



June 8, 2022

Ms. Sue Brown, Town Planner  
Zoning Board of Appeals  
Manchester-by-the-Sea Town Hall  
10 Central Street  
Manchester-by-the-Sea, MA 01944

Via: Email to Sue Brown, Town Planner ([browns@manchester.ma.us](mailto:browns@manchester.ma.us));  
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Reference: Supplemental Environmental Peer Review  
Chapter 40B Comprehensive Permit Application  
0 School Street  
Manchester-by-the-Sea, Massachusetts  
B+T Project No. 3344.00

Dear Ms. Brown:

Beals and Thomas, Inc. (B+T) is providing this supplemental review documenting our Environmental Peer Review of the Chapter 40B Comprehensive Permit Application Filing for 0 School Street ('the Property') in Manchester-by-the-Sea, Massachusetts. We understand that SLV School Street, LLC (the Applicant), proposes to develop a 40B housing project consisting of 136 apartment units, 34 of which are designated to be affordable, with associated site improvements (the Project).

B+T issued a preliminary memorandum on February 22, 2022 and an initial letter to the Board dated March 7, 2022, which presented the results of our site visit and our initial review of the original documentation submitted by the Applicant. We then issued a supplemental comment letter dated March 25, 2022, and additional documentation was subsequently provided by the Applicant as listed below, which served as the basis of our current review:

- Plan entitled *MBTS Conservation Bylaw Buffer Exhibit*, dated May 5, 2022, Prepared by Allen & Major Associates, Inc.
- Plan set entitled *Existing Conditions*, dated May 19, 2022, stamped by Norman. L. Lipsitz, PLS, and prepared by Allen & Major Associates, Inc.
- Revised Wetland Bylaw Waiver Request, dated May 25<sup>th</sup>, 2022.
- ILSF Calculation with plan entitled *Existing Watershed Plan*, dated May 4, 2022

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Civil Engineering ▪ Land Surveying ▪ Landscape Architecture ▪ Land Use Permitting ▪ Environmental Planning ▪ Wetland Science

- Response to Supplemental Review Letter, provided by the Applicant, dated May 25, 2022.

We have reviewed the documentation above with respect to the requirements of the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, S. 40) and its implementing Regulations at 310 CMR 10.00 (collectively referred to as the 'Act'), *Article XVII of the Manchester-by-the-Sea General Bylaws: General Wetlands Bylaw* (Rev. April 2015) and the *Manchester-by-the-Sea Wetlands Regulations for Administering General By-Law Article XVII* (2021; collectively 'the Bylaw'), and particularly with regard to our most recent comments.

### **Review Format**

To maintain the Administrative Record, we have included the comments from our initial letter report dated March 7, 2022, followed by the Applicant's responses in *italicized* font, followed by the next succession of our comments from the March 25, 2022 review letter, the Applicant's response to those in *italicized* font, and our current comments in **bold** font to document the status of our original comment as applicable.

For further ease of reading, we have also omitted the introductory text from our March 7, 2022 correspondence which characterized the site conditions and provided an overview of the Project.

### **Bylaw Waiver Requests**

1. B+T performed a review of the Applicant's Wetland Bylaw Waiver Requests prepared by Strategic Land Ventures (Section 10.2) in the context of the Site Development Plans and the findings of our February 9, 2022 site visit. **Please note that the original waiver request table comments and responses have been left in place to preserve the dialogue between B+T and the Applicant. However, where text accompanying previously requested waivers has been updated by the Applicant, such updates are reflected in the table. Please also refer to the final section of this review letter which addresses the new waiver requests which have resulted from this dialogue. Specifically, as requested by the Board, waivers were evaluated to assess: 1) Necessity of relief; 2) Alternate methods of compliance; and 3) Potential adverse impact of waiver approval.**

<b><i>By-Law or Regulations Section</i></b>	<b><i>Requirement</i></b>	<b><i>Explanation</i></b>
Wetlands Bylaw Section 1.2.2: Use of Home Rule Authority	<i>Protect vernal pools as an additional resource area recognized by the Town as significant, but not included in the Act;</i>	This extends the resource area boundary 100 feet into the uplands, unlike the WPA definition. This effectively makes a 130-foot no disturbance zone and 150-foot no build zone to vernal pools. This application of this bylaw – particularly the extended scope of the resource area and buffer would make the construction of the driveway essentially impossible and thus would be tantamount to a denial of the permit. As will be demonstrated by the Applicant’s consultant, the project will not impair vernal pool function.
<p>B+T Previous Comment:</p> <p>a) Necessity of relief: Granting the Applicant relief from the Bylaw’s regulation over Vernal Pools would be necessary if such is the case that the 100-foot extension of the vernal pool boundary (and subsequent 30’ No Disturb Zone) and such waivers are Consistent with Local Needs and are required to permit the construction and operation of the Project. As not all of the PVPs and CVPs constraining the Property have been delineated (see Comment No. 11), there is not enough information to determine whether or not what is described as a major redesign or a substantial loss of units would occur.</p> <p><i>Applicant Response: Adherence to the local 200’ buffer and associated 130’ no disturb area around vernal pools would require major changes to the plan and loss of units. The two CVPs north of the site have been delineated and have been shown on the recently submitted plan set dated 3/23/2022. We are seeking waivers from local vernal pool provisions but will demonstrate how the plan complies with DEP regulations and does not impair vernal pool function.</i></p> <p>B+T Response: Although we concur with the delineation of the two CVPs noted herein, we recommend that the two newly delineated PVPs within the A Series also be shown on the plan. It appears that some level of a waiver will be necessary from the PVPs within the A Series wetland, but without the delineation being represented on the plan, it is unclear how the Vernal Pool setbacks would affect the Project specifically.</p> <p><i>Applicant Response: The two newly delineated PVPs within the A Series and the associated setbacks will be shown on an updated plan to be submitted as “Bylaw Buffer Exhibit”.</i></p>		

*As the civil plan set represents, we have stayed out of the 100' foot vernal pool setback for all stormwater management infrastructure per DEP requirements, and in an effort to be as compliant as possible, we have kept the building and roadway out of the 100' foot buffer as well with the exception of a limited section of the driveway. As the buffer exhibit represents, we cannot build the project and adhere to the increased setback requirements under the local bylaw.*

Also, for clarity, it is our interpretation that there is not a "200' buffer" to Vernal Pools as noted in the Applicant's response above. We read the Bylaw and Regulations in combination as protecting the pool plus 100' from the pool perimeter as the Vernal Pool Resource Area. The 100' buffer zone then follows (which does yield a 200' jurisdictional area from the pool, but the inner 100' of this is a resource area, not buffer zone). Within the outer 100', or the buffer zone, there is a 30' No Disturb and a 50' No Build zone.

*Applicant Response: Applicant agrees with this interpretation of the local bylaw. Please see the bylaw buffer zone exhibit previously referenced, which depicts both the locally defined 100' expansion of the vernal pool resource area and the 100' buffer thereto. Please also see our previous comment, which relates to the 100' buffer under the State Wetlands Protection Act, and notes the reasons for seeking waiver of the local bylaws relating to vernal pools.*

**B+T Current Comment: Based on the illustrative buffer exhibit, there are two locations where work is proposed within the local Vernal Pool resource area (i.e. the vernal pool basin plus 100' adjacent area): 1) west of the northerly A series Vernal Pool, for driveway, grading, and retaining wall; and 2) east of the R series Vernal Pool, for stormwater basin off-grading.**

- b) Alternate methods of compliance: More information from the Applicant, including the delineation of MAHW of the PVPs and CVPs, is necessary to confirm the necessity of the requested waiver, and to ascertain if alternate design strategies (e.g., retaining walls to minimize off-grading, but with consideration of vernal pool species movement corridors) would be applicable/appropriate.

*Applicant Response: As shown on the plans dated 3/23/22, all VP boundaries have been delineated except for VP A North. Vernal pool A North was flagged on 4/1/22 and can be shown on future updated plans*

B+T Response: We understand from this comment that the intent is to show the PVP within the A Series on future updated plans. We recommend that these plans be submitted to the ZBA prior to the Board rendering a decision on the waiver request to fully understand the dimensional relief that is requested.

