

June 5, 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 peer review and Conservation Commission comments, the applicant submitted revised development plans and documents addressing mainly the stormwater management design and associated site improvement modifications, existing conditions information including a change in the Degraded Riverfront Area (RA) boundary as well as an interpretation of the RA regulatory performance standards application, re-location and partial daylighting the existing 20" RCP that currently conveys stormwater runoff from Boston Post Road, and additional plan information describing the RA.

As described in NEC's January 9, 2023, peer review comment letter, the Project is proposed on two separate parcels of land located at 113 and 115 Boston Post Road in Wayland, MA (the Site). The lots are identified by the Wayland Assessor's Map 30, Lots 70 and 71. Combined, they total approximately 6.5 acres of land. Each lot currently represents a separate development scenario. 113 Boston Post Road is improved with a vacant single-family dwelling and carriage house. 115 Boston Post Road was historically a garden center business containing several associated buildings, greenhouses, parking and circulation surfaces and drainage.

The Applicant has not demonstrated that the Project will have no significant adverse impacts on the Resource Area's ability to protect the interests of the Act. Specifically, the revised plans indicate that there will be alteration of Bank to Pine Brook, the subsurface sewage disposal system has not been designed and has not received its DEP Groundwater Discharge Permit, and the Commission cannot presume that the Project will have no significant adverse impact on the RA's ability to protect the interests identified in the Act since each lot has not evaluated independently per 310 CMR 10.58(4)(d). Further, until the Project meets the MA Stormwater Standards, the Commission cannot presume that the stormwater management will protect the interests of the Act.

The basis for the comments presented herein include a site meeting and review of the following:

- Plan set: *Cascade Residential Housing Development, Boston Post Road, Wayland, Massachusetts, Middlesex County* by C1.0 Engineering, LLC; dated November 14, 2022, Revised May 1, 2023; stamped and signed by William Doyle, MA P.E. No. 41510; 6 sheets.
- 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;

- Response to Peer Review Comments, dated May 3, 2023; Prepared by LEC.
- Quitclaim Deed dated June 2, 2022.
- Plan titled Existing Conditions, dated January 12, 2018; Stamped by Robert Buckley, PLS.

NEC's comments below generally follow those presented in our January 9, 2023, Peer Review Comment letter and include paraphrased Applicant's responses in *italics* and NEC additional comments in **bold**.

### **General Site and Project Description**

According to the NOI, the Site is comprised of two assessor's lots totaling 6.483 acres parcel located on the southerly side of Route 20. 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, and an abandoned septic system occupies the lot. Small areas of both lots extend across Pine Brook, a perennial stream and mapped Cold Water Fishery Resource. Areas Subject to Protection and Jurisdiction that exist on the Site include 200-foot RA (RA), Bank, Land Under Water (LUW), Bordering Land Subject to Flooding (BLSF), Bordering Vegetated Wetlands (BVW) and 100-foot buffer zone. Vegetated areas on the Site are stabilized with both native and invasive species as described in the NOI.

According to the NOI, the project description 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 (under M.G.L. Chapter 40B) with associated access drives, parking lots, stormwater BMPs, on-site wastewater treatment facility (that will not exceed 11,000 gallons per day) and RA 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 NOI will need to be revised to document Bank alteration that will result from construction of the stormwater swale that discharges directly to Pine Brook as well as the evaluation of each lot for compliance with the RA performance standards.

The extent of Degraded RA boundary depicted on the May 1, 2023 site plans reflect a revised boundary that has excluded area previously designated Degraded RA. Site development impacts to both degraded and non-degraded RA have been quantified by the Applicant in their recent submission. However, square footages are cumulative totals across both two lots.

### **Completeness Review - NOI**

NEC found that the information submitted by the Applicant in their NOI application and the subsequent May 1, 2023 submission is 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.

- 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.

- 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.
- 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.

- 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.
- 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.

- 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.

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.

- 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.

- 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.

- 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.**

- 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.**

- 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.**

#### **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.**

- 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.

**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).**



## 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.**

## Review Summary

Based on our review of the May 1, 2023 NOI submission, 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. Until the Commission has the information, they need to fully evaluate the Project and its effect on the Resource Areas, the record is deficient, and an Order of Conditions approving the Project cannot be issued.

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

Very truly yours,

**Nover Environmental Consulting, LLC**



Marta J. Nover

cc: BETA Group, Inc.