



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

Provided by MassDEP:  
MassDEP File #:322-1000  
eDEP Transaction  
#:1642946  
City/Town:WAYLAND

**A. General Information**

1. Conservation Commission

WAYLAND

2. Issuance

a. ☒ OOC

b. ☐ Amended OOC

**3. Applicant Details**

a. First Name DEAN

b. Last Name HICKEY

c. Organization CASCADE DEVELOPMENT ASSOCIATES, LLC

d. Mailing Address 831 BEACON STREET, #268

e. City/Town NEWTON CENTER

f. State MA

g. Zip Code 02459

**4. Property Owner**

a. First Name DEAN

b. Last Name HICKEY

c. Organization CASCADE DEVELOPMENT ASSOCIATES, LLC

d. Mailing Address 831 BEACON STREET, #268

e. City/Town NEWTON CENTER

f. State MA

g. Zip Code 02459

**5. Project Location**

a. Street Address 113-115 BOSTON POST ROAD

b. City/Town WAYLAND

c. Zip Code 01778

d. Assessors 30

e. Parcel/Lot# 70 & 71

Map/Plat#

f. Latitude 42.35925N

g. Longitude 71.34115W

**6. Property recorded at the Registry of Deed for:**

a. County

b. Certificate

c. Book

d. Page

SOUTHERN MIDDLESEX

80325

106

**7. Dates**

a. Date NOI Filed : 11/17/2022

b. Date Public Hearing  
Closed:

11/8/2023

c. Date Of Issuance: 11/29/2023

**8. Final Approved Plans and Other Documents**

a. Plan Title:

b. Plan Prepared by:

c. Plan Signed/Stamped by:

d. Revised Final Date: e. Scale:

CASCADE  
RESIDENTIAL  
HOUSING  
DEVELOPMENT,  
BOSTON POST  
ROAD, WAYLAND,  
MASSACHUSETTS

C1.0 ENGINEERING

WILLIAM DOYLE, P.E.  
41510

10/31/ 2023

1" = 30'



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RIVERFRONT  
AREA

RESTORATION  
PLANTING PLAN,  
113-115 BOSTON  
POST ROAD,  
WAYLAND,  
MASSACHUSETTS

LEC  
ENVIRONMENTAL N/A  
CONSULTANTS, INC.

04/24/2023

1" = 30'

**B. Findings**

**1. Findings pursuant to the Massachusetts Wetlands Protection Act**

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

Check all that apply:

- |   |  |   |
|---|--|---|
| a. <input checked="" type="checkbox"/> Public Water Supply  | b. <input checked="" type="checkbox"/> Land Containing Shellfish | c. <input checked="" type="checkbox"/> Prevention of Pollution        |
| d. <input checked="" type="checkbox"/> Private Water Supply | e. <input checked="" type="checkbox"/> Fisheries                 | f. <input checked="" type="checkbox"/> Protection of Wildlife Habitat |
| g. <input checked="" type="checkbox"/> Ground Water Supply  | h. <input checked="" type="checkbox"/> Storm Damage Prevention   | i. <input checked="" type="checkbox"/> Flood Control                  |

**2. Commission hereby finds the project, as proposed, is:**

**Approved subject to:**

- a. ☐ The following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

**Denied because:**

- b. ☒ The proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. 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 interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. ☒ The information submitted by the applicant is not sufficient to describe the site, the work or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**

3. ☐ Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310CMR10.02(1)(a).

