



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:
002-1015
 MassDEP File #

 eDEP Transaction #
Amesbury
 City/Town

A. General Information

Please note:
 this form has been modified with added space to accommodate the Registry of Deeds Requirements

Important:
 When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



1. From: Amesbury
 Conservation Commission

2. This issuance is for (check one):
 a. Order of Conditions b. Amended Order of Conditions

3. To: Applicant:
Richard Terrill
 a. First Name b. Last Name

Fafard Real Estate and Development
 c. Organization

120 Quarry Drive
 d. Mailing Address

Milford MA 01757
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):
Thatcher Kezer, III
 a. First Name b. Last Name

Mayor - City of Amesbury
 c. Organization

City Hall - 62 Friend Street
 d. Mailing Address

Amesbury MA 01913
 e. City/Town f. State g. Zip Code

5. Project Location:
Summit Avenue and Route 150 Amesbury
 a. Street Address b. City/Town

87 and 88 7 and 50
 c. Assessors Map/Plat Number d. Parcel/Lot Number

Latitude and Longitude, if known: 42d12m47s 70d56m06s
 d. Latitude e. Longitude



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A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):
Essex South
- | | |
|------------------------|--|
| a. County | b. Certificate Number (if registered land) |
| <u>13425 and 13469</u> | <u>409 and 23</u> |
| c. Book | d. Page |
7. Dates: April 16, 2010 May 6, 2013 June 14, 2013
 a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance
8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):
All final approved plans are pending revision of project plans per conditional approval. See Attachment to Order of Conditions for details.
- | | |
|--------------------------------------|--------------------------|
| b. Prepared By | c. Signed and Stamped by |
| _____ | _____ |
| d. Final Revision Date | e. Scale |
| _____ | _____ |
| f. Additional Plan or Document Title | g. Date |
| _____ | _____ |

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:
- Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:
- | | | |
|---|--|---|
| a. <input checked="" type="checkbox"/> Public Water Supply | b. <input 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"/> Groundwater Supply | h. <input checked="" type="checkbox"/> Storm Damage Prevention | i. <input checked="" type="checkbox"/> Flood Control |
2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

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.



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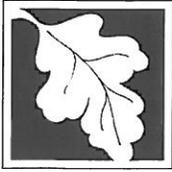
B. Findings (cont.)

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 the 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 Act's interests, 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 310 CMR 10.02(1)(a) _____ a. linear feet

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

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



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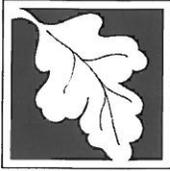
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B. Findings (cont.)

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

	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	_____	_____		
	a. square feet	b. square feet		
	_____	_____		
	c. c/y dredged	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	_____	_____	_____ cu yd	_____ cu yd
	a. square feet	b. square feet	c. nourishment	d. nourishment
14. <input type="checkbox"/> Coastal Dunes	_____	_____	_____ cu yd	_____ cu yd
	a. square feet	b. square feet	c. nourishment	d. nourishment
15. <input type="checkbox"/> Coastal Banks	_____	_____		
	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	_____	_____		
	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	_____	_____		
	a. square feet	b. square feet		
	_____	_____		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	_____	_____		
	a. c/y dredged	b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	_____	_____		
	a. square feet	b. square feet		



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B. Findings (cont.)

* #22. 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 (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

22. Restoration/Enhancement *:

a. square feet of BVW

b. square feet of salt marsh

23. Stream Crossing(s):

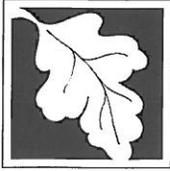
a. number of new stream crossings

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 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 extend the issuance date of the original Final Order of Conditions and the Order will expire on _____ unless extended in writing by the Department.
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.



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

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 002-1015 "
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 MassDEP.
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.



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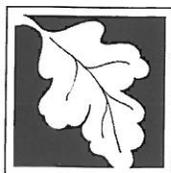
C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

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 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 the 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 Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 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.



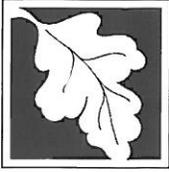
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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- 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 18(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 Pollution 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 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(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 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.



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- 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 (if you need more space for additional conditions, please attach a text document):

See Attachment to Order of Conditions



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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 Amesbury _____ hereby finds (check one that applies):
 Conservation Commission
- a. that the proposed work 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 of Conditions is issued.

- b. that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

Amesbury Wetlands Ordinance _____ AWO
 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 (if you need more space for additional conditions, attach a text document):

Revision of project plans pursuant to Attachment to Order of Conditions



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E. Signatures

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

6.14.13
 1. Date of Issuance

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

three
 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:

M. Howard
Steph...
M. D. B...

by hand delivery on

by certified mail, return receipt requested, on

Date

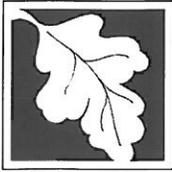
6.14.13
 Date

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 of 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.



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G. Recording Information

Prior to commencement of work, 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.

Amesbury
 Conservation Commission

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

To:

Amesbury
 Conservation Commission

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

Summitt Avenue and Route 150 002-1015
 Project Location MassDEP File Number

Has been recorded at the Registry of Deeds of:

Essex South _____ _____
 County Book Page

for: _____
 Property Owner

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:

June 14, 2013
 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

ATTACHMENT TO ORDER OF CONDITIONS

Applicant: Richard Terrill
Fafard Real Estate and Development Corporation
120 Quarry Drive
Milford, MA 01757

Property Ownership: Thatcher Kezer, III – Mayor
City of Amesbury
City Hall – 62 Friend Street
Amesbury, MA 01913

Project: Village at Bailey’s Pond (Summit Avenue and Route 150)

DEP File: 002-0015

Pursuant to Massachusetts Wetlands Protection Act (M.G.L. chapter 131, §40) and its implementing regulations (310 CMR, § 10.00) and the City of Amesbury Wetlands Ordinance and its implementing regulations:

This Order: Provides a conditional approval for the construction of a multi-unit residential development on a parcel of land located at the intersection of Route 150 and Summit Avenue pursuant to the Massachusetts Wetlands Protection Act and the City of Amesbury Wetlands Ordinance.. The project entails the construction of residential units and associated driveways, parking areas, utilities and stormwater management system. Access to the site will be from new driveway connections to Route 150, Summit Avenue and Beacon Street. For the reasons stated below, approved work is limited to the work shown on the Project Plans (listed below) that is outside the Riverfront Area as defined by the aforementioned Massachusetts Wetlands Protection Act and the City of Amesbury Wetlands Ordinance and their implementing regulations. In addition, all work is limited to allowable activities pursuant to §21.7 of the aforementioned regulations. As reasons for this conditional approval, the Amesbury Conservation Commission finds that:

1) With the exception of some limited portions of trails, the Riverfront Area in the Project site is not degraded, within the meaning of the DEP Regulations for Riverfront Area. Therefore, the project is subject to the performance standards of 310 CMR 10.58(4), and not the standards for redevelopment of a degraded area under 310 CMR 10.58(5). This finding is supported by the analysis in the letter from the BSC Group to the Commission, dated April 22, 2013 (the “BSC Letter”), which concludes that the project site is not a previously developed Riverfront Area. In this regard, most of the project site is characterized by pervious, well vegetated land containing topsoil that provides Riverfront Area function. Some limited locations within trail footprints exhibit an absence of topsoil and are unvegetated. These specific locations within the trail footprint qualify as degraded, but do not confer degraded status upon the entire site. Additionally, the site is not paved, and is neither a junk yard nor abandoned dumping grounds, and therefore does not qualify as degraded under these provisions.

2) Even assuming that the Riverfront Area were to be determined to be degraded, the Commission finds that the current project design and proposed mitigation do not meet the mitigation requirements of 310 CMR 10.58(5). As analyzed in the BSC Letter, the proposed mitigation does not offset the adverse impacts caused by creation of impervious surfaces and the development of forested land, including the impairment of wildlife habitat.

3) The applicant has not provided an adequate alternatives analysis, as required by 310 CMR 10.58(4), to show that there are no practicable and substantially equivalent economic alternatives to the work proposed within the Riverfront Area, with less adverse effects on interests protected by the Massachusetts Wetlands Protection Act and the Amesbury Wetlands Ordinance. As analyzed in the BSC Letter, the applicant has not documented that it is necessary to locate proposed activities, including stormwater structures, within the Riverfront Area. In addition, the Commission disagrees with the applicant's contention that reducing the number of buildings, so as to eliminate buildings within the Riverfront Area, would be inconsistent with the project purpose.

1) Notice of Intent filed by: **Richard Terrill**
Fafard Real Estate and Development
Corporation

120 Quarry Drive
Milford, MA 01757

2) Notice of Intent plans prepared by: **Sean Malone**
Oak Engineers, LLC
P.O. Box 1123
Brown's Wharf
Newburyport, MA 01950

Notice of Intent and Subsequent Reports

- 1) Notice of Intent. April 16, 2010. Village at Bailey's Pond.
- 2) Gillian T. Davies, Senior Wetland/Soil Scientist, BSC Group, Inc. January 29, 2013. Bailey's Pond Notice of Intent Review.
- 3) Dominic Rinaldi, P.E., LEED AP, Project Manager/Associate, BSC Group, Inc. January 31, 2013. Peer Review – Stormwater and Revised Information, The Village at Bailey's Pond, Amesbury, Massachusetts.
- 4) Gillian T. Davies, Senior Wetland/Soil Scientist, BSC Group, Inc. April 22, 2013. Bailey's Pond Notice of Intent Peer Review including Soil Log for Bailey's Pond Site Visit on April 3, 2013.

- 5) Thomas G. Hughes, Hughes Environmental Consulting. May 1, 2013. Response to Peer Review Comments, Village at Bailey's Pond, Amesbury, Massachusetts with accompanying site plan titled Riverfront Area Degraded Area Plan C-013C dated September 30, 2011 with third revision dated May 1, 2013.
- 6) Sean P. Malone, Vice President, Oak Consulting, LLC. February 19, 2013. Response to Peer Review Comments, Village at Bailey's Pond, Amesbury, Massachusetts.

Correspondence

- 1) Correspondence from Joseph W. Fahey, Director, Community and Economic Development to Deirdre Buckley, Massachusetts Executive Office of Environmental Affairs (MEPA Unit), Sub: EEAA No. 14596 – Village at Baileys Pond dated June 11, 2010.
- 2) Correspondence from John D. Viola, Deputy Regional Director, Massachusetts Department of Environmental Protection to Ian A. Bowles, Secretary, Massachusetts Executive Office of Energy and Environmental Affairs regarding review of Environmental Notification Form dated June 14, 2012.
- 3) Correspondence from Attorney Jeffery L. Roelofs, Law Offices of Jeffery L. Roelofs, P.C., to Amesbury Conservation Commission regarding Bailey's Pond Notices of Intent (State and Local) dated April 15, 2010.
- 4) Correspondence from Attorney John J. Goldrosen, Kopelman and Paige, P.C. to Amesbury Conservation Commission regarding Bailey's Pond Project dated April 27, 2010.

Project Plans

- 1) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Existing Conditions Plan. Scale: 1" = 40'. Project 12013. Sheet C-001A. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 2) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Existing Conditions Plan. Scale: 1" = 40'. Project 12013. Sheet C-001B. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 3) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Existing Conditions Plan. Scale: 1" = 40'. Project 12013. Sheet C-001C. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 4) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Grading Drainage & Erosion Control Plan. Scale: 1" = 40'. Project 12013. Sheet C-003A. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).

- 5) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Grading Drainage & Erosion Control Plan. Scale: 1" = 40'. Project 12013. Sheet C-003B. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 6) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Grading Drainage & Erosion Control Plan. Scale: 1" = 40'. Project 12013. Sheet C-003C. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 7) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Landscape Plan. Scale: 1" = 40'. Project 12013. Sheet C-004A. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 8) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Landscape Plan. Scale: 1" = 40'. Project 12013. Sheet C-004B. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 9) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Landscape Plan. Scale: 1" = 40'. Project 12013. Sheet C-004C. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 10) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Erosion Control Notes and Details Plan. Scale: As Noted. Project 12013. Sheet C-006. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 11) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Site Details Plan. Scale: As Noted. Project 12013. Sheet C-009. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 12) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Riverfront Area Impact Plan. Scale: 1" = 30'. Project 12013. Sheet C-013. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 13) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Degraded Riverfront Area Historic Aerial Plan. Scale: 1" = 30'. Project 12013. Sheet C-013A. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).

- 14) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Riverfront Area Impact & Restoration Plan. Scale: 1" = 30'. Project 12013. Sheet C-013B. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 15) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Riverfront Area Degraded Area Plan. Scale: 1" = 30'. Project 12013. Sheet C-013C. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions); Revision 2 dated February 15, 2013; and Revision 3 dated May 1, 2013.
- 16) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Riverfront Area Restoration Plan. Scale: 1" = 30'. Project 12013. Sheet C-013D. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions). Revision 2 dated February 15, 2013.
- 17) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Site Details Plan. Scale: As Noted. Project 12013. Sheet C-014. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions). Revision 2 dated February 15, 2013.

I. GENERAL CONDITIONS:

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 of Conditions ("Order").
2. The conditional approval that has been granted for this application does not constitute compliance with any law or regulation other than MGL Chapter 131, Section 40, Wetlands Regulations CMR 10.00 and Amesbury Wetlands Ordinance ("Ordinance") and their implementing regulations ("Regulations") as promulgated by the Commonwealth of Massachusetts and the City of Amesbury.
3. This Order shall apply to any successor in interest or successor in control of the property.
4. This Order of Conditions shall be recorded at the Essex County South Registry of Deeds in Salem, MA prior to the pre-construction meeting. A recorded copy of the OoC and Attachment to Order of Conditions shall be submitted to the ACC on or before the pre-construction meeting.
5. The work authorized hereunder shall be completed within **three (3) years** from the date of this Order.
6. This Order may be extended by the issuing authority for one or more periods of up to one year each upon application to the issuing authority at least **thirty business (30) days** prior to the expiration date of the Order.
7. This Order shall be made part of all construction contracts and subcontracts dealing with the work proposed and approved, and the requirements of this Order shall supersede any conflicting contract requirements. The contractor or contractors responsible for the project's completion shall understand and be notified of the

requirements of this Order. Any person performing work on the activity that is the subject of this Order is individually responsible for understanding and complying with the requirements of this Order.

8. The applicant shall submit the NPDES Construction NOI and Stormwater Pollution and Prevention Plan to the ACC for review and approval. The review shall be conducted by a consultant of the ACC. The applicant shall cover expenses for the review.
9. The ACC may use the peer review consultant for review of enforcement orders issued in the event of violations and in the review of any subsequent mitigation plans and any and all supporting documents. The cost will be borne by the applicant or party requesting release from the enforcement order.
10. No project phasing is permitted. All stormwater management systems and any associated infra improvements should be completed in full as approved.
11. A sign shall be displayed visible from the public roadway at the site not less than two (2) feet or more than three (3) square feet in size bearing the words,

“MA DEP File Number 002-1015”

12. The Amesbury Conservation Commission (ACC) reserves the right to impose additional conditions on this project including but not limited to additional or modified erosion control / siltation controls during construction, if it deems that site conditions warrant such measures to mitigate potential impacts.
13. If the subject parcel is sold or the development rights are transferred to any other person, the applicant shall be required to submit to the Amesbury Conservation commission a signed and notarized letter of acknowledgement from the buyer or their assignees stating that they have been provided copies of all permits associated with the proposed project, including this Order, and that they understand their responsibility associated with the construction of this project under those permits, including this Order.
14. The applicant shall be required to pay in full any outstanding invoices from the Commission’s peer review consultant for this project. All construction activity shall cease immediately if sufficient funds are not made available for review and monitoring by the commission’s Environmental Monitor as identified in condition 12.
15. At the applicant’s expense, the Amesbury Conservation Commission shall designate BSC Group (Worcester) to act as an ‘**Environmental Monitor**’. **BSC Group shall provide environmental monitoring expertise** by a professional engineer and/or a professional wetland scientist, who have relevant experience in wetland impact / assessment and erosion / sedimentation control measures to oversee any emergency placement of controls and regular inspection or replacement of sedimentation control device. In addition, the Environmental Monitor(s) shall conduct weekly monitoring of the work locus as it relates to wetland resources during the pre-construction phase of the approved project commencing with the pre-construction meeting and the construction phase. A quarterly monitoring schedule will be conducted post-construction until a Certificate of Compliance has been issued. The Environmental Monitor(s) shall submit the appropriate number of monitoring reports to the Amesbury Conservation Commission during the pre-construction phase beginning with the pre-construction site visit and meeting and throughout the construction phase of the approved work and quarterly monitoring reports during the post construction period.

16. The Environmental Monitor shall also provide a full review of the as-built plans and provide comments and recommendations in support of a Request for Certificate of Compliance and the subsequent issuance of a Certificate of Compliance by the Amesbury Conservation Commission. Deviations, both authorized and unauthorized, shall be fully documented. Unauthorized deviations from the approved plan may result in additional mitigation measures imposed on the applicant by the ACC and/or enforcement action with possible fines.
17. The name and phone number of the Environmental Monitor shall be provided to the applicant in the event that this person has to be contacted, due to an emergency at this site, during any 24-hour period, including weekends. **The monitor(s) shall be given the authority to stop construction should there be unlawful entry into the wetland resources areas and / or for erosion controls purposes.** The Environmental Monitor(s) will be required to inspect all such devices and oversee cleaning and the proper disposal of waste products. Cleaning shall include removal of any entrapped silt.
18. As stated, **the Environmental Monitor(s) shall conduct site inspections on site for compliance with this Order at a minimum of once per week during pre-construction and construction phases of work and/or during or immediately after rainstorms of 0.5 inches or more.** No site preparation or construction shall be allowed until the Environmental Monitor has submitted a site visit schedule to the applicant and the Amesbury Conservation Commission.
19. Weekly monitoring reports will include at a minimum: 1) Photographs of all BMPs and erosion control, BVW and stream channels, all other environmental resource construction activities, entrances, stock piles, storage areas; 2) detailed description of ongoing construction activity action taken on any recommendations by the Environmental Monitor and further actions needed by contractor.
20. Any modification to the approved site plan shall require review and approval by the ACC. Prior to consideration of any such request, the wetland resource area shall be re-flagged or the originally approved flagging shall be established in the field. The applicant shall be required to submit the modification request in writing along with all the necessary forms and supporting documents in a timely manner for the Commission's consideration. The Amesbury Conservation Commission may require all modification requests to be reviewed by its Environmental Monitor and the applicant shall submit the necessary funds to the ACC for the consultant services. The Commission shall review the request and decide if an Amended Order of Conditions is required pursuant to the Massachusetts Wetlands Protection Act and the Amesbury Wetlands Ordinance.
21. In the event of the issuance of an Enforcement Order(s), the Conservation Agent or Environmental Monitor will evaluate the violations and prepare a set of recommended actions which will be included in the enforcement order. Any revisions, plans or engineering design modifications will be reviewed by the ACC peer review or Environmental Monitor at the developer's expense and final actions to remove enforcement order will require approval by the conservation commission. No Certificate of Compliance will be issued until all violations and/or Enforcement Order is lifted and all actions under the Enforcement Order have been addressed to the satisfaction of the Amesbury Conservation Commission.

22. As stated, any change that requires modification of the project plans within the jurisdictional area or changes to the erosion control plan or to the stormwater management system may require an Amended Order of Conditions unless the Commission decides otherwise at its regularly posted public meeting. If the ACC decides that a change is of sufficient magnitude that it shall require the imposition of additional conditions to ensure adequate protection of the resource area and / or the interests covered under the Ordinance and Regulations, an Amended Order of Conditions shall be required and a new public hearing shall be required.
23. Should any activity associated with this work result in sediment transport into jurisdictional resources such as Bailey's Pond, additional erosion control measures would need to be employed. The developer is required to have on site an additional 30 haybales and associated silt fencing to serve as an emergency control measure to halt sediment transport.
24. Should the approve stormwater management system prove insufficient at any time, the Amesbury Conservation Commission will require a reevaluation of the stormwater system by a peer consultant. The applicant is responsible for remitting the necessary funds to cover all expenses of such a peer review.
25. Any requests for modification or amendment of the Order shall not be considered or reviewed if the Order has expired or there is an outstanding Enforcement Order on the subject parcel.
26. The public access trail approved by the Amesbury Conservation Commission as part of this Attachment to Order of Conditions must be recorded as a public easement prior to the start of any construction activity and proof of which shall be submitted to the Amesbury Conservation Commission at or prior to the pre-construction meeting. The trail shall be no less than six (6) feet in width. Details shall be provided to review and approval by the Amesbury Conservation Commission prior to the preconstruction meeting. Trails shall be designed pursuant to the Massachusetts Department of Conservation and Recreation Trails Guidelines and Best Management Practices Manual (updated March, 2012). Trail design shall be reviewed and approved by the Amesbury Conservation Commission and subject to a peer review as selected by the commission. The developer is responsible for all expenses associated with this review.
27. All exterior lights shall point away from Bailey's Pond and all jurisdictional resources. The use of cut-off shields and dark sky fixtures is required. Lighting fixtures are subject to review and approval by the Amesbury Conservation Commission and subject to a peer review. The developer is responsible for all expends associated with this review.
28. Any Deed for all or any portion of the property subject to this Order shall contain the following language. "This property is subject to a non-disturbance zone in which no alteration of land or vegetation may occur other than the alteration approved under this Order. The non-disturbance zone is shown on the plan entitled " ____ (title of plans) _____ recorded at the Essex South Registry of Deeds, at Book _____, Page _____, and/or registered with the Land Registration Office of the Essex County Registry District as Document No. ____ as described in the Order of Conditions recorded in the same Registry at Book _____, Page _____, and/or in the same Registry District as Document _____. In accordance with said Order of Conditions, this language shall be incorporated in full into all future deeds, easements, mortgages, leases, licenses,

occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the property or a portion thereof is conveyed (a "Deed").

II. PRE-CONSTRUCTION CONDITIONS:

Prior to requesting a pre-construction meeting the following documents and information shall be submitted along with a written request no later than sixty (60) days in advance of such meeting.

