

July 19, 2023

Wayland Conservation Commission  
ATTN: Linda Hansen, Conservation Administrator  
Wayland Town Hall  
41 Cochituate Road  
Wayland, MA 01778

RE: **Cascade Residential Housing Development - Notice of Intent (May 2023 Submission)**  
**113-115 Boston Post Road, Wayland, MA**  
**DEP File No. 322-1000**

Dear Ms. Hansen,

Nover Environmental Consulting, LLC (NEC) is continuing its review of the November 2022 Notice of Intent (NOI) submission for the Chapter 40B Residential Development referred to as Cascade Wayland (the Project). Based on a series of peer reviews from NEC, BETA, along with Conservation Commission comments, the applicant has continued to revise their NOI plans and provide additional detail where requested.

The basis for the comments presented herein include a site visit and review of the following additional information (not already submitted previously):

- Plan set: *Cascade Residential Housing Development, Boston Post Road, Wayland, Massachusetts, Middlesex County* by C1.0 Engineering, LLC; dated November 14, 2022, Revised June 30, 2023; stamped and signed by William Doyle, MA P.E. No. 41510.
- 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 June 30, 2023;
- Response to NEC and BETA Peer Review Comments, dated July 11, 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.

### **Summary**

NEC's comments and summary discussion presented herein include only that pertaining to LEC's responses to NEC's June 6, 2023 comments. In general, all NEC's June 6, 2023, comments remain the same and we remain of the opinion that the Commission does not have sufficient information at this time to issue an Order of Conditions approving the project. Further, it is our opinion that an Order of Conditions that requires a significant number of Special Conditions to ensure that the project meets all regulatory performance standards is not the intention of 310 CMR 10.00 and is not advisable. The burden is on the Applicant to provide the Commission with sufficient information to describe the site, the work, and the effects of the work on the interests of the Wetlands Protection Act.

In summary:

- As detailed below, the Applicant has not applied the Riverfront Area performance standards on a per lot basis as required by the Regulations. The requirement to apply the standards on a per lot basis for this project was confirmed by DEP upon inquiry from the Commission's Office.
- Based on NEC's site visit on 7/18/23, it is our opinion that the Degraded Riverfront Area (DRA) boundary remains inaccurate throughout much of the Site. We observed and documented fully vegetated pollinator meadows and succeeding shrub meadows in areas delineated as DRA including in the location of the proposed stormwater basin at the northwest corner of the Site. The DRA boundary shown on the plan was estimated in the field by BETA in January 2023 during a brief site meeting. The dense vegetation and surface soil observed on 7/18/2023 in the designated DRA cannot be ignored. The burden is on the Applicant to prove that these areas are not non-degraded. To date, the Applicant has not provided any evidence to support the DRA boundary.
- The Applicant's NOI submissions to date do not adequately address the proposed 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.
  - According to the Surface Water Quality Regulations (314 CMR 4.00), a discharge of water to a Class B Water shall not impair existing water uses (cold water fishery) and will not result in a level of water quality less than that specified for a cold water fishery resource (CFR) including an exceedance of water temperature as applicable (in this case 68°F), minimum of dissolved oxygen, etc. The Applicant needs to provide the Commission with Pine Brook's background conditions for such parameters along with a credible statement from a Professional demonstrating that discharging the combined Site and Route 20 stormwater runoff directly to Pine Brook will not impair existing water use as a CFR and will not result in a level of water quality less than that specified in the surface water quality regulations.
  - Based on NEC's review of 314 CMR 4.00, it appears that the project requires authorization from DEP to directly discharge to Pine Brook, a Class B Water. The Commission can require confirmation that DEP will authorize the discharge prior to issuance of OOC approving the Project as designed.
  - Stormwater Standard 6 for CFR's requires special long term pollutant prevention including emergency shutdown and containment features on the stormwater management system. The Applicant appears to have only addressed the required 1.0 inch of rain for their water quality volume calculation. This design element needs to be provided. Otherwise, the Project does not meet Standard 6.
  - A revised NOI and supporting plans and documents should be submitted to DEP since the project design has changed significantly. They should have the ability to provide the Commission and Applicant with comments, if appropriate.
- 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. 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.