a. linear feet

**Inland Resource Area Impacts:(For Approvals Only):**



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Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	<u>                    </u> a. linear feet	<u>                    </u> b. linear feet	<u>                    </u> c. linear feet	<u>                    </u> d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. square feet	<u>                    </u> d. square feet
6. <input type="checkbox"/> Land under Waterbodies and Waterways	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. square feet	<u>                    </u> d. square feet
7. <input checked="" type="checkbox"/> Bordering Land Subject to Flooding	<u>                    </u> e. c/y dredged	<u>                    </u> f. c/y dredged		
	<u>2462</u>		<u>2462</u>	
Cubic Feet Flood Storage	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. square feet	<u>                    </u> d. square feet
	<u>0</u>		<u>0</u>	
	<u>                    </u> e. cubic feet	<u>                    </u> f. cubic feet	<u>                    </u> g. cubic feet	<u>                    </u> h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	<u>                    </u> a. square feet	<u>                    </u> b. square feet		
Cubic Feet Flood Storage	<u>                    </u> c. cubic feet	<u>                    </u> d. cubic feet	<u>                    </u> e. cubic feet	<u>                    </u> f. cubic feet
9. <input checked="" type="checkbox"/> Riverfront Area	<u>66545</u>			
	<u>                    </u> a. total sq. feet	<u>                    </u> b. total sq. feet		
Sq ft within 100 ft	<u>                    </u> c. square feet	<u>                    </u> d. square feet	<u>                    </u> e. square feet	<u>                    </u> f. square feet
Sq ft between 100-200 ft	<u>                    </u> g. square feet	<u>                    </u> h. square feet	<u>                    </u> i. square feet	<u>                    </u> j. square feet

**Coastal Resource Area Impacts:**

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	<u>                    </u> a. square feet	<u>                    </u> b. square feet		
	<u>                    </u> c. c/y dredged	<u>                    </u> d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. c/y nourishment	<u>                    </u> d. c/y nourishment
14. <input type="checkbox"/> Coastal Dunes	<u>                    </u> a. square feet	<u>                    </u> b. square feet	<u>                    </u> c. c/y nourishment	<u>                    </u> d. c/y nourishment
15. <input type="checkbox"/> Coastal Banks	<u>                    </u> a. linear feet	<u>                    </u> b. linear feet		



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16. ☐ Rocky Intertidal Shores

a. square feet b. square feet

17. ☐ Salt Marshes

a. square feet b. square feet c. square feet d. square feet

18. ☐ Land Under Salt Ponds

a. square feet b. square feet

c. c/y dredged d. c/y dredged

19. ☐ Land Containing Shellfish

a. square feet b. square feet c. square feet d. square feet

20. ☐ Fish Runs

Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above

c. c/y dredged d. c/y dredged

21. ☐ Land Subject to Coastal Storm Flowage

a. square feet b. square feet

22.

☐ Restoration/Enhancement (For Approvals Only)

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.5.c & d or B.17.c & d above, please entered the additional amount here.

a. square feet of BVW

b. square feet of Salt Marsh

23.

☐ Streams Crossing(s)

If the project involves Stream Crossings, please enter the number of new stream crossings/number of replacement stream crossings.

a. number of new stream crossings

b. number of replacement stream crossings

**C. General Conditions Under Massachusetts Wetlands Protection Act**

**The following conditions are only applicable to Approved projects**

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - a. the work is a maintenance dredging project as provided for in the Act; or
  - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the



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extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.

5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not exceed the issuance date of the original Final Order of Conditions.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work..
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

" Massachusetts Department of Environmental Protection"  
[or 'MassDEP']  
File Number : "322-1000"

11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before Mass DEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to





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require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

**NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS**

19. The work associated with this Order(the "Project") is (1) ☐ is not (2) ☐ subject to the Massachusetts Stormwater Standards. If the work is subject to Stormwater Standards, then the project is subject to the following conditions;
- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollutant Discharge Elimination System Construction General Permit as required by Stormwater Standard 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
  - b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that: *i.* all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures; *ii.* as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized; *iii.* any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10; *iv.* all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition; *v.* any vegetation associated with post-construction BMPs is suitably established to withstand erosion.
  - c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 19(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following: *i.* the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and *ii.* the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
  - d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollutant Discharge Elimination System Multi-Sector General Permit.
  - e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 19(f) through 19(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 19(f) through 19(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving



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more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.
- g) The responsible party shall:
  - 1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
  - 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
  - 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

**Special Conditions:**

SEE ATTACHMENT TO ORDER OF CONDITIONS ISSUED BY THE WAYLAND CONSERVATION COMMISSION PURSUANT TO THE WETLAND PROTECTION ACT (310 CMR 10.0) THAT OUTLINE THE REASONS FOR DENIAL. SEE SPREADSHEET PREPARED BY ADAM KAUTZA, MASS DIVISION OF FISH AND WILDLIFE WITH THE INVENTORY OF EASTERN BROOK TROUT OBSERVED ON JUNE 29, 2023 IN PINE BROOK, WAYLAND, MASS. SEE SPREADSHEET PREPARED BY THE CONSERVATION DEPARTMENT REGARDING THE RIVERFRONT IMPACT EVALUATION.