29. Prior to construction the applicant will provide the Amesbury Conservation Commission a copy of the NPDES permit application and supporting documents. Additionally, the applicant will provide a statement from the operator/manager of the SWPPP and LTPPP acknowledging the responsibilities and requirements in the plans and agree to carry out said responsibilities and adhere to Best Management Practices of the plans as a perpetual responsibility and condition.
30. The Environmental Monitor (BSC) shall review and provide comments and recommendations on all final mitigation plans and stormwater operations and maintenance plans and any proposed beaver management program as a pre-construction condition. This includes buffer zone impact mitigation and any and all invasive species locations and mitigation strategy; and a grading plan. No review shall take place until the applicant has provided sufficient funds to conduct the review. The final plans will be subject to amendment pursuant to the recommendations by the Environmental Monitor and subsequent approval by ACC.
31. If warranted, the contractor shall provide a dewatering plan subject to review and approval by the Environmental Monitor and the Amesbury Conservation Commission indicating the design of the dewater filter as well as proposed location for the filters should they be required. The dewatering plan will be provided to the Amesbury Conservation Commission no later than forty (40) days prior to construction.
32. Any dewatering plan or draw down activities shall not directly release water into a resource area or storm drainage system tributary to a resource area. Water from dewatering activities could make use of a dewatering bag or similar device to remove sediment before the water is released. This requirement also applies to discharge of any and all construction-generated runoff, whether released by gravity or pumped.
33. There shall be no pumping of water from wetland resource areas on or adjacent to the site.
34. The contractor will provide a construction sequence for installation of the stormwater management facilities sixty (60) days prior to construction for review and approval by the ACC.
35. The applicant will provide a final Invasive Species Control Program sixty (60) days prior to construction for review and approval by the Amesbury Conservation Commission; provided, however, that regardless of when construction is scheduled to begin, the applicant will provide a final Invasive Species Control Program for review and approval by the ACC within twelve (12) months after issuance of the OoC. The approved program will include the proposed schedule and sequence of mitigation activities and will be updated on an annual basis by March 1st of each year during construction. The updated program will also include the National Wetlands Inventory

classification of replacement plants and the control methodology for each invasive plant species. Any and all documents shall be submitted at least four (4) weeks prior to the state of construction.

36. If for unforeseen circumstances the project does not take place within three (3) years of the OoC issuance, the Amesbury Conservation Commission shall require a review of site conditions and final Invasive Species Program at that time to better reflect changing conditions.
37. The applicant shall be required to post an erosion control bond with the Amesbury Conservation Commission and the amount shall be calculated @ \$0.25 per square feet of buffer zone area within the approved limit of work. Such funds shall be sufficient to repair any damages to the wetlands due to soil erosion, stabilization of all soils and the disturbed areas on the site. Prior to any release of bond amount, the Amesbury Conservation Commission shall require the inspection of work completed. Final release of the bond amount shall be allowed upon completion of all site work, including but not limited to, the stormwater management system, access driveways and landscaping work. In addition, releases from the erosion control bond will only be made once the site is fully stabilized and all mitigation areas are functions properly as indicated by the Environmental Monitor report and to the satisfaction of the Amesbury Conservation Commission.
38. Prior to making application for building permits, copies of all recorded legal documents pertaining to drainage and utility easements, the Riverwalk Easement, restrictions on individual lots and other conservation restrictions shall be provided to the Commission for their records.
39. Unless required by the Amesbury Planning Board, the Commission shall require a performance bond to be posted in the amount necessary to install and complete the stormwater management system and to ensure the performance of all the permit conditions under this Order. The applicant shall submit the necessary legal and financial documents in order to post the bond. Upon receiving the request from the applicant, the Commission's consultant shall review the work to be done and make their recommendation to the Commission. No work on the site shall commence until such time as the approved performance bond has been established by the applicant. The final release from the performance bond shall be made after two growing seasons have passed and all the plants in the approved mitigation areas have survived and are healthy as confirmed by the Environmental Monitor and approved by the Amesbury Conservation Commission. Any release of funds shall be made by the Commission upon verification of work by its consultant and/or its Agent.
40. Prior to the pre-construction meeting and commencement of any activity on this site, the boundaries of all wetland resource areas as shown on the final plans shall be identified by flagging, spaced at intervals not greater than 25-feet apart. Flagging shall be checked and replaced as necessary and maintained until a Certificate of Compliance is issued for the project.
41. Prior to the pre-construction meeting and commencement of any activity on this site, all erosion control devices approved under this Order shall be properly installed as shown on the approved plan. Erosion control barriers shall consist of entrenched silt fence backed by double-staked hay bales. The Amesbury Conservation Commission and/or its Agent and Environmental Monitor shall inspect and approve such

installation at a pre-construction meeting. The erosion control devices must remain in place and functioning until the Commission or its Agent has authorized their removal. All workers must be instructed not to work beyond this limit.

42. **Once the above mentioned pre-construction requirements are complete, the applicant shall contact the Conservation Department prior to site preparation or construction and shall arrange an on-site PRE-CONSTRUCTION SITE VISIT with a representative from the Amesbury Conservation Commission and/or its agent, the project supervisor, the contractor responsible for work, the engineer, wetland scientist (if applicable), and the applicant to ensure all of the Conditions of this Order are understood. Please contact the Amesbury Conservation Department office at (978) 388-8110 ext. 317 at least twenty days (480 hours) prior to any activity to arrange the pre-construction meeting.**
43. All contractors and subcontractors shall be informed of the conditions and provisions of this Order. This Order shall be included in all construction contracts and subcontracts dealing with the work, and shall supersede other contract requirements. Failure to have this OoC present during a site visit shall constitute a violation of the Wetlands Protection Act and the Amesbury Wetlands Ordinance and shall be subject to enforcement action by the ACC in a public meeting.
44. Prior to any work being done at the project site, the applicant shall inform the Amesbury Conservation Commission and the Environmental Monitor in writing of the names, addresses, business, mobile and home telephone numbers of both the project supervisor who will be responsible for ensuring on-site compliance with this Order and his/her alternate. The notification shall occur at least 20 days (20) prior to commencement of work on the site. The applicant shall also notify the Amesbury Conservation Commission and its Environmental Monitor in writing of any changes.

III. CONSTRUCTION CONDITIONS:

45. A copy of the recorded Order shall be provided to the Building Inspector at the time of making application for Building Permit along with a set of approved plans.
46. Accepted engineering and Best Management Practices as outline in the SWPPP and LTPPP for construction standards shall be followed in the conduct of all work. All site improvements shall be installed as per final plans and engineering details shown on them. Any modifications or deviations from the final plans shall only be made upon approval from the Commission. Any reports that are required to be submitted shall be subject to review and approval the by the Amesbury Conservation Commission.
47. Erosion control devices shall be inspected regularly by the applicant; and immediately after 0.5 inches of precipitation. Any entrapped silt shall be removed to an area outside of the buffer zone and wetland resource areas; silt fence and hay bales shall be replaced as necessary.
48. After proper grading, all disturbed areas shall be brought to final finished grade and stabilized permanently against erosion. This shall be done in the Amesbury Conservation Commission approved manner. Achievement of stabilization is considered to be when the surface shows complete vegetation cover as prescribed in

the approved landscape plan. This shall be measured by at least 80% coverage by established vegetation.

49. Bare ground in the Buffer Zone that cannot be permanently stabilized within thirty (30) days shall be stabilized by a temporary cover of rye or other grass should be established following U.S. Natural Resource Conservation Service (NRCS) procedures to prevent erosion and sediment transport. If the season is not appropriate for plant growth, exposed surfaces shall be stabilized by straw, jute netting or other NRCS approved Best Management Practices. Any stabilization materials such as jute netting shall be firmly anchored to prevent them from being washed from slopes by rain, snow melt, or flooding.
50. Subsequent to seeding, disturbed areas will be covered with salt hay mulch, erosion control blanket or netting, or other suitable material in order to provide adequate surface protection until seen germination. Preference should be given to erosion control netting with biodegradable stitching. Netting shall be required on all slopes 4:1 or steeper unless the slope is designated on the approved plans to be covered by other material.
51. Site grading and construction in the Buffer Zone shall be scheduled to avoid periods of high rates of perception. Once begun, grading and construction shall move uninterrupted to completion to avoid erosion and siltation to the wetlands.
52. No alteration or activity shall occur beyond the limit or work as defined by the siltation barriers shown on the final plan.
53. All waste generated by, or associated with, the construction activity shall be contained within the construction area, and away from the resource area. There shall be no stump dumps, burying of stumps or any material onsite. The applicant shall maintain a dumpster (or other suitable means) at the site for the storage and removal of such construction material off-site. However, no trash dumpsters will be allowed within 50-feet of the Bordering Vegetated (BVW) or riparian bank.
54. All stockpiles shall be enclosed by erosion control consisting of hay bales and entrenched silt fence. There shall be no stockpiling outside the approved limit of work.
55. Equipment storage and refueling operations shall be situated in an upland area at a distance greater than 100-feet from the BVW. All machinery shall be checked daily for leaking fluids.
56. Cleaning of concrete mixing equipment and/or machinery shall be restricted to upland areas at a distance greater than 100 feet to the BVW.
57. Unless approved by the Commission for control of invasive species, chemicals, pesticides, herbicides, etc. shall not be used or stored within 100' of a BVW with the exception of the use of herbicides as part of the approved Invasive Species Management Plan.
58. Any damage caused as a direct result of this project to any wetland resource areas shall be the responsibility of the applicant to repair, restore and / or replace. Sedimentation or erosion into these areas shall be considered damage to wetland resource areas. If

sediment reaches these areas, the Commission and/or its agents shall be contacted and a plan for abatement of the problem and proposed restoration / mitigation measures shall be submitted for approval and implementation. If the applicant fails to address the failure or damage as required by the Commission in a timely manner, it shall be deemed as a violation under the Regulations.

59. Monitoring by the Environmental Monitor, follow-up eradication of invasive species, and any necessary re-plantings shall be continued until a Certificate of Compliance is issued. The applicant shall provide sufficient funds to ensure this to avoid enforcement action.

IV. AFTER CONSTRUCTION:

60. Upon completion of the project, the applicant shall submit the following to the Amesbury Conservation Commission to Request for a Certificate of Compliance (COC):

- a. WPA Form 8A- Request for a Certificate of Compliance;
- b. A letter from the applicant requesting the Certificate of Compliance with the following information included:
 - i. Name and address of current landowner;
 - ii. The name and address of the individual or other entity to whom the COC is to be issued;
 - iii. The street address and lot number for the project; and DEP file #
 - iv. "As-Built" plans prepared, sign, and stamped by a Registered Professional Civil Engineer (and / or Registered Professional Land Survey) of the Commonwealth, for public record. The as-built plans shall be reviewed by the Amesbury Conservation Commission's consultant (BSC) at the applicant's expense.

61. Erosion control devices shall remain in place and functioning properly until all exposed soils have been stabilized with final vegetative cover and the Commission and / or its Agent has authorized their removal.

62. The Environmental Monitor shall also provide a full review of the as-built plans and provide comments and recommendations in support of a Request for Certificate of Compliance and the subsequent issuance of a Certificate of Compliance by the Amesbury Conservation Commission. Deviations, both authorized and unauthorized, shall be fully documented. Unauthorized deviations from the approved plan may result in additional mitigation measures imposed on the applicant by the ACC and/or enforcement action with possible fines.

63. Prior to issue of Certificate of Compliance, the applicant shall be required to pay in full any outstanding invoices from the Commission's construction observation consultant.

64. The applicant shall make request for Certificate of Compliance as provided for under Section 7.12 of the Amesbury Wetlands Regulations, as amended.

V. PERPETUAL CONDITIONS:

The following conditions are ongoing and do not expire with the issuance of the Certificate of Compliance:

65. The drainage easements on individual lots shall not be obstructed by any structure and shall always be available for maintenance and repair. This condition shall be noted on individual property Deed.
66. The management contract between the owner and the site management company shall provide that the dumping of leaves, grass clippings and/or brush is prohibited in buffer.
67. The site management agreement between the owner and the site manager shall provide that no chemical herbicides, pesticides, non-organic fertilizers or road deicers are to be used on the portion of the property that is jurisdictional pursuant to the Massachusetts Wetlands Protection Act and the City of Amesbury Wetlands Ordinance at any time now or in the future and that any contractors providing maintenance services to the jurisdictional area shall be advised of the requirement except that the site management agreement may permit the use of chemical deicers such as low salt/sand mix or calcium chloride in the areas shown on the as-built
68. Fertilizers utilized for landscaping and lawn care shall be slow release, low-nitrogen types (<5%), and shall not be used within the jurisdictional area. Unless approved by the Commission for control of invasive species, pesticides and herbicides shall not be used within 200 feet of a wetland resource area. This condition shall survive the Order of Conditions and shall run with the title of the property and noted in the Deed.
69. If pets are allowed by the site manager, management must provide receptacles for the disposal of pet waste and arrange to have the receptacles emptied in accordance with sanitary codes.
70. It is the responsibility of the property owner to maintain the stormwater management systems as specified in the Operation and Maintenance Plan to ensure that they function properly. This condition shall exist in perpetuity and shall be recorded as such in the Certificate of Compliance. On the sale or change of hands of the property, the applicant shall provide the new owner with a copy of the Operation and Maintenance Plan. At each subsequent sale of the property, the then current owner shall provide a copy of the Operation and Maintenance Plan to the new owner. A copy of the new owner's acknowledgement of receipt of the Operation and Maintenance Plan shall be sent to the Amesbury Conservation Commission. This condition shall exist in perpetuity and shall be recorded as such in the Certificate of Compliance.
71. The applicant shall comply with all requirements of the Operation and Maintenance Plan filed with the Order of Conditions. The applicant shall maintain and repair all components of the stormwater management system in order to ensure that the design capacity, the stormwater treatment and pollution abatement capacity, and structural integrity of these facilities are maintained. The applicant shall maintain all stabilized surfaces as designed including maintenance and repair of pavement and maintenance of landscaped areas maintaining a vigorous growth of all plant materials. Catch basins and stormwater treatment units shall be inspected and cleaned and roadways,

driveways and sidewalks shall be swept at intervals specified in the Operation and Maintenance Plan (O&M Plan). Snow shall be plowed onto designated areas to encourage infiltration during subsequent thawing periods. Sediments shall be removed from snow storage areas by April 4 of each year. Accumulated sediments shall be removed from sumps and floatable wastes shall be removed from the surface of every catch basin at intervals specified in the operation plan. All drain pipes shall be inspected and sediment and debris removed at intervals specified in the O&M Plan. Sediments and wastes shall be disposed of in accordance with all applicable federal, state, and local laws. The subsurface infiltration structures shall be inspected and cleaned at intervals specified in the O&M Plan.

72. The applicant and his/her successors in ownership shall file written reports of the inspections, cleaning and stormwater maintenance with the Amesbury Conservation Commission on an annual basis, by November 1st beginning the year the stormwater management system is installed. If the approved invasive species monitoring plan is not implemented as approved, the ACC may issue a fine in addition to an enforcement order.
73. Stormwater management reports shall be submitted in the prescribed manner for a five (5) year period.

EXHIBIT

Notice of Intent and Subsequent Reports

- 1) Gillian T. Davies, Senior Wetland/Soil Scientist, BSC Group, Inc. January 29, 2013. Bailey's Pond Notice of Intent Review.
- 2) Dominic Rinaldi, P.E., LEED AP, Project Manager/Associate, BSC Group, Inc. January 31, 2013. Peer Review – Stormwater and Revised Information, The Village at Bailey's Pond, Amesbury, Massachusetts.
- 3) Gillian T. Davies, Senior Wetland/Soil Scientist, BSC Group, Inc. April 22, 2013. Bailey's Pond Notice of Intent Peer Review including Soil Log for Bailey's Pond Site Visit on April 3, 2013.
- 4) Thomas G. Hughes, Hughes Environmental Consulting. May 1, 2013. Response to Peer Review Comments, Village at Bailey's Pond, Amesbury, Massachusetts with accompanying site plan titled Riverfront Area Degraded Area Plan C-013C dated September 30, 2011 with third revision dated May 1, 2013.
- 5) Sean P. Malone, Vice President, Oak Consulting, LLC. February 19, 2013. Response to Peer Review Comments, Village at Bailey's Pond, Amesbury, Massachusetts.

Correspondence

- 1) Correspondence from Joseph W. Fahey, Director, Community and Economic Development to Deirdre Buckley, Massachusetts Executive Office of Environmental Affairs (MEPA Unit), Sub: EEAA No. 14596 – Village at Baileys Pond dated June 11, 2010.
- 2) Correspondence from John D. Viola, Deputy Regional Director, Massachusetts Department of Environmental Protection to Ian A. Bowles, Secretary, Massachusetts Executive Office of Energy and Environmental Affairs regarding review of Environmental Notification Form dated June 14, 2012
- 3) Correspondence from Attorney Jeffery L. Roelofs, Law Offices of Jeffery L. Roelofs, P.C., to Amesbury Conservation Commission regarding Bailey's Pond Notices of Intent (State and Local) dated April 15, 2010.
- 4) Correspondence from Attorney John J. Goldrosen, Kopelman and Paige, P.C. to Amesbury Conservation Commission regarding Bailey's Pond Project dated April 27, 2010.

Project Plans

- 1) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Existing Conditions Plan. Scale: 1" = 40'. Project 12013. Sheet C-001A. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 2) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Existing Conditions Plan. Scale: 1" = 40'. Project 12013. Sheet C-001B. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 3) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Existing Conditions Plan. Scale: 1" = 40'. Project 12013. Sheet C-001C. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 4) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Grading Drainage & Erosion Control Plan. Scale: 1" = 40'. Project 12013. Sheet C-003A. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 5) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Grading Drainage & Erosion Control Plan. Scale: 1" = 40'. Project 12013. Sheet C-003B. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 6) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Grading Drainage & Erosion Control Plan. Scale: 1" = 40'. Project 12013. Sheet C-003C. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 7) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Landscape Plan. Scale: 1" = 40'. Project 12013. Sheet C-004A. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 8) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Landscape Plan. Scale: 1" = 40'. Project 12013. Sheet C-004B. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 9) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Landscape Plan. Scale: 1" = 40'. Project 12013. Sheet C-004C. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).

- 10) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Erosion Control Notes and Details Plan. Scale: As Noted. Project 12013. Sheet C-006. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 11) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Site Details Plan. Scale: As Noted. Project 12013. Sheet C-009. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 12) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Riverfront Area Impact Plan. Scale: 1" = 30'. Project 12013. Sheet C-013. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 13) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Degraded Riverfront Area Historic Aerial Plan. Scale: 1" = 30'. Project 12013. Sheet C-013A. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 14) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Riverfront Area Impact & Restoration Plan. Scale: 1" = 30'. Project 12013. Sheet C-013B. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions).
- 15) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Riverfront Area Degraded Area Plan. Scale: 1" = 30'. Project 12013. Sheet C-013C. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions); Revision 2 dated February 15, 2013; and Revision 3 dated May 1, 2013.
- 16) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Riverfront Area Restoration Plan. Scale: 1" = 30'. Project 12013. Sheet C-013D. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions). Revision 2 dated February 15, 2013.
- 17) The Village at Bailey's Pond – Route 150 and Summit Avenue, Amesbury, Massachusetts, Site Details Plan. Scale: As Noted. Project 12013. Sheet C-014. Date: September 30, 2011. Revision 1 dated December 7, 2012 (General Revisions). Revision 2 dated February 15, 2013.



33 Waldo Street
Worcester, MA 01608

January 29, 2013

Amesbury Conservation Commission and Mr. John Lopez
Amesbury Conservation Commission
62 Friend Street
Amesbury, MA 01913

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RE: Bailey's Pond Notice of Intent Peer Review

Dear Mr. Lopez and Members of the Commission:

BSC Group, Inc. (BSC) is pleased to submit this wetland resources peer review report on the proposed Village at Bailey's Pond (Route 150 and Summit Avenue) Notice of Intent (NOI). Oak Consulting Group (OCG) and Hughes Environmental Consulting (HEC) have submitted revised NOI materials on behalf of Fafard Real Estate and Development Corporation.

This report analyzes project information provided in the project NOI (filed 4/15/2010), in revised supporting materials (dated 10/27/2011 and 1/14/2013) and on project plans titled The Village At Bailey's Pond (Site Plan), dated 9/30/2011 and revised 12/07/2012. The purpose of this assessment is to evaluate project compliance with the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) (WPA) and associated regulations (310 CMR 10.00 et al.) and the City of Amesbury Wetland Protection Ordinance and associated regulations (Ordinance). The delineation of Bordering Vegetated Wetlands (BVW) was evaluated according to the MA Department of Environmental Protection "Handbook for Delineating Bordering Vegetated Wetlands Under the MA Wetlands Protection Act". Regulated resource areas on the subject property include BVW and associated Buffer Zone, Bank, Isolated Vegetated Wetland (IVW), Land Under Water, and Riverfront Area (RA). Regulated resources other than BVW were assessed according to definitions in the Ordinance and in the state WPA regulations.

RESOURCE AREA DELINEATION PEER REVIEW

Bordering Vegetated Wetland, Isolated Vegetated Wetland and Riverfront Area

BSC initially walked the flagged BVW and RA lines with Sean Malone of OCG, at which time, BSC noted that due to beaver activity, some significant changes to the RA line would be necessary, as well as some minor changes (unrelated to beavers) to the BVW line. An un-flagged IVW was noted. On 8/7/2012, BSC again walked the RA and wetland boundary lines with Tom Hughes of HEC, who had made some of the necessary changes to flag locations. While in the field, BSC and Tom Hughes agreed upon revised locations for additional flags. HEC then asked the applicant's surveyors to return later to survey them and add them to the site plan. The site plan revised on 12/7/2012 includes all of the requested changes, as well as requested changes to the 100' and 200' RA lines.

Engineers
Environmental
Scientists
GIS Consultants
Landscape
Architects
Planners
Surveyors

Rare and Endangered Species, Vernal Pools, Isolated Vegetated Wetland

The NOI materials include a MA Natural Heritage and Endangered Species Program (NHESP) 2008 Priority Habitat and Estimated Habitat map (NHESP map) that shows no



Priority or Estimated Habitat polygon occurring on the site of the proposed project. Other than the heavily impacted IVW, BSC did not note any area that had the potential to function as a vernal pool. Given the heavy ATV traffic that runs through the IVW, it is unlikely that this area functions as a vernal pool in its current state.

Land Under Water and Bank

Land Under Water occurs down-gradient from Bank under the Pond and the perennial stream. Bank occurs down-gradient of the BVW line along the Pond edge. Pond Bank is not flagged since it is down-gradient of BVW, and the buffer zone associated with Pond Bank is contained within the BVW 100' buffer zone. Bank of the river is either coincident with the RA Mean Annual High Water Line (MAHW), or down-gradient of RA MAHW, and thus was not flagged separately from the RA MAHW.

NOI, SITE PLAN AND SUPPLEMENTAL MATERIALS PEER REVIEW

BSC provides the following comments with regard to the project NOI, Site Plan and supplemental materials:

1. The applicant should submit an updated/revised NOI form (WPA Form 3) with updated impact numbers, given the substantial changes to the resource area boundaries. The 10/27/2011 cover letter from Sean Malone (McFarland Johnson) to the Amesbury Conservation Commission (ACC) provided tables with impact numbers broken down by resource area and type of impact. BSC recommends that updated/revised tables of this sort be provided for each of the Alternatives that are examined in the Alternatives Analysis (see below). Additionally, providing impact avoidance, minimization, and mitigation numbers in this type of format for each of the Alternatives is also recommended, as it will facilitate evaluation and comparison of the Alternatives with regard to their comparative impacts to RA and other resource areas.
2. Riverfront Area Status: The Applicant has proposed that the RA on the project site qualifies as previously developed and degraded riverfront under 310 CMR 10.58(5), specifically referencing their opinion that the site meets the "absence of topsoil" and/or "abandoned dumping grounds" criteria. BSC is of the opposite opinion, and does not believe that the RA on the project site meets MA DEP's criteria (based on personal communication, MA DEP NERO, 1/23/2013) for "abandoned dumping grounds" as the debris in the RA generally consists of scattered items that can be removed fairly easily. MA DEP considers an RA to meet the qualification for abandoned dumping grounds if the site is substantially and significantly compromised/degraded, such as by having extensive and large blocks of material that require substantial heavy machinery removal efforts, and that cover significant areas of land surface, such as in a bona fide junkyard.