- 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 protect fisheries, or potentially the Banks ability to contain floodwaters, both of which are Bank performance standards that must be met.
- The Applicant is asking the Commission to approve the location of the subsurface sewage disposal system (SSDS) 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. It remains NEC's opinion that the Commission is within its regulatory authority to require that the Applicant obtain its Groundwater Discharge Permit prior to issuance of an Order of Conditions. Otherwise, the presumption that the groundwater discharge in RA and the impacts to groundwater within the 100 foot buffer zone to the CFR will not adversely affect the river's ability to protect fisheries is not overcome.
- It should be noted again that the SSDS is proposed in the entire 100–200-foot Riverfront Area (RA) on Lot 70 (#113 Boston Post Road) where most of the area is non-degraded. Therefore, under the current RA performance standards at 310 CMR 10.58(4)(d), this work is presumed to have an adverse impact on the Riverfront Area.

NEC's comments below generally follow those presented in our June 5, 2023, Peer Review Comment letter and include paraphrased Applicant's July 2023 responses in *italics* where required and NEC additional comments marked **NEC (red)**. We have removed information from previous comment letters where appropriate / or no longer applicable, for brevity.

#### **Completeness Review - NOI**

NEC found that the information submitted by the Applicant in their NOI application and the subsequent submission insufficient to describe the site, the work, and the effect of the work on the interests identified in the Act for several reasons. Under the Act and Regulations, the Commission must be provided with sufficient information to make this determination (310 CMR 10.05(6)(c)).

- CR1. The NOI site plans are only conceptual and don't provide a sufficient level of detail for a comprehensive review by the Commission. The Regulations specify that the information submitted by the Applicant with the NOI must be "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, NEC believes that it would be appropriate for the Commission to cease further review of the Project until sufficient information is provided.

*LEC believes that a sufficient level of detail was provided that sufficiently described the site, the work, or the effects of the work on the interests of the Act and asked that NEC provide more specifics.*

**The Applicant's May 1, 2023 submission of revised site and stormwater management design lacks sufficient detail for the Commission to be able to determine that the work will not have an adverse impact on the Resource Areas (Riverfront, Bank) ability to protect the interests of the Act and/or confirm that the Project meets the Riverfront and Bank's General Performance Standards.**

- It is LEC's position that the intent of the Regulations is to apply the 310 CMR 10.58(4)(d) performance standards to a total cumulative RA square footage, not per lot if the project will occur on more than one lot.

Per 310 CMR 10.58(4)(d) – No Significant Adverse Impact, 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.

NEC recommends that until the Applicant provides a legal decision that interprets the application of 310 CMR 10.58(4)(d) per its position, the Commission should require the Applicant to demonstrate that the project will have No Significant Adverse Impact on each lot referenced in the NOI and on the project plans. Until that is done, the NOI applicant has not provided sufficient information to determine the effects of the work on the interests of the Act and whether the Project complies with regulatory performance standards.

(NEC) NEC's comments above remain. The project as currently designed may not meet the RA performance standards when applied according to the Regulations. LEC provided a Quickclaim Deed that describes the land transfer from Mahoney's Garden Centers, LLC to Cascade Development Associates, LLC that included two Parcels of land. Parcel One – is described as one lot (Lot B) and Parcel Two is described as three lots (Lots 2, 3B and 4). The Wayland Assessor's database (and NOI application) describes the Project Site as two separate lots – Lot 70 (#113 Boston Post Road) and Lot 71 (#115 Boston Post Road).

LEC also provided a copy of the Preface to the 1997 Regulatory Revisions for the Rivers Protection Act Amendments to the Wetlands Protection Act presumably describing the intent of the application relative to the "per lot" adverse impact performance standard. NEC read the Preface's No Significant Adverse Impacts section. We do not see specific discussion that would allow the Applicant of a single Project proposed on two or more lots to combine the total cumulative RA for the purpose of determining if the project will have significant adverse impacts.

- The revised project design plans indicate there will be alteration of Bank to Pine Brook associated with the swale that will daylight flows from an existing 20" drainage line that collects stormwater from Route 20 as well as new flows from the proposed stormwater basin. Bank alteration needs to be qualified and quantified in a revised NOI form and the Applicant needs to describe how the Project complies with the Performance Standards for Bank, at 310 CMR 10.54(4).