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**D. Findings Under Municipal Wetlands Bylaw or Ordinance**

1. Is a municipal wetlands bylaw or ordinance applicable? ☐ Yes ☒ No

**2. The Conservation Commission hereby (check one that applies):**

a. ☐ DENIES the proposed work which cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw specifically:

1. Municipal Ordinance or Bylaw \_\_\_\_\_

2. Citation \_\_\_\_\_

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order or Conditions is issued. Which are necessary to comply with a municipal ordinance or bylaw:

b. ☐ APPROVES the proposed work, subject to the following additional conditions.

1. Municipal Ordinance or Bylaw \_\_\_\_\_

2. Citation \_\_\_\_\_

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows:





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**E. Signatures**

This Order is valid for three years from the date of issuance, unless otherwise specified pursuant to General Condition #4. If this is an Amended Order of Conditions, the Amended Order expires on the same date as the original Order of Conditions.

11/29/2023

1. Date of Original Order

Please indicate the number of members who will sign this form. This Order must be signed by a majority of the Conservation Commission.

5

2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Signatures:

LINDA HANSEN

Duly Authorized to sign by a vote recorded  
with the Middlesex Registry of deeds in  
Book 78298, Page 320

☐ by hand delivery on

☒ by certified mail, return receipt requested, on

Date

Date 11/29/2023

**F. Appeals**

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.

**G. Recording Information**

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

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Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

WAYLAND

Conservation Commission

Please be advised that the Order of Conditions for the Project at:

113-115 BOSTON POST ROAD

Project Location

322-1000

MassDEP File Number

Has been recorded at the Registry of Deeds of:

County

Book

Page

for:

Property Owner DEAN HICKEY

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant

Rev. 4/1/2010



## **Wayland Conservation Commission Attachment to Order of Conditions**

to accompany Mass. Wetlands Prot. Act M.G.L. c. 131, §40 Order of Conditions

**Date of Issue: November 29, 2023**

**Applicant: Dean Hickey**

**Owner: Cascade Development Associates, LLC**

**Project Location: 113-115 Boston Post Rd**

**Map and Lot Number(s): Map 30, Lots 70 & 71**

### **Plans and Documents:**

The Commission received the following site plans and documents from the Applicant during the hearing process:

- Plan set: *Cascade Residential Housing Development, Boston Post Road, Wayland, Massachusetts, Middlesex County* by C1.0 Engineering, LLC; dated November 14, 2022, Revised October 31, 2023; stamped and signed by William Doyle, MA P.E. No. 41510. [Note; the October 31, 2023 plan set does not include the Riverfront Restoration Planting Plan as stated in the Drawing List.]
- Notice of Intent Application, prepared for Cascade Development Associates, LLC by LEC Environmental Consultants, Inc. Received November 16, 2022.
- Stormwater Report: "113-115 Boston Post Road, Wayland Massachusetts, Post Construction Stormwater Management Report" prepared by C1.0 Engineering, LLC, dated November 14, 2022; Revised May 1, 2023; June 30, 2023; October 31, 2023.
- Response to Peer Review Comments, dated May 3, 2023, July 11, 2023, November 1, 2023; Prepared by LEC Environmental Consultants, Inc.
- DEP Response to MassDEP Deficiencies and Errors for Groundwater Mounding Analysis of Proposed Subsurface Disposal System for the Cascades Development at 115 Boston Post Road, Wayland, MA; dated July 12, 2021, prepared by Geosphere Environmental Management, Inc.
- Quitclaim Deed dated June 2, 2022.
- Riverfront Area Restoration Planting Plan, 113-115 Boston Post Road, Wayland, Massachusetts prepared by LEC Environmental Consultants, Inc.; dated November 14, 2022 and revised April 24, 2023.
- Commonwealth of Massachusetts Housing Appeals Committee Decision on Stipulation and Entry of Judgement, Case number 2019-03, Eden Management, Inc. – appellant and Wayland Board of Appeals – Appellee, dated July 29, 2021.