When conducting site visits to the project site, BSC did not consider the possibility that the RA on the site would qualify for "absence of topsoil" status and did not examine the RA for "absence of topsoil", as the RA on the site generally functions at a higher level and is more heavily vegetated than RA's on other sites that BSC is aware of, that have failed to meet the "absence of topsoil" criteria when reviewed by MA DEP. BSC refers the Applicant to the 596 Lowell Street Superseding Order of Conditions (SOC) for MA DEP NERO File #219-642, issued on December 29, 1999 in this regard.



The RA on the project site is generally heavily vegetated, with extensive forested land. Although topsoil may have been stripped from all or part of the RA in the past, it is highly unlikely that a nascent topsoil has not started to develop where vegetation, even sparse vegetation, has established itself. Where new topsoil, even in the smallest amounts, has begun to form, it is BSC's experience that MA DEP tends not to grant "absence of topsoil" status. Where RA is vegetated and has some level of topsoil development, it is BSC's experience that MA DEP does not tend to consider the RA to be degraded. It is BSC's experience that MA DEP tends to reserve the term "degraded" for severely impacted RA's that have pavement or its close equivalent on the ground surface, and a substantive absence of vegetation. The reasoning behind this is that a vegetated RA with an emerging topsoil is providing RA function, and will, over time, continue to develop further capacity to provide RA function. It is BSC's experience that status as "degraded RA" tends to be reserved for RA's, or portions of RA's, that are paved or function at a level that is close to pavement function. In the past (such as identified in the SOC cited above), where a portion of the RA is paved, only the actual footprint of the paved area has been counted as "degraded" by MA DEP, and the remainder of the RA has been excluded from the "degraded" status. Thus, the standard provisions of 310 CMR 10.58 would apply on the project site to all areas of RA that are not paved or functioning at a level similar to pavement. Thus the Alternatives Analysis and "no significant adverse impact" sections of the RA regulations would apply to the RA on the project site, along with the other standard RA provisions. Should the Applicant wish to discuss this issue on the project site where soils can be examined, BSC is happy to do so.

3. Given that the project site does not qualify as previously developed and degraded RA, the applicant is required to submit an RA Alternatives Analysis per 10.58(4), and should closely follow the methodology outlined in the regulations:

...the applicant shall prove by a preponderance of the evidence that there are no practicable and substantially equivalent economic alternatives to the proposed project with less adverse effects on the interests identified in M.G.L. c. 131 s. 40 and that the work, including proposed mitigation, will have no significant adverse impact on the riverfront area to protect the interests identified in M.G.L. c. 131 s. 40.

(c) Practicable and Substantially Equivalent Economic Alternatives. There must be no practicable and substantially equivalent economic alternative to the proposed project with less adverse effects on the interest identified in M.G.L. c. 131 s. 40.

1. Definition of Practicable. An alternative is practicable and substantially equivalent economically if it is available and capable of being done after taking into consideration costs, existing technology, proposed use, and logistics, in light of overall project purposes. Available and capable of being done means the alternative is obtainable and feasible. Project purposes shall be defined generally (e.g. single family home, residential subdivision, expansion of a commercial development). ***The alternatives analysis may reduce the scale of the activity or the number of lots available for development***, consistent with the project purpose and proposed use...Transactions shall not be arranged to circumvent the intent of alternatives analysis review. The four factors to be considered are:

a. Costs, and whether such costs are reasonable or prohibitive to the owner...Cost includes expenditures for construction, landscaping, and transaction expenses. ***Cost does not include anticipated profits*** after the project purpose is achieved or expenditures to achieve the project purpose



prior to receiving an order with the exception of land acquisition costs incurred prior to August 7, 1996. In taking costs into account, the issuing authority shall be guided by these principles:

i. The cost of an alternative must be reasonable for the project purpose, and cannot be prohibitive.

ii. ***Higher or lower costs taken alone will not determine whether an alternative is practicable.*** An alternative for proposed work in the riverfront area must be a practicable and substantially equivalent economic alternative (i.e. will achieve the proposed use and project purpose from an economic perspective).

c. The proposed use. This term is related to the concept of project purpose...In the context of projects where the purpose implies a business component, such as residential subdivision, commercial, and industrial projects, the proposed use typically requires economic viability. ***Practicable and substantially equivalent economic alternatives include alternatives which are economically viable for the proposed use from the perspective of site location, project configuration within a site, and the scope of the project.***

2. Scope of Alternatives. *The applicant is referred to this section of the regulations to determine the scope of the alternatives analysis. The scope is in part dependent upon the date of purchase of the property, as well as the project purpose, and may include consideration of offsite alternatives, depending in part upon date of purchase of property.*

3. Evaluation of Alternatives. The applicant shall demonstrate that there are no practicable and substantially equivalent economic alternatives...within the scope of alternatives...with less adverse effects on the interests identified in M.G.L. c.131 s.40. The applicant shall submit information to describe sites and the work both for the proposed location and alternative site locations and configurations sufficient for a determination by the issuing authority under 310 CMR 10.58(4) (d). The level of detail of information shall be commensurate with the scope of the project and the practicability of alternatives. ***..The purpose of evaluating project alternatives is to locate activities so that impacts to the riverfront area are avoided to the extent practicable.*** Projects within the scope of alternatives must be evaluated to determine whether they are practicable. ***As much of a project as feasible shall be sited outside the riverfront area...***If there would be no less adverse effects on the interests identified in M.G.L. c. 131 s. 40, the proposed project rather than a practicable alternative shall be allowed, but the criteria...for determining no significant adverse effect must still be met. ***If there is a practicable and substantially equivalent economic alternative with less adverse effects, the proposed work shall be denied...***
(d) No Significant Adverse Impact. The work, including proposed mitigation measures, must have no significant adverse impact on the riverfront area to protect the interests identified in M.G.L. c. 131 s. 40. *The applicant is referred to this section to identify the thresholds for significant adverse impacts.*

BSC specifically refers the Applicant to the sections of the regulations listed above that are in both bold and italics. The Applicant should prepare conceptual site plans for Alternatives that would propose project footprints that avoid impacting the RA to the greatest extent possible. This is likely to require shifting roadway alignments out of the RA, and removing some building footprints, grading and stormwater features from the RA. **An Alternatives Analysis that fully complies with WPA regulations will include alternatives that shift**



building, grading, stormwater, and roadway footprints out of the RA on the site. Depending on the purchase date of the property, the Applicant may or may not need to consider offsite alternatives in their alternatives analysis.

4. Ordinance-regulated Isolated Vegetated Wetland (IVW): The Applicant cites Ordinance section 460-3, exemption (5) for the IVW on the site. BSC defers to the ACC with regard to the decision as to whether the IVW on the site qualifies for this exemption, as this determination will depend, in part, on past precedent and ACC's interpretation of their own Ordinance. BSC notes that the proposed restoration activities for the IVW are likely to enhance the ecological function of the IVW, and could be included as part of a mitigation plan for the site. BSC notes that mitigation should be developed in the context of a plan to *first* avoid resource impacts, *then* minimize resource impacts, and *at the last stage* of the planning process, mitigate for resource impacts that are allowable under state and local regulations and have been avoided and minimized to the greatest extent possible. BSC understands, based on a phone discussion with Tom Hughes (1/28/2013), that more specific planting plans and species lists would be developed for the proposed wetland restoration, should the applicant receive approval to proceed in this regard. BSC supports the development of these more specific wetland restoration plans and lists, should ACC determine that IVW wetland restoration is an advisable part of the overall project resource mitigation plan. Due to this plan to develop greater detail at a later stage, BSC will not provide specific comments on the details of wetland restoration for the IVW at this time, as it would be premature.

5. Ordinance and Associated Regulations Requirements. In addition to the need to evaluate the proposed project for compliance with WPA RA regulations, as discussed above, the Applicant should provide additional information that evaluates the various project Alternatives relative to the Ordinance and associated regulations, and demonstrates compliance with the Ordinance and associated regulations. Specifically, the Ordinance requires the Applicant to address Section 460-5 B: Proof. This section of the Ordinance also **requires an Alternatives Analysis, and does so with regard to all regulated resource areas, not just the RA.** Under this provision, the Applicant should develop Alternatives that remove impacts from Buffer Zones (BZs) to the greatest extent possible, so that the project complies with item (5) under the Proof section of the Ordinance, Part 1, Section 12.0 Burden of Proof, and Part 2, Section 21.7 Structures of the regulations. These regulations require evaluation of Alternatives in order to maximize *first*: impact avoidance, *second*: impact minimization, and *third*: impact mitigation. BSC notes that the current Site Plans propose:

- sewer crossing within RA and BVW
- sewer crossing and a small amount of grading within the 25' BZ
- driveway footprint, stormwater features, grading, a sewer crossing, and path within the 50' BZ.
- significant amount of structures, pavement, stormwater features, grading within the 100' BZ. The outer 50' of BZ are heavily developed.
- sewer crossing, path, stormwater features within the inner 100' of RA
- structures, pavement/roadway, stormwater features, grading, path within the outer 100' - 200' of RA

As mentioned previously, BSC recommends that these impacts be quantified and presented in table format, so that comparison between Alternatives, and evaluation relative to state and local performance standards and regulations, is facilitated.



It should be noted that no special provisions are indicated in the Ordinance for the allowance of stormwater structures within RA. Therefore, it appears that stormwater structures are regulated the same way that any other structure is regulated under the Ordinance. Additionally, there are no exemptions for construction of new utilities, or for footpaths. The Applicant should address these within the context of the Ordinance and associated regulations.

The Applicant should address Part 1, Section 12.0 of the Ordinance regulations, regarding, "...significant or cumulative detrimental effect upon Resource Areas or their wetland values protected herein."

6. Proposed Project Impacts. Due to the need for an Alternatives Analysis (per Ordinance and associated regulations and WPA regulations), and our recommendation for provision of updated impact tables (quantifying the impacts listed above, by resource area, for each Alternative), BSC finds that it is premature to assess proposed project impacts beyond the general comments provided. These impacts should be reviewed and discussed in the context of an Alternatives Analysis that is in compliance with WPA regulations and the Ordinance and associated regulations, and that is based on updated impact and mitigation tables. This will allow the Alternatives to be assessed to determine the Alternative with the least significant adverse impact that is practicable, and substantially equivalent economically (as defined in the WPA regulations and Ordinance and associated regulations).

7. Proposed Project Mitigation. It is BSC's opinion that a thorough Alternatives Analysis (per Ordinance and associated regulations and WPA regulations) would increase significantly the amount of resource impact avoidance and minimization that is possible for this project. Only after these measures have been maximized is it possible to evaluate proposed mitigation measures, as mitigation options may shift with a shifting project impact footprint. The Applicant should provide quantified mitigation numbers in table format, for each of the Alternatives, and for each impacted resource area, so that the Alternatives can be assessed to determine the Alternative with the least significant adverse impact that is practicable, and substantially equivalent economically (as defined in the WPA regulations and Ordinance and associated regulations). Proposed mitigation should be discussed and evaluated following selection of the project Alternative that provides the least adverse impact while remaining practicable and substantially economically equivalent, and thus cannot be evaluated fully at this time.

Following selection of a preferred Alternative, and following impact avoidance and minimization efforts within that Alternative, the Applicant may propose mitigation measures along the lines of those proposed in the current project documents. Should mitigation be necessary under the preferred Alternative (and there may be an Alternative that requires no or very little mitigation), BSC concurs with the Applicant that the following mitigation ideas generally represent opportunities to enhance ecological functioning on the site:

- Restoration of the IVW
- Restoration of ATV-impacted Bank
- Invasive species control
- Enhancement/Supplementation of impacted soils (specific locations to be determined in consultation with the ACC) and planting of high-value native species
- Restoration/stabilization of eroded areas
- Removal of debris, trash, paintball bridges and yard waste



The details (plans, cross-sections, text, tables, etc.) of how, where and to what extent any of these mitigation measures are proposed should be provided for each Alternative in the Alternatives Analysis. More specific peer review comments are appropriate following provision of the Alternatives Analysis and a more detailed level of information.

8. Proposed Stream Crossing: Any proposal for a stream crossing, such as the proposed sewer crossing, should include detailed plans & cross-sections (existing conditions, proposed conditions, and eventually, as-built conditions), and text (some of which has been provided) describing the construction sequence, erosion and sedimentation controls, bank stabilization measures, and resource (Land Under Water, Bank, BVW) restoration plans, as well as text (some of which has been provided) regarding compliance with resource area performance standards at both the state and local level. This work has been described in general terms only. The Applicant has proposed Bank restoration that exceeds replacement of the currently ATV-impacted Bank conditions. The details of this Bank restoration work should be provided, both in visual (plans & cross-sections) and in text form, for any Alternative (and some Alternatives may not require a stream crossing) that includes a stream crossing. BSC concurs with the Applicant that the portion of current BVW that is actually ATV-impacted previous Bank, should be restored to Bank, rather than to BVW.

9. Pedestrian Path: Text and Site Plans should specify whether the proposed pedestrian paths are unpaved or paved.

10. Erosion Control, Pollution Prevention Plan, Operation & Maintenance Plan: Comments on these elements of the proposed project are better made when the Alternatives Analysis has been completed and a preferred Alternative has been chosen, as comments on this level of detail are premature until a more definitive Alternative has been identified. However, BSC does recommend that as the Applicant develops further plans for the site, that they incorporate a phased approach to construction sequencing. Given the sandy and erodible nature of some of the soils on the site, a phased construction sequence will be especially important in ensuring effective erosion and sedimentation control. The Applicant is referred to the U.S. Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP).

The Commission should feel free to contact me at (617) 896-4524 (office) or (978) 621-8783 (cell) with any questions regarding this report and this letter report. BSC appreciates the opportunity to be of assistance.

Sincerely,
BSC Group, Inc.

Gillian T. Davies
Senior Wetland/Soil Scientist



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January 31, 2013

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Town of Amesbury Conservation Commission
c/o Mr. John Lopez, Conservation Agent
Amesbury Town Hall
62 Friend Street
Amesbury, Massachusetts 01913

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**RE: Peer Review – Stormwater Design
Review of Supplemental and Revised Information
The Village at Bailey’s Pond
Amesbury, Massachusetts**

Dear Members of the Conservation Commission and Mr. Lopez:

BSC Group has completed its review of the revised stormwater management design for The Village at Bailey’s Pond proposed residential development off of Summit Avenue and Route 150 in Amesbury, Massachusetts. This letter report summarizes our findings and presents comments and questions that we have formed as a result of the review. It is based upon our comments previously submitted to you in a letter dated September 28, 2012, as well as updated project drawings dated 12/07/12, and a letter from Oak Consulting Group to Mr. Nipun Jain dated December 7, 2012 with attachments. For clarity, for each of our original comments, we have restated the comment in standard text, restated the proponent’s response from the December 7, 2012 letter in italics, and summarized our review on the response in bold.

Please note that this review only covers the stormwater management design portion of the project. A review covering the remainder of the NOI filing is also being performed by BSC Group and the results of that review will be submitted separately. This review encompasses stormwater management design compliance with the Massachusetts Wetlands Protection Act (WPA) and associated regulations including the Department of Environmental Protection’s Massachusetts Stormwater Handbook (Stormwater Handbook) as well as the Amesbury Wetland Ordinance (Ordinance) and associated regulations.

Review of Design Plans

Drawings C-003A thru C-003C – Grading Drainage & Erosion Control Plan

1. Where are the outlets from Bioretention Areas #1 and 3 (Drawings C-003A and C-003B respectively)? It appears that these overflow onto a parking lot and the site driveway. Can an overflow structure for each of these BMP’s be provided per the detail on Drawing C-009 and piped into the closed stormwater management system?

Engineers

Environmental
Scientists

GIS Consultants

Landscape
Architects

Planners

Surveyors



The bioretention areas have been revised to provide drywells as overflow structures. These structures for Bioretention areas interior to the site have been piped to the closed drain system.

We consider this item closed.

2. All bioretention areas have been designed with ponding depths greater than 8-inches (varying between 9-inches and 2.5-feet). Per the section on bioretention areas and rain gardens in the Stormwater Handbook Volume 2, Chapter 2, recommends ponding depths of 6 to 8-inches. While 9 or 10-inches may be acceptable, greater depths should be avoided.

The bioretention areas have been revised to provide an overflow 10" or less above the basin bottom elevation thus limiting the regular ponding depths as recommended.

We consider this item closed.

3. The rip-rap apron southwest of Building 9 (Drawing C-003A) is drawn with a length of 18 to 20-feet, but labeled at 12-feet long. Based on the slope shown, the drawn length of 18 to 20-feet seems more appropriate.

The rip-rap aprons have been revised on the plan and size calculations are enclosed.

We consider this item closed.

4. The Applicant's designer should verify that the rip-rap apron at the 30-inch discharge southwest of Building 9 (Drawing C-003A) is sufficiently sized for the potential flows.

Rip-rap sizing calculations are enclosed.

We consider this item closed.

5. As curbing is not proposed along the interior drives, runoff from paved areas will be collected in the yard drains PYD 1 and 2. Do these yard drains have deep sumps and hooded outlets? If not, they do not qualify as pre-treatment for the downstream bio-retention area and should be replaced with deep sump, hooded catch basins. It is also recommended that all yard drains utilize a "beehive" type grate to help prevent clogging of the inlet.

These drains have been revised to be standard catchbasins (PCB's 12 and 13) on the revised plans.

We consider this item closed.

Drawing C-006 – Erosion Control Notes and Details Plan

All comments on this plan are included in BSC's review letter to the Amesbury Planning Board. A copy of this letter is attached.

Drawing C-009 – Site Details Plan

Please see comments on this drawing pertaining to stormwater management in BSC's review letter to the Amesbury Planning Board. A copy of this letter is attached.

6. Details of the rip-rap overflows from bioretention areas and of the rip-rap aprons at pipe outlets should be provided on this plan. These details should provide rip-rap gradation.

A rip-rap apron detail and sizing table has been added to the plans.

We consider this item closed.



Review of Revised Stormwater Management Study

Report Narrative

7. Section 1.1 states that 23 test pits were conducted on the site, yet only one test pit log is included in the Appendices. Further, this test pit log shows the most restrictive layer being loamy sand and not the sand that was used for design purposes. The remaining 22 test pit logs should be submitted so it can be determined if the loamy sand is or is not typical of the site soils.

The logs for the 23 test pits conducted were included in the November 12, 2012 submission. As shown on the logs, the top layer primarily consists of a loamy sand fill ranging from approximately 6" to 18" thick on average. This fill layer will be removed in areas where infiltration is proposed. Notes to remove existing fill in the areas of infiltration have been added to the details on Sheet C-009

We consider this item closed.

8. BSC concurs with the conclusion that the seasonal high groundwater level is at or near the mean high water level of Bailey's Pond.

Comment noted

We consider this item closed.

9. The summary tables for peak discharge rates and volumes (Standard 2) are divided into six outfalls as well as a total for the site. Several of the post-development peak runoff rates from individual outfalls for certain storm events exceed the pre-development rates. However, the post-development rates for the total site are less than pre-development rates for all storms analyzed. Since all runoff from the site goes to Bailey's Pond, this is acceptable and should be considered to meet the requirements of Standard 2 of the Stormwater Handbook.

Comment noted. The revised summary table enclosed has combined these to one watershed to the pond.

We consider this item closed.

10. In Section 2.3 includes required and provided groundwater recharge calculations. However, based on the site grading (see Drawings C-003A thru C-003C), not all stormwater runoff from impervious surfaces on site is being directed to infiltration BMP's. Therefore, in accordance with the requirements of "Other Considerations for Standard 3" documented in the Stormwater Handbook Volume 3, Chapter 1, calculations should be provided showing how much of the site's impervious surface runoff is directed to infiltration BMP's. In addition, the adjusted required recharge volume should be calculated and provided.

A stormwater treatment summary is enclosed.

Sufficient documentation has been provided to show that the project complies with Standard 3's volume requirements. We consider this item closed.

11. Section 2.3 should also include drawdown calculations showing that each infiltration BMP will drain completely within 72-hours in accordance with the requirements of the Stormwater Handbook Volume 3, Chapter 1.



This calculation is provided with the enclosed summary table.

Sufficient documentation has been provided to show that the project complies with the drawdown requirements of Standard 3. We consider this item closed.

Peak Runoff Rate Calculations

12. Multiple subcatchment areas include sheet flow lengths greater than 100-feet. According to the “Massachusetts Supplement for the TR-55 Hydrology Procedure” from the NRCS, sheet flow lengths should be limited to 50 to 100-feet.

The calculations have been revised to limit the sheet flow length to a maximum of 100’.

We consider this item closed.

13. Multiple subcatchment areas include shallow concentrated flow segments with surface conditions such as “woodland”, “grassed waterway”, and others. The most recent version of TR-55 only recognizes shallow concentrated flow surface conditions of “paved” and “unpaved”. While these other surface types are included in the HydroCAD program, they should not be used per TR-55.

The calculations have been revised to use “unpaved” in all areas of shallow concentrated flow not on pavement as recommended.

We consider this item closed.

14. The total runoff area in the post-development runoff rate calculations is 2.05-acres less than that in the pre-development calculations. This may be due to building infiltration areas not being fully counted (each building type is only included once in the calculations). The Applicant’s designer should verify if that is the case and provide the area of each building type to show that the pre and post development drainage areas analyzed are the same.

As presumed, the proposed building areas were excluded from the overall subcatchment area because of the building infiltration areas being designed to fully handle the 100-year storm. This was done to simplify the model. There are two proposed building types. There are 27 basic units with a roof area of 3,892 sf (105,084 sf) and 7 galleria units with a roof area of 4,300 sf (30,100 sf). The total roof area is 135,184 sf (3.103 ac). The total Post Development area analyzed (excluding the buildings) is 1,029,896 sf (23.643 ac). The total Post Development area including the buildings is 1,165,080 sf (26.747 ac) which is equal to the Pre Development area. This has been corrected in the revised calculations.

We consider this item closed.

15. The post-development runoff calculations include several subcatchments with times of concentration (Tc’s) of less than 6-minutes. This is a conservative approach as the “Massachusetts Supplement for the TR-55 Hydrology Procedure” from the NRCS allows the use of a minimum Tc of 6-minutes.

The revised post-development calculations have used the minimum time of concentration of 6 minutes.

We consider this item closed.



Checklist for Stormwater Report and Supporting Documentation

16. The Applicant should provide rip-rap apron and stone sizing calculations for each outlet from the stormwater management system to comply with the requirements of Standard 1 specified in Volume 3, Chapter 1 of the Stormwater Handbook.

These are provided in Enclosure B.