*Applicant Response: Delineations of all PVPs within A series is shown on the Existing Conditions Plan sheet V-101, revised through May 19th 2022.*

**B+T Current Comment: It appears that the limit of work east of the R series may be able to be tightened so as to avoid impact within the local vernal pool resource area. We request that the Applicant evaluate and advise. However, it appears that although the limit of work northwest of the A series may be able to be tightened slightly to reduce the extent of work in the vernal pool resource area, it is not possible to completely avoid the impact.**

- c) Adverse impact of approval: B+T recommends that an exhibit be prepared or linework added to the site plan showing the extent of the locally jurisdictional Vernal Pool Habitat and associated No Disturb Zone with respect to the Project to help determine the necessity of the waiver. Not enough information appears to be presented in this application package to render a decision.

*Applicant Response: the locally jurisdictional 200ft VP boundaries are shown on the updated plans dated 3/23/2022 to show necessity of this waiver. Adherence to this no disturb zone would effectively make the project unbuildable. We are seeking waivers from local vernal pool provisions but will demonstrate how the plan complies with DEP regulations and does not impair vernal pool function.*

B+T Response: B+T understands that some manner of a waiver to the vernal pool setback provisions will be required by this design. The Applicant notes that they will demonstrate 'how the plan complies with DEP regulations and does not impair vernal pool function'. We recommend the Applicant provide a synopsis of engineering or construction management solutions being explored to achieve this protection, particularly as it relates to the removal of potential ledge outcrops up-gradient of the A Series PVPs. In the vicinity of the A Series PVPs, work is proposed to extend down-gradient from the crest of the slope above one of the vernal pools with significant ledge. We feel that a greater discussion as to how work will be undertaken to avoid impacts to the PVPs during construction is warranted.

*Applicant Response: The Applicant believes that the level of detail being requested, specifically construction strategy solutions, are better addressed during the development of Construction Drawings and prior to the building permit application submittal. The Applicant will accept a customary condition requiring such construction management details. Nevertheless, the Applicant has contacted a prominent multi-family general contractor in an effort to communicate possible means and methods that could be used during construction to appropriately protect resource areas during construction, and further details will be forthcoming as necessary.*

**B+T Current Comment: The potential adverse impact of approving this waiver is a reduction in the natural/undisturbed area of locally jurisdictional vernal pools on-site. Specifically, two areas of the outer vernal pool upland boundary would be developed. If this waiver is granted, the Project would be subject to the jurisdictional setbacks of the Act, which regulates vernal pool habitat only to the extent within the resource area surrounding a vernal pool.**

**We note that the wildlife evaluation is forthcoming which is anticipated to further examine the vernal pools and their surrounding resource areas and uplands, and therefore defer evaluation of adverse impact to receipt of that document.**

**Additionally, although we understand that the construction-level detail is typically addressed at a later stage of the development process, given the vernal pool waiver request(s) and potential for adverse impacts to vernal pools (particularly the A series) during construction due to the steep and tall slopes, ledge, and the proposed work limit, information regarding how construction-period impacts will be avoided appears warranted to inform the Board’s waiver decision.**

<p>Wetlands Bylaw Section 2.2: Alter</p>	<p><i>[Definition of Alter]</i></p>	<p>Waiver being requested of this definition as it relates to the interpretation and implementation of the bylaw and its expanded resource areas. Many of the subsections of 2.2 are open to subjective interpretation; and adherence to local wetland bylaw regulations will make the project unbuildable. For example, the terms “cumulative” and “incremental” in bylaw section 2.2.13 are not defined. Thus, it is open to subjective interpretation and could require a major redesign and a substantial loss of units depending on the local Commission’s interpretation. The Applicant will demonstrate that the project does not result in adverse impacts to Resource areas and will otherwise be subject to approval from the Conservation Commission under the Wetlands Protection Act</p>
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B+T Previous Comment

- a) Necessity of relief: The noted language above relates to the definition of “Alter”; the definitions section of the Bylaw does not itself impose any requirements. Therefore, it appears that the waiver being requested is actually from Section 4, which regulates alteration of resource areas and buffer zones. We request that the Applicant confirm the intended waiver.

*Applicant Response: Waiver is being requested for the expanded nature of this definition as the definition extends beyond the WPA. The submitted plans demonstrate compliance with all applicable DEP regulations.*

B+T Response: At this time the submitted plans do not clearly demonstrate compliance with all applicable MassDEP regulations. For example, the plans do not quantify total RFA impacts in relation to total RFA on-site in compliance with the performance standards of 310 CMR 10.58(4).

Although we understand that some of this information is forthcoming through the NOI process with the MCC, we caution against noting compliance with the Act and its implementing regulations based on the information submitted to date until the project is reviewed and approved by the issuing authority.

*Applicant Response: The Applicant will be submitting an NOI to the Conservation Commission under the Wetlands Protection Act. All riverfront issues will be addressed in that filing. As our exhibits will represent, we will be disturbing less than the allowable area.*

Resource area impacts in the form of potential BVW impact and Riverfront Area impact will be required for this design. Additionally, potential impact to the additional jurisdictional boundaries applied to PVPs and CVPs under the Bylaw may also be necessary. The Applicant has specifically framed this waiver request around the language of the Bylaw which allows the MCC to consider cumulative and incremental adverse impacts as alterations.

*Applicant Response: The bylaw contains stricter standards than the WPA. Resource area impacts are required for this project and will meet all relevant performance standards under the WPA.*

B+T Response: B+T understands that this information will be forthcoming through the NOI process with the MCC. If a waiver is granted to this provision, then the Project will still require review for compliance with the Act and its implementing regulations as the Applicant notes.

*Applicant Response: Acknowledged and agreed. The Applicant seeks a waiver from the local bylaw as stated and will other demonstrate, both to the ZBA and ultimately to the MCC that the project will not have any adverse impacts to the wetlands resources on site.*

While we acknowledge that the terms ‘cumulative’ and ‘incremental’ are not provided standalone definitions in these local rules, the Bylaw’s Regulations do provide a definition for interpreting ‘Significant Immediate or Cumulative Adverse Effect’ (Section 2.28) to guide the MCC’s decision-making process:

*2.28 “Significant Immediate or Cumulative Adverse Effect” means an impact that would under reasonable assumptions result in a measurable decrease in the function of a Resource Area protected by the By-Law at the site or proximal to the site, taking into consideration past losses, current conditions and the projected impacts of reasonably foreseeable future work resulting in similar, comparable, or other discernible impact and disturbance, as determined by the Commission.*

*When an activity that may not be significant in and of itself, or incremental activities that may not be significant in isolation, but cumulatively have an adverse impact, that activity may have a Significant Immediate or Cumulative Adverse Effect. Determination of Significant Immediate or Cumulative Adverse Effect shall be made on case-by-case basis, considering all relevant evidence presented and which shall include but not be limited to attritional loss and history of activities within Resource Areas.*

*Applicant Response: This interpretation would go beyond what is required by DEP and would effectively make the project unbuildable. Waivers of local provisions are being sought and, as will be demonstrated by the Applicant’s consultants, the project will not have an adverse impact on Vernal Pool function.*

B+T Response: It is unclear from the Applicant’s response if the Project is unable to meet this standard of No Significant Immediate or Cumulative Adverse Effect. While we acknowledge that this definition is expanded beyond those defined by the MassDEP regulations (310 CMR 10.04), we recommend that the Applicant still consider and respond to whether or not the Project will result in a measurable decrease in resource area functions noted above. That said, regardless of the outcome of that evaluation, we acknowledge that a waiver from this provision may be desirable to avoid uncertainty during the NOI permitting process.

*Applicant Response: See prior response. We are confident that the project will not “result in a measurable decrease in resource area function.” The project will meet the required standards under the WPA and the vernal pool/wildlife study will also address these considerations.*

B+T Response: We recommend that the Applicant provide a written statement as to whether or not the Project can satisfactorily meet the Regulation's test for *Significant Immediate or Cumulative Adverse Effect* as defined in Section 2.28. If the Project cannot meet the standard, we recommend that the Applicant detail which Project components would not comply.