A revised NOI needs to be submitted to the Commission and to DEP for further review and a statement that the receiving waters is a mapped Coldwater Fisheries Resource.

(NEC) In their July 2023 NOI submission, Applicant has not qualified or quantified Bank alteration associated with construction and post-construction alterations. As stated above, it is unrealistic to believe that clearing of vegetation on the river's upper bank boundary, excavation up to the river's upper bank boundary, and discharge of stormwater from the

Site development as well as Route 20's stormwater runoff will not adversely affect the Bank's ability to protect fisheries or potentially its ability to contain floodwaters.

NEC recommends that additional topographic data be collected at the location of the proposed discharge to confirm existing conditions information and current design assumptions. A cross section at the Bank boundary is also needed to illustrate the design and its potential impacts to the Bank and its stability.

- The project plans depict the location of the proposed Projects wastewater discharge system. No wastewater discharge system design or hydrogeologic report was provided with the NOI. Therefore, the Commission cannot presume the Project protects the interests of the Act. Of note is that there is proposed grading in the inner (0-100 foot) non-degraded riparian zone to Pine Brook associated with the conceptual wastewater discharge system design.

(NEC) The Applicant has stated they don't believe that the receipt of a Groundwater Discharge Permit from DEP (that would require the design of the wastewater discharge system) is required for the issuance of the OOC approving the project. As stated earlier in this letter, NEC believes the Commission has the regulatory authority to require that the Applicant obtain a Groundwater Discharge Permit so that the presumption that the wastewater treatment system protects the interests of the Act – in particular, protection of fisheries is met.

- The location of the existing 20" RCP that discharges stormwater runoff from Route 20 is not accurately shown on the existing and proposed conditions plans. NEC observed the discharge approximately 30+ feet east (upgradient) below Pine Brook's upper Bank. There are several additional discharges from unknown sources in the same location that need to be investigated and shown on the plans.

(NEC) The Applicant is relying on the existing conditions survey that shows the discharge in the location on the plan. During the January 2023 site meeting, the 20" RCP pipe was not observed by anyone present. It is being assumed that it exists as shown on the existing conditions plan. NEC re-visited the Site on July 18, 2023 and documented three discharge pipes located approximately 50 to 60 feet upgradient of the stone culvert. The 20" RCP was not found and there was no indication of discharge to Pine Brook in that location.

We also observed a structure with two manholes in the vicinity of the pvp pipe discharges that may be a source of one or more of the discharges to Pine Brook. The structure / manholes are not shown on the existing conditions plan. This needs to be investigated.

- The swale is not fully designed. It cannot be built as shown and it shows Bank alteration. The proposed grades at the Bank to Pine Brook are incomplete. Further, construction of the swale will require additional vegetation alteration outside the swale footprint to accommodate equipment, material storage, excavated material casting, etc. Since the work is proposed in Resource Areas (RF and BLSF) and ON the Bank to Pine Brook, the Applicant should provide a comprehensive level of detail. NEC also defers to BETA to determine if flow dissipation is required at the end of the swale prior to discharge to Pine Brook. Since

the swale design is still conceptual, the Applicant has not provided sufficient information to describe the work or the effects of the work on the Resource Area's ability to protect the interests of the Act.

**(NEC) The Applicant has modified the swale design and defer to BETA for its design and constructability on the river's upper Bank boundary as well as the flow dissipation proposed. We also question the existing Bank's ability to transmit stormwater through its existing physical condition/structure under storm events.**

- The Applicant needs to provide more detail relative to the abandonment of the 20" RCP. It is NEC's understanding that all Route 20 stormwater will be re-routed through a new drain line that will combine with the treated stormwater from the proposed basin. The existing 20" drain should be capped / removed.

NEC recommends that the Applicant notify MassDOT about the abandonment of the 20" drain and procure their approval for the current design to relocate the stormwater discharge. MassDOT's approval should be required prior to issuance of an OOC approving the project.