### **Record Documents – Other:**

- Comment Letters, prepared by BETA Group, Inc. dated (January 12, 2023, June 2, 2023, and September 6, 2023).
- Peer Review Comment Letters: Prepared by Nover Environmental Consulting, LLC, dated January 9, 2023, June 5, 2023, and July 19, 2023.
- Report: *Pine Brook's Eastern Brook Trout Cold-water Fishery*, dated 09/26/2017; Revised 11/21/2017; prepared by EBT Environmental Consultants, Inc.
- *Pine Brook's Eastern Brook Trout Habitat and Population Assessment Field Report*, dated 06/29/2023; conducted by Adam Kautza, Coldwater Fisheries Project Leader, MA Division of Fisheries & Wildlife.
- Letter from Scott Horsley to the Wayland Conservation Commission, dated August 2, 2023.
- PowerPoint Presentation – July 18, 2023 Site Conditions; prepared by NEC, LLC.



## Wayland Conservation Commission Attachment to Order of Conditions

to accompany Mass. Wetlands Prot. Act M.G.L. c. 131, §40 Order of Conditions

### Findings of Fact:

On November 16, 2022, a Notice of Intent was filed with the Wayland Conservation Commission (the Commission) on behalf of Dean Hickey, Cascade Development Associates, LLC (Applicant) for the proposed M.G.L. Chapter 40B Residential Development referred to as Cascade Wayland (the Project) located on the southerly side of Route 20, at 113 and 115 Boston Post Road in Wayland, MA (the Site). The Project was filed under the Massachusetts Wetlands Protection Act, M.G.L. Section 40 (the Act) and its Regulations, 310 CMR 10.00.

The public hearing was opened on November 30, 2022. Since then, the Applicant requested continuances 11 times before their second public hearing. They continued to request continuances four times before their third public hearing held on November 8, 2023, at which time, they requested that the public hearing be closed. During the NOI process, the Applicant required the Commission request permission to enter the site.

By requesting the closure of the November 8, 2023 public hearing, the Applicant denied the Commission adequate time to review the *Response to Peer Review Comments* dated November 1, 2023; prepared by LEC Environmental Consultants (LEC), on behalf of the Applicant, and submitted only one week prior to the hearing. The comprehensive LEC submission contained a revised set of Project design plans, a revised Stormwater Management Report, and substantial responses to the Commission's stormwater peer review consultant, BETA Group, Inc. The submission was submitted one week prior to the third public hearing. Without adequate time to review the revised plans and stormwater report by the Commission and their peer review consultant, compliance with DEP's Stormwater Standards could not be verified.

The Commission understands they play an important role in determining whether the Project complies with the requirements of the Act and its Regulations. The Commission has the initial review of a Project and must have sufficient information to make that determination. Otherwise, an Applicant can make an end around the Commission and proceed to DEP with a Superseding Order of Conditions request for a "de novo" review.

At the November 8, 2023, public hearing, the Applicant requested the hearing be closed. At the same public meeting, the Commission voted UNANIMOUSLY to issue an Order of Conditions DENYING the Project. From the initiation of the NOI and Project Review and continuing throughout the hearing proceedings, the Commission found that the information submitted by the Applicant was insufficient to describe the site, the work, and the effect of the work on the interests identified in the Act. The Commission also found that the proposed work could not be conditioned to meet the performance standards set forth in the wetland regulations, 310 CMR 10.00. Therefore, this Project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act and sufficiently describes the effects of the work on the interests described in the Act and a final Order of Conditions is issued. A description of the performance standards which the Project cannot meet and the specific information which is lacking and why it is necessary is provided in this DENIAL.