*Applicant Response: See prior response. While we seek a waiver from this regulation, we remain committed to demonstrating, both to the ZBA and the MCC, that there will be no measurable decrease in resource area function. Our forthcoming vernal pool study will demonstrate that we don't adversely impact the resource areas based on DEP and commonly accepted standards. We cannot meet all the local bylaw requirements but will, again, demonstrate that the project will not adversely impact the resource areas. If this waiver is not granted, we can't build the project.*

*Applicant Response: A statement or report of this nature would be more common during the NOI process. The Applicant would be comfortable with a condition in the Comprehensive Permit requiring us to make a similar statement as part of an anticipated filing with the Conservation Commission under the Wetlands Protection Act.*

B+T Response: Please refer to our comment regarding the previous response.

*Applicant Response: see prior response.*

**B+T Current Comment: The result of granting this waiver would defer to the definition of Alter of the Act at 310 CMR 10.04, which does not include an evaluation of cumulative and incremental impacts, among other more minor differences. It remains unclear to us why denial of this waiver would result in the project being unbuildable as stated by the Applicant, but acknowledge the noted uncertainty with the undefined terms.**

**We also note that the Applicant's indication that the requested written statement as to whether or not the Project can satisfactorily meet the Regulation's test for Significant Immediate or Cumulative Adverse Effect as defined in Section 2.28 is more appropriate for the NOI process is not relevant, since the NOI will only address the MA WPA and not the local Bylaw.**

**That said, it appears that the waiver is requested to provide the Applicant with more certainty in the permitting process as the terms "cumulative" and "incremental" are not defined. It is not apparent to us why the development as proposed would not comply with this section but acknowledge the Applicant's concern.**

**For example, this definition could be interpreted as requiring an evaluation of existing historically impacted areas associated with the former quarry operation, to the extent those may lie outside of the currently proposed limit of work. Similarly, the Bylaw definition of Alter could be interpreted to allow speculation as to future impacts resulting from a development project (such as “lawn creep”, dumping, etc.). Further, it is not specified whether the analysis is limited to on-site, or would include off-site impacts beyond the Applicant’s control.**

- b) Alternate methods of compliance: Alternative methods of compliance can be evaluated once the Applicant confirms/identifies which Project aspects would be in non-compliance.

*Applicant Response: The Applicant will be submitting a Notice of Intent to the MCC under the Wetlands Protection Act and will adhere to those regulations and requirements.*

B+T Response: Acknowledged. However, we recommend that the Applicant provide as much documentation to this effect, in essence, an alternatives analysis, as is feasible during the waiver request process.

*Applicant Response: The Applicant will do an alternatives analysis as part of the Notice of Intent if it is deemed to be necessary. We will submit that information at that time.*

**B+T Current Comment: Although the Applicant indicates above that an alternatives analysis may be provided during the NOI process, we note that it is our understanding that such an analysis would not address the Bylaw’s “cumulative” and “incremental” effect requirement, given that the NOI will be filed only pursuant to the Act in accordance with the Comprehensive Permit process.**

**That said, the Applicant has noted elsewhere that the forthcoming wildlife study will document “no measurable decrease in resource area function.” We understand that this study is ongoing at this time.**

**Additionally, for the Board’s information we note that “alternative methods of compliance” are not applicable to this particular waiver request. An evaluation of “cumulative” and “incremental” impacts is either provided or it is not.**

- c) Adverse impact of approval: The potential for adverse impact of waiver approval can be evaluated once the Applicant confirms/identifies which Project aspects would be in non-compliance.

*Applicant Response: The Applicant will be submitting a Notice of Intent to the MCC under the Wetlands Protection Act and will adhere to those regulations and requirements.*

B+T Response: Acknowledged. Please see the above response.

*Applicant Response: see above.*

**B+T Current Comment: Given the character of the existing site and proposed development B+T does not take exception to this waiver request.**

Wetlands Bylaw Section 2.9: Vernal Pool	<i>[Definition of Vernal Pool]</i>	As stated in prior explanation, a waiver is required from the expanded definition of the extent of a vernal pool and its buffer in that, under such bylaw, the work required for roadway construction would be within the vernal pool or buffer thereto. As will be demonstrated by the Applicant’s consultant, the project will not impair vernal pool function.
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B+T Previous Comment

a) Necessity of relief: The Applicant notes that the 100-foot extension of the Vernal Pool Boundary and associated No Disturb Zone would result in a major redesign or a substantial loss of units. Please refer to B+T’s response to the Section 1.2.2 Waiver Request above with respect to all PVPs and CVPs being portrayed on the Plan.

*Applicant response: Plans dated 3/23/22 show all PVPs and CVPs except two. VP A North was delineated on 4/1/22 and a small pool just south of VP A South was identified and subsequently delineated on 4/1/22.*

B+T Response: We request that all delineated CVPs and PVPs, with associated resource area limits, buffer zone, and no disturb and no build zones, be reflected on the revised plan as these boundaries serve as the basis for the dimensional waiver requests.

*Applicant Response: The Delineations of all PVPs and CVPs within A series is shown on the Existing Conditions Plan sheet V-101, revised through May 19th 2022. In addition, we have prepared an exhibit (MBTS Conservation Bylaw Buffer Exhibit sheet EX-101) showing resource delineations and setbacks as defined under the local bylaw.*

**B+T Current Comment: Please refer to earlier discussion regarding the local vernal pool extent.**

- b) Alternate methods of compliance: Full delineation of the PVPs and CVPs constraining the Site would be required to render a complete evaluation as to whether or not alternate methods of compliance are available. B+T recognizes that alternate means of site access appear to be even more impactful in terms of requiring a crossing of the A-Series BVW or use of Old School Street, if it were available.

*Applicant Response: Refer to response to comment (a) above.*

B+T Response: Acknowledged; we recommend that the plans be updated to reflect these delineations to allow for a more thorough evaluation of implications.

*Applicant Response: See previous responses*

**B+T Current Comment: Please refer to earlier discussion regarding the local vernal pool extent.**

- c) Adverse impact of approval: Potential loss of vernal pool habitat under local jurisdiction which extends into the uplands may occur from this design. However, as not all of the vernal pool boundaries have been delineated at this time, it is unclear the extent to which relief would be necessary for this Project, and the associated potential adverse impact from waiver approval.

*Applicant Response: Refer to response to comment (a) above.*

B+T Response: Acknowledged; we recommend that the plans be updated to reflect these delineations to allow for a more thorough evaluation of implications.

*Applicant Response: See previous responses. As the plans and exhibits represent, the project cannot be built without the granting of the waivers.*

**B+T Current Comment: Please refer to earlier discussion regarding the local vernal pool extent.**

<p>Wetlands Bylaw          Section 4.1.1:          Jurisdiction</p>	<p><i>any freshwater or coastal wetland; salt marsh; wet meadow; bog; swamp; vernal pool; spring; bank; reservoir; lake; pond; river or stream; beach; dune; estuary; coastal bank; lands under any water body; land subject to flooding or inundation by groundwater or surface water; land subject to tidalaction; coastal storm flowage or flooding; and</i></p>	<p>Requesting waiver specifically for the vernal pool resource area section. This application of this bylaw – particularly the extended scope of the resource area and buffer would make the construction of the driveway essentially impossible and thus would be tantamount to a denial of the permit. As will be demonstrated by the Applicant’s consultant, the project will not impair vernal pool function.</p>
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**B+T Previous Comment**

- a) Necessity of relief: The Applicant will require some level of relief as the Project will require Riverfront Area impacts and potential BVW impacts. However, this specific waiver request is structured to request from relief from almost all resource areas recognized by the Bylaw, including those which are not applicable to the Site in question (e.g., land subject to tidal action, coastal bank, etc.). Rather than a blanket waiver to one of the critical operational components of the Bylaw, B+T recommends the Applicant refine this waiver request to specifically call out certain resource areas as noted in the commentary and why this waiver is required to permit the construction and operation of the Project.