**(NEC) The Applicant has provided very limited detail on the abandonment of the 20" drain. We expected them to provide at a minimum, the timeline for capping the drain and re-directing the flow to the discharge swale; more detail on capping procedures including the material and methodology used to cap the drain (recent experience in another town documented that cement capping was not effective after 15 (or less) years resulting in bypass of stormwater/intrusion of groundwater.**

- The Applicant needs to address the topographic contour elevation discrepancy between BETA's January 2023 GPS survey, the FEMA Detailed Flood Study, and the Existing Conditions Plans provided in the NOI.

**(NEC) We defer to BETA's response to the Applicant's 7/11 response to BETA Comment G31.**

- CR2. NEC found it difficult to find the resource area boundaries on the existing and proposed conditions NOI site plans. It is also difficult to determine how the qualifications and quantifications of RA and BLSF impacts have been applied to the Site and Project. NEC recommends that subsequent site plans submitted to the Commission better and more clearly describe the site and the effects of the work on the resource areas.

While we realize that figures were provided in the NOI that does provide better detail, the NOI plans-of-record that are referenced in an Order of Conditions should reflect the work permitted (or not permitted) by the Order clearly for the Commission, developer, contractor, issuing authority, or person providing compliance monitoring of the Project.

*The Revised Plans have been modified to address this comment, and include Sheets Area 1 through Area 4 which provide color-coded linework to show the extent of RA, DRA, Limit of work, etc. The project design team is open to holding a working session with the peer reviewers and Conservation staff to further review and present the Revised Plans for further clarity.*

#### Sheet Area 1 - Total Riverfront Area

The total square footage of RA is not quantified per lot as required by Per 310 CMR 10.58(4)(d) standards.

#### Sheet Area 2 – Non-Degraded Riverfront Being Altered

The quantification of alteration of non-degraded RA is not per lot as required by Per 310 CMR 10.58(4)(d) performance standards. The degraded RA boundary needs revising on the 113 Boston Post Road lot and needs to reference how the non-degraded RA limits were located in the field. Any plan that depicts a boundary in relation to a property line should be stamped by a Professional Land Surveyor (PLS), especially given the performance standards are directly applied to total land area on a given lot. Per 310 CMR 10.05(4)(h), the Commission has the regulatory authority to require a PLS certification.

#### Sheet Area 3 – Existing Degraded Riverfront Area on the Property

The degraded RA boundary needs revising on the 113 Boston Post Road lot. The Commission may require that this Sheet be certified by a PLS. There is no reference to survey.

#### Sheet 4 – Riverfront Area Alteration for Development

The total square footage of RA alteration is not quantified per lot as required by Per 310 CMR 10.58(4)(d) standards. The degraded riverfront boundary needs revising on the 113 Boston Post Road lot. There is no reference to survey therefore, the Commission can require that this Sheet be certified by a PLS.

**(NEC) As LEC responded, NEC's 6/5 comments and LEC's 7/11 responses to the above mainly stem from our difference of opinion relative to the application of the No Significant Adverse Impact RA performance standards. Our 6/5 comments to CR2 remain the same.**

- CR3. The submission of the sufficient detailed site plans should reflect design conditions set forth in the Comprehensive Permit issued on January 15, 2019, by the Wayland Zoning Board of Appeal that materially affect work Subject to Jurisdiction under the Regulations. The Applicant should provide a written statement if they believe that no Comprehensive Permit conditions will require future design changes that would affect jurisdictional work and current permitting.

*In their response, LEC states that the project proponent does not anticipate any significant changes to the design or site plans resulting from the conditions in the Comprehensive Permit that would affect the Commission's review of the NOI Application.*

If the Project is approved, NEC recommends that the Commission include adding a Special Condition to the OOC requiring that the Applicant submit the final plans along with a comprehensive description of all deviations from the OOC record plans be provided to the Commission and / or included a requirement that the developer obtain at a minimum, an Amended OOC if there are any deviations from the permit plans of record in jurisdictional areas or associated with the stormwater management design that discharges to a jurisdictional area (including buffer zone).



- CR4. NEC understands that the Project has not received a Groundwater Discharge Permit from MADEP. Therefore, the Commission cannot presume that the on-site wastewater treatment facility will protect the interests of the Act. The Commission could require that the Groundwater Discharge Permit be obtained prior to issuance of an Order of Conditions approving the work.