Appropriate rip-rap apron and stone sizing calculations have been provided. We consider this item closed.

17. A long term pollution prevention plan meeting the requirements of Standard 4 has not been provided.

A long term pollution prevention plan has been provided in Enclosure D.

An appropriate long term pollution prevention and operations and maintenance plan meeting the requirements of Standard 4 has been submitted. We consider this item closed.

18. As the project has soils with a rapid infiltration rate (greater than 2.4-inches per hour), it is required to size treatment BMP's by calculating a water quality volume of 1-inch. For this reason, the project is also required to provide pretreatment to remove 44% of total suspended solids (TSS) prior to discharge to an infiltration BMP. The treatment BMP's have been sized appropriately, but 44% of TSS is not being removed prior to discharge to the infiltration BMP's.

The proposed bio-retention basins are classified as a "treatment" BMP rather than an "infiltration" BMP because prior to being infiltrated, the stormwater is treated as it is filtered through the soil media and additional treatment is provided through the uptake of phosphorus and nitrogen from the vegetation. Per the design guidance in the Handbook, bio-retention basins require pretreatment in the form of a deep sump catchbasin and sediment fore bay when piped into the basin or a 8" gravel strip followed by a 3-5 foot strip of sod when entering the basin via sheet flow. Prior to discharge to an infiltration basin, the onsite drainage will be pretreated with the use of a deep sump hooded catchbasin and a sediment forebay. The plans have been revised to provide the appropriate form of pretreatment as described above and required by the Handbook.

We consider this item closed.

19. The project includes one (1) proprietary treatment BMP. However, no sizing information has been provided for this device. It is unclear if the Stormceptor 450i proposed is of sufficient size to adequately treat the runoff from its tributary area.

The sizing data for the Stormceptor is provided in Enclosure C.

Appropriate manufacturer's Stormceptor sizing data has been provided. We consider this item closed.

20. No pipe sizing calculations have been provided.

Pipe Sizing calculations for the 25-yr storm event is provided as Enclosure B.

Appropriate pipe sizing calculations have been provided. We consider this item closed.



We look forward to discussing this project with you further at the Commission's public hearing on the project. Please feel free to contact me at (617) 896-4386 or drinaldi@bscgroup.com should you have any questions on the information in this report.

Sincerely,

BSC GROUP, INC.

Dominic Rinaldi, P.E., LEED AP
Project Manager/Associate

cc: Planning Board
N. Jain
G. Davies

April 22, 2013

Amesbury Conservation Commission and Mr. John Lopez
Amesbury Conservation Commission
62 Friend Street
Amesbury, MA 01913

RE: Bailey's Pond Notice of Intent Peer Review

Dear Mr. Lopez and Members of the Commission:

BSC Group, Inc. (BSC) is pleased to submit this wetland resources peer review report on the proposed Village at Bailey's Pond (Route 150 and Summit Avenue) Notice of Intent (NOI). Oak Consulting Group (OCG) and Hughes Environmental Consulting (HEC) have submitted a letter response (dated 2/19/2013) to the Amesbury Conservation Commission (ACC) on behalf of Fafard Real Estate and Development Corporation. The 2/19/2013 letter is in response to BSC peer review comments contained in a letter dated 1/29/2013. The 2/19/2013 OCG/HEC letter indicates that the Applicant wishes to determine the site's status with regard to "previously developed and degraded riverfront" per Wetland Protection Act regulations 310 CMR 10.58(5). As the Applicant has not previously identified the site in this manner, an additional site visit was required to assess the site in this regard. Due to snow cover/frozen ground conditions, a site visit could not be scheduled until April 3rd, 2013. This letter report discusses the findings of the site visit, as well as other issues identified in the OCG/HEC letter of 2/19/2013.

Additionally, this report refers to project information provided in the project NOI (filed 4/15/2010), in revised supporting materials (dated 10/27/2011 and 1/14/2013) and on project plans titled The Village At Bailey's Pond (Site Plan), dated 9/30/2011 and revised 12/07/2012.

The purpose of this assessment is to evaluate project compliance with the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) (WPA) and associated regulations (310 CMR 10.00 et al.) and the City of Amesbury Wetland Protection Ordinance and associated regulations (Ordinance). The delineation of Bordering Vegetated Wetlands (BVW) was evaluated earlier in the peer review process according to the MA Department of Environmental Protection "Handbook for Delineating Bordering Vegetated Wetlands Under the MA Wetlands Protection Act". Regulated resource areas on the subject property include BVW and associated Buffer Zone, Bank, Isolated Vegetated Wetland (IVW), Land Under Water, and Riverfront Area (RA). Regulated resources were assessed according to definitions in the Ordinance and in the state WPA regulations.

April 3rd, 2013 Site Visit

Sean Malone (OCG), Tom Hughes (HEC), Jack Tremblay (Amesbury Conservation Commission (ACC)) and Gillian Davies (BSC) attended the site visit on 4/3/2013, although Mr. Malone and Mr. Tremblay were only able to be present for a portion of the site visit due to time constraints.



1. Absence of Topsoil status:

The Applicant wishes to claim "absence of topsoil" status for much of the area within the RA on the project site. In order to investigate this claim, BSC dug a total of 11 soil pits and 1 augur hole (approximately 9 - 14" deep) at various locations (see attached soil log and sketch plan) within the portion of the RA on the site where the Applicant wishes to claim "absence of topsoil" status.

Although neither the WPA nor the WPA regulations (310 CMR 10.00 et al), nor the City of Amesbury Ordinance define the term "topsoil", soil scientists and the literature of soil science generally consider topsoil to be synonymous with the A horizon, which is defined as:

Mineral soil, formed at the surface or below an O horizon, little remnant rock structure, and one or more: 1) accumulation of humified organic matter but dominated by mineral matter, and not dominated by E or B horizon properties; 2) properties resulting from cultivation, pasturing, or similar disturbance; or 3) morphology resulting from surficial processes different from the underlying B or C."¹).

The Society of Soil Scientists of Southern New England (SSSSNE) references the nesoil.com website and its Glossary of Soil Science Terms as an up-to-date source of technical soils information and definitions of terms. The Glossary of Soil Science Terms at nesoil.com as well as the "Middlesex County Massachusetts Interim Soil Survey Report" (1995) and the "Soil Survey of Worcester County, Massachusetts, Southern Part" (1998) by the United States Department of Agriculture, Natural Resources Conservation Service, provide the following definition of topsoil:

The upper part of the soil, which is the most favorable material for plant growth. It is ordinarily rich in organic matter and is used to topdress roadbanks, lawns, and land effected by mining.

It should be noted that the SSSSNE website specifically associates topsoil with the A horizon. It should also be noted that the SSSSNE website includes a discussion of A horizons that mentions that if an A horizon is more than 2 or 3 inches thick, it has probably been plowed, thereby indicating that relatively thin horizons can be identified as A horizons, as well as indicating that A horizons are also known as topsoil.

The "Soil Survey of Essex County, Massachusetts, Northern Part" (1981) provides the following definition of topsoil:

Presumably a fertile soil or soil material, or one that responds to fertilization, ordinarily rich in organic matter, used to topdress roadbanks, lawns and gardens.

This definition is very similar to the non-agriculturally oriented topsoil definition (definition (ii)) found at the Soil Science Society of America's Glossary of Soil Science Terms:

¹ Field Book for Describing and Sampling Soils, Version 3.0. September 2012. p. 4-1. National Soil Survey Center, Natural Resources Conservation Service, U.S. Department of Agriculture.



topsoil (i) The layer of soil moved in cultivation. Frequently designated as the Ap layer or Ap horizon. (ii) Presumably fertile soil material used to topdress roadbanks, gardens, and lawns.

It should be noted that neither the definition for topsoil, nor the definition for an A horizon, specify a minimum required depth. Rather, the characterization is based on the qualities of the soil with regard to a combined presence of mineral and organic material, and typical location at the surface. Topsoil is considered to be material that is qualitatively favorable for plant growth (presence of roots and vegetation being confirmation of favorable status for plant growth).

Method:

Soil Pits 1, 4, 5, 6, 7, 9, 10, 11, and 12 were dug in currently vegetated areas. All of these areas except for Pit 5 are forested. Pit 5 is in an area with herbaceous and shrub vegetation. All of these pit locations had a normal leaf litter layer above the soil material. Pits 2 and 8, as well as August 3, were dug in existing footpaths that are currently unvegetated and receive ATV traffic. However, Pit 8 was dug in a location where rooting structure remains within the path.



Pit 5 was dug in the vegetated circle inside the trails, just in front of the shrub. This area is less well vegetated than much of the site, but does exhibit topsoil/A horizon.

Results:

The dark brown colors observed in the topsoil/A horizon that was observed in Pits 1, 4, 5, 6, 7, 8, 9, 10, 11, and 12 indicate the presence of organic material. Soil textures were in the sandy loam to loamy sand range, indicating the presence of a mineral component. Each of these pits included many fine to medium roots within the topsoil/A horizon, indicating that the soil material is favorable for plant growth, and that topsoil has developed in place. Material located below the dark brown topsoil/A horizon contained colors indicative of a reduced organic matter content, as is typical for horizons beneath the surface horizons. It should be noted that the presence of vegetation and rooting within the topsoil/A horizon help confirm the presence of topsoil, as "most favorable material for plant growth" is part of the definition of topsoil.



Conclusion:

BSC concludes that topsoil/A horizon is present in all of the locations represented by Pits 1, 4, 5, 6, 7, 8, 9, 10, 11, and 12. 100% of the vegetated locations contained topsoil/A horizon, as one would anticipate. In addition, Pit 8 contained topsoil/A horizon, despite being located in a footpath. The texture of the topsoil/A horizon at Pit 8 was sandy loam, and extensive rooting was present. It is BSC's opinion that the topsoil/A horizon has been able to remain in this footpath due to the finer texture of the soil and the root structure. Contrasting these results, Pit 2 and August 3 exhibited an absence of topsoil/A horizon. These locations are in a footpath that is clearly heavily used and eroded by ATV traffic, and has loamy sand texture. The coarser texture combined with the ATV traffic has likely resulted in topsoil/A horizon being more easily eroded. Minimal or no roots were observed in these two excavations.

While significant portions of the RA on the project site appear to have been mined for sand and gravel (based on aerial photograph and OCG/HEC comments) many decades ago, it also appears that the RA has recovered from that disturbance in the intervening time (see photographs under #2 below), and has become a largely forested area since then, with a functioning RA, herbaceous, shrub and tree layers, and development of topsoil/A horizon with extensive rooting. Following re-establishment of vegetation and topsoil/A horizon, trails have been installed on the site. In some trail locations, the over-use of the trails by ATVs has resulted in the erosion of the topsoil/A horizon. In these specific locations, BSC finds that the "absence of topsoil" criteria can be met. In vegetated areas, and in some of the trail areas, topsoil/A horizon occurs. In some locations, the topsoil/A horizon may be fairly shallow, ranging from 0.5 - 2" within a given pit, but it is present. The criteria listed at WPA regulations 310 CMR 10.58(5) requires a complete absence of topsoil material. BSC observed that the "absence of topsoil" criteria is clearly *not* met where vegetation is present, and in some of the trail areas, within the RA on this project site.

The Applicant should field-delineate the footprint of the areas within RA that truly exhibit a complete absence of topsoil, such as those observed at Pit 2 and August 3.



Sandy trails, heavily used by ATV's, were observed to lack topsoil/A horizon. Vegetated areas adjacent to sandy trails were observed to contain topsoil/A horizon.



2. Abandoned Dumping Grounds status:

The Applicant has claimed that the site is "Abandoned Dumping Grounds" (ADG) per WPA regulations 310 CMR 10.58(5). ADG is not defined in the WPA regulations. However, BSC understands (personal communication, DEP, Heidi Davis, 2/18/2013) that DEP does not consider the presence of debris that is easily carried away to constitute ADG. The following photographs document the typical conditions of the RA on the project site. The area is utilized by paintball enthusiasts, and paintball nests have been installed in a few locations. Additionally, there is some trash/debris, such as tires and a wood pallet. All of these may be carried away fairly easily, and the vast majority of the RA is not impacted by this debris. BSC does not consider the project site RA to qualify as ADG.



RA on north side of stream, with paintball nest and some debris



RA on north side of stream, looking towards culvert



Trail and forested area on north side of stream



Perennial stream with some debris (pallet, tire) and trees downed by beavers



Trail on south side of stream, with paintball nest



Paintball nest on south side of stream



Trail and forested area on south side of stream

3. Project Site RA status as degraded or previously developed area:

BSC concurs with the Applicant that some portions of trail within the RA completely lack topsoil/A horizon material. These areas meet the "absence of topsoil" criteria, and therefore, can be regarded as currently degraded. The Applicant should field-delineate these areas, as they are eligible for reuse/redevelopment under WPA regulations 310 10.58(5).

With regard to the remaining RA areas on the project site, BSC finds that remaining areas contain topsoil, are pervious, provide Riverfront Area functions (wildlife habitat, hydrologic functions, prevention of pollution, protection of fisheries), and do not qualify as ADG. Additionally, most of the remaining areas (i.e. non-trail areas) are well vegetated, adding to their functionality and demonstrating suitability for plant growth. Consistent with past DEP decisions (see below), BSC believes that these remaining areas should be regulated under 310 CMR 10.58(4) performance standards, and not under 310 CMR 10.58(5) performance standards. Past DEP decisions clearly state that locations on a site that exhibit topsoil/A horizon material are not considered to be currently degraded and do not meet the "absence of topsoil" criteria. In assessing sites, DEP also considers the functionality of the RA and whether or not it is vegetated. In neither case cited below, did DEP find that locations with



topsoil, vegetation, and RA functionality could be regulated under 310 CMR 10.58(5). In both cases, they required that such areas be regulated under 310 CMR 10.58(4). BSC observes that the Bailey's Pond RA has characteristics similar to, or more ecologically intact (greater topsoil development and vegetative development) than, the RA's that DEP required to be regulated by 310 CMR 10.58(4).

In the Superseding Order of Conditions (dated 12/29/1999) for DEP File #219-642, 596 Lowell Street, Methuen, DEP states:

Given both presence of topsoil and vegetative cover, the Department found, that although the site was previously developed as a drive-in movie theatre, it is not currently degraded except for the two small areas of existing pavement. The letter stated that since the Department does not consider the project to be redevelopment, the plans needed to be revised to meet the performance standards under 310 CMR 10.58(4).

In the Information Request letter (dated 5/4/2000) for DEP File #209-295, Crystal Motor Express, 10 Kimball Lane, Lynnfield, DEP states:

Although the area had previously been altered, the current soil shows a nascent A horizon (topsoil) with roots growing to a depth of approximately 7 inches. This Riverfront area currently functions to serve at least some of the interests of the Wetlands Protection Act regulations, including groundwater recharge and wildlife habitat.

Consequently, the Department has determined that the project as currently proposed does not meet the performance standards of 310 CMR 10.58(5). Specifically, although the site was previously-developed as a grassed horse track, because of the clear presence of topsoil in our test pit, combined with the fact that the site is well vegetated, we do not find that the riverfront area is currently degraded. The existing paved area of Kimball Lane does qualify as degraded.

In the 1/17/2001 Superseding Order of Conditions for this project, DEP stated:

After the site visits, the Department sent an information request letter to you stating that although the site was previously filled for the construction of a grassed horse track, it does not meet the definition of degraded Riverfront Area under 310 MR 10.58(5). It does not meet the definition because it is vegetated, pervious, and contains topsoil. The letter stated that since the Department does not consider the project to be redevelopment, the plans needed to be revised to meet the performance standards under 310 CMR 10.58(4).

Additionally, in the 4/29/2004 Superseding Order of Conditions (SOC) for DEP File #36-833 in Ipswich, DEP states:

...the Department concurs **that the only degraded portion of the proposed project is the parking lot on Lot 5.** As "**Redevelopment**" means replacement, rehabilitation, or expansion of existing structures, improvement of existing roads, or **reuse of degraded or previously-developed areas**, and the work proposed on Lot 6A is neither degraded nor previously-developed, it cannot enjoy the benefits of the



310 CMR 10.58(5) and must meet the performance standards of 310 CMR 10.58(4)...projects proposed as Redevelopment projects under 10.58(5) must pass two tests: 1) they must meet the definition of Redevelopment as described in the first paragraph of 10.58(5), and 2) they must fulfill ALL of the criteria (a) - (h) of 10.58(5).

In the paragraph above, DEP identifies the parking lot on Lot 5 as the only degraded portion of the proposed project, implying that it is the only area eligible to meet the definition of Redevelopment. Later in the same SOC, DEP states that, "...apart from the problem with Lot 6, the remainder of the project fulfills the criteria contained in 10.58(5) by dint of the large amount of restoration proposed." This statement suggests that DEP views the amount of mitigation/restoration proposed for this project to meet the criteria at 10.58(5)a, f and/or g. However, DEP does not explain how the proposed project would meet the definition of Redevelopment, particularly since earlier in the letter, DEP has stated that only the parking lot on Lot 5 meets the definition of degraded. It would appear that interpreting any other portion of Lot 5 as degraded would contradict both DEP's own assessment in this SOC, as well as earlier SOCs cited above.

The Applicant has cited a Decision and Order on Motions to Strike and For Directed Decision (Decision) (Wilmington, "In the Matter of Edward T. McLaughlin, Trustee, Elm Realty Trust") for DEP File #344-635, Docket # DEP-05-1224, dated 6/21/2006 in support of their request for the site to be considered under 310 CMR 10.58(5). It is BSC's understanding that this decision is not final, and that it is not appropriate at this time to use it as a reference for decisions (personal communication, DEP, Jill Provencal, Feb/March 2013). That said, BSC finds reference to DEP's understanding of appropriate implementation of 310 CMR 10.58(5) in the Decision, as follows.

Jill Provencal's opinion that only the foundation, which comprised block walls, and the area immediately adjacent to it, which contained "a fill material of sand and gravel that is not supporting a significant amount of vegetation or performing functions of a Riverfront Area", qualified as previously-developed riverfront area. That was because...the MassDEP does not consider work proposed on areas with existing vegetation or lawns as work that is being done on degraded areas...(it) does not consider existing vegetated areas on these sites, that are providing functions important to Riverfront Areas, such as wildlife habitat, as degraded and therefore a project proponent cannot claim that redevelopment standards of the wetlands regulations should be applied to those areas...Based on her opinion that "a majority of the project site is functioning as a Riverfront Area," Provencal also opined that the proposed project would not improve existing conditions within it, particularly since the project would replace existing conditions with "a paved impervious parking lot over a significant portion of the site, that currently contains abundant vegetation."

Although the Decision is not final, BSC notes that the DEP ALJ attorney, in concluding that an "absence of topsoil" exists, is relying on an opinion from a soil evaluator who has not provided the type of data necessary to determine whether or not topsoil exists. The soil evaluator expresses an opinion, and appears to base his opinion on his own soil data logs. These logs (contained in the footnotes to the Decision) contain information pertaining to soil texture and location of water table, and do not contain further soils information that soil scientists typically collect when determining presence or absence of topsoil/A horizon, such



as soil color. The level of information provided in the soil evaluator's soil logs is insufficient for an assessment of presence/absence of topsoil, and yet, the DEP ALJ attorney appears to base his opinion on it.

Earlier in this project's history, the Wilmington Conservation Commission had employed a certified and registered soil scientist to evaluate the site. This soil scientist (Art Allen) collected soil color information and information about plant rooting and earthworm presence, thus allowing him to verify the presence of topsoil using appropriate technical soil science criteria. His assessment was consistent with the DEP Environmental Analyst's opinion. He observed that topsoil was present with the exception of the area within the limits of the foundation on the site. BSC concludes that the information and expertise provided by the soil scientist supports the DEP Environmental Analyst's opinion, and the DEP ALJ's opinion is unsupported by valid soil data with regard to determining presence or absence of topsoil.

4. Conclusions regarding Riverfront Area

BSC site investigations lead BSC to conclude that the project site is not ADG and does contain topsoil in vegetated areas and portions of the trail system. There are specific portions of the trail system that lack topsoil, and thereby qualify as degraded. These areas should be field-delineated, and would be regulated under 310 CMR 10.58(5). The remainder of the site is not currently degraded, contains topsoil, is largely well vegetated, and functions as RA. Consistent with past DEP decisions, BSC concludes that these areas should be regulated in accordance with the Performance Standards set forth at 310 CMR 10.58(4).

5. Discussion regarding Mitigation:

In the event that the areas containing topsoil and existing vegetated (largely forested) functioning RA were to be determined to be degraded and eligible for review under 310 CMR 10.58(5), it is BSC's opinion that the Applicant's current project design and proposed mitigation do not meet the mitigation requirements established at 310 CMR 10.58 (5), particularly since a relatively significant amount of the RA would be impacted by proposed development.

Additionally, the Applicant states that the amount of proposed RA impact exceeds the area of RA in the Applicant's "Area 3", which is the area they calculated to be unvegetated by interpreting aerial photography. BSC has observed that a portion of the unvegetated trail area has no topsoil, and a portion of it does contain topsoil, so the area of land devoid of topsoil is less than the area estimated by the Applicant under their "Area 3" calculation, and should be field-delineated. Hence, even if the project were being reviewed under 310 CMR 10.58(5) (and BSC's opinion is that the project is not eligible for this), the project likely would not be in compliance with 310 CMR 10.58(5)(e), which requires:

The area of proposed work shall not exceed the amount of degraded area, provided that the proposed work may alter up to 10% if the degraded area is less than 10% of the riverfront area, except in accordance with 310 CMR 10.58(5) (f) or (g).

Assuming that BSC is interpreting the Applicant's impact table ("Calculations of square footage of conditions within the RA", in 2/19/2013 letter) correctly, the Applicant appears to be saying that there will be 30,694 sf of impact to RA, (but this may not include paved surfaces) and that the total RA in "Area 3" is 15,734 sf. The Applicant's tables are not clear, as another table listed under "2012 Alternative" lists an apparent total RA impact of 31,062



sf (including temporary impacts), and yet another table listed under "Alternative Riverfront Impacts Summary Table" lists a total RA impact of 32,787 sf under the 2012 alternative. These tables appear to be inconsistent with each other. The Applicant should verify which is correct, and should produce a correct table that contains all types of impacts to the RA.

The Applicant's proposed mitigation includes:

- placing additional topsoil on top of existing soils, which, in many areas already contain functioning topsoil (of varying thicknesses)
- removal of invasive species
- planting of native species
- restoration of an IVW
- restoration/stabilization of a section of eroded stream bank
- removal of debris
- grading to reduce runoff and increase infiltration (this would also result in soil disturbance and compaction, as well as possible loss of native vegetation)

While these actions are likely to have some ecological benefit, it is not clear that they would improve conditions to a degree that would offset installation of impervious surfaces and conversion of naturally vegetated forested land to land altered for development. Grading could have some potential negative consequences, depending on the location of the grading. Proposed development is of such a scale that wildlife habitat function in the RA may be impaired due to impairment of wildlife movement, as well as the direct loss of wildlife habitat and other RA functions.