### Project and Site Description:

The Project Site is comprised of two lots totaling 6.483 acres. The 113 Boston Post Road parcel (1.266 acres) is presently occupied by an existing vacant single-family dwelling, detached garage structure and presumably an abandoned septic system. The 115 Boston Post Road lot (5.217 acres) is the former Mahoney's Nursery commercial business. Vacant and dilapidated structures, gravel surfaces in various physical stages, areas of established meadow, shrub and forested habitat, and an abandoned septic system occupies the Mahoney's Nursery lot. Small areas of both lots extend across Pine Brook, a perennial stream and Cold-Water Fishery Resource. Areas Subject to Protection and Jurisdiction that exist on the Site include 200-foot Riverfront Area (RA), Bank, Land Under Water (LUW), Bordering Land Subject to Flooding (BLSF), Bordering Vegetated Wetlands (BVW) and 100-foot buffer zone.



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At the request of the Commission, Adam Kautza, Mass Division of Fisheries and Wildlife Coldwater Fisheries Project Leader, conducted a habitat assessment of Pine Brook including an inventory of Eastern brook trout at the Project Site. Mr. Kautza found "good habitat" adjacent to Pine Brook and on its Banks including undercut banks, root wads, wood, overhanging vegetation/well-developed riparian forest (but relatively narrow in spots), and a very high-quality wild brook trout population (see attached spreadsheet prepared by Adam Kautza).

The Project as described by the NOI includes the demolition of existing structures, driveways, parking lots, and impervious and gravel areas associated with an abandoned garden center and single-family dwelling, and construction of a 60-unit, 4-story affordable housing development with associated access drives, parking lots, stormwater BMPs, 11,000 gallon per day on-site wastewater treatment facility, resource area restoration and mitigation. As described in the NOI's General Project Description, portions of the Project are located within RA and BLSF associated with Pine Brook and within the 100-foot buffer zone to BVW. Accessory features to the Project described include site grading, a retaining wall, erosion controls, invasive species management, native revegetation, a meadow, and stormwater management.

The Project includes the routing of untreated Route 20 stormwater through the Project's stormwater management detention BMP, ultimately discharging to Pine Brook from the new direct discharge point on Pine Brook's bank. The Project's treated water quality volume and treatment do not include existing stormwater runoff from Route 20. The Commission finds that, notwithstanding Finding 9, stormwater management systems shall be constructed as depicted on the plan-of-record to attenuate roof and driveway runoff.

### Reasons for Denial:

#### Insufficient Information, 310 CMR 10.05(6)(c)

The Commission found that the information submitted by the applicant was not sufficient to describe the site, the work, or the effect of the work on the interests identified in M.G.L. c. 131, § 40. Therefore, per 310 CMR 10.05(6)(c), the Commission cannot issue an Order allowing the work.

- At the time of the Commission's decision to issue an Order of Conditions, denying the Project, they did not have sufficient information to determine whether the Project fully met the Stormwater Standards. A revised set of Project plans and Stormwater Report were submitted to the Commission a week prior to the November 8, 2023 public hearing closure. The Commission explained to the Applicant at the November 8, 2023 hearing that their stormwater peer review consultant needed more time to review the revised set of project plans and documents in order to advise on whether the Project met the Stormwater Standards at 310 CMR 10.05(6)(k). The Applicant denied the Commission's request to allow the hearing to remain open, which effectively did not provide sufficient information to describe the work and the effects of the work on the interests of the Act. Compliance with performance standards including the Stormwater Standards could not be verified by the Commission prior to the closure of the hearing.
- The Project is relying on the degraded riverfront area boundary depicted on the October 31, 2023 Project plans to meet performance standards. The Commission and their peer review consultants have observed and documented substantial areas within the Site's delineated degraded riverfront area that contain fully established meadow and succeeding shrub habitats with 100% ground coverage and topsoil. The Applicant did not provide any evidence to support the degraded riverfront area boundary. It is the Commission's position that until the Project plans accurately depict the degraded riverfront area limits, an Order of Conditions allowing work to redevelop a previously developed riverfront area in accordance with 310 CMR 10.58(5) Redevelopment Within Previously Developed Riverfront Areas cannot be issued.
- As stated in 310 CMR 10.58(4)(d), within 200-foot RAs, the Commission may allow the alteration of up to 5,000 square feet or 10% of the riverfront area within the lot, whichever is greater, on a lot recorded on or before October 6, 1997 or lots recorded after October 6, 1997 or up to 10% of the RA