*LEC is suggesting that a Groundwater Discharge Permit is not a requirement for the Commission to issue an Order of Conditions and indicates the Applicant is amendable to including a Special Conditions requiring that the project receive a Groundwater Discharge Permit as part of the approval.*

**The Commission may require construction drawing level plans if they believe it is necessary to sufficiently describe the work and the effects of the work on the Resource Area's ability to protect the interests of the Act. Given that the wastewater discharge system is located in the RA and near a Critical Area (Coldwater Fisheries Resource), obtaining a DEP Groundwater Discharge Permit that would address potential impacts on the CFR from the discharge of up to 11,000 gpd of wastewater to the groundwater seems reasonable and should be required.**

**In accordance with 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.**

**Therefore, it is NEC's recommendation that the Commission at a minimum, require a copy of the Groundwater Discharge Permit Application to confirm the information to be accurate and complete and to confirm the Coldwater Fisheries Resource was identified and its protection addressed.**

**(NEC) No further comment.**

- CR5. On August 31, 2021, the MADEP issued an *Approval of Supplemental Hydrogeological Evaluation Report*. The document references a report titled *Revised Hydrogeological Report: Groundwater Mounding Analysis for Proposed Subsurface Disposal System* prepared by Geosphere Environmental Management, Inc. dated February 3, 2021. It is NEC's understanding that this report and all supplemental plans and data collected from the Site to date will be submitted to the Commission for this NOI review. Based on NEC's review of the MADEP approval document, it is unclear whether they were aware that Pine Brook was a CFR/Critical Area (per the DEP Stormwater Regulations and Standards).

*The Revised Hydrogeological Report: Groundwater Mounding Analysis for Proposed Subsurface Disposal System prepared by Geosphere Environmental Management, Inc. dated February 3, 2021 was submitted to the Commission. The Stormwater Management system meets the requirements for critical areas.*

**The NOI submission included the August 31, 2021, DEP *Approval of Supplemental Hydrogeological Evaluation Report*, not the February 3, 2021 revised Hydrogeological Report. Based on the DEP Approval letter, there was technical information submitted to DEP in July 2021 to address deficiencies in the February 2021 report. NEC recommends that the Commission request that the February 3, 2021, Hydrogeological Report and the July 2021 correspondence to DEP be submitted as part of this NOI review. Otherwise, the Commission lacks sufficient information to describe the site.**



**(NEC) The January 2023 Revised Hydrogeological Report and July 2021 technical information has been submitted to the Commission. The July 2021 technical information pertained generally to modifying locations of sentinel groundwater monitoring wells (for sampling purposes once the SSDS system is functioning); location of the collection of the surface water sample to confirm discharge parameter compliance; and report / details consistency.**

- CR6. The existing conditions plan should be stamped by a MA Professional Land Surveyor (PLS). Pursuant to 310 CMR 10.05(4)(h), the Commission can require that supporting plans and calculations be prepared and stamped by a licensed and/or certified professional when in its judgement the complexity of the proposed work warrants the relevant expertise. Given that the NOI site plans depict conditions including 100-year floodplain elevations, horizontal setbacks from field established resource area boundaries, Degraded RA quantifications, etc., the plans need to be certified by a PLS for the Commission to be able to rely on them to describe the site and confirm Regulatory compliance.

*A stamped and signed existing conditions plan is included in the Revised Plans (Appendix D).*

**The Applicant's May 1, 2023 submission included the Plan titled Existing Conditions, dated January 12, 2018; Stamped by Robert Buckley, PLS. This 2018 plan does not include existing conditions details shown on the Existing Conditions Plan, dated November 12, 2022, Last Revised May 1, 2023; stamped by William Doyle, P.E. New existing conditions survey information that has a direct impact on compliance with regulations and / or zoning should be certified by a PLS. As per 310 CMR 10.05(4)(h), the Commission can require this PLS certification on existing conditions plans.**

