applicable.
- 2) MassDEP finds that the proposed project does not meet the performance standards of 310 CMR 10.58(4)(c); subsequently, said activity is judged not to protect the interests of the Wetlands Protection Act and is, therefore, prohibited under M.G.L. Chapter 131, section 40.



Massachusetts Department of Environmental Protection  
 Bureau of Resource Protection - Wetlands  
**WPA Form 5 Superseding Order of Conditions-DENIAL**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

002-1015

Provided by DEP

**C. ISSUANCE**

This Order is valid for three years from the date of issuance.

Issued by: **Massachusetts Department of Environmental Protection**

Signature *Heidi M. Davis*

Heidi M. Davis, Acting Section Chief, Wetlands Program, Bureau of Resource Protection

by hand delivery

by certified mail, return receipt requested on

1.30.14

Date

Date



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 5 Superseding Order of Conditions-DENIAL**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

002-1015

Provided by DEP

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## D. Notice of Appeal Rights

### Appeals

#### A) Appeal Rights and Time Limits

The applicant, the landowner, any person aggrieved by this Superseding Order, Determination or the Reviewable Decision as defined at 310 CMR 10.04, who previously participated in the proceedings leading to the Reviewable Decision, the conservation Commission, or any ten (10) residents of the city or town where the land is located if at least one resident was previously a participant in the permit proceeding, are hereby notified of their right to appeal this Reviewable Decision pursuant to M.G.L. c.30A, S. 10, provided the request is made by certified mail or hand delivery to the Department, along with the appropriate filing fee and a MassDEP Fee Transmittal Form within ten (10) business days of the date of issuance of this Superseding Order or Determination, and addressed to

Case Administrator  
Department of Environmental Protection  
One Winter Street - 2<sup>nd</sup> Floor  
Boston, MA 02108

A copy of the request (hereinafter also referred to as Appeal Notice) shall at the same time be sent by certified mail or hand delivery to the Conservation Commission, the applicant, the person that requested the Superseding Order or Determination, and the issuing office of the MassDEP at:

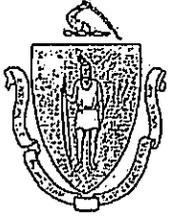
Massachusetts Department of Environmental Protection  
NERO, 205B Lowell Street  
Wilmington, MA 01887

In the event that a ten resident group requested the Superseding Order or Determination, the Appeal Notice shall be served on the designated representative of ten resident group, whose name and contact information is included in this reviewable Decision (when relevant)

#### Contents of Appeal Notice

An Appeal Notice shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6) and 310 CMR 10.05(7)(j), and shall contain the following information:

- (a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;
- (b) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative; if a ten residents group, the same information of the group's designated representative.
- (c) if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;
- (d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceedings that led to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;
- (e) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;
- (f) a clear and concise statement of the alleged errors in the Department's decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c.131, S. 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision;



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 5 Superseding Order of Conditions-DENIAL**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

002-1015

Provided by DEP

**D. Appeals (cont.)**

- (g) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;
- (h) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and
- (i) if asserting a matter that is Major and Complex, as defined at 310 CMR 10.0491), a statement requesting that the Presiding Officer make a designation of Major and Complex, with specific reasons supporting the request.

**Filing Fee and Address**

A copy of the Appeal Notice along with a MassDEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts  
Massachusetts Department of Environmental Protection  
Commonwealth Master Lockbox  
Box 4062  
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, district of the Commonwealth of Massachusetts, or a municipal housing authority. 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.

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