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within a lot recorded after October 6, 1997. The Project is proposed on two separate assessor's lots. The Applicant did not apply the RA performance standards on a per lot basis and therefore, did not provide the Commission with sufficient information to sufficiently describe the effect of the work on the interests of the Act. Throughout the NOI hearing process, the Commission repeatedly requested that the Applicant determine if the Project met 310 CMR 10.58(4)(d) by applying the standard on a per lot basis. The Applicant would not provide this information (see attached riverfront evaluation table).

- Plans and documentation submitted by the Applicant were convoluted and inconsistent regarding terminology, regulatory relevance, and information presentation. For example, plan sheets titled Area 1, 2 and 3 depicted different degraded RA boundaries and presented information in narrative form that could not be confirmed in plan view. No where did the Applicant provide an understandable summary of why the Project met the RA performance standards.
- The Applicant did not provide sufficient information to describe the effects of the new direct discharge of treated and untreated stormwater to a Critical Area – Pine Brook, a Cold-Water Fishery Resource (CFR), which is also a designated Class B Water according to 314 CMR 4.00. The Commission requested that the Applicant provide credible evidence from a qualified Professional demonstrating that discharging the combined Site and Route 20 stormwater directly to Pine Brook would not impair existing water use as a CFR (protection of fisheries interest protected by the Act) and would not result in a level of water quality less than that specified in the surface water quality regulations. The Applicant did not provide any such credible evidence leaving the Commission to believe that there will be adverse impacts to this protected cold water fish habitat. The Notice of Intent did not identify Pine Brook as a cold-water fishery resource within the project site, nor did the Applicant check Bank as a Resource Area that would be altered as part of this proposed project or that Outstanding Resource Waters is within the proposed project site.
- Per 310 CMR 10.05(4)(h), the Commission may require that the Applicant provide supporting plans and calculations by an appropriate professional certification when in their judgement, the complexity of the proposed work warrants this requirement. At the closure of the public hearing, the Commission had insufficient information to determine that the 11,000 gallon per day subsurface sewage disposal system (SSDS) would not adversely impact protected interests identified in the Act. The Applicant inappropriately asked the Commission to approve the location of the subsurface sewage disposal system in 200-foot riverfront area without design details, without a DEP Groundwater Discharge Permit, without the submission of background / existing conditions parameters of Pine Brook during all flow scenarios, and without a credible analysis of the potential impacts to the surface water quality parameters in Pine Brook that are critical to the its ability to support cold water fish and fisheries in general. A preliminary phosphorus loading analysis prepared by Scott Horsley and submitted to the Commission on August 2, 2023 indicates that stream concentrations of phosphorus could increase from 21 µg/liter (measured) to 159-637 µg/liter from wastewater effluent discharges to Pine Brook. Thermal impact to the stream also needs to be evaluated. The presumption that the groundwater discharge in riverfront area with documented discharge to Pine Brook, a Coldwater Fishery Resource with good Eastern Brook Trout habitat and population, will not adversely affect the river's ability to protect fisheries is not overcome without supporting documentation from the Applicant.
- The Applicant did not adequately describe the work associated with the NEW direct stormwater discharge to Pine Brook, a Critical Area / Coldwater Fishery Resource, or its effect on the interests of the Act – specifically, protection of fish habitat and surface water quality. Site work associated with the stormwater discharge channel is proposed (vegetation clearing and excavation/grading) directly on and behind the upper bank boundary to Pine Brook. The Applicant has presented an unreasonable assumption that removal of woody vegetation at the limit of the upper Bank boundary along with excavation directly behind the upper Bank boundary will not adversely impact Bank and its ability to





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protect fisheries, or potentially the Banks ability to contain floodwaters, both of which are Bank performance standards that must be met.