**(NEC) It is LEC's opinion that a PLS stamp is not required on the updated / revised existing conditions plan. We respectfully disagree with their interpretation. Our position is based on direct communication with members of the Board of Registration for Civil Engineers and Surveyors regarding the performance standard for presenting existing conditions / boundaries on a plan in relation to property boundaries. Regardless, the Commission has the regulatory authority to require that the existing conditions plan be certified by a PLS especially given the discrepancy with the surface elevations across the Site found by BETA.**

- CR7. The NOI did not provide sufficient information in support of the Degraded RA boundary. During the Site meeting on January 4, 2023, BETA's MA Approved Soil Evaluator, Gary D. James, P.E. observed topsoil at varying thicknesses in shallow observation holes within areas delineated by LEC as Degraded RA. Based on the observation of well vegetated land containing topsoil, an presumably agreed upon boundary of Degraded RA was identified in the field that was generally located by BETA's GPS equipment. A revised existing conditions plan will be developed by the Applicant that depicts the regulatory Degraded RA as defined in the Regulations at 310 CMR 10.58(4).

In the WETLANDS/AMESBURY DEP File #002-1015 Superseding Order of Conditions dated January 30, 2013, the MADEP rendered the opinion that two issues needed to be examined. One, is whether the area is devoid of topsoil and therefore meets the definition of degraded within the meaning of the regulations; and two, under which regulatory performance standards for RA should the site be evaluated.

Until the Applicant submits the revised Degraded RA boundary and applicable evaluation for compliance with the RA Regulations, the NOI does not contain sufficient information to describe the effects of the work on the resource area or the appropriate regulatory standards for RA that should be applied.

*According to LEC, a response to this comment was provided on pages 1 through 6 of their May 3, 2023 Response to Comment Letter and in the NOI Application. Generally, LEC agrees to accept the revised Degraded RA boundary but reserves the right to present an argument against in a future proceeding.*

**NEC recommends that the BETA Group, Inc. provide a technical memorandum describing site findings relative to the Degraded RA boundary depicted on the May 1, 2023 revised site plans. The memorandum should cite recent experience with the identification of Degraded RA boundary, the WETLANDS/AMESBURY DEP FILE #002-1015 SOC decision dated January 30, 2013, and existing site conditions relative to surface soil and vegetation to support or argue the Degraded RA boundary on the current NOI plans.**

**(NEC) Based on our 7/18/2023 site visit, we documented densely vegetated areas within the DRA boundary. Therefore, we respectfully disagree with the DRA boundary presented by the Applicant. Without an accurate DRA boundary, compliance with the RA performance standards cannot be determined.**

- CR8. 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." It is not clear how the Limit of Redevelopment shown on the NOI site plans was established under the definitions found in the Regulations and at this time, NEC does not agree with the Applicant's interpretation. NEC recommends that the Applicant specifically address this comment.

*According to LEC, a response to this comment was provided on pages 1 through 6 of their May 3, 2023 Response to Comment Letter and in the NOI Application.*

**The Regulations at 310 CMR 10.58(5) describe that the Redevelopment Within Previously Developed RAs; Restoration and Mitigation standard be applied to each lot independently to confirm compliance with the performance standards.**

**(NEC) LEC did not apply this RA regulatory performance standard to each lot as their opinion differs from NEC's as described in multiple paragraphs above.**

#### **Wetland Resource Area Boundaries and Performance Standards**

The boundaries to Bank, Mean Annual High Water (establishing the 100- and 200-foot RA) and BVW established in the field by others were confirmed by LEC. Based on NEC's observations during the January 4, 2022, Site meeting, the flagged boundaries of resource areas observed appeared adequate. We also understand that the resource area boundaries were peer reviewed during the Comprehensive Permit application process.

The following comments are related to compliance specific to areas Subject to Protection and Jurisdiction as defined in the Regulations.

- RA1. The NOI combines the total of RA, Degraded RA, non-Degraded RA and disturbance on both assessor's lots. According to 310 CMR 10.58(4)(d), to confirm that the Project will have no significant adverse impact on the RA's ability to protect the interests identified in the Act, each lot needs to be evaluated independently. Once the revised Degraded RA is depicted on the NOI site plans and agreed upon by the Commission, the Applicant will need to submit a revised evaluation of the work proposed in the RA for each lot under the applicable standards.