*Applicant Response: Applicant agrees that this waiver should be revised to specifically call out the necessary resource area. The updated April 5th waiver request list submitted by the Applicant has made this distinction.*

B+T Response: Acknowledged. The Applicant has revised the waiver request to 4.1.1. to apply to the inclusion of Vernal Pools as a resource area. If a waiver is granted from the Vernal Pool setbacks of the Bylaw, we recommend that the Applicant consider whether or not this waiver request is still required as the PVPs and CVPs are interior of other local-and state-jurisdictional resource areas.

*Applicant Response: This waiver is still being requested as it relates to vernal pools. Necessary waivers for other resource areas have been requested. The applicant is aware and understands that all CVPs and PVPs are interior of other local and state jurisdictional resource areas. If this waiver is not granted, based on enhanced Vernal Pool delineation and setbacks, the project would not be able to be built as shown in MBTS Conservation Bylaw Buffer Exhibit, sheet number EX-101.*

**B+T Current Comment: The Applicant is seeking relief from this section as it relates to vernal pools and proposed work therein (e.g. within 100' of the pool basin). Should this waiver be granted, portions of the resource areas encapsulating the vernal pools would still be regulated as vernal pool habitat (and not a separate resource area) under the Act (310 CMR 10.04). We note for the Board's clarification that this vernal pool habitat, pursuant to the Act, is limited to the boundary of the surrounding wetland and does not extend into uplands, even if such uplands are within 100 feet of the vernal pool.**

- b) Alternate methods of compliance: The Applicant has the opportunity to refine the waiver request as it relates to isolated wetlands and vernal pools, and to demonstrate why these resource areas prevent construction and operation of the Project. Subsequently, alternate methods of compliance can be evaluated.

*Applicant Response: As shown on plans dated 3/23/22, the additional locally defined resource areas constrain the site. Adherence to all local bylaws would significantly inhibit the construction of the project as shown on the Plan Set of Record. The updated April 5th waiver list has included a waiver from the aforementioned provisions; and the materials recently submitted demonstrate how the Application is in compliance with MA wetland regulations.*

**B+T Response:** We acknowledge that the April 5<sup>th</sup> Waiver Request has been updated to confine this waiver to Vernal Pools being considered a resource area. We recommend that the Applicant consider whether or not there is a path for the construction of this Project in a manner which still recognizes the jurisdictional status of PVPs and CVPs under the Bylaw. For the waiver requests, it would be helpful for the Applicant to specifically identify what the implications of denial would be for the corresponding waiver request.

*Applicant Response: Strict application of the additional jurisdiction of the vernal pools under the Bylaw, along with the local bylaw provisions with respect to the regulation thereof would make this project unbuildable. A significant portion of the driveway needs to go through the jurisdictional area of the vernal pools under the Bylaw. The current plan design is the only feasible layout for the driveway due the site topography and wetland constraints. Without the driveway, the building cannot be built. The reason for a majority of the waivers requests is due to work within the additional jurisdiction the bylaw places over vernal pools. Note though that, as aforesaid, the driveway only intersects a small portion of the buffer to the vernal pool as defined under the Act. Again, the Applicant will demonstrate that this small incursion will not result in a measurable decrease in resource area function.*

**B+T Current Comment: It is unclear why this waiver request is necessary, given the Applicant's indication that the forthcoming vernal pool/wildlife habitat study will demonstrate no impacts to resource areas, including vernal pools. We presume that the waiver is requested to provide less uncertainty in the permit review process.**

<p>c) Adverse impact of approval: The way in which this waiver request is structured is that the Applicant is seeking a waiver from all wetland resource areas subject to local jurisdiction as listed in Section 4.1.1 of the Bylaw—which includes <i>all</i> resource areas with the exception of Riverfront Area (Section 4.1.2). This would essentially render the Project subject only to review pursuant to the Act.</p> <p><i>Applicant Response: Please refer to the updated April 5th waiver list for the requested waiver refinements.</i></p> <p>B+T Response: Acknowledged. This section has been revised to further specify from which resource areas relief is being requested.</p> <p>Applicant Response: No response required</p> <p><b>B+T Current Comment: Granting this waiver would result in vernal pools being considered a habitat feature of other wetland resource areas, as opposed to being themselves resource areas. Additionally, the extent of area subject to jurisdictional review would be reduced, as the local vernal pool resource area extends 100’ into uplands, which is not the case with the Act. We defer an evaluation as to potential adverse impact of waiver approval to receipt of the vernal pool/wildlife habitat study currently being prepared by the Applicant.</b></p>		
<p>Wetlands Bylaw          Section 4.4:          Jurisdiction and          Presumption</p>	<p><i>Unless the applicant demonstrates by clear and convincing evidence that a significant adverse effect will not occur, it shall be presumed that significant adverse effects will result from any alteration within:</i></p> <p><i>4.4.1 - a Resource Area, other than land subject to flooding or inundation by groundwater, or surface water or coastal storm flowage or flooding;</i></p> <p><i>4.4.2 - 30 feet of the edge of any salt marsh, freshwater wetland or vernal pool; or</i></p>	<p>Waivers of 4.4.1 and 4.4.2 are required because work is required within Resource Areas and 30 feet of the edge of a freshwater wetland and/or a vernal pool. As will be demonstrated by Applicant’s consultant, work will be completed without adversely impacting resource area.</p>

B+T Previous Comment

- a) Necessity of relief: With respect to resource area impacts (Section 4.4.1), Riverfront area and potential (depending on availability of municipal sewers) BVW impacts appear to be required to achieve the Project design. Similarly, relief from the 30-foot No Disturb Zones (Sections 4.4.2 and 4.4.3) would also be required to perform the necessary crossings.

*Applicant Response: A waiver from Section 4.4.3 is no longer needed as the Applicant will be connecting to municipal sewer. However, sections 4.4.1 and 4.4.2 are needed for construction of the stormwater bioretention area outfall.*

B+T Response: Acknowledged. However, we note that the April 5<sup>th</sup> Waiver Requests does not include Section 4.4.1, only Section 4.4.2 and request that the Applicant update accordingly.

*Applicant Response: Applicant will update waiver list to include sections 4.4.1 and 4.4.2. 4.4.1 is needed because work is proposed within "Resource Areas" (Riverfront Area and Vernal Pool) and similarly 4.4.2 is needed because work is proposed within 30 of the edge of a freshwater wetland and/or a vernal pool. Failure to grant waivers from both 4.4.1 and 4.4.2 will not allow the stormwater bioretention areas and the driveway to be built. If the project cannot build the stormwater management areas, the project will not meet the MassDEP stormwater standards. Inability to build the driveway would make the entire development infeasible. However, the currently proposed stormwater management area will meet the MassDEP stormwater standards.*

**B+T Current Comment: Given the configuration of the Property's School Street frontage, the project requires work within Riverfront Area which is the subject of the Section 4.4.1 waiver request. With respect to the Section 4.4.2 waiver request, the Applicant is requesting this as it relates to the space required for the stormwater management system and driveway. These subsections of the Bylaw specifically relate to the presumption that work therein (the resource areas and 30-foot No Disturb Zone) carries the presumption of significant adverse effect.**

- b) Alternate methods of compliance: Unless an off-site upland route for the wastewater line is available to the Applicant, there does not appear to be another alternative for wastewater siting on-site given the configuration of the available uplands. Similarly, from a site access standpoint, it does not appear that the Applicant could shift the site entrance outside of the Riverfront Area without encroaching into the A-Series BVW.

*Applicant Response: Wastewater line is no longer proposed; B&T is correct in that the site entrance cannot be moved or else there would be permanent impacts to BVW. The analysis will be included in the NOI submittal to the MCC under the State Wetlands Protection Act.*

B+T Response: Acknowledged. The Applicant is no longer proposing the wastewater line through the A Series BVW.

Applicant Response: No response required.