6. Alternatives Analysis:

The Applicant has provided information with regard to an Alternatives Analysis, however, BSC has a number of comments:

- the on-site alternatives analysis does not provide sufficient documentation for the necessity of the proposed activities within the RA. BSC recommends that the Applicant further assess an alternative for developing the site that would keep all development, with the exception of activities allowable under 310 CMR 10.58(4), outside of the RA.
- The Applicant should document the necessity for stormwater structures within the RA, as stormwater structures should be kept out of RA unless there is no practicable alternative or the stormwater structures are necessary to meet performance standards for other resource areas ((310 CMR 10.58(4)(d)).
- All alternatives should include an assessment of costs under 310 CMR 10.58(4)(c). The February 2013 Supplemental Alternatives Analysis makes a statement that removing the building and impervious area from the RA are not practicable and substantially (economically) equivalent, but no information is provided with regard to costs. The cost of an alternative is a discrete part of the definition of "practicable". As noted at 310 CMR 10.58 (4) (c) 1: Definition of Practicable. An alternative is practicable and substantially equivalent economically if it is available and capable of being done after taking into consideration costs, existing technology, proposed use, and logistics, in light of overall project purposes.
- A statement is made that reducing the number of buildings is not consistent with the project purpose. Under 310 CMR 10.58(4)(c)1, project purpose, "...shall be defined generally...(e.g. residential subdivision, expansion of a commercial



development)", such that number of buildings is not included in "project purpose".

- Site plans showing the alternatives are not labeled to indicate which alternative they are showing, and this should be provided.

The table titled "Calculations of square footage of conditions within the Riverfront Area" should be revised after areas qualifying for "absence of topsoil" have been field-delineated. The table should indicate whether the terms "degraded" and "disturbed" are referring to pre or post construction conditions, and types of impacts should be clearly identified.

Following further development of the alternatives analysis, and maximization of the avoidance and minimization of impacts, mitigation measures for the chosen alternative should be further examined. At this point, it is premature to fully evaluate mitigation measures, as impacts have not been fully clarified through a complete alternatives analysis process.

7. Ordinance:

The Applicant should confer with the City of Amesbury to determine whether or not the proposed sewer pipeline constitutes a "structure" under the Ordinance.

The Applicant should provide documentation with regard to Ordinance regulations Part II, Section 12.0, that the proposed work, "...will not have a significant or cumulative detrimental effect upon Resource Areas or their wetland values protected herein...Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny the proposed project."

The Applicant should provide a thorough alternatives analysis, including an alternative that removes development from the RA, except for that which is allowed under 310 CMR 10.58(4), so that the Amesbury Conservation Commission can evaluate project alternatives with regard to Ordinance Section 460-5 D. Proof, particularly (4), which implies the necessity of an alternatives analysis in order to achieve Ordinance compliance:

The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property used, overall project purpose (e.g. residential, institutional, commercial or industrial), logistics, existing technology, costs of the alternatives and overall project costs.

8. Erosion Control, Pollution Prevention Plan, Construction Sequencing Plan, Operation & Maintenance Plan:

With regard to potential impacts to wetland resources, comments on these elements of the proposed project are better made when the Alternatives Analysis has been completed and a preferred Alternative has been chosen based on the results of the Alternatives Analysis, as comments at this level of detail are premature until a more definitive preferred Alternative has been identified. However, BSC does recommend that as the Applicant develops further plans for the site, that they incorporate a phased approach to construction sequencing, and use best management practices with regard to erosion and sedimentation control, so as to reduce the risk of potential erosion and sedimentation impacts to wetland resources. Given the sandy and erodible nature of some of the soils on the site, a phased construction sequence



and implementation of erosion and sediment control best management practices will be especially beneficial in helping to prevent construction phase impacts to wetland resources.

The Commission should feel free to contact me at (617) 896-4524 (office) or (978) 621-8783 (cell) with any questions regarding this report and this letter report.

Sincerely,
BSC Group, Inc.

Gillian T. Davies
Senior Wetland/Soil Scientist

cc: Ingeborg Hegemann, BSC Group, Inc.

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SOIL LOG FOR BAILEY'S POND SITE VISIT

BSC Group, Inc.

April 3, 2013

PIT 1

HORIZON	DEPTH (in)	COLOR	TEXTURE	COMMENTS
Oi	0.5-0			Many fine to medium roots to 9"
A	0-5	10YR 3/2	Sandy loam	
Bw	5-12	7.5YR 4/4	Loamy sand	



Pit 1: Topsoil (A horizon) and extensive roots are visible.

PIT 2

HORIZON	DEPTH (in.)	COLOR	TEXTURE	COMMENTS
Bw ₁	0-7	10YR 4/4	Loamy sand	No topsoil observed
Bw ₂	7-11	10YR 5/6 with 10YR 5/8 med 20% concentrations	Loamy sand	



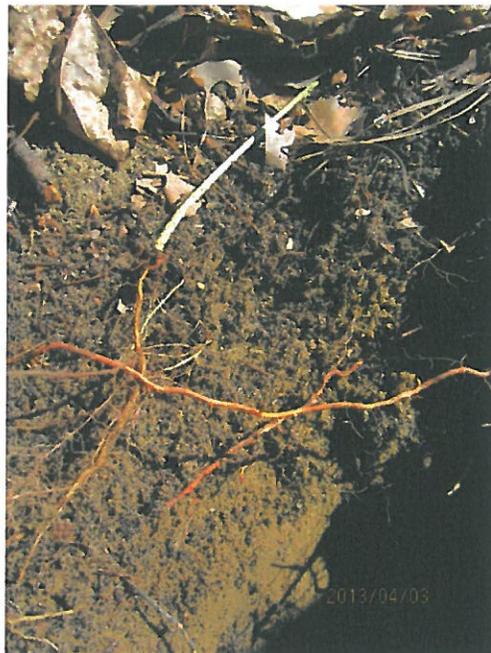
Pit 2: Topsoil not present. Material near surface is 10YR 4/4 color. Almost no rooting is visible.

AUGUR 3

Soil conditions at Augur 3 location were similar to at Pit 2 location, so no data was collected.

PIT 4

HORIZON	DEPTH (in.)	COLOR	TEXTURE	COMMENTS
Oi	0.5-0			Many fine to medium roots to 6"
A	0-3.5 on one side of pit, 0-1.5 on other side of pit	10YR 3/2	Loamy sand	
Bw	3.5-14	10YR 4/4	Loamy sand	



Pit 4: Topsoil (A horizon) and extensive roots are visible.

PIT 5

HORIZON	DEPTH (in.)	COLOR	TEXTURE	COMMENTS
Oi	1-0			Fine roots to 9"
A	0-2	10YR 3/3	Loamy sand	
Bw	2-13	10YR 4/6	Loamy sand	



Pit 5: Topsoil (A horizon) and roots are visible.

PIT 6

HORIZON	DEPTH (in.)	COLOR	TEXTURE	COMMENTS
Oi	0.5-0			Many fine to medium roots to 10"
A ₁	0-2.5	10YR 2/2	Loamy sand	
A ₂	2.5-8	10YR 3/3 and 10YR 3/4	Loamy sand	
Bw	8-13	10YR 4/6	Loamy sand	



Pit 6: Topsoil (A horizon) and extensive roots are visible.

PIT 7

HORIZON	DEPTH (in.)	COLOR	TEXTURE	COMMENTS
Oi	1-0			Many fine to medium roots to 10"
A	0-3	10YR 3/2	Loamy sand	
Bw	3-11	10YR 4/6 with 7.5YR 4/6 med. 20% concentrations, 10YR 4/4 med. 20% concentrations	Loamy sand	



Pit 7: Topsoil (A horizon) and extensive roots are visible.

PIT 8

HORIZON	DEPTH (in.)	COLOR	TEXTURE	COMMENTS
A	0-1.5 and 0-2, depending on location in pit	10YR 2/2 and 10YR 3/3	Sandy loam	Many fine to medium roots to 6" Many in the top 2"
Bw	1.5 or 2 - 9	2.5Y 4/3 with 10YR 4/6 large 30% concentrations, also 5YR 4/4 concentrations	Loamy sand	



Pit 8: Topsoil (A horizon) and extensive roots are visible. This pit is in a footpath.

PIT 9

HORIZON	DEPTH (in.)	COLOR	TEXTURE	COMMENTS
Oi	0-1			Many fine to medium roots, one 1.25" root at 1.5" below surface
A	0-5	10YR 3/2	Sandy loam	
Bg	5-12	2.5Y 4/2 with 7.5YR 4/6 fine, 10% concentrations		



Pit 9: Topsoil (A horizon) and extensive roots are visible.

PIT 10

HORIZON	DEPTH (in.)	COLOR	TEXTURE	COMMENTS
Oi	0.5-0			Many fine roots to 9"
A	0-6	10YR 2/2	Loamy sand	
AB	6-10	10YR 3/4	Loamy sand	



Pit 10: Topsoil (A horizon) and extensive roots are visible.

PIT 11

HORIZON	DEPTH (in.)	COLOR	TEXTURE	COMMENTS
Oi	0.5-0			Many fine roots to 7"
A	0- 0.5 or 1.5 depending on location in pit	10YR 2/2	Loamy sand	
AB	0.5 or 1.5 - 2	10YR 3/4	Loamy sand	
Bw	2-5	10YR 4/6	Loamy sand	
ABb ₁	5-8	10YR 3/3 and 3/4	Loamy sand	
ABb ₂	8-10	10YR 3/4	Loamy sand	



Pit 11: Topsoil (A horizons) and extensive roots are visible.

PIT 12

HORIZON	DEPTH (in.)	COLOR	TEXTURE	COMMENTS
O _i	0.5-0			Fine roots to 12", one 3/4" root at 8"
A ₁	0-1.5 or 2, depending on location in pit	10YR 2/2	Loamy sand	
A ₂	1.5 or 2 - 3.5 or 5, depending on location in pit	10YR 3/3	Loamy sand	
AB	3.5 or 5-12	10YR 3/4	Loamy sand	



Pit 12: Topsoil (A horizons) and extensive roots are visible.

HUGHES ENVIRONMENTAL CONSULTING

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May 1, 2013

John Lopez, Conservation Agent
63 Friend Street
Town Hall
Amesbury, MA 01913

RE: Response to Peer Review Comments
Village at Bailey's Pond
Amesbury, Massachusetts

Dear Mr. Lopez,

We are in receipt of a letter prepared by Gillian T. Davies of the BSC Group, dated April 22, 2013. This letter provides a report of the site visit conducted on April 3, 2013, comments on the applicants February 19, 2013 submission, and Ms. Davies opinions on regulatory interpretations of the Wetlands Protection Act. In response to BSC's letter we offer the following for the Commission's consideration as well as the enclosed revised C-013C showing a correction of the degraded area based on the site visit.

Many of the issues raised in BSC's letter are already addressed in the materials submitted to the Commission previously, including those submitted on February 19, 2013. However, it is worth addressing here a few of the central points.

Most importantly, the Applicant disputes many of BSC's factual and regulatory conclusions because they are premised on a flawed interpretation and application of the Massachusetts Wetlands Protection Regulations. Under BSC's approach, the redevelopment standards of 310 CMR 10.58(5) would apply to certain portions of a project within a particular Riverfront Area and the general performance standards of 310 CMR 10.58(4) would apply to other portions of the same project, within the same Riverfront Area, on the same lot. This approach of applying two different sets of standards within the same Riverfront Area is inconsistent with the overall structure of the Riverfront Area regulations and is in direct conflict with the unambiguous language of 310 CMR 10.58(5).

BSC acknowledges that the Riverfront Area at issue here was previously developed and also that within that area are several thousand square feet of currently degraded areas. Due to these undisputed facts alone, the redevelopment standards of 310 CMR 10.58(5) apply to the proposed activities within that Riverfront Area – and not only to those portions of the project that fall within the footprint of the degraded areas. We discussed this issue at great length in our letter dated February 19, 2013. In summary, though, the plain language of 10.58(5)(e) makes clear that the redevelopment standards apply to all of the activities proposed within a Riverfront Area that contains degraded areas – including those beyond the footprint of the degraded areas. The regulations specifically allow work that involves alterations exceeding the degraded areas, so long as mitigation measures are also conducted in accordance with 10.58(5)(f) and (g).

Based on the clear and common sense interpretation of the Riverfront Regulations, the only remaining issue before the Commission is whether it desires any modifications to the proposed mitigation measures – which we believe exceed the requirements of 10.58(5)(f) and (g). Since February, we have sought input on our mitigation proposal. In BSC's January 29, 2013 review, they commented that "*BSC concurs with the Applicant that the following mitigation ideas generally represent opportunities to enhance ecological functioning on the site:*

-Restoration of the IVW

-Restoration of ATV-impacted Bank

-Invasive species control

-Enhancement/Supplementation of impacted soils (specific locations to be determined in consultation with the ACC) and planting of high-value native species

-Restoration/stabilization of eroded areas

-Removal of debris, trash, paintball bridges and yard waste

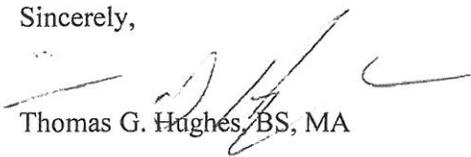
If the Commission desires refinements to the mitigation proposal, we welcome that discussion. However, we are proposing substantial mitigation, whose benefits to the Riverfront Area would clearly enhance the functioning of the RA as a whole, even when considering any impacts of the alterations proposed.

In conclusion, we disagree that the project as proposed is subject to both the requirements of 10.58(4) and 10.58(5), as BSC suggests. The project is governed by the redevelopment standards of 310 CMR 10.58(5). To suggest that two sets of standards apply to the same project within the same Riverfront Area on the same parcel of land is in conflict with the regulatory structure and language.

We ask that the Commission approve the project as proposed, subject to our discussion at Monday's hearing related to any mitigation measures that the Commission may desire.

We look forward to discussing the plan changes and these comments with the Conservation Commission on March 4, 2013. If you have any questions, please feel free to call us at your earliest convenience.

Sincerely,


Thomas G. Hughes, BS, MA

Cc: Mike Abell, MADEP

Enclosure: Revised C-013C – Riverfront Area Degraded Area Plan



Oak Consulting Group

February 19, 2013

Project 12013

John Lopez, Conservation Agent
63 Friend Street
Town Hall
Amesbury, MA 01913

RE: Response to Peer Review Comments
Village at Bailey's Pond
Amesbury, Massachusetts

Dear John,

This letter responds to the peer review comments of Gillian T. Davies of the BSC Group as set forth in her letter dated January 29, 2013. In addition to this letter, please find the enclosed:

- Enclosure A – Supplemental Alternatives Analysis
- Enclosure B - Redevelopment in Riverfront Worksheet
- Enclosure C – Plans (Sheets C-013C, C-013D, and C-014)
- Enclosure D – Updated WPA Form 3 pages 2 & 3
- Enclosure E – Resource Area Values Analysis

Below are Ms. Davies' comments (*in italic*) and our response. These responses were prepared with input from Tom Hughes of Hughes Environmental Consulting.

BSC Comment:

RESOURCE AREA DELINEATION PEER REVIEW

Bordering Vegetated Wetland, Isolated Vegetated Wetland and Riverfront Area

BSC initially walked the flagged BVW and RA lines with Sean Malone of OCG, at which time, BSC noted that due to beaver activity, some significant changes to the RA line would be necessary, as well as some minor changes (unrelated to beavers) to the BVW line. An un-flagged IVW was noted. On 8/7/2012, BSC again walked the RA and wetland boundary lines with Tom Hughes of HEC, who had made some of the necessary changes to flag locations. While in the field, BSC and Tom Hughes agreed upon revised locations for additional flags. HEC then asked the applicant's surveyors to return later to survey them and add them to the site plan. The site plan revised on 12/7/2012 includes all of the requested changes, as well as requested changes to the 100' and 200' RA lines.

RESPONSE: Comment noted. To clarify, the IVW had previously been flagged, but expanded after the original delineation. New flags were placed and surveyed in accordance with Ms. Davies' comments.

BSC Comment:

Rare and Endangered Species, Vernal Pools. Isolated Vegetated Wetland

The NOI materials include a MA Natural Heritage and Endangered Species Program (NHESP) 2008 Priority Habitat and Estimated Habitat map (NHESP map) that shows no Priority or Estimated Habitat polygon occurring on the site of the proposed project. Other than the heavily impacted IVW, BSC did not note any area that had the potential to function as a vernal pool. Given the heavy ATV traffic that runs through the IVW, it is unlikely that this area functions as a vernal pool in its current state.

John Lopez, Conservation Agent
Amesbury, Massachusetts

- Restoration of ATV-impacted Bank
- Invasive species control
- Enhancement/Supplementation of impacted soils (specific locations to be determined in consultation with the ACC) and planting of high-value native species
- Restoration/stabilization of eroded areas
- Removal of debris, trash, paintball bridges and yard waste

The details (plans, cross-sections, text, tables, etc.) of how, where and to what extent any of these mitigation measures are proposed should be provided for each Alternative in the Alternatives Analysis. More specific peer review comments are appropriate following provision of the Alternatives Analysis and a more detailed level of information.

RESPONSE: The updated and supplemental plans and alternatives analysis submitted with this letter are responsive to this comment.

BSC Comment:

8. Proposed Stream Crossing: Any proposal for a stream crossing, such as the proposed sewer crossing, should include detailed plans & cross-sections (existing conditions, proposed conditions, and eventually, as-built conditions), and text (some of which has been provided) describing the construction sequence, erosion and sedimentation controls, bank stabilization measures, and resource (Land Under Water, Bank, BVW) restoration plans, as well as text (some of which has been provided) regarding compliance with resource area performance standards at both the state and local level. This work has been described in general terms only. The Applicant has proposed Bank restoration that exceeds replacement of the currently ATV-impacted Bank conditions. The details of this Bank restoration work should be provided, both in visual (plans & cross-sections) and in text form, for any Alternative (and some Alternatives may not require a stream crossing) that includes a stream crossing. BSC concurs with the Applicant that the portion of current BVW that is actually ATV-impacted previous Bank, should be restored to Bank, rather than to BVW.

RESPONSE: Stream crossing details have been provided on Sheet C-014, submitted with this letter.

BSC Comment:

9. Pedestrian Path: Text and Site Plans should specify whether the proposed pedestrian paths are unpaved or paved.

RESPONSE: The pedestrian paths will be unpaved.

BSC Comment:

10. Erosion Control, Pollution Prevention Plan, Operation & Maintenance Plan: Comments on these elements of the proposed project are better made when the Alternatives Analysis has been completed and a preferred Alternative has been chosen, as comments on this level of detail are premature until a more definitive Alternative has been identified. However, BSC does recommend that as the Applicant develops further plans for the site, that they incorporate a phased approach to construction sequencing. Given the sandy and erodible nature of some of the soils on the site, a phased construction sequence will be especially important in ensuring effective erosion and sedimentation control. The Applicant is referred to the U.S. Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP).

John Lopez, Conservation Agent
Amesbury, Massachusetts

*proposed project for compliance with WPA RA regulations, as discussed above, the Applicant should provide additional information that evaluates the various project Alternatives relative to the Ordinance and associated regulations, and demonstrates compliance with the Ordinance and associated regulations. Specifically, the Ordinance requires the Applicant to address Section 460-5 B: Proof. This section of the Ordinance also **requires an Alternatives Analysis, and does so with regard to all regulated resource areas, not just the RA.** Under this provision, the Applicant should develop Alternatives that remove impacts from Buffer Zones (BZs) to the greatest extent possible, so that the project complies with item (5) under the Proof section of the Ordinance, Part 1, Section 12.0 Burden of Proof, and Part 2, Section 21.7 Structures of the regulations. These regulations require evaluation of Alternatives in order to maximize first: impact avoidance, second: impact minimization, and third: impact mitigation. BSC notes that the current Site Plans propose:*

- sewer crossing within RA and BVW
- sewer crossing and a small amount of grading within the 25' BZ
- driveway footprint, stormwater features, grading, a sewer crossing, and path within the 50' BZ.
- significant amount of structures, pavement, stormwater features, grading within the 100' BZ. The outer 50' of BZ are heavily developed.
- sewer crossing, path, stormwater features within the inner 100' of RA
- structures, pavement/roadway, stormwater features, grading, path within the outer 100' – 200' of RA

As mentioned previously, BSC recommends that these impacts be quantified and presented in table format, so that comparison between Alternatives, and evaluation relative to state and local performance standards and regulations, is facilitated.

It should be noted that no special provisions are indicated in the Ordinance for the allowance of stormwater structures within RA. Therefore, it appears that stormwater structures are regulated the same way that any other structure is regulated under the Ordinance. Additionally, there are no exemptions for construction of new utilities, or for footpaths. The Applicant should address these within the context of the Ordinance and associated regulations.

RESPONSE: As documented in previous submittals and the enclosed supplemental alternatives analysis, the applicant has worked with the Commission and other Town of Amesbury officials to design this project in a manner that avoids and minimizes wetlands impacts to the extent practicable and feasible and to otherwise mitigate impacts. The overall result of this project will be a significant improvement in the wetlands and riverfront area functions.

The Commission, through its regulations, has adopted 310 CMR 10.58 as the local performance standards for work in Riverfront Areas. See analysis above. Despite that, a supplemental alternatives analysis is submitted with this letter, which also discusses alternatives for the footpaths and utilities.

BSC Comment:

The Applicant should address Part 1, Section 12.0 of the Ordinance regulations, regarding, "...significant or cumulative detrimental effect upon Resource Areas or their wetland values protected herein."

RESPONSE: These standards were addressed in previous submittals, and are further addressed in the materials submitted with this letter. The applicant disputes that any formal alternative

shall be defined generally (e.g. single family home, residential subdivision, expansion of a commercial development). **The alternatives analysis may reduce the scale of the activity or the number of lots available for development, consistent with the project purpose and proposed use... Transactions shall not be arranged to circumvent the intent of alternatives analysis review. The four factors to be considered are:**

- a. **Costs, and whether such costs are reasonable or prohibitive to the owner... Cost includes expenditures for construction, landscaping, and transaction expenses. Cost does not include anticipated profits after the project purpose is achieved or expenditures to achieve the project purpose prior to receiving an order with the exception of land acquisition costs incurred prior to August 7, 1996. In taking costs into account, the issuing authority shall be guided by these principles:**
 - i. **The cost of an alternative must be reasonable for the project purpose, and cannot be prohibitive.**
 - ii. **Higher or lower costs taken alone will not determine whether an alternative is practicable. An alternative for proposed work in the riverfront area must be a practicable and substantially equivalent economic alternative (i.e. will achieve the proposed use and project purpose from an economic perspective).**
- c. **The proposed use. This term is related to the concept of project purpose... In the context of projects where the purpose implies a business component, such as residential subdivision, commercial, and industrial projects, the proposed use typically requires economic viability. Practicable and substantially equivalent economic alternatives include alternatives which are economically viable for the proposed use from the perspective of site location, project configuration within a site, and the scope of the project.**

2. **Scope of Alternatives. The applicant is referred to this section of the regulations to determine the scope of the alternatives analysis. The scope is in part dependent upon the date of purchase of the property, as well as the project purpose, and may include consideration of offsite alternatives, depending in part upon date of purchase of property.**

3. **Evaluation of Alternatives. The applicant shall demonstrate that there are no practicable and substantially equivalent economic alternatives... within the scope of alternatives... with less adverse effects on the interests identified in M.G.L. c.131 s.40. The applicant shall submit information to describe sites and the work both for the proposed location and alternative site locations and configurations sufficient for a determination by the issuing authority under 310 CMR 10.58(4) (d). The level of detail of information shall be commensurate with the scope of the project and the practicability of alternatives. ...The purpose of evaluating project alternatives is to locate activities so that impacts to the riverfront area are avoided to the extent practicable. Projects within the scope of alternatives must be evaluated to determine whether they are practicable. As much of a project as feasible shall be sited outside the riverfront area... If there would be no less adverse effects on the interests identified in M.G.L. c. 131 s. 40, the proposed project rather than a practicable alternative shall be allowed, but the criteria... for determining no significant adverse effect must still be met. If there is a practicable and substantially equivalent economic alternative with less adverse effects, the proposed work shall be denied... (d) No Significant Adverse Impact. The work, including proposed mitigation measures, must have no significant adverse impact on the riverfront area to protect the interests identified in M.G.L. c. 131 s. 40. The applicant is referred to this section to identify the thresholds for**

(d) Proposed work, including expansion of existing structures, shall be located outside the riverfront area or toward the riverfront area boundary and away from the river, except in accordance with 310 CMR 10.58(5)(f) or (g).