*LEC disagrees with the interpretation that each lot needs to be evaluated separately when applying the RA regulatory performance standards.*

**NEC does not agree with LEC's interpretation of 310 CMR 10.58(4)(d) as presented in their May 3, 2023 Response Letter. It has been our experience that DEP and the Commission has interpreted this standard as written. Each lot needs to be evaluated independently. We recommend that the Applicant provide a binding legal interpretation to support their interpretation. Otherwise, the Commission should require that each lot be evaluated independently.**

**(NEC) See CR1 discussion above.**

- RA2. 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." Therefore, to determine the extent of redevelopment per 310 CMR 10.58(5), the limit of Degraded RA needs to be re-established.

**(NEC) See CR-7 discussion above.**

- RA3. NEC will defer to BETA to confirm the BLSF boundary elevation established by the Applicant. It is our understanding that BETA will be recommending that the Applicant submit additional technical information in support of their BLSF boundary delineation. Once the BLSF boundary is confirmed by BETA and more detailed Project information is provided, NEC will be able to determine if the Project meets performance standards per 310 CMR 10.57(4).

**LEC did not provide any further technical justification for the BLSF boundaries presented on the May 1, 2023 NOI plans. Once the BLSF boundary is confirmed by BETA, NEC will review work proposed in this Resource Area. Both filling and alteration (square footage) needs to be quantified to apply the BLSF performance standards (e.g. floodplain compensation, wildlife habitat alteration).**

**(NEC). No further comment. BETA appears to have agreed upon the BLSF boundaries shown on the revised NOI plan. Therefore, there are no changes to the BLSF alteration quantification presented in the NOI.**

## Stormwater Standards

BETA is providing the technical peer review of the stormwater management design along with other civil and hydrological elements of the Project Review that NEC will rely on for our analysis of regulatory compliance under Act and Regulations. It is NEC's understanding that BETA will be providing comments relative to the Project's compliance with the Stormwater Standards and that subsurface exploration to document the Estimated Seasonal High Groundwater Elevation in the location of the stormwater BMP (as required by the Standards) will be conducted.

- SW1. To presume the stormwater management system will protect the interests of the Act, it must comply with the Stormwater Regulations and Stormwater Standards (the Standards). Until BETA and the Commission are satisfied that the Project complies with the Standards, the Project cannot be presumed to protect the interests of the Act.

**NEC defers to BETA to determine whether the Project meets the Stormwater Standards.**

- SW2. The NOI WPA Form 3 correctly indicates that a portion of the site constitutes redevelopment. The DEP Stormwater Checklist incorrectly indicates that the Project is a Redevelopment Project. The Project is a Mix of New Development and Redevelopment. The New Development must fully comply with the Standards and the Redevelopment portion of the Project must meet the Standards to the Maximum Extent Practicable and must make improvements to existing conditions. A corrected Stormwater Checklist and Report should also be submitted to the Commission and BETA for review.

*LEC's response stated that the project classifies as a redevelopment site; however, the project meets the Standards and does not require the redevelopment site credit of designing to the maximum extent practicable.*

**NEC defers to BETA to confirm that the Project complies with the Stormwater Standards for a new development / redevelopment proposal.**

- SW3. (NEC) The Project's stormwater management design must fully comply with Standard 6 – Critical Area (to CFR). Therefore, it should include an emergency shutoff and containment component to response to a release of oil and/or hazardous materials to prevent migration of impacted stormwater to the CFR.**

## Review Summary

Based on our review of the July 11, 2023 NOI submission and site visit on July 18, 2023, it remains our opinion that the Applicant has not provided the Conservation Commission with sufficient information to describe the Site, the work, and the effect of the work on the interests identified in the Act. Therefore, the presumption of no significant adverse effect on Resource Areas has not been overcome. Therefore, an Order of Conditions approving the Project should not be issued.

If you have any questions, please contact me at any time. Thank you.

Very truly yours,

**Nover Environmental Consulting, LLC**

A handwritten signature in black ink, appearing to read "Marta J. Nover". The signature is fluid and cursive, with the first name "Marta" being more prominent than the last name "Nover".

Marta J. Nover

cc: BETA Group, Inc.