**B+T Current Comment: The Applicant has refined this waiver to pertain to a portion of the area within the 30-No Disturbance Zone needed for a portion of the site driveway and stormwater system and its associated off-grading as well as to the Riverfront Area as it pertains to site access. There do not appear to be alternate methods of compliance as alternate means of access along either Old School Street or School Street would appear to be more impactful to resource areas than the current configuration of the site entrance. With regard to the stormwater basin and site driveway there do not appear to be alternate methods of compliance regarding the 30-foot No Disturbance Zone.**

- c) Adverse impact of approval: Given the snow cover at the time of the field review, it is unknown if relief from Section 4.4.3 would be necessary, and if so, Bank would need to be individually delineated as the Applicant notes. Collectively, waivers from Sections 4.4.1, 4.4.2, and 4.4.3 do not appear to signify adverse impact but will require conformance with the inland resource area performance standards of the Act when undergoing review before the MCC. Conformance with these performance standards will require additional documentation than what is included in the Comprehensive Permit Application (e.g., Riverfront Area Alternatives Analysis, Wildlife Habitat Assessment (depending on the context of Vernal Pool Habitat impacts), potentially stream crossing standards, etc.).

*Applicant Response: A waiver of Section 4.4.3 is no longer necessary as the Applicant will be connecting to municipal sewer. As such a wetland crossing/ BVW impact would no longer be required. A wildlife habitat assessment is being prepared and will be submitted during the Comprehensive Permit public hearing process.*

B+T Response: Acknowledged. Additionally, during subsequent site visits no such Bank was observed within the A Series BVW proximate to the former directional drilling location.

Applicant Response: No response required.

**B+T Current Comment: The Applicant has noted that no significant adverse effect will be demonstrated in the forthcoming vernal pool/wildlife habitat study, and we defer evaluation of adverse impact of granting the waiver to receipt of that document.**

<p>Wetlands Bylaw Section 6.1: Applications and Fees</p>	<p><i>Except as provided in Section 5 hereof, a written NOI application shall be filed with the ConCom to prior to performing any activity affecting a Resource Area. The NOI shall include such information and plans as are deemed necessary by the ConCom to describe proposed activities and their effects on the Resource Area or Resource Area Buffer Zone. No activities shall commence without receiving and complying with a permit issued pursuant to this By-Law</i></p>	<p>All local applications and consideration within the context of the local bylaws, shall be subsumed into 40B process and under the jurisdiction of the ZBA. As such, the applicant will not be submitting a separate local bylaw NOI filing</p>
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The relief requested to Section 6.1 appears general in nature and regarding the permitting process. This section of the Bylaw is the regulatory mechanism which requires that an Order of Conditions (OOC) under the Bylaw be issued prior to work commencing within the MCC's jurisdiction.

- a) Necessity of relief: Regardless of whether this waiver is granted, an OOC issued by the Commission under the Act will be required for this Project. An OOC is a state permit issued by the Commission or, upon appeal, by MassDEP through a Superseding Order of Conditions (SOC) and is necessary for work within the 100-foot Buffer Zone, the potential BVW crossing, and for work within the 200-foot Riverfront Area. The Applicant is requesting a waiver from Bylaw requirements/standards that are in excess of those required by the Act, which seems to be in essence requesting a waiver from the full Bylaw. We recommend that the Applicant specify why such a broad waiver is necessary to construct and operate the Project.

*Applicant Response: Pursuant to G.L. c. 40B, a formal Order of Conditions will be obtained under the WPA exclusively. The ZBA is being asked to review all local wetland and environmental considerations as part of the Comprehensive Permit process.*

B+T Response: Acknowledged. We understand that through the waiver process it is the Applicant's intent to only require an OOC under the standards of the Act. We recommend the Applicant consider whether or not all of the waivers listed therein are comprehensive enough to not require any coverage for an OOC under the bylaw.

*Applicant Response: This is not entirely accurate. While the Applicant is requesting waivers from many local wetlands bylaw provisions, the Applicant is not solely relying on the OOC it will seek from the MCC. Rather, in keeping with the local interest in providing enhanced protection of wetlands, the Applicant will demonstrate, to the ZBA that there are no measurable decreases in resource area protections. What the Applicant is seeking from the ZBA are waivers from certain of the local wetland bylaw and effectively getting an Order of Conditions from the Zoning Board of Appeals, approving the project in a manner that is consistent with G.L. c. 40B.*

**B+T Current Comment: Granting of this waiver request is consistent with the Comprehensive Permit process, through which the Applicant will not be seeking a separate Order of Conditions under the Bylaw. This waiver relates to the procedural processes under the Bylaw which establishes one of the grounds through which this local permit is required. We note for the record that this Project will be subject to similar provisions as stated in this section of the Bylaw under the Act when reviewed by the MCC.**

- b) Alternate methods of compliance: Due to the fact that an OOC will be required under the Act, the Applicant has the opportunity to file concurrently for a state and local OOC. This concurrent filing is a common approach for wetland permitting in communities with a local wetland bylaw or ordinance. The most readily available alternative is to simply file concurrently and instead specify this waiver request to the standards of the Bylaw which specifically would prevent construction and operation of the Project.

*Applicant Response: Applicant is only required to file under the WPA for an OOC from the MCC. As a 40B project, review under local bylaw is part of 40B process.*

B+T Response: We recommend that clarification from Town Counsel be provided as to whether or not the waiver from the Bylaw is inherently allowed by-right through the Chapter 40B Comprehensive Permit Process or if the Applicant still carries the burden of proof that there shall be no adverse environmental impacts.

*Applicant Response: The Applicant has not suggested that waivers are allowed as a matter of right although it has noted that c. 40B supports the waivers of local bylaws where appropriate. We are requesting waivers and will demonstrate the need for such waivers while also demonstrating that we are not harming the core interests protected under the local wetlands bylaw.*

**B+T Current Comment: Acknowledged. As the Bylaw review is being addressed pursuant to the Comprehensive Permit process, there is no alternative to this procedural waiver.**

c) Adverse impact of approval: A wholesale waiver to Section 6.1 of the Bylaw could result in an inadvertent circumvention of the Bylaw itself as this addresses the requirement of a filing itself and the ability of the MCC to request information to perform a complete review. If the Proponent’s concern is the discretionary language with regard to the information the MCC may request, then we note for the record that the Act mirrors this language throughout its implementing regulations. For example, the Commission has the ability to ask for materials:

(310 CMR 10.04) – Definition of ‘Plans’: *Plans means such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the issuing authority to describe the site and/or the work, to determine the applicability of M.G.L. c. 131, § 40 or to determine the impact of the proposed work upon the interests identified in M.G.L. c. 131, § 40. (See also General Instructions for Completing Notice of Intent (Form 3) and Abbreviated Notice of Intent (Form 4).) Emphasis added.*

*Applicant Response: The applicant will comply with requests from the MCC to the greatest extent feasible during the NOI permitting process under the MA Wetlands Protection Act.*

B+T Response: Acknowledged. We understand that it is the Applicant’s intent to file only under the Act and its regulations.

Applicant Response: No response required.

**B+T Current Comment: There is no specific adverse impact of approval, since this waiver only reflects the Comprehensive Permit process (whereby the Board addresses the local bylaws) and does not change performance standards of the Bylaw.**

Wetlands Bylaw Section 9: Permits and Conditions	<i>[Standards of Review for applications under the local wetlands bylaw]</i>	Waiver from this entire section. This section is not applicable under c. 40B. Permits and approvals to be granted pursuant to G.L. c. 40B. Enhanced standards and burdens of proof are not applicable under 40B and, if applied, could nullify the project. As will be demonstrated by the Applicant’s consultant, the project will not adversely impact the interests set forth under the Wetlands Protection Act.
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B+T Previous Comment

- a) Necessity of relief: Section 9 of the Bylaw is multifaceted and speaks to additional permitting requirements, the extent of the Commission's discretionary powers in permitting decisions, as well as several procedural/operational processes. B+T concurs that there are components of Section 9 which are suitable for a waiver request, although we caution against a blanket waiver to avoid a procedural misstep or inadvertent circumventing of the local permitting process. For example, while the Applicant may appropriately request a waiver to Section 9.10 which speaks to additional wildlife habitat studies beyond those required by the Act, it may not be appropriate to waive Section 9.12 *et seq* which relate to permitting procedures such as expiration dates.