The building and associated impervious areas were previously shifted so as to be located toward the riverfront area boundary and away from the river to the maximum extent possible. In addition, the project involves significant mitigation measures in accordance with (and exceeding) the requirements of 310 CMR 10.58(5)(f) and (g).

(e) The area of proposed work shall not exceed the amount of degraded area, provided that the proposed work may alter up to 10% if the degraded area is less than 10% of the riverfront area, except in accordance with 310 CMR 10.58(5)(f) or (g).

The area of proposed work does not exceed the amount of the degraded Areas 2 and 3 (as described above). If only Area 3 were treated as being degraded, the proposed work would exceed the square footage of that degraded area. However, even under that analysis, the project would comply with this subsection (e) criteria because, as allowed in this subsection, exceeding the amount of degraded area is permissible where mitigation is proposed in accordance with 310 CMR 10.58(5)(f) and (g) – as it is here.

(f) When an applicant proposes restoration on-site of degraded riverfront area, alteration may be allowed notwithstanding the criteria of 310 CMR 10.58(5)(c), (d), and (e) at a ratio in square feet of at least 1:1 of restored area to area of alteration not conforming to the criteria. Areas immediately along the river shall be selected for restoration. Alteration not conforming to the criteria shall begin at the riverfront area boundary. Restoration shall include:

- 1. removal of all debris, but retaining any trees or other mature vegetation;**
- 2. grading to a topography which reduces runoff and increases infiltration;**
- 3. coverage by topsoil at a depth consistent with natural conditions at the site; and**
- 4. seeding and planting with an erosion control seed mixture, followed by plantings of herbaceous and woody species appropriate to the site;**

See discussion under subsection (g), below.

(g) When an applicant proposes mitigation either on-site or in the riverfront area within the same general area of the river basin, alteration may be allowed notwithstanding the criteria of 310 CMR 10.58(5)(c), (d), or (e) at a ratio in square feet of at least 2:1 of mitigation area to area of alteration not conforming to the criteria or an equivalent level of environmental protection where square footage is not a relevant measure. Alteration not conforming to the criteria shall begin at the riverfront area boundary. Mitigation may include off-site restoration of riverfront areas, conservation restrictions under M.G.L. c. 184, §§ 31 to 33 to preserve undisturbed riverfront areas that could be otherwise altered under 310 CMR 10.00, the purchase of development rights within the riverfront area, the restoration of bordering vegetated wetland, projects to remedy an existing adverse impact on the interests identified in M.G.L. c. 131, § 40 for which the applicant is not legally responsible, or similar activities undertaken voluntarily by the applicant which will support a determination by the issuing authority of no significant adverse impact. Preference shall be given to potential mitigation projects, if any, identified in a River Basin Plan approved by the Secretary of the Executive Office of Environmental Affairs.

mix. This mitigation will significantly enhance the value of this area to serve RA functions.

Area 3 - This area, shown on plan sheet C-13C in red, is an area stripped of topsoil and void of any vegetation since active mining of the site prior to 1996. That this area is degraded cannot be genuinely debated. This area covers more than 15,000 square feet of the riverfront area (a larger percentage of the RA than was present in the Ipswich matter referenced above). As discussed above, BSC's view appears to be that this area is not degraded because it is not functioning in a manner similar to pavement. That view is based on a misunderstanding of the regulations. As discussed above, "absence of topsoil" is sufficient to render an area degraded. In the Decision and Order on Motions to Strike and for Directed Decision, In the Matter of Edward T. McLaughlin, Trustee, ETM Realty Trust, the Magistrate addressed this issue...

...As I read 310 CMR 10.58(5), the words "impervious surfaces" are lined solely to "existing structures or pavement." This makes sense because "structures and pavement" tend to make surfaces impervious; in contrast, the "absence of topsoil" does not necessarily render a surface impervious and neither do the two listed characteristics ("junkyards, or abandoned dumping grounds"). A junkyard or an abandoned dumping ground can be found on a pervious site.

Also, with regards to the abandoned dumping grounds criteria for qualifying as degraded, BSC indicates that based on conversations with the Department, an abandoned dumping ground must be similar to a junkyard. However, the regulations list those two criteria separately. We note that we were unable to locate prior decisions on appeal that clarify how abandoned dumping grounds are defined. Discussions with Amesbury residents who grew up in the area indicate that the area in question has been used by people on an ongoing basis for decades to discard items. Tires, televisions, monitors, and other waste are scattered throughout portions of the riverfront area closest to Summit Ave. The regulations make a distinction between abandoned dumping grounds and junkyards, and we believe the designation of this area as degraded based on it being an abandoned dumping ground is justified. Despite that view, we have not included those areas within the "degraded" areas depicted in the enclosed plans.

The presence of Area 3 alone renders the redevelopment standards of 310 CMR 10.58(5) applicable to this project – even if Area 2 were treated as not being degraded – and this project complies with those redevelopment standards. Compliance with each criteria (set forth in bold) is as follows:

**310 CMR10.58(5) Redevelopment Within Previously Developed Riverfront Areas;
Restoration and Mitigation.**

Notwithstanding the provisions of 310 CMR 10.58(4)(c) and (d), the issuing authority may allow work to redevelop a previously developed riverfront area, provided the proposed work improves existing conditions. Redevelopment means replacement, rehabilitation or expansion of existing structures, improvement of existing roads, or reuse of degraded or previously developed areas. A previously developed riverfront area contains areas degraded prior to August 7, 1996 by impervious surfaces from existing structures or pavement, absence of topsoil, junkyards, or abandoned dumping grounds...

John Lopez, Conservation Agent
Amesbury, Massachusetts

greater biodiversity. In other words, those areas that were stripped of topsoil prior to 1996 were degraded at that time and, despite the growth of some vegetation within them, remain degraded today.

The site was actively mined for sand and gravel, as evident from the 1966 aerial photo and 2004 test pits, and as apparent upon a site visit. We have reviewed the DEP decisions provided by BSC, and do not believe those decisions support BSC's view as applied to this site. Moreover, other DEP decisions, support HEC's view. See, for example, the Decision and Order on Motions to Strike and for Directed Decision In the Matter of Edward T. McLaughlin, Trustee, ETM Realty Trust, Docket No. DEP-05-1224, 2006 WL 1807362 (DivAdmLawApp, 2006). There, the Presiding Officer credited the applicant's view that certain previously-disturbed but currently vegetated areas of the site qualified as degraded due to the absence of topsoil.

The standards of 310 CMR 10.58(5) apply to projects within "degraded or previously developed areas." 310 CMR 10.58(a) states as follows:

A previously developed riverfront area contains areas degraded prior to August 7, 1996 by impervious surfaces from existing structures or pavement, absence of topsoil, junkyards, or abandoned dumping grounds. Work to redevelop previously developed riverfront areas shall conform to the following criteria: . . ."

There is no dispute that the RA on this site was "degraded prior to August 7, 1996." As such, it qualifies as a previously developed riverfront area. Even if the regulations were interpreted as requiring currently degraded RA conditions, the site still qualifies. For a lot previously developed, the performance standards of 310 CMR 10.58(4) apply only where "no portion of the riverfront area is degraded . . ." 310 CMR 10.58(5)(a). Here, even if the previously stripped but currently vegetated areas were not considered degraded, there are still over 15,000 square feet of undisputedly degraded RA – with no topsoil and no vegetation.

In the Department's 2004 decision involving a project in Ipswich (File No. 36-833), the Department refused to apply the redevelopment standards of 310CMR 10.58(5) to a certain lot within a larger subdivision, because the degraded portion of the RA did not extend to that particular lot (Lot 6 or 6A). With respect to the other lots, the Department concluded that the redevelopment standards applied to work within the RA even though only a small portion of the RA on each lot was degraded. The decision includes a summary of the regulations as follow:

"...The Department would like to take this opportunity to comment that, in general, projects proposed as Redevelopment projects under 10.58(5) must pass two tests: 1) they must meet the definition of Redevelopment as described in the first paragraph of 10.58(5), and 2) they must fulfill ALL of the criteria (a) – (h) of 10.58(5). Criteria (e) is of particular relevance to this project; it reads, "the area of proposed work shall not exceed the amount of degraded area, provided that the proposed work may alter up to 10% if the degraded area is less than 10% of the Riverfront Area, except in accordance with 310 CMR 10.58 (f) or (g)". Criteria (f) and (g) then describe restoration and mitigation within Riverfront Areas.

John Lopez, Conservation Agent
Amesbury, Massachusetts

RESPONSE: The roadway network and infrastructure will be completed in a single phase for the north side and south side of the project. Because the overall disturbance will be greater than 1 acre, a Stormwater Pollution Prevention Plan will be prepared in accordance with the NPDES Stormwater CGP. This plan will be prepared and an NOI will be filed with the EPA prior to any land disturbance activity.

We look forward to discussing the plan changes and these comments with the Conservation Commission on March 4, 2013. If you have any questions, please feel free to call us at your earliest convenience.

Sincerely,

OAK CONSULTING GROUP, LLC



Sean P. Malone, P.E.
Vice President

SPM/TH
Enclosures



Amesbury

Joseph W. Fahey
Director, Community and Economic Development
Tel: (978) 388-8110
Fax: (978) 388-6727
joe@amesburyma.gov

62 Friend Street
Second Floor
Amesbury, MA 01913

June 11, 2010

Deirdre Buckley
Executive Office of Environmental Affairs
MEPA Unit
100 Cambridge Street, Suite 900
Boston, Massachusetts 02440

Sub: EEA No. 14596 – Village at Bailey's Pond

Dear Ms. Buckley,

The following comments are being submitted to your office on the Environmental Notification Form (ENF) for the project "Village at Bailey's Pond" in Amesbury, MA and with an EEA No. 14596.

The project was initially submitted to the Amesbury Planning Board and the Amesbury Conservation Commission in 2004. At that time, the Planning Board had several concerns, including site layout, density, interior vehicular circulation and public safety, significant changes to existing grades, total impervious area, stormwater management and overall impact to the environmental resources. The Board worked with Dodson Associates Ltd. to review alternate development scenarios to address their concerns regarding the proposed development. The consultant prepared a report highlighting the developable area and carrying capacity of the site. Two development alternatives were prepared that would minimize the environmental impact and address the concerns raised by the Planning Board and the neighboring residents. The report is enclosed with this letter.

The 2010 proposal does have fewer units than the 2004 proposal but does not address the major concerns previously raised by the Planning Board. The proposed site plan significantly impacts the natural environment by removing large areas of existing vegetation and cutting into steep slopes (15-25% or greater than 25%) along the perimeter of the site. Given the type of soils, these areas of mature vegetation not only help prevent soil erosion but also contribute to the natural stormwater management system. The mature trees also provide a natural habitat to the flora and fauna in this neighborhood that has made a comeback. These areas are also some of the areas where gravel mining activities did not take place and therefore development in these areas would displace the natural topography on the site.

The proposed residential units are accessed by driveways from the main arterial road from Rte 150 and another minor dead-end road from Summit Avenue. These proposed driveways range from 12 to 16 feet in width and should be minimum 18 feet in width to allow safe two way traffic. The impervious surface will increase by about 20% once the proposed roads are properly designed to minimum widths and providing cul-de-sacs for turnarounds from dead end driveways.

The proposed stormwater management system comprises of bio-retention areas and rain gardens. These rain gardens are spread throughout the site and occupy most of the useable yards behind or in front of each unit. Their locations make them susceptible to frequent damage by residential activity, snow plowing and storage and possible elimination by homeowners resulting in storm water runoff into the Bailey Pond. Overflow outlet points for higher flow events are also missing from some of these bio-retention areas. Consolidating these rain gardens into fewer stormwater management structures using LID techniques in and around dedicated open space areas would be more appropriate to treat stormwater runoff. This would allow better maintenance of these rain gardens and bio- retention areas and prevent damage due to human activity and sand and oil contaminants from accumulated snow.

Roof runoff is captured by subsurface infiltration systems. There are 39 such systems but only two percolation test were completed for the entire site. Additional tests should be performed to verify that the number and design of the proposed structures is adequate to handle roof runoff.

The potential impact from inadequate stormwater management would be very severe on the outlet structure for Bailey's Pond. The existing weir has been overtopped and damaged Merrimack Street on many occasions. As Bailey's Pond is part of the Merrimack River watershed, it is critical that the proponent review the existing drainage conditions at the Bailey's Pond weir and re-evaluate their stormwater management design.

Providing vital access to the residential units would necessitate that proposed road widths be increased, thereby increasing the impervious surface and further impacting stormwater runoff. As presented in the attached report, fewer of residential structures would allow for more land area to be available to address stormwater management issues.

The site plan shows that the structures have been moved out of the 50 feet buffer from the resource area. There is still going to be work related to grading, shaping and access trails along and within the 100 feet buffer and the 200 feet buffer to the Riverfront area. There are areas of 10 – 15% slopes within these buffer areas. Removal of vegetation, re-grading and filling activities will impact the natural habitat and as such these activities should be limited. By reducing the limit of work, these environmental resources and the watershed are more likely to be protected from impact due to development on this site.

We are requesting that an Environmental Impact Review (EIR) be undertaken and the scope include;

1. Alternatives to the Project. A description and analysis of alternatives to the Project including:

- all feasible alternatives, including but not limited to those indicated in the Scope;

- the alternative of not undertaking the Project (i.e., the no-build alternative) for the purpose of establishing a future baseline in relation to which the Project and its alternatives can be described and analyzed and its potential environmental impacts and mitigation measures can be assessed;
- an analysis of the feasible alternatives in light of the objectives of the Proponent including relevant statutes, regulations, executive orders and other policy directives;
- an analysis of the principal differences among the feasible alternatives under consideration, particularly regarding potential environmental impacts;
- a brief discussion of any alternatives no longer under consideration including the reasons for no longer considering these alternatives.

2. Existing Environment. A description and analysis of the physical, biological, chemical, economic, and social conditions of the Project site, its immediate surroundings, and the region (in sufficient detail to provide a baseline in relation to which the Project and its alternatives can be described and analyzed and its potential environmental impacts and mitigation measures can be assessed) including:

- topography, geology, and soils;
- surface and groundwater hydrology and quality;
- plant and animal species and habitat;
- traffic, and pedestrian and bicycle transportation;
- scenic qualities, open space and recreational resources;
- the built environment and human use of the Project site, its immediate surroundings and the region, including existing infrastructure (i.e., water supply, wastewater treatment and/or disposal, transportation, waste management, etc.), zoning districts and other relevant land-use designations or plans, business districts, industrial parks, housing stock, and vacancy rates; and
- rare or unique features (including environmental and social conditions) of the Project site and its immediate surroundings such that any increase in environmental impacts, however small or gradual, may result in an unusual or disproportionate effect on environmental resources or quality or public health.

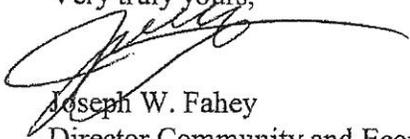
3. Assessment of Impacts. A detailed description and assessment of the negative and positive potential environmental impacts of the Project and its alternatives. The EIR should assess (in quantitative terms, to the maximum extent practicable) the direct and indirect potential environmental impacts from all aspects of the Project that are within the Scope. The assessment shall include both short-term and long-term impacts for all phases of the Project (e.g., acquisition, development, and operation) and cumulative impacts of the Project, any other Projects, and other work or activity in the immediate surroundings and region.

4. Mitigation Measures. A description and assessment of physical, biological and chemical measures and management techniques designed to limit negative environmental impacts or to cause

positive environmental impacts during development and operation of a Project. The EIR should specify in detail: the measures to be taken by the Proponent to avoid, minimize, and mitigate potential environmental impacts; and the anticipated implementation schedule that shall ensure that mitigation measures shall be implemented prior to or when appropriate in relation to environmental impacts. The EIR shall also discuss alternatives to the proposed mitigation measures considered by the Proponent. The proponent shall provide for integration of open space and public access to existing easements accessing the boardwalk at the Merrimac Hat Factory project.

I am hopeful that serious consideration will be given to our request for an Environmental Impact Review (EIR) which includes the above noted issues.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Joseph W. Fahey', with a long, sweeping horizontal flourish extending to the right.

Joseph W. Fahey
Director Community and Economic Development

JWF/jb



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHEAST REGIONAL OFFICE

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DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

June 14, 2010

Ian A. Bowles, Secretary
Executive Office of
Energy & Environmental Affairs
100 Cambridge Street
Boston MA, 02114

RE: Amesbury
Village at Bailey's Pond
150 and Summit Avenue
EEA # 14596

Attn: MEPA Unit

Dear Secretary Bowles:

The Massachusetts Department of Environmental Protection Northeast Regional Office (MassDEP-NERO) has reviewed the Environmental Notification Form (ENF) submitted by Fafard Real Estate and Development Corp. to construct 148 housing units, 592 parking spaces, and infrastructure on a 24.51 acre site abutting Bailey's Pond in Amesbury (EEA #14596). The Department provides the following comments.

Wetlands

The ENF indicates that the project would alter 30 lf of bank, 120 sf of bordering vegetated wetlands, 187 sf of land under water, 307 sf of bordering and subject to flooding, and 14,159 sf of Riverfront Area. According to the ENF, these wetlands impacts are unavoidable for the proposed sewer line, and will be temporary with all resource areas restored resources. However, it appears that the sewer line could be rerouted within Summit Avenue to avoid any alteration of wetland resources.

As proposed, the buildings and roadways for the project would maintain a minimum, 25 foot buffer from Bailey's pond associated wetlands. However, seven of 37 buildings proposed would be sited with associated parking areas and infrastructure within the 100 foot buffer for Bailey's Pond.

The information in the ENF is insufficient to confirm that the project conforms to the performance standards in the wetlands regulations, particularly for impacts to the Riverfront Area. An alternatives analysis is needed to demonstrate that there are no practicable and substantially equivalent economic alternatives with less adverse impact, pursuant to 310 CMR 10.58 (4) (c). It also has not been demonstrated that the project would have no significant impact in conformance

with the provisions in 310 CMR 10.58 (4) (d). At the MEPA consultation session, the proponent's representatives indicated that more than 14,000 sf of Riverfront Area would be impacted including about 2,500 sf of imperviousness. Given the small amount of imperviousness, which appears to be associated with a driveway access from a cul-de-sac, it would be possible to eliminate this alteration altogether, potentially by reducing the width of the driveway and shifting the layout of two buildings and their associated driveways.

Stormwater

Although the ENF indicates that the project would utilize a combination of best management practices, including bioretention basins, Stormceptor units, and subsurface detention, there is insufficient information in the ENF to evaluate the stormwater management system for compliance with the wetlands regulations.

As described at the MEPA consultation session, it was reported that the culvert conveying the pond's discharge to the Merrimack River is undersized for certain storm events. This appears to be confirmed by erosion observed in the vicinity of the pipe that resulted from the March 2010 rainfall events, according to neighbors. Since the proposed project would increase imperviousness by almost 34 percent, the volume of runoff to the pond will be increasing, which in turn will contribute to an increase in the outflow from the pond. In addition, a study released this month by the US Geological Survey found that there is no 'safe zone' in terms of watershed development. At minimal increases of less than 10 percent imperviousness, the study found that aquatic life in streams was affected negatively. In particular, it was found that pollution sensitive organisms declined by as much as one third in urban and suburban streams when compared with forested watershed areas.

The extent to which the volume would be increased and contribute to the flooding problem is unclear. To some extent onsite infiltration and underground detention would reduce the increase in runoff volume. However, this has not been considered in the ENF, and since the stormwater management standards require control of only the peak rate of runoff, the impact of runoff volume would not be addressed in the wetlands Notice of Intent and permitting. The MEPA review, however, presents an opportunity to consider this issue and potential mitigation options.

The use of low impact development techniques, such as bioretention basins would be appropriate for treating stormwater at the project site. Bioretention basins treat stormwater runoff effectively; according to the Stormwater Management Handbook, (Volume 2, Chapter 2, page 23) bioretention basins designed as described remove an estimated 90 percent of total suspended solids with adequate pretreatment, and 30 percent or more of total nitrogen and total phosphorus, in addition to removing metals.

Recognizing the conservation commissioner's concern¹ that maintenance of the bioretention basins in residential areas is a problem in the Town of Amesbury, MassDEP advises the proponent to establish binding conditions on the proponent and/or condominium association to maintain the basins as stormwater systems in accordance with a maintenance plan that conforms to the planting, design, and maintenance guidance in the *Stormwater Management Handbook*,

¹ At the MEPA consultation session on June 9, 2010, maintenance of bioretention basins was identified as a concern by a member of the Amesbury Conservation Commission.

(Volume 2, Chapter 2, page 27-28). Inclusion of permanent markings on or near the basins with information linking the basins to the maintenance requirements also would serve as a reminder to residents that these planted areas provide a stormwater control function.

At the consultation session, the proponent's representatives indicated that the stormwater management system is designed to capture and treat one inch of runoff because the soils on site have sufficiently high infiltration rates that runoff contaminants may not have adequate residence time in the soils for treatment. The proposed treatment volume is consistent with the requirements in the *Stormwater Management Handbook*, Volume 1, page 9 for soils with high infiltration rates.

Compliance with Stormwater Management Standard 8 for erosion and sedimentation control is extremely important at this site, which is comprised of steep slopes with a 30 – 40 foot drop in elevation from Route 150 and Summit Avenue, which apparently have been created as a result of former gravel operations. In addition to carefully designed erosion controls, the project construction should be phased to expose small areas soils for construction before disturbing other portions of the site to more easily control sediment runoff. The proposed controls will need to be elaborated in the Stormwater Pollution Plan, a requirement for an NPDES Construction General Permit.