- In the summer of 2023, Adam Kautza, Mass Division of Fisheries and Wildlife Coldwater Fisheries Project Leader, conducted a habitat assessment of Pine Brook including an inventory of Eastern brook trout at the Project Site (see attached spreadsheet prepared by Adam Kautza). He found good habitat adjacent to Pine Brook and on its Banks including undercut banks, root wads, wood, overhanging vegetation / well-developed riparian forest (but relatively narrow in spots), and a very high-quality wild brook trout population. In 2017, John Sheedy, Mass Division of Fish & Wildlife stated that Pine Brook had the highest trout numbers of any stream assessed in the Northeast Region. The Applicant did not provide an opinion from a wildlife or fish biologist relative to whether the effects of the work associated with construction of the direct discharge channel would have an adverse effect on important wildlife habitat on the river's bank or its land under water resource area. Therefore, the Commission had insufficient information to determine that the work met performance standards, protecting the interests of the Act the resource areas are providing. Additional baseline water sampling over multiple seasons will be needed to understand the effects of stormwater and wastewater discharges from this proposed development on the sustainability of the trout fishery.
- The Applicant submitted a Riverfront Area Restoration Planting Plan dated April 24, 2023 (revised). The most recent plan set dated October 31, 2023 did not include a recent version of this plan although it is listed as part of the Drawing List. An updated restoration plan is needed because the size and location of the stormwater measures have changed and should be reflected on the restoration plan.
- Extensive regrading of the site is proposed in both the inner and outer riparian areas. The 'Total Alteration' values provided do not include the restoration area where extensive grading of the site is proposed. The inner riparian includes grading for the stormwater basin, construction of the stormwater swale and the placement of stone and fill, and the installation of the leach field with 7 – 10 feet of fill proposed. These areas need to be identified as areas of riverfront alteration and area of land impacted needs to be quantified.
- Currently, the catch basin on Route 20 adjacent to the site discharges runoff directly to Pine Brook through a pipe transecting through the site. Numerous site visits by Conservation staff and reports from abutters have observed that no significant amount of flow discharges from this pipe. It is presumed that the connecting pipe is broken and much of the runoff infiltrates prior to discharge. The applicant has chosen to direct the street runoff to a swale that discharges to Pine Brook based without adequate information on the amount of runoff generated from the street. The Commission is unaware that the Mass Department of Transportation has approved the applicants' design plans. A better system would be to infiltrate as much runoff as possible before directing it to a cold water stream, similar to the system installed by the farm stand at 134 Boston Post Road (as required by DOT).
- The existing conditions plans indicates that three PVC pipes that discharge to Pine Brook. The Applicant has not identified the source of this illicit discharge. The removal of these pipes was not addressed in the Notice of Intent.
- No information was provided to the Commission regarding vegetation removal from the riverfront area or the wetland buffer zone. As a former nursery site, much of the site is vegetated and the amount of tree and shrub removal from the resources areas needs to be quantified.

### **Performance Standards – Not Met**

310 CMR 10.03(1), any person who files a Notice of Intent to perform any work within an Area Subject to Protection under M.G.L. c. 131, § 40 or within the Buffer Zone has the burden of demonstrating to the issuing



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authority that the area is not significant to the protection of any of the interests identified in M.G.L. c. 131, § 40, or that the proposed work within a resource area will contribute to the protection of the interests identified in M.G.L. c. 131, § 40 by complying with the general performance standards established by 310 CMR 10.00 for that area. **The Applicant for this Project did not overcome said burden.**

- The Project does not meet 310 CMR 10.58(4)(d) – No Significant Adverse Impact performance standard. Within 200 foot RAs, the issuing authority may allow the alteration of up to 5,000 square feet or 10% of the RA within the lot, whichever is greater, on a lot recorded on or before October 6, 1997 or lots recorded after October 6, 1997 subject to the restriction of 310 CMR(4)(c)(2.b.vi, or up to 10% of the RA within a lot recorded after October 6, 1997. The Applicant did not apply the riverfront area performance standards on a per lot basis as required by the Regulations (and confirmed by DEP's Regional Office during the NOI proceedings upon inquiry) but rather combined the total RA on each lot and applied the standards found at 310 CMR 10.58(4)(d). If the riverfront standards are applied correctly, the work proposed on the 113 Boston Post Road parcel (1.266 acres) would not result in a No Significant Adverse Impact as there is work proposed in the 200-foot RA that significantly exceeds 10% of the RA on the lot. Further, there is work proposed within the 100-foot inner riparian zone that is not degraded and therefore, does not meet the performance standard, 310 CMR 10.58(4).
- The Commission believes that proposed activities in the 100-foot RA does not meet the performance standards and therefore, cannot be allowed. The burden of proof that the Project meets 310 CMR 10.58(4) and 10.50(5) has not been overcome.