*Applicant Response: Permits and approvals are to be granted pursuant to G.L. c. 40B. The Applicant is requesting waivers from certain sections of the Wetlands Bylaw and will be filing a NOI under the MA WPA only.*

B+T Response: B+T understands that the Applicant carries the burden of demonstrating that the granting of these waivers will not have an adverse environmental impact.

Applicant Response: No response required.

**B+T Current Comment: Sections 9.1 through 9.6 and 9.12 through 9.16 generally address procedural considerations, which would not appear to require waiving given the Comprehensive Permit process at play (whereby the Board addresses the wetlands Bylaw). Please refer to the below discussion regarding the other subsections in Section 9:**

- **Section 9.7 – This section presumes that the Buffer Zone is important to protecting the Resource Areas and that impacts therein have a high likelihood of adverse impact.**
- **Section 9.8 – This section generally mirrors certain Riverfront Area standards contained in the Act.**
- **Section 9.9 – This Section addresses wetland replication as mitigation.**
- **Section 9.10 – This section relates to wildlife habitat studies.**
- **Section 9.11 – This section presumes that Vernal Pools and the adjacent area provide essential habitat functions.**

**It does not seem that waivers from the procedural elements of Section 9 are necessary, given the Comprehensive Permit process, although we take no exception to these waivers if the Applicant prefers to include them for administrative purposes.**

**Regarding the other subsections, it is not apparent that waivers are needed from 9.8 or 9.9, although we similarly take no exception to them.**

**For Sections 9.10 and 9.11, the Applicant is undertaking a study to address wildlife habitat and vernal pools, however, we recognize that this waiver request may relate more to managing the scope and extent of these studies, since particularly Section 9.10 provides broad discretion regarding what can be required as part of a study. We take no exception to these waivers, given that the Applicant has agreed to provide a vernal pool/wildlife habitat study.**

- b) Alternate methods of compliance: B+T recommends that the Applicant specifically list which provisions of Section 9 of the Bylaw are requested to be waived in relation to allowing the construction and operation of the Project. We note for the record that additional documentation will be required for the Project by the Act, such as an Alternatives Analysis for Riverfront Area impacts.

*Applicant Response: The applicant is requesting a waiver from the entire section as described above. The applicant team will submit all necessary information and plans pursuant to the WPA as part of the NOI filing with the MCC under the MA Wetlands Protection Act.*

B+T Response: Granting of this waiver would remove the majority, if not all, of the local filing requirements of the Bylaw, which appears to be the Applicant's intent with the waiver request.

Applicant Response: No response required.

**B+T Current Comment: Alternates for compliance are not relevant to this waiver request as it relates to how the Town is to consider potential impacts of a project, as opposed to design standards. Additionally, some components of Section 9 are administrative in nature.**

- c) Adverse impact of approval: This can be evaluated once the waiver request is refined. At a minimum the Town may request the documents related to the appropriate resource area performance standards of the Act which are mirrored by the Bylaw. For example, an Alternatives Analysis for Riverfront Area impacts will need to be provided in conformance with the Riverfront Area performance standards (310 CMR 10.58(4)(c)).

*Applicant Response: Please refer to refinements included in the April 5th waiver request list. Wetlands Regulations*

B+T Response: Acknowledged. The Applicant is requesting a waiver from the entirety of Section 9 of the Bylaw. B+T recommends the Applicant further consider if there is a scenario where an OOC under the Bylaw could be sought that would not jeopardize the feasibility of the Project.

*Applicant Response: We are requesting waivers to maintain the project feasibility and allow the project to be built as proposed, while demonstrating that the project will not adversely impact the interests protected under the local bylaw. As noted above, we are not submitting an NOI under the local bylaw in that the ZBA’s jurisdiction assumes all such authority, subject to the waivers that are warranted under G.L. c. 40B.*

**B+T Current Comment: To the extent relevant, the Applicant is undertaking the studies noted in Section 9, and other subsections therein are either not germane or mirror the Act. Therefore, it does not appear that there is an adverse impact of approval of this waiver request.**

Wetlands Regulations Sections 2.17 & 2.18	2.17 – Definition -No Build Zone 2.18 – Definition – No Disturb Zone	As stated in previous note, a waiver is required from the No Build and No Disturb Zones. Under such bylaw, the work required for the driveway and stormwater areas would be within these zones and would be prohibited. As will be demonstrated by the applicant’s consultant, the work will not impair these areas.
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B+T Previous Comment

a) Necessity of relief: If a tie-in to the municipal sewer system is not available, then at least temporary wetland impacts will be required to achieve the noted connection given the configuration of the available uplands. However, the requested waiver is from the definitions section, which does not in and of itself impose requirements. Therefore, we recommend that the Applicant evaluate whether the intended waiver request is instead from Sections 4.1 (which disallows certain alterations) and 4.4 (which specifies that adverse effect is presumed for alteration within 30 feet of certain resource areas).

*Applicant Response: Please refer to the April 5th waiver request list. The Applicant is proposing to connect to municipal sewer eliminating the need to cross a resource area with a sewer line.*

B+T Response: If municipal sewer connection is available, the Applicant will no longer be requesting this waiver.

Applicant Response: No response required.

**B+T Current Comment: Certain components of the Project lie within the 30' No Disturb Zone and the 50' No Build Zone to Vernal Pools with respect to the driveway and some stormwater features. We note that this section is only a waiver to the definitions of these jurisdictional setbacks, not their performance standards.**

**Please also refer to the new waiver section at the end of this letter where the Applicant's requested waiver from the relevant sections of the Regulations is discussed (Sections 10.1.1 and 10.1.2).**

- b) Alternate methods of compliance: If routing the pipe off-site or connecting with municipal sewer is not achievable, then an alternate method of compliance does not appear feasible given the anticipated size of the on-site treatment system to accommodate the number of proposed units.

*Applicant Response: The project is now connecting to municipal sewer.*

B+T Response: B+T acknowledges that the Project now proposes connecting to the municipal sewer system.

Applicant Response: No response required.

**B+T Current Comment: This waiver relates to definitions rather than the implementation of these definitions. Therefore, alternatives are not applicable; please refer to the discussion of the Section 10.1 Waiver requests later herein.**

- c) Adverse impact of approval: The Act provides the MCC with the ability to permit resource area disturbances subject to specific performance standards. Impacts will need to be quantified in terms of the temporality of impacts (permanent or temporary), and how they will be either replicated (if permanent) or restored (if temporary). We recommend that the Applicant clarify if and how they will restore the BVW and No Disturb Zones to pre-disturbance conditions.

*Applicant Response: The Applicant team will clarify the temporary and permanent impacts and restoration/mitigation efforts as part of the NOI process before the MCC under the MA Wetlands Protection Act.*

B+T Response: Our original comment largely related to previously proposed wetland impacts, which have been eliminated with the connection to municipal sewer.

Applicant Response: No response required.

**B+T Current Comment: As it pertains to the 30' No Disturb Zone and 50' No Build Zone associated with the expanded vernal pool boundaries (the extension of 100'), the Project will require this waiver to achieve the current design. Specifically, this relief will be needed as it pertains to the driveway and the stormwater design. As noted in our response to Bylaw Waiver Request Section 1.2.2, the 30' No Disturb Zone and 50' No Build Zone contain steep topography and are generally comprised of ledge outcrops. In our opinion, diligence and monitoring during the construction period will be required to mitigate the risk of adverse environmental impacts.**

### **Bylaw and Regulation Comments**

2. The Applicant has not requested a waiver from the 50-foot No Build Zone as defined in Section 2.17 of the Bylaw's Regulations. B+T understands that the applicability of this No Build Zone may not be necessary if a waiver is granted to the 100-foot boundary extension to the MAHW of PVPs and CVPs. However, if this waiver request is needed, B+T recommends that the tabulated waiver requests be updated accordingly.