Wastewater

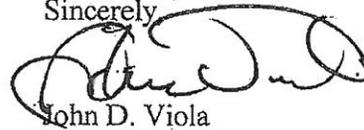
The project will require a sewer extension permit from MassDEP. If an EIR is required, MassDEP requests that the proponent describe, and show on readable plans, the proposed sewer system and pump station and local sewer service to the site. Any established requirements for infiltration and inflow removal in the Town also should be considered.

Greenhouse Gas Emissions and Sustainability Issues

The ENF has not addressed greenhouse gas emissions, energy and water conservation, and other sustainability issues, such as solid waste recycling.

The MassDEP Northeast Regional Office appreciates the opportunity to comment on this proposed project. Please contact Kevin.Brande@state.ma.us, at (978) 694-3236 for assistance with wastewater issues, and Michael.Abell@state.ma.us at (978) 694-3257 for further information on the wetland issues. If you have any general questions regarding these comments, please contact Nancy.Baker@state.ma.us, MEPA Review Coordinator at (978) 694-3338.

Sincerely



John D. Viola
Deputy Regional Director

cc: Brona Simon, Massachusetts Historical Commission
Kevin Brander, Jill Provencal, Mike Abell, MassDEP-NERO
Katherine Glenn, MCZM
Town of Amesbury Conservation Commission



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April 27, 2010

John Goldrosen
jgoldrosen@k-plaw.com

Conservation Commission
Amesbury Town Hall
62 Friend Street
Amesbury, MA 01913

Re: Bailey's Pond Project

Dear Members of the Conservation Commission:

You have requested an opinion concerning the status of the Notice of Intent ("NOI") for the Bailey's Pond project, DEP #002-868 ("Project"). You have informed that the NOI was filed on June 23, 2004 (the "2004 NOI"), under both the Wetlands Protection Act ("Act") and the Town Wetlands Bylaw ("Bylaw"). In 2005, the hearings were continued to an unspecified date pending further submittals by the Applicant, but the Applicant did not provide any further data or request that the hearing be reopened. You have recently been contacted by the Applicant, who has informed you that it intends to withdraw the 2004 NOI filed under the Act and to file a new NOI in its place, but that it wishes to proceed with the 2004 NOI filed under the Bylaw. The Bylaw is no longer in effect, having been superseded in July 2008 by the adoption of the Town Wetlands Ordinance ("Ordinance").

It is my opinion that the 2004 NOI has expired under both the Act and the Bylaw. Therefore, the Applicant should be advised to formally withdraw the 2004 NOI and to file a new NOI under the Act and the current Ordinance. If the Applicant is unwilling to withdraw the 2004 NOI filed under the Bylaw, the Commission should vote to inform the Applicant that the NOI has expired, by operation of law.

310 CMR 10.04(4)(g) of the Regulations to the Act ("Act Regulations") provides, in part, as follows:

A Notice of Intent shall expire where the applicant has failed to diligently pursue the issuance of a Final Order in proceedings under 310 CMR 10.00. A Notice of Intent shall be presumed to have expired two years after the date of filing unless the applicant submits information showing that (a) good cause exists for the delay of proceedings under 310 CMR 10.00; and (b) the applicant has continued to pursue the project diligently in other forums in the intervening period; provided, however, that unfavorable financial circumstances shall not constitute good cause for delay.

Since the Applicant has already indicated that it intends to withdraw the 2004 NOI filed under the Act, presumably there is no dispute that the above-quoted Act Regulation is applicable,

Conservation Commission

April 27, 2010

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and that the Applicant cannot show that there is "good cause" for the delay or that it has been pursuing the project in other forums (i.e., seeking other necessary permits). As noted in the Act Regulation, "unfavorable financial circumstances" (i.e., in my opinion, either generally unfavorable economic conditions or specific financial difficulty on the Applicant's part) are not "good cause" for a delay in pursuing the issuance of an Order of Conditions.

It is my understanding that the Bylaw, which was in effect when the 2004 NOI was filed, did not address whether an NOI filed under the Bylaw expired due to the passage of time, and that there were not any regulations to the Bylaw. The Ordinance was enacted by the Municipal Council on July 26, 2008. On February 11, 2009, the Commission adopted the Town Wetland Regulations ("Ordinance Regulations"). Section 7.4(g) of the Ordinance Regulations has provisions concerning the expiration of an NOI that are identical to those in 310 CMR 10.04(4)(g).

In the absence of any provision in the Bylaw or a regulation thereto concerning the expiration of an NOI that is different from the provisions of the Act Regulations, it is my opinion that the Act Regulations should be followed, so that the same procedural rules operate in considering NOI's under both the Act and the Bylaw. This opinion is supported by the fact that the Ordinance Regulations specifically follow the same rule as in the Act Regulations.

It is my opinion, therefore, that the 2004 NOI under the Bylaw has expired, by operation of law (i.e., according to the rule stated in 310 CMR 10.04(4)(g)). In order for the Project to receive an Order of Conditions, a new NOI must be filed under both the Act and the Ordinance, in my opinion.

Since the 2004 NOI has expired under both the Act and the Bylaw, it is my opinion that the Commission is not required to take any action on the 2004 NOI. Nonetheless, in the interests of clarifying and documenting the status of the 2004 NOI, the Commission should request that the Applicant formally withdraw the 2004 NOI under both the Act and the Bylaw, by written notice to the Commission. If the Applicant is unwilling to do so, I recommend that the Commission take a formal vote on a motion stating that: "The 2004 NOI has expired under both the Act and the Bylaw, according to 310 CMR 10.04(4)(g), and the Commission will not reopen the hearing on the 2004 NOI or consider it further." The Applicant (and the Department of Environmental Protection) should be informed, in writing, of the Commission's vote.

It is my understanding that most, if not all, of the current Commission members were not members of the Commission in 2004-05, when hearings were held on the 2004 NOI. Massachusetts courts have held that municipal board members who have been absent from substantive hearings on a project application may not vote on the application. However, it is my opinion that the Commission's current members may vote on the motion suggested above, because the motion concerns a procedural issue and not the substantive merits of the Project.

KOPELMAN AND PAIGE, P.C.

Conservation Commission

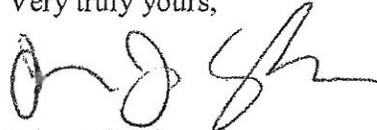
April 27, 2010

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Assuming that the Applicant files a new NOI under both the Act and the Bylaw, the Commission should schedule a hearing, with notice to abutters, as provided in the Act Regulations and the Ordinance Regulations. Given the passage of time and the fact that there has been turnover on the Commission since 2005, the NOI should be treated as a new application, i.e., as if the Project had not previously been submitted to the Commission for its consideration. The hearing on the new NOI should be conducted without regard to any evidence presented during the hearings on the 2004 NOI. The Applicant's presentation, any public comments, and the Commission's review of the NOI should take this approach, to ensure a fair hearing and to provide a complete record of the Commission's consideration of the new NOI.

Please feel free to contact me if you have any further questions concerning this matter.

Very truly yours,



John J. Goldrosen

JJG/eon

cc: Mayor

398882/AMESCC/9999

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April 15, 2010

To Be Submitted Under Separate Cover

Amesbury Conservation Commission
Attn: John Lopez, Conservation Agent
62 Friend Street
Amesbury, MA 01913-2825

RE: Bailey's Pond Notices of Intent (State and Local)

Dear Commission Members and Mr. Lopez:

I write in connection Fafard Real Estate & Development Corporation's ("Fafard") proposed development at the Bailey's Pond property. Specifically, I write in connection with Fafard's request that the Commission resume its public hearing related to its previously filed application under Amesbury's Wetlands Protection Bylaw ("Local Bylaw").

Background

Fafard filed a Notice of Intent with the Commission for the Bailey's Pond development in 2004 – under both the Massachusetts Wetlands Protection Act ("State Act") and the Local Bylaw (DEP File No. 002-868). The Commission commenced its joint public hearing, retained a peer review consultant (at Fafard's expense) and solicited preliminary input from other Amesbury officials. However, at the Commission's January 10, 2005 meeting, the Commission decided to continue the hearing indefinitely to allow the Planning Board's review of the project to proceed further before engaging in a more detailed review of the project.

Proceedings before the Planning Board continued through 2005. In the meantime, the Amesbury Municipal Council solicited input from the Inspector General and Department of Revenue regarding the Purchase and Sale Agreement ("P&S") between Fafard and Amesbury. In 2006, the Inspector General and Department of Revenue issued letters criticizing certain aspects of the P&S. Although neither required that the P&S be redone, diligent but lengthy negotiations between Fafard and Amesbury officials ensued – ultimately leading to an Amended P&S that took effect in February 2010.

Pending Applications Before Commission

With the P&S issues now resolved, Fafard is prepared to continue with its permitting efforts before the Planning Board and Commission. Because the previous applications before the Commission remain pending, the hearings under the State Act and Local Bylaw can proceed without the need for any new applications.

With respect to the State Act and regulations, 310 CMR 10.05(4)(g) provides that a Notice of Intent “is presumed to have expired two years after the date of filing unless the applicant submits information showing that (a) good cause exists for the delay of proceedings . . .; and (b) the applicant has continued to pursue the project diligently in other forums in the intervening period. . . .” Here, good cause exists for the delay of proceedings (i.e., the P&S issues raised by the IG and DOR and need to address those issues prior to continuing with permitting), and Fafard has continued to pursue the project diligently (through its efforts to negotiate an amended P&S). In informal discussions with MassDEP personnel, MassDEP expressed agreement with this approach.

Nevertheless, Fafard has decided to file a new Notice of Intent for its project under the State Act – and, in connection with doing so, will pay another round of filing fees as required under MassDEP’s regulations. Fafard will also be withdrawing its previous Notice of Intent to the extent it pertains to the State Act.

However, with respect to the application pending under the Local Bylaw, Fafard is requesting that the Commission resume its previously postponed public hearing without the filing of a new application. Fafard is not required to file a new application and doing so would entail the payment of another round of filing fees that would be duplicative of the fees it previously paid. Fafard understands that there are new Commission members not involved in the previous hearings. However, this change in the membership and the related “Mullin Rule” issues that arise from this change (discussed below) can be appropriately addressed without a new application.

In short, the Mullen Rule issues can be addressed by circulating and publishing notice of the continued hearing (just as would be done if a new application were filed), and rehearing the matter – that is, proceeding with a new presentation of all information as related to the project in its current configuration (including solicitation of input from other interested officials and the public). Fafard would stipulate that the Commission’s decision would be based on the information presented during this resumed hearing only – and not on information previously presented.

In Mullin v. Planning Bd. of Brewster, 17 Mass.App.Ct. 139 (1983), the Appeals Court held that two members of a planning board who missed the only session of a public hearing on a special permit application could not vote on the matter. This holding has been referred to as the “Mullin rule.”

Massachusetts courts have made clear that the Mullin Rule is one to be applied flexibly, such that isolated absences from a public hearing are not prejudicial to the final vote (and do not disqualify those members from voting) as long as the absentee members are otherwise competent to vote on the matter – such as if the substantive material was reiterated at a later meeting which the board members did attend. See Krafchuk v. Brooks, 21 Mass.L.Cptr. 15, 2006 WL 627165 (2006), vacated and remanded, Krafchuk v. Planning Bd. of Ipswich, 453 Mass. 517 (2009); Robinson v. Board of Health of Chatham, 58 Mass. App. Ct. 394, 396, n.7, rev. denied, 440 Mass. 1103 (2003) (Bd. of Health variance, distinguishing Mullin); Coleman v. Travers, 11 LCR

Amesbury Conservation Commission
April 15, 2010
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8, 11, Land Court Misc. No. 263677 (2003) (Kilborn, J.) (subdivision case); Xarras v. Snyder, 1998 WL 1184169 (Mass.Sup.Ct., Fremont-Smith, J.) (special permit).

The Massachusetts Superior Court, addressing this issue in the context of Conservation Commission proceedings, has acknowledged that the Mullen Rule must be applied with some flexibility. Jeffries v. Commission of Milton, 18 Mass.L.Rptr. 56, 2004 WL 1541861 (MA Super. 2004). In Jeffries, the court invalidated the votes at issue and remanded the case back to the Commission. However, in instructing the Commission how to address the Mullen Rule concerns at issue, the Court held that the Commission could either rehear the matter based upon the original application (as Fafard proposes to do here) or conduct a new hearing based upon a new application. The Court also stated as follows:

The Mullin rule should not be carried to extremes. A municipal board must retain some reasonable degree of flexibility in carrying out its duties, especially when the same project or case involves hearings on multiple nights. Cf. Barbaro v. Wroblewski, 44 Mass.App.Ct. 269, 272-73, 689 N.E.2d 1369 (1998). The court does not suggest that a board or conservation commission member will automatically be disqualified from voting on a project if he or she has been late for a meeting or has missed a meeting when there has been some minor discussion about a project. There may also be some circumstances when a board will be justified in rehearing a session and treating a prior session as void if it is necessary to obtain a quorum of members who have attended every session and if the public hearing rights of residents and interested parties are preserved.

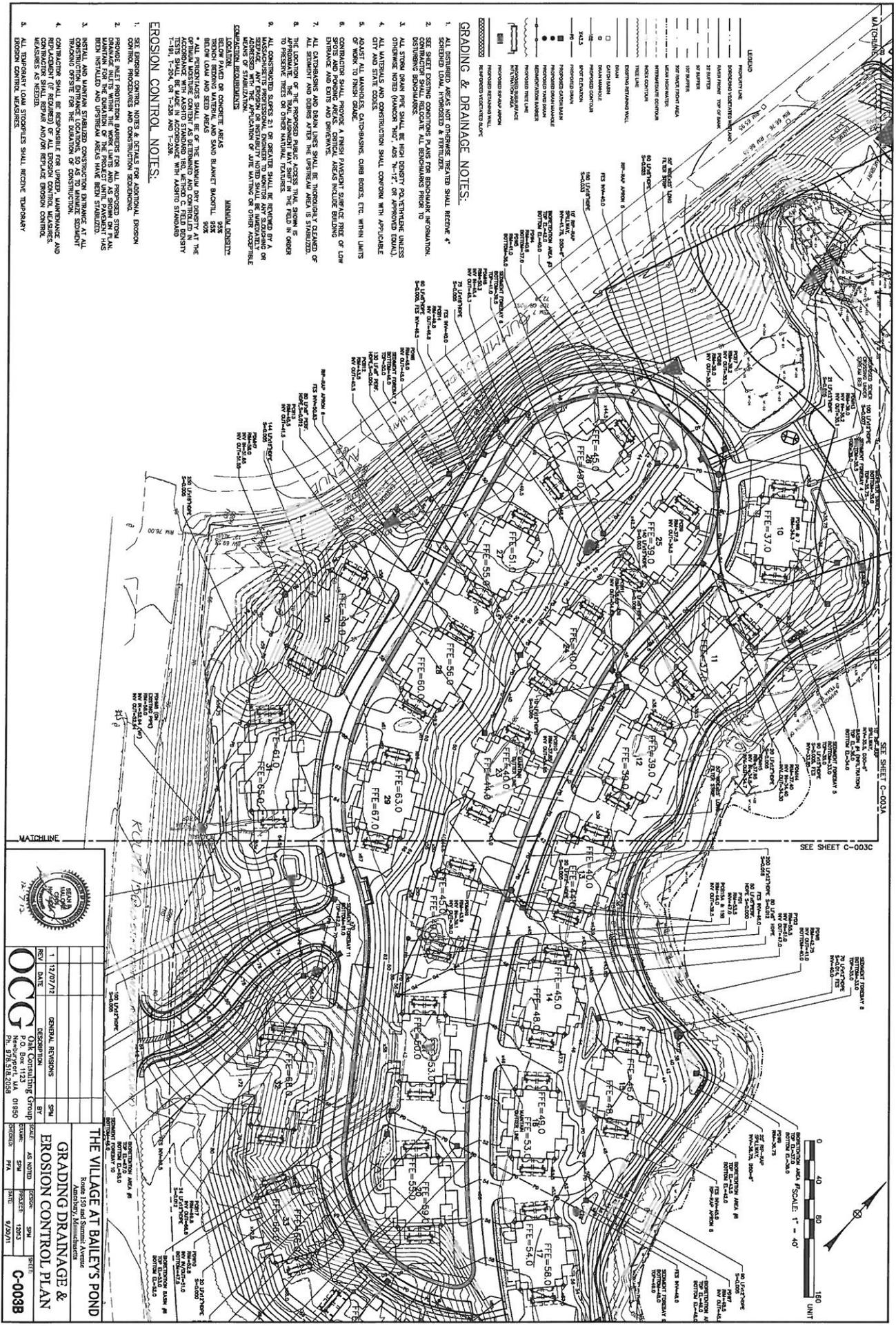
Here, consistent with the guidance provided by the Court in Jeffries and other cases, Fafard is requesting that the Commission start its hearing afresh – including circulation and publication of all required public notices (which Oak Engineering will handle) – without the need for a new application. Fafard will re-present the project, in its updated configuration, and the Commission members, public and other interested parties will have a full opportunity to participate – all as part of a joint hearing on Fafard's applications under the State Act and Local Bylaw.

If you have any questions related to these procedural issues, or if you would like to discuss them, please call me.

Sincerely,



Jeffrey L. Roelofs



GRADING & DRAINAGE NOTES:

1. ALL EXISTING AREAS NOT OTHERWISE SPECIFIED SHALL REMAIN AS SHOWN.
2. SEE SHEET C-003A FOR PROPOSED GRADING AND DRAINAGE INFORMATION.
3. ALL STORM DRAIN PIPES SHALL BE HIGH DENSITY POLYETHYLENE UNLESS OTHERWISE SPECIFIED.
4. ALL UTILITIES AND OBSTRUCTIONS SHALL BE SHOWN WITH APPROPRIATE CITY AND STATE CODES.
5. ADJUST ALL MANHOLES, CATCH BASINS, CURB BOXES, ETC. WITHIN LIMITS OF WORK TO FINISH GRADE.
6. CONTRACTOR SHALL PROVIDE A FINISH HANDBOOK SURFACE FREE OF LOW SPOTS AND POHOLES. CONTROL AREAS INCLUDE BUILDING FOOTPRINTS, DRIVEWAYS, AND DRIVEWAYS.
7. THE LOCATION OF THE PROPOSED GRADE ACCESS SHALL BE SHOWN AS APPROXIMATE. THE FINAL ADJUSTMENT MAY VARY IN THE FIELD IN ORDER TO MAINTAIN THE PROPOSED GRADE.
8. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE PROPOSED GRADING AND DRAINAGE PLAN. THE PROPOSED GRADING SHALL BE MAINTAINED MEANS OF STABILIZATION.
9. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE PROPOSED GRADING AND DRAINAGE PLAN. THE PROPOSED GRADING SHALL BE MAINTAINED MEANS OF STABILIZATION.

EROSION CONTROL NOTES:

1. SEE EROSION CONTROL NOTES & DETAILS FOR ADDITIONAL EROSION CONTROL MEASURES.
2. CONTRACTOR SHALL PROVIDE EROSION CONTROL MEASURES FOR ALL EXPOSED SOILS.
3. CONTRACTOR SHALL BE RESPONSIBLE FOR UPKEEP, MAINTENANCE AND REPAIRS AS NEEDED.
4. ALL TEMPORARY EROSION CONTROL MEASURES SHALL BE REMOVED UPON COMPLETION OF CONSTRUCTION.



OCG
Professional Engineering Group
P.O. Box 1123
Newport, VA 0150
Ph: 578.518.2008

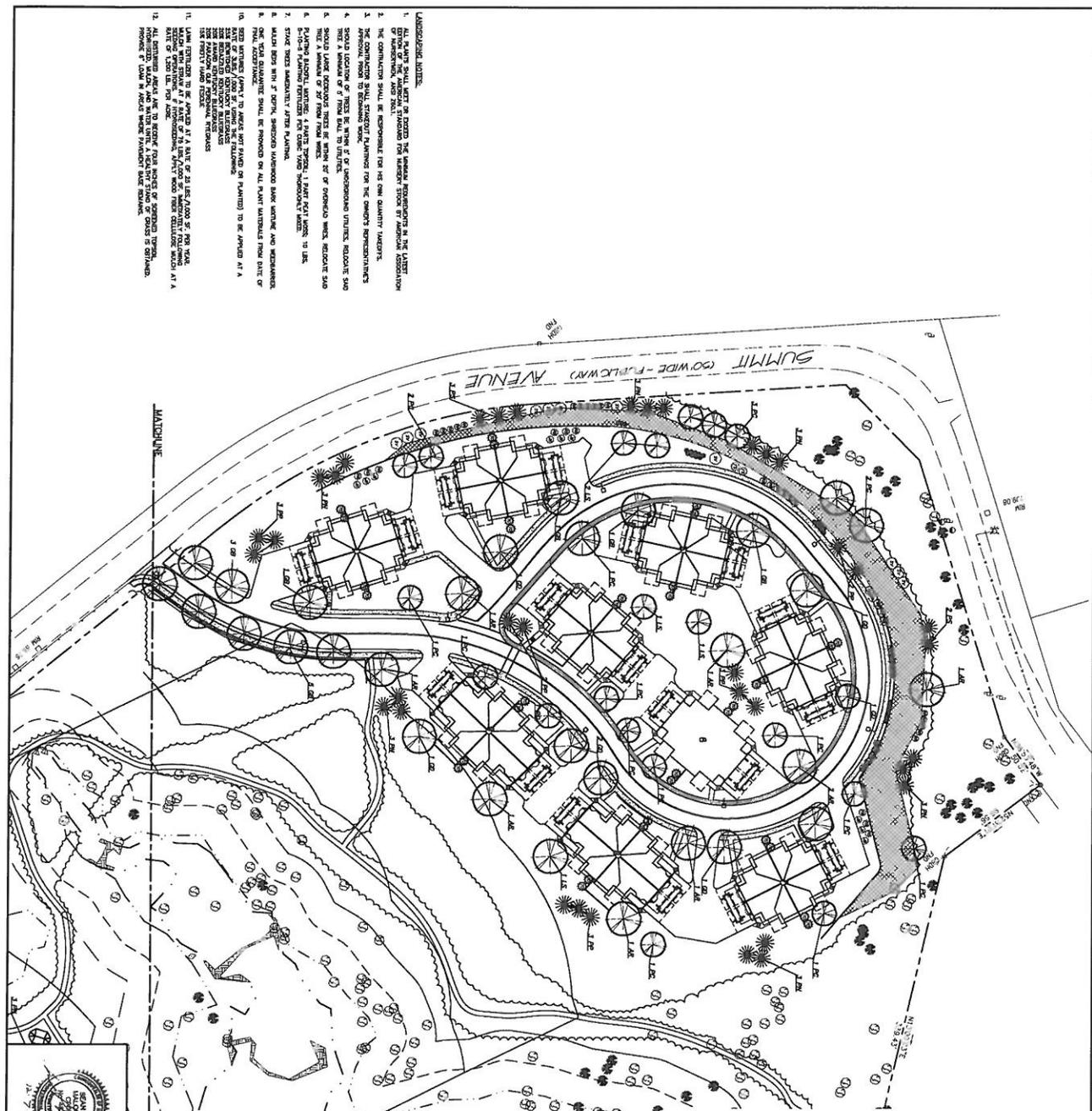
THE VILLAGE AT BAILEY'S POND
Route 150 and Summit Avenue
Leesville, LA 70501

REV	DATE	DESCRIPTION	BY	CHECKED	DATE
1	12/07/21	GENERAL REVISIONS	SM	SM	12/07/21

GRADING DRAINAGE & EROSION CONTROL PLAN

DATE: 12/07/21
SCALE: 1" = 40'

C-003B



PLANT SCHEDULE FROM THIS DRAWING ONLY.

SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	COMMENTS
AR	ACER RUBRA 'RED SUNSET'	RED MAPLE	3-2" 3" O.D.	8448
AS	AMORPHOEAE	NETTLE	3-2" 3" O.D.	8449
BS	BETULA PULCHRA	BETULA	3-2" 3" O.D.	8450
CS	CORNUS STYRACIA	AMERICAN SPICEWOOD	3-2" 3" O.D.	8451
DS	DIODAY	DIODAY	3-2" 3" O.D.	8452
ES	EUONYMUS ALATIS	WAX LEAF	3-2" 3" O.D.	8453
FS	FORSYTHIA	SPRING BLOSSOM	3-2" 3" O.D.	8454
GS	GEOXOMA	WAX LEAF	3-2" 3" O.D.	8455
HS	HEDERA HELIX	COMMON ivy	3-2" 3" O.D.	8456
IS	IRIS	IRIS	3-2" 3" O.D.	8457
JS	JUNIPERUS	COMMON JUNIPER	3-2" 3" O.D.	8458
KS	KOENIGIA	WAX LEAF	3-2" 3" O.D.	8459
LS	LEUCODENDRON	WAX LEAF	3-2" 3" O.D.	8460
MS	MORNING GLORY	MORNING GLORY	3-2" 3" O.D.	8461
NS	NIPHEA	WAX LEAF	3-2" 3" O.D.	8462
OS	ORNITHOGALUM	WAX LEAF	3-2" 3" O.D.	8463
PS	PERSEA	WAX LEAF	3-2" 3" O.D.	8464
QS	QUERCUS	WAX LEAF	3-2" 3" O.D.	8465
RS	RUBUS	WAX LEAF	3-2" 3" O.D.	8466
SS	SAROTHECA	WAX LEAF	3-2" 3" O.D.	8467
TS	TEUCRIUM	WAX LEAF	3-2" 3" O.D.	8468
US	URTICA	WAX LEAF	3-2" 3" O.D.	8469
VS	VIBURNUM	WAX LEAF	3-2" 3" O.D.	8470
WS	WISTERIA	WAX LEAF	3-2" 3" O.D.	8471
XS	XANTOXERIS	WAX LEAF	3-2" 3" O.D.	8472
YS	YUCCA	WAX LEAF	3-2" 3" O.D.	8473
ZS	ZEPHYRUM	WAX LEAF	3-2" 3" O.D.	8474
AS	AGAVE	WAX LEAF	3-2" 3" O.D.	8475
BS	BELLAIRIA	WAX LEAF	3-2" 3" O.D.	8476
CS	CALYPTROGYNOS	WAX LEAF	3-2" 3" O.D.	8477
DS	DICENTELLA	WAX LEAF	3-2" 3" O.D.	8478
ES	EUROSA	WAX LEAF	3-2" 3" O.D.	8479
FS	FORSYTHIA	WAX LEAF	3-2" 3" O.D.	8480
GS	GEOXOMA	WAX LEAF	3-2" 3" O.D.	8481
HS	HEDERA	WAX LEAF	3-2" 3" O.D.	8482
IS	IRIS	WAX LEAF	3-2" 3" O.D.	8483
JS	JUNIPERUS	WAX LEAF	3-2" 3" O.D.	8484
KS	KOENIGIA	WAX LEAF	3-2" 3" O.D.	8485
LS	LEUCODENDRON	WAX LEAF	3-2" 3" O.D.	8486
MS	MORNING GLORY	WAX LEAF	3-2" 3" O.D.	8487
NS	NIPHEA	WAX LEAF	3-2" 3" O.D.	8488
OS	ORNITHOGALUM	WAX LEAF	3-2" 3" O.D.	8489
PS	PERSEA	WAX LEAF	3-2" 3" O.D.	8490
QS	QUERCUS	WAX LEAF	3-2" 3" O.D.	8491
RS	RUBUS	WAX LEAF	3-2" 3" O.D.	8492
SS	SAROTHECA	WAX LEAF	3-2" 3" O.D.	8493
TS	TEUCRIUM	WAX LEAF	3-2" 3" O.D.	8494
US	URTICA	WAX LEAF	3-2" 3" O.D.	8495
VS	VIBURNUM	WAX LEAF	3-2" 3" O.D.	8496
WS	WISTERIA	WAX LEAF	3-2" 3" O.D.	8497
XS	XANTOXERIS	WAX LEAF	3-2" 3" O.D.	8498
YS	YUCCA	WAX LEAF	3-2" 3" O.D.	8499
ZS	ZEPHYRUM	WAX LEAF	3-2" 3" O.D.	8500

LANDSCAPE NOTES:

- ALL PLANTING SHALL BE IN ACCORD WITH THE GENERAL RECOMMENDATIONS IN THE LATEST EDITION OF THE NATIONAL LANDSCAPE ARCHITECTURE ASSOCIATION'S "GUIDE TO PLANTING FOR LANDSCAPE ARCHITECTS".
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR HIS OWN QUALITY STANDARDS.
- SPACING SHALL BE AS SHOWN ON THE PLANS UNLESS OTHERWISE NOTED.
- PLANTING SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE NATIONAL LANDSCAPE ARCHITECTURE ASSOCIATION'S "GUIDE TO PLANTING FOR LANDSCAPE ARCHITECTS".
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THE VILLAGE AT BAILEY'S POND
 ROUTE 150 and Summit Avenue
 Leesburg, VA 22075

LANDSCAPE PLAN

SEE SHEET C-004B

OCG
 O.C. GROUP
 P.O. Box 1121
 Newburg, VA 22643
 Ph. 541.516.2088

REV. DATE. DESCRIPTION BY

1. 12/07/15 GENERAL REVISIONS SPM

SCALE: AS NOTED

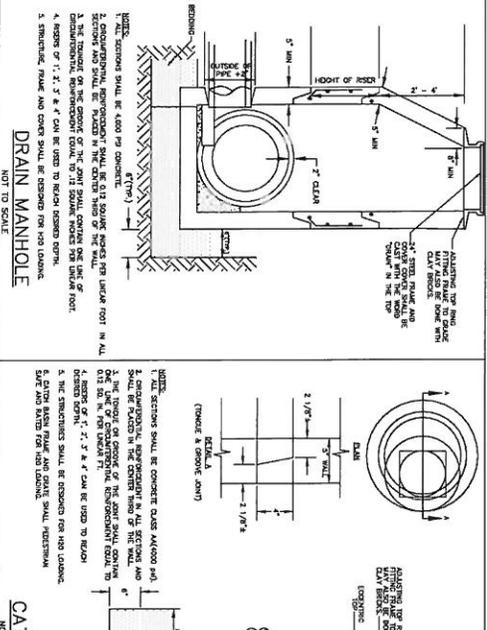
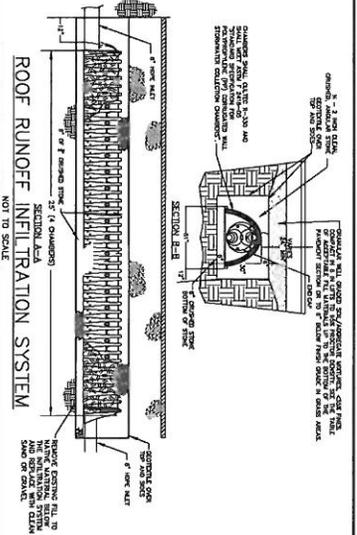
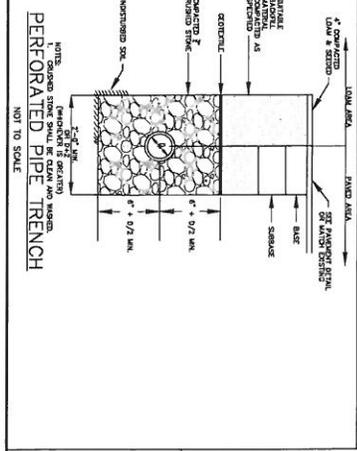
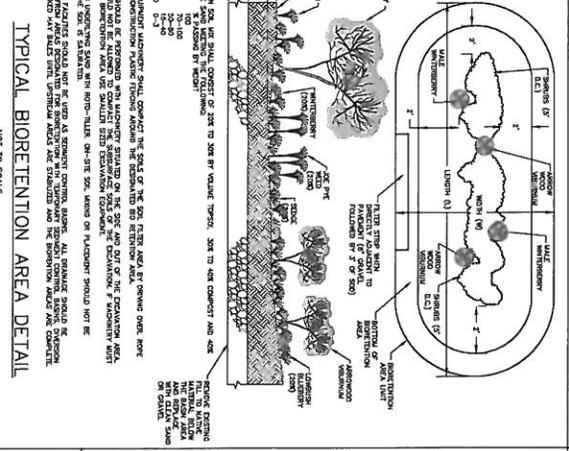
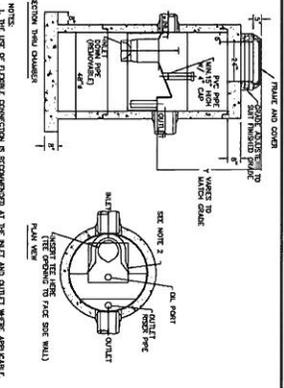
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PROJECT: 1203

SHEET: 1

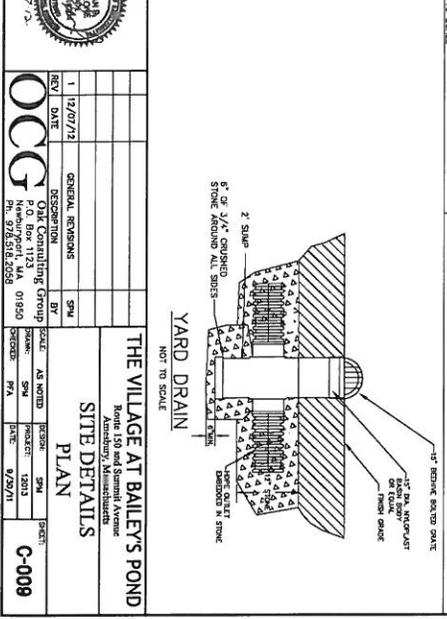
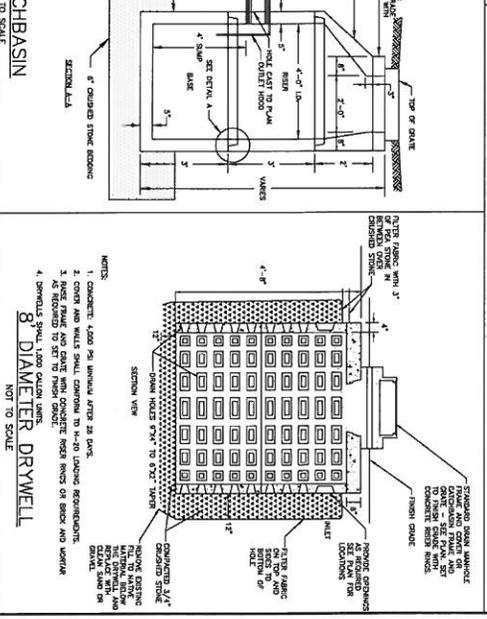
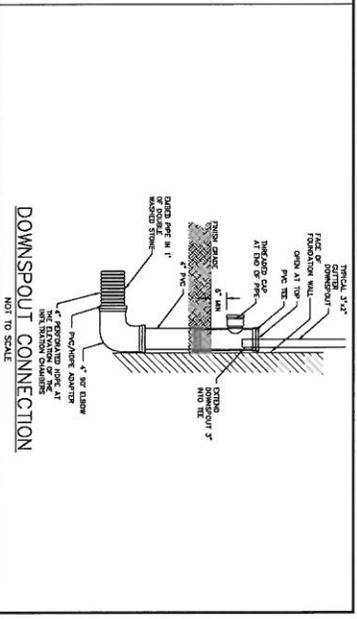
OF: 1

C-004A



RIP-RAP OUTLET DETAIL
NOT TO SCALE

APRON NO.	APRON WIDTH (FT)	APRON LENGTH (FT)	APRON AREA (SQ FT)	APRON PERCENT OF TOTAL AREA (%)
APRON 1	8.00	10.00	80.00	10.00
APRON 2	12.00	10.00	120.00	15.00
APRON 3	12.00	10.00	120.00	15.00
APRON 4	8.00	10.00	80.00	10.00
APRON 5	8.00	10.00	80.00	10.00
APRON 6	8.00	10.00	80.00	10.00
APRON 7	8.00	10.00	80.00	10.00
APRON 8	8.00	10.00	80.00	10.00
APRON 9	8.00	10.00	80.00	10.00



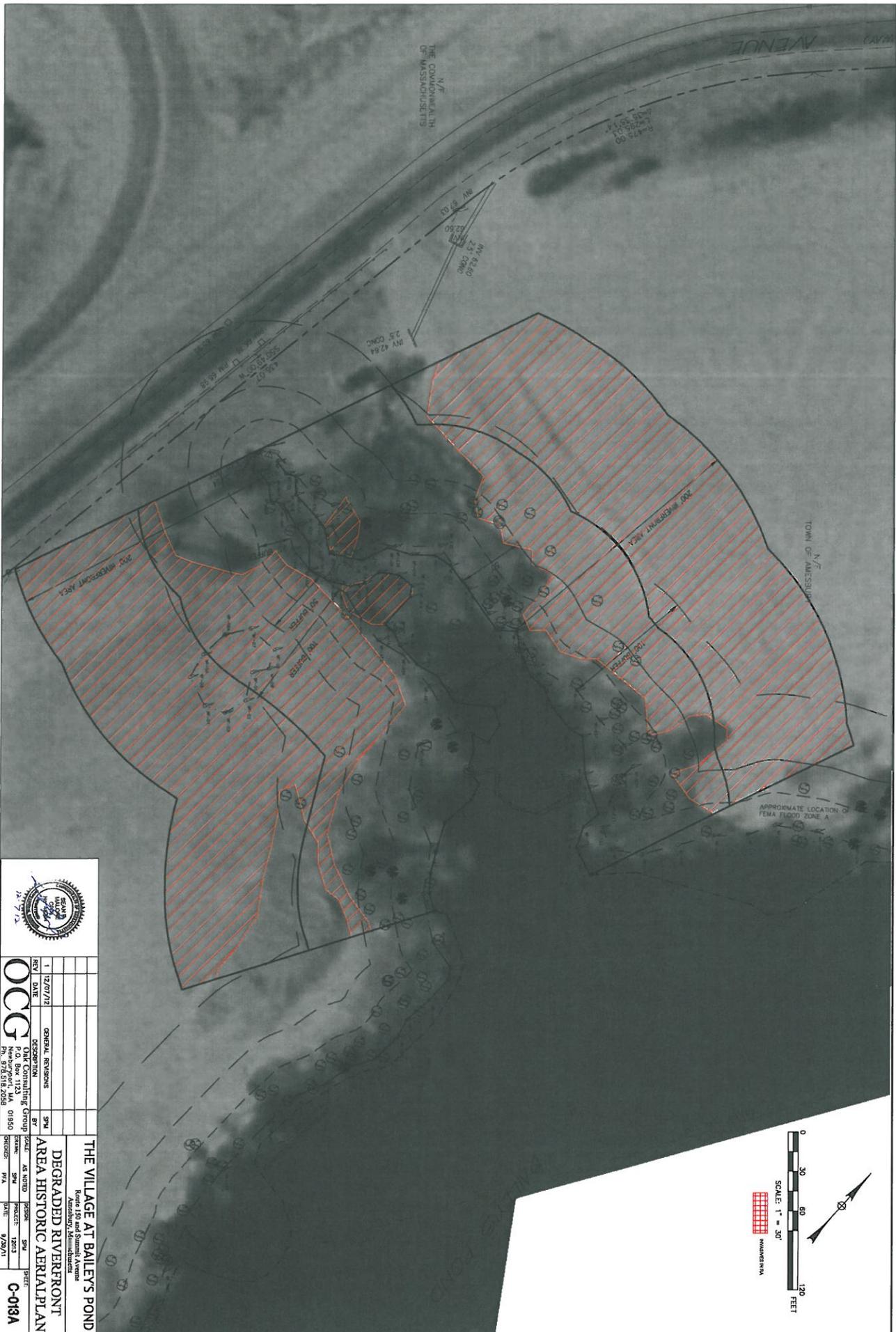
THE VILLAGE AT BAILEY'S POND
Home 150 and Summit Avenues
Arlington, Massachusetts

SITE DETAILS PLAN

DATE: 12/07/12
BY: [Signature]
CHECKED: [Signature]
APPROVED: [Signature]

DESCRIPTION: [Text]
SCALE: AS NOTED
SHEET: C-008

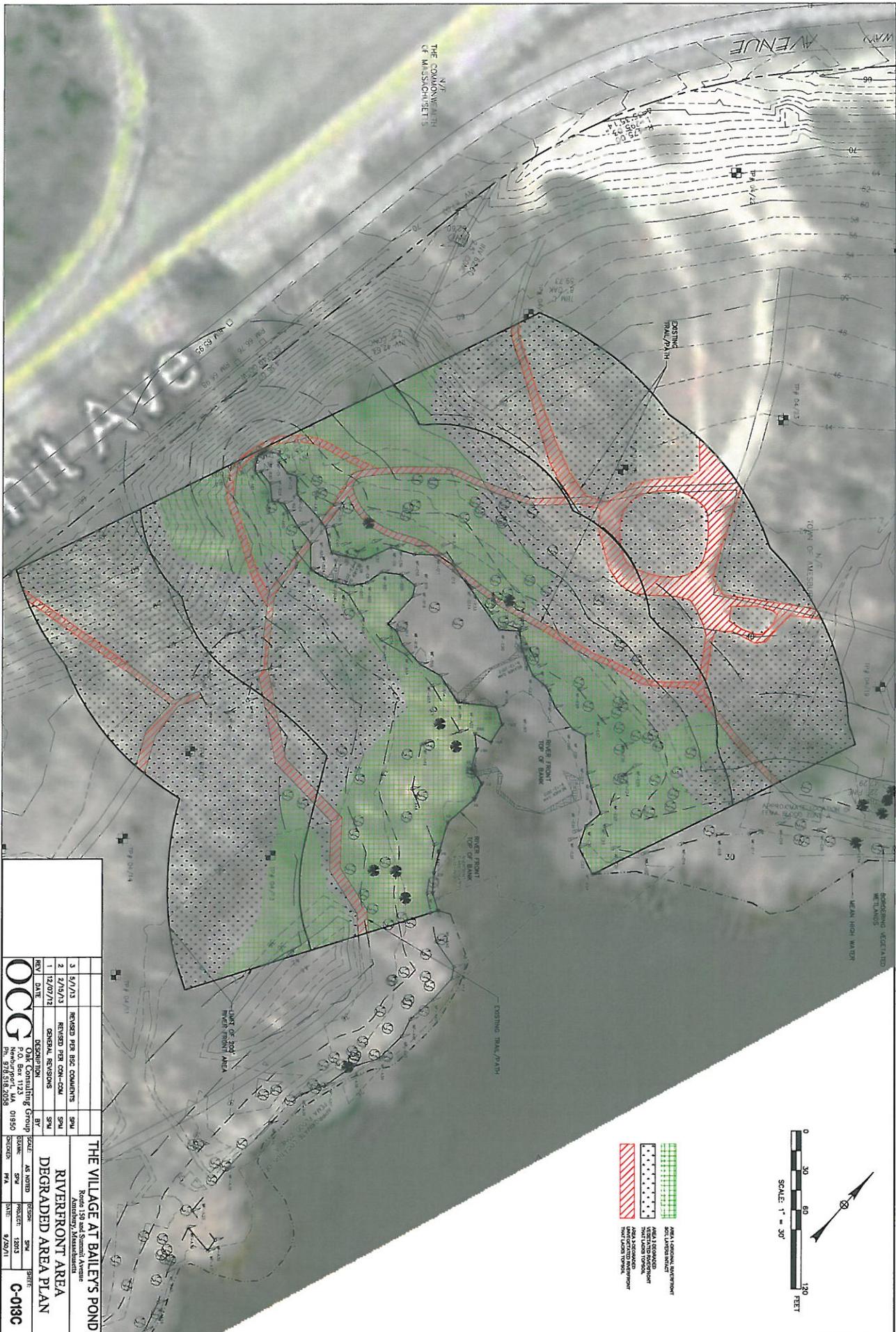
1. THE FILTERING SOIL FOR THIS CONCEPT IS 20% TO 30% BY VOLUME TYPE-2, 30% TO 40% CORNER AND 40% TYPE-1.
2. THE FILTERING SOIL SHALL BE 20% TO 30% BY VOLUME TYPE-2, 30% TO 40% CORNER AND 40% TYPE-1.
3. THE FILTERING SOIL SHALL BE 20% TO 30% BY VOLUME TYPE-2, 30% TO 40% CORNER AND 40% TYPE-1.
4. THE FILTERING SOIL SHALL BE 20% TO 30% BY VOLUME TYPE-2, 30% TO 40% CORNER AND 40% TYPE-1.
5. THE FILTERING SOIL SHALL BE 20% TO 30% BY VOLUME TYPE-2, 30% TO 40% CORNER AND 40% TYPE-1.



REV	DATE	DESCRIPTION	BY	DATE
1	12/07/12	GENERAL REVISIONS	SPM	

CCG
 CONSULTING GROUP
 200 South Main Street
 Newburyport, MA 01950
 Ph: 978.538.4058

THE VILLAGE AT BAILEY'S POND		DEGRADED RIVERFRONT AREA HISTORIC AERIAL PLAN	
Route 150 and Summit Avenue Amesbury, Massachusetts			
PROJECT	AS NOTED	DATE	SHEET
00000	SPM	12/03	7/20/11
PROJECT	DATE	SHEET	
00000	12/03	7/20/11	
C-013A			



3	5/0/13	REVISED PER REC COMMENTS	SPW
2	2/0/13	REVISED PER CH-204	SPW
1	12/07/12	ORIGINAL DESIGN	SPW
REV	DATE	DESCRIPTION	BY
CCG Consulting Group New Bedford, MA 01950 P.O. Box 1123 Tel: 508.538.5555			
THE VILLAGE AT BAILEY'S POND Riverfront Area Wetland Assessment Report		DEGRADED AREA PLAN	
SCALE:	AS SHOWN	DATE:	5/20/13
PROJECT:	1203	DATE:	5/20/13
PROJECT:	MA	DATE:	5/20/13
C-03C		REVISED	