Given that the presumption that Pine Brook's RA, Bank and Land Under Water protects important fish habitat was not overcome by the Applicant, the Commission has determined that the Project will adversely affect said interest. Information supporting a finding that the work would not adversely affect the resource area's ability to protect fish habitat was not provided by the Applicant after repeated requests by the Commission.

### Summary - Denial:

The Wayland Conservation Commission finds that the information submitted by the Applicant is insufficient to describe the site, the work, or the effect of the work on the interests identified in the Act. The Commission also finds that the project cannot be conditioned to meet the performance standards set forth in 310 CMR 10.58(4)(d).

Therefore, for these reasons, the Wayland Conservation Commission had no choice but to vote unanimously 5-0 to DENY this project. This Order of Conditions - Denial prohibits the work from going forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act and provides sufficient information to credibly describe the site, the work and the effect of the work on the interests identified in the Act.

**End of Attachment to Order of Conditions**

Pine Brook [Spreadsheet provided to the Wayland Conservation Department on July 12, 2023 by Adam Kautza]  
6/29/2023

115 Boston Post Road, Wayland  
Adjacent to and slightly downstream of old greenhouse/plant store property

Good habitat although fairly shallow - good habitat, undercut banks, root wads, wood, overhanging vegetation/well-developed riparian forest but relatively narrow in spots with residential encroachment/small watershed, mostly groundwater/minor bank erosion and some minor sand and fine sediment deposition but really nothing to be concerned about/low-gradient swampy habitat downstream/very high-quality wild brook trout population, esp for a developed-developing landscape/all age classes including YOY present

Reach length - 60 m  
Stream temperature - 17 C  
Reach width - 1.7 m  
pH - 7.56  
Average depth - 0.1 m  
Conductivity - 483 mS  
Max depth - 0.5 m


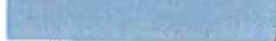







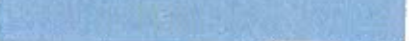


Eastern Brook Trout		Eastern Brook Trout	
Length (mm)	Weight (g)	Length (mm)	Weight (g)
57	2	154	39
80	6	64	NA
74	4	165	52
142	31	68	3
80	8	83	7
75	6	73	4
70	4	80	6
195	86	72	4
76	5	164	46
165	50	127	24
158	43	130	24
163	47	64	3
135	26	142	28
172	60	199	86
160	40	152	37
144	29	62	3
82	6	89	7
83	6	144	33
176	57	153	47
77	5	149	39
70	4	167	50
66	3	66	3
89	8	69	4
73	4	55	2
70	4	66	3
84	7	85	6

**Cascade Project**  
**113-115 Boston Post Road**

**DEP File No. 322-1000**

**Table of information provided by Applicant**

**Riverfront evaluation values shown in square feet**

Description		Boston Post Road			TOTAL
	riverfront	113	115	subtotal	
Area of land	(entire lot)	54,450	228,254		282,704
	inner				117,431
	outer				92,015
					209,446
10% of riverfront					20,945
Degraded riverfront					78,099
Proposed Alteration	inner				2,658
	outer				63,888
					66,546 *
Non-degraded riverfront being altered					
	inner				
	outer				
					11,948
Non-degraded wooded riverfront area being altered					
	inner				
	outer				
					5,668
Restoration Area within Riverfront					
	inner				
	outer				
					74,882

\* Plan incorrectly states this value as 66,501

The degraded values assumes the area is based on BETA degraded analysis

 Indicates information not provided by applicant