*Applicant Response: Please refer to the April 5th updated waiver list.*

B+T Response: Acknowledged. The Applicant has updated the Waiver Request list to include these jurisdictional setbacks.

Applicant Response: No response required.

**B+T Current Comment: Please refer to the end of this letter for discussion regarding new waivers requested.**

3. If BVW impacts associated with the directional drilling of the wastewater line are not temporary in nature, then wetland replication will be required under the Act and the Bylaw. If the design scenario envisions permanent impacts, we note that Section 9.4 of the Bylaw's Regulations requires a higher threshold of replication than what is required by the Act (unless a waiver is granted).

*Applicant Response: As shown on updated plans dated 3/23/22 and narrative dated 3/25/22, the applicant plans to connect to municipal sewer, therefore no BVW impact is required or proposed.*

B+T Response: Acknowledged. Since connection to municipal sewer is proposed, a further analysis of BVW impacts for directional drilling is unnecessary.

4. If a waiver to the 100-foot boundary extension of Vernal Pool boundary is not granted, the Applicant will be required to provide an Alternatives Analysis pursuant to the Vernal Pool Performance Standards in Section 9.7 of the Bylaw's Regulations.

*Applicant Response: Please refer to refinements included in the April 5th updated waiver list. The Applicant's consultants will demonstrate that the project will not have an adverse impact on CVP or other jurisdictional resource areas*

B+T Response: B+T understands from this verbiage that a quantification of impacts on the CVP and other jurisdictional resource areas is forthcoming. We encourage the Applicant to consider the ways in which compliance with local requirements, such as the aforementioned Alternatives Analysis, can be included in the supplemental information to the Town.

*Applicant Response: The Applicant will not be preparing an alternatives analysis for the vernal pools as part of the NOI as that is not required under DEP regulations. The Applicant will not be submitting an alternative analysis during the public hearing process.*

**B+T Current Comment: Acknowledged. Please refer to the waiver request table and end portion of this letter for additional discussion.**

5. The Applicant requests a waiver to Section 4.4.2 of the Bylaw as tabulated above. We note that this waiver request should also address Section 10 of the Bylaw's Regulations, which also provides language establishing the 30-foot No Disturb Zone and 50-foot No Build Zone.

*Applicant Response: Please refer to refinements included in the April 5th updated waiver list. The Applicant's consultants will demonstrate that the project will not have an adverse impact on CVP or other jurisdictional resource areas*

B+T Response: Acknowledged. The Waiver Request has been updated to request relief from Section 10.

Applicant Response: No response required.

**B+T Current Comment: Please refer to the end of this letter for discussion regarding new waivers requested.**

6. It appears that the Site's hydrology as well as that of wetland resource areas may change due to increases in peak rates of runoff in the post-Project condition as compared to existing conditions. B+T notes that Section 2.2.2 of the Bylaw includes specific language for interpreting alterations with relation to drainage, flow patterns, flood retention, etc.

*Applicant Response: A revised drainage report prepared by Allen & Major Associates, Inc., dated 3/23/22 has been submitted to the town and the ZBA.*

B+T Response: B+T recommends that the Applicant consider whether or not a Waiver is also required from Section 2.2.2 of the Bylaw or provide some additional commentary on changes to drainage or flow patterns, particularly in the areas where the A Series wetland is used a design point in the drainage analysis.

*Applicant Response: The Applicant will update waiver list to include Section 2.2.2 of the Bylaw. This waiver is required due to the changing of drainage and flow patterns on the site. The required removal and addition of various materials for the project will change the existing drainage characteristics and flow patterns currently found on-site and these changes are necessary to construct the project will still meeting DEP regulations. Since the site is undeveloped, any work could have the potential to change existing drainage characteristics and drainage patterns. Failure to grant this waiver would make the project unbuildable because change to existing conditions is required.*

**B+T Current Comment: Acknowledged. The revised waiver request includes relief requested for the definition of *Alter* in Section 2.2. [Alter]. Please refer to the table for related discussion. For the Board's information, we note that the Act contains similar language regarding the changing of drainage patterns and flow characteristics as representing alterations, and so this will also be reviewed pursuant to the NOI filed under the Act.**

#### **Wetland Resource Area Comments**

7. Quantification of the proposed resource area impacts will be required prior to filing with the MCC. B+T recommends that these resource area impacts be quantified during this permitting stage to facilitate Project evaluation.

*Applicant Response: The proposed resource area impacts will be quantified as part of the filing of the NOI under the Wetlands Protection Act with the MCC.*

B+T Response: Acknowledged.

Applicant Response: No response required.

8. Quantification of the total on-site Riverfront Area and proposed impacts within the inner and outer 100 feet of Riverfront Area has not been provided at this time. Prior to submission to the MCC, these impact numbers will need to be itemized to assess compliance with the Riverfront Area performance Standards (310 CMR 10.58 *et seq*).

*Applicant Response: Riverfront area and associated impacts will be quantified, and compliance assessed with the relevant performance standards as part of the filing of the NOI under the Wetlands Protection Act with the MCC.*

B+T Response: Acknowledged.

Applicant Response: No response required.

9. An Alternatives Analysis pursuant to 310 CMR 10.58(4)(c) will need to be included in supporting documentation when the Project is reviewed by the MCC, regardless of whether or not a waiver to the Alternatives Analysis required under the Bylaw is granted.

*Applicant Response: Applicant team will provide any necessary alternatives analysis pursuant to 10.58(4)(c) as part of the filing of the NOI under the Wetlands Protection Act with the MCC.*

B+T Response: Acknowledged.

Applicant Response: No response required.

10. There are Critical Areas present on and proximate to the Site, including the watershed to a Coldwater Fishery and to the PVPs and CVPs. We recommend that the Applicant provide information as to how the Project will avoid impacts to these Critical Areas. Sawmill Brook, the designated Coldwater Fishery, according to the MA Division of Fisheries and Wildlife, is one of the few remaining waterways in northeastern Massachusetts with adequate water quality (namely temperature) to support a wild brook trout population. Such evaluation should include but not be limited to evaluation of potential water quality, including thermal, impacts to the brook from the stormwater and wastewater systems, for example, or avoidance thereof. If impacts are unavoidable, the Applicant should demonstrate why the need for this affordable housing Project outweighs such impacts.

*Applicant Response: A revised drainage report prepared by Allen & Major Associates, Inc., dated 3/23/22 has been submitted to the town and the ZBA. The Applicant's consultants will demonstrate that the project will not have an adverse impact on CVP or other jurisdictional resource areas.*

B+T Response: We acknowledge that the revised March 23, 2022 drainage report has been provided. However, will the Applicant undertake any additional hydrologic analyses to identify and potentially mitigate impacts to Critical Areas? We also understand that the revised drainage report investigates Wetland Series A as a design point, but have the other PVPs and CVPs been investigated individually to ascertain pre- and post-development hydroperiods?

*Applicant Response:*

*The applicant had taken great care to design a stormwater management system that will mitigate the potential impact of the proposed projects impact on the surrounding cold-water fishery and vernal pools. Per MassDEP stormwater standard, the proposed stormwater management system (SMS) has been designed to meet the "Best Management Practices (BMPS) for Cold Water Fisheries" by proposing removal of at least 44% of the total suspended solids prior to discharge to the infiltration systems, by providing greater than 80% TSS removal prior to discharge, and providing a water quality volume greater than 1.0 inch of runoff times the imperious area of the post-development project site. The proposed SMS provides a cold-water fishery treatment train including deep sump catch basins, proprietary separators, filtering bioretention and exfiltrating bioretention areas to mitigate the projects impact to the cold-water fishery.*

*Per MassDEP stormwater standard the proposed stormwater management system (SMS) has been designed to meet the BMPs for "Stormwater Discharges Near or To ...Vernal Pools" by proposing BMPs be set back at least 100 from a certified vernal pool, remove at least 44% of the total suspended solids prior to discharge to the infiltration systems and provide a water quality volume greater than 1.0 inch of runoff times the imperious area of the post-development project site.*

*The proposed SMS provides a vernal pool treatment train including deep sump catch basins, proprietary separators, exfiltrating bioretention areas and underground infiltration systems to mitigate the projects impact to the vernal pools. The Applicant has studied the effects the project has to interior vernal pools. Watershed E-4B has been included in the updated model to illustrate the watershed to the two vernal pools in wetland A more accurately.*

*The existing watershed is 248,398 SF. Of the existing 248,398 sf of existing watershed only 4% (10,064 sf) is proposed to be impervious in the post development conditions, illustrating the projects minimal impact to the groundwater of this vernal pool. This has been mitigated by the proposed underground Infiltration System #2 (UIS#2) which collects that impervious area and infiltrates it back into the ground. UIS #2 is located completely within Existing Watershed E-4B. In addition to the infiltration system mitigation, the total surface runoff area of the proposed condition will be at least 242,609 sf (P-4B & P-18), which will at least match the surface runoff of existing conditions.*

*Per the MassDEP Stormwater Handbook "Water budgeting analysis is not required, if the recharge is directed to the same subwatershed where the impervious surfaces are proposed."*

*The Applicant has mitigated the projects minimal impacts on wetland A.*

**B+T Current Comment: This comment has been adequately addressed; no further action needed.**

11. Not all of the vernal pool boundaries constraining the development area are shown or delineated on the Plans. As much of the conversation surrounding the waiver request is based on the boundary of vernal pools as expanded by the Bylaw, these boundaries should be delineated to fully understand the necessity of the waiver request.

*Applicant Response: The vernal pools to the north and west of the site have been delineated and shown on site plans dated 3/23/22. The remaining 2 PVPs (VP A North and a VP south of VP A South) were delineated on 4/1/22 and will be shown on a future plan.*

B+T Response: Not all of the PVP delineations are shown on the submitted plan set at this time. We recommend that the plans be updated to reflect the newly delineated PVPs.

For planning purposes, B+T generally agrees with the approximation of Vernal Pool A North's southwest boundary (closest to the proposed wastewater line). Based on our field reconnaissance, there appears to be an elevated landform within the BVW between flags A27 and A50 that divides the vernal pool boundary from the southwest portion of the wetland system. This elevated landform is vegetated with mature eastern hemlock (*Tsuga canadensis*) and yellow birch (*Betula alleghaniensis*).

B+T recommends that the unflagged vernal pool boundaries be delineated to the extent that they constrain the Project.

*Applicant Response: This vernal pool boundary was delineated on 4/1/22 and can be shown on an updated plan set.*

B+T Response: B+T recommends that this delineation be reflected on an updated plan set.

*Applicant Response: Delineations of all PVPs within A series are shown on the Existing Conditions Plan sheet V-101, revised through May 19th 2022*

**B+T Current Comment: Acknowledged. All PVPs and CVPs noted in the field are shown on the revised plans.**

12. During the February 9, 2022 site visit, it was mentioned that the C-Series upland feature was determined to not qualify as ILSF. B+T recommends that the supporting ILSF calculations be provided to the Town to document that this feature does not qualify as a wetland resource area pursuant to 310 CMR 10.57 *et seq.* Based on the conditions of the soil and surrounding vegetation, B+T concurs that this topographic depression does not appear to qualify as an Isolated Vegetated Wetland.

*Applicant Response: The C-series feature was already determined by Goddard and confirmed by Michael DeRosa, the Peer reviewer during the ANRAD phase, and accepted with the issuance of the ORAD.*

B+T Response: The ORAD specifies that not all wetland resource areas on-site were investigated (See Findings of Fact No. 2), nor were ILSF calculations provided for the potential C Series feature. Although we acknowledge that this area was not holding any water in recent site visits (April 22, 2022), true confirmation that this area is not ILSF requires an engineering calculation, as noted in Goddard Consulting, LLC's Wetland Delineation Report dated November 27, 2019.

*Applicant Response: The Applicant has completed engineering calculations and has determined the area does not qualify as ILSF. During the 1-year-storm event the C series feature collects 5,706 cubic feet (0.13 acre-feet) which is less than the required volume of ¼ acre-feet to an average depth of six inches.*

**B+T Current Comment: Acknowledged; the landscape feature does not qualify as ILSF based on the provided calculation.**

13. The Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (Panel Nos. 25009C0432G and 24009C0434G) depict a flood zone (Zone A; Base Flood Elevation Unknown) bounding the Property to the north. B+T recommends that the Applicant provide information evaluating whether a flood study is necessary to determine if the Zone A constrains the Property and reflect on the Plans.

*Applicant Response: The FEMA flood zone A is shown on updated plans dated 3/23/22.*

B+T Response: We acknowledge that the FEMA Zone A line has been transposed on the plan set. However, we recommend that the rationale for not performing a flood study be provided as the Zone A is not set to a specific elevation in the FEMA mapping.

*Applicant Response: The flood line does not fall within our property and is at a lower elevation than any of the significant work being undertaken on the site.*

**B+T Current Comment: Acknowledged; the Applicant has provided the requested information to document the administrative record.**

14. A number of wetland flags are missing in the field or have fallen. We find that this is common for a wetland delineation that is a few years in age. As we are in general agreement with the wetland boundary where flags were missing (as referenced in the ORAD), B+T recommends that any absent flagging be re-hung prior to construction.

*Applicant Response: The missing wetland flags can be re-hung prior to construction.*

B+T Response: Acknowledged.

Applicant Response: No response required

15. Based on our February 9, 2022 field review, it appears that an intermittent stream flows south from the B-Series wetland which is currently mapped as ILSF and a CVP. It appears that this intermittent stream feature was originally delineated as part of the ORAD process (Plan Date September 21, 2020 from Allen & Major Associates, Inc.) with flags B-14 through B-24, but does not appear to be explicitly indicated in the ORAD as confirmed. We recommend that the Bank of this intermittent stream exiting the wetland system be accounted for as part of the contemporary delineation. We further recommend that this B-Series wetland resource area be recognized on the plans as BVW given its association with this surface water feature (see 310 CMR 10.55(2)(a)).

*Applicant Response: This area is in the very southern portion of the site and is currently shown on plans using the accepted lines from the ORAD. The proposed project will not impact this area.*

B+T Response: We acknowledge that the B Series resource area and its associated Buffer Zone are outside of the limit of disturbance proposed with this Comprehensive Permit. We note for the administrative record that unidirectional flow south of the WF-B Series feature was observed on our February 9<sup>th</sup> and April 9<sup>th</sup> site visits, which may suggest that this wetland is BVW and not only an ILSF/Isolated Wetland. However, additional evaluation as to whether the channel connects to the wetland would be necessary to determine, which is not necessary given the location of this area in relation to the Project, and since this area will be held in conservation as part of the Project.

Applicant Response: No response required

#### **Development Plans and Additional Site Comments**

16. Based on the plan notes (Sheet C-104), directional drilling appears to be the preferred option for crossing the A-Series BVW. Will this drilling require disturbance to the surface of the BVW? Will the potential for ledge or glacial erratics impact the viability of directional drilling? And if drilling is the confirmed strategy, will this impact the subsurface hydrology of the BVW with relation to the Vernal Pool Habitat?

*Applicant Response: The project now proposes to connect to municipal sewer; therefore the impacts referenced are no longer applicable.*

B+T Response: Acknowledged.

Applicant Response: No response required

17. Given the significant presence of PVPs and CVPs within and bounding the Property, we recommend the Applicant consider time-of-year restrictions for certain activities which may impact Vernal Pool Habitat, such as the directional drilling of the A-Series BVW.

*Applicant Response: The Applicant believes there is no basis for a time-of-year construction restriction based upon the proposed design and transition to municipal sewer.*

B+T Response: Given the significant presence of CVPs and PVPs within and surrounding the locus, including proximate to proposed work, B+T recommends the Applicant provide information documenting why time-of-year restrictions are or are not necessary for certain construction activities proximate to the CVPs and PVPs.

*Applicant Response: With appropriately designed and installed erosion control, construction will not impact the CVPs or PVPs. The Applicant will endeavor to show construction means and methods for preserving the areas in question and those means and methods are not seasonal.*