



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Northeast Regional Office • 150 Presidential Way Woburn, MA 01801 • 978-694-3200

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### VIA EMAIL

February 27, 2024

Mr. Dean Hickey  
c/o Cascade Development Associates, LLC  
831 Beacon Street, #268  
Newton Center, MA 02459  
dean@westportcapitalinc.com

RE: WETLANDS/WAYLAND  
DEP File #322-1000  
113 – 115 Boston Post Road  
**INFORMATION REQUEST**

Dear Mr. Hickey:

The Northeast Regional Office of the Massachusetts Department of Environmental Protection Wetlands Program (MassDEP) has completed its initial review of the proposed plans and supporting documentation for the project referenced above. On February 2, 2024, MassDEP held a site visit to review the site and informally discuss the issues subject to the appeal. As you are aware, the Wayland Conservation Commission (WCC) issued an Order of Conditions (OOC) denying the proposed project based on its opinion that the project did not meet the performance standards in the Wetlands Protection Act, MGL Chapter 131, § 40 (the Act) and Regulations [310 CMR 10.58(4) and (5)] and for a lack of information [310 CMR 10.05(6)(c)].

The WCC opened the public hearing for the proposed project on November 30, 2022 and hired BETA Group, Inc. and Nover Environmental Consulting, LLC. to conduct peer review for stormwater and regulatory compliance. Continued public hearings were held on July 19, 2023 and November 8, 2023.

Within the denial OOC, the WCC stated that at the time of their decision to issue the OOC, they did not have sufficient information to 1) “*determine whether the project fully met the Stormwater Standards*”; 2) “*support the degraded riverfront area boundary*”; 3) demonstrate the Riverfront Area performance standards were applied on a per lot basis; 4) have a consistent summary of why the project met the Riverfront Area performance standards; 5) understand “*the effects of the new direct discharge of treated and untreated stormwater to a Critical Area*” including receipt of “*credible evidence from a qualified Professional demonstrating*” that discharge would not adversely affect the cold-water fishery; 6) determine that the subsurface sewage disposal system would not adversely impact protected interests in the Act; 7) “*describe the work associated with the NEW direct stormwater discharge to Pine Brook... or its effect on the interests of the Act*”; 8) determine whether the “*discharge channel would have an adverse effect on important wildlife*”

This information is available in alternate format. Please contact Melixza Esenyie at 617-626-1282.

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*habitat on the river's bank or its land under water resource area*" due to lack of an opinion from a wildlife or fish biologist and additional baseline water sampling over multiple seasons; 9) receive an updated restoration plan consistent with the full plan set; 10) receive information on total amount of regrading on site, including areas for the stormwater swale and leach field; 11) determine the best approach for infiltrating street runoff prior to directing it to a cold-water stream and confirm that Massachusetts Department of Transportation approved the design plans; 12) identify the source of the three PVC pipes that discharge to Pine Brook; and 13) quantify the amount of tree and shrub removal from the Riverfront Area and wetland Buffer Zone.

These items were requested during the public hearing discussions, and through the letters from WCC's peer reviewers. Final responses to these information requests were provided in the "*Response to Peer Review Comments*," dated November 1, 2023, prepared by LEC Environmental Consultants, Inc (LEC) on your behalf, which was submitted to the WCC one week prior to the November 8, 2023 public hearing. In the Request for Superseding Order of Conditions (SOC), dated December 12, 2023, LEC addressed each of the WCC's bulleted information request items noted above. LEC describes where the information was provided to the WCC, which in certain cases includes the original Notice of Intent application, dated November 16, 2022, and the LEC Response to Peer Review Comments letters dated May 3, 2023, July 11, 2023, and November 1, 2023. The information confirms your opinion that sufficient information was provided and that the proposed project can be conditioned to meet the regulatory performance standards for work within Riverfront Area and Buffer Zone.

It is MassDEP's opinion that the denial by the WCC does not qualify as a "lack of information denial" under 310 CMR 10.05(6)(c). Under this section, a conservation commission must find that the information submitted is not sufficient and must specify in its OOC the "information which is lacking and why it is necessary." It is MassDEP's opinion that the WCC received the aforementioned information in order to render a decision and therefore is not considered a lack of information under 310 CMR 10.05(6)(c).

Based on observations at MassDEP's site visit and plans currently contained in the file, MassDEP disagrees with the limits of Degraded Riverfront Area Boundary as delineated by LEC, due to the presence of topsoil and vegetation. In addition, MassDEP requests the following additional information and plan revisions in preparation for issuance of an SOC:

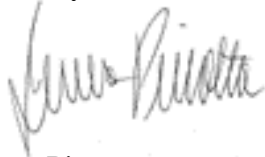
1. Based on observations at the site visit it is MassDEP's opinion that the Project plans should be revised to depict the degraded Riverfront Area boundary consistent with the "BETA Degraded Riverfront Area Boundary" line.
2. A standalone table should be submitted which identifies and quantifies existing degraded and non-degraded areas within the Riverfront Area, proposed alteration within both degraded and non-degraded Riverfront Area, and proposed restoration/mitigation.
3. An updated "Riverfront Restoration Planting Plan" should be provided to reflect the final plan changes made in the October 31, 2023 plan set and, include the modifications to the limit-of-work line, size of the stormwater retention basin, and addition of the day-lit drain pipe.

4. The proposed work to disconnect and cap the three existing PVC pipes should be shown on the plan and detail provided, as described in your December 12, 2023 letter.

In accordance with the Wetlands Regulations at 310 CMR 10.05(7)(f)2, additional information must be submitted within 70 days of MassDEP's request. MassDEP understands that more time may be necessary to gather the additional information and will consider any reasonable request for additional time if it is requested prior to the deadline. Please note that all information submitted to MassDEP must at the same time be sent to all the other parties to the appeal. MassDEP also reserves the right to request additional information if required as the result of this submittal.

Should you have any questions regarding this matter, or you require additional time to comply with this request, please contact me at (781) 366-9109 or by email at [jenna.pirrotta@mass.gov](mailto:jenna.pirrotta@mass.gov).

Sincerely,



Jenna Pirrotta  
Environmental Analyst  
Wetlands Program - NERO

cc: Wayland Conservation Commission, Wayland Town Hall, 41 Cochituate Road, Wayland, MA 01778 Attn: Linda Hansen, [lhansen@wayland.ma.us](mailto:lhansen@wayland.ma.us)  
LEC Environmental Consultants, Inc., 380 Lowell Street, Suite 101, Wakefield, MA 01880 Attn: Richard Kirby, [rkirby@lecenvironmental.com](mailto:rkirby@lecenvironmental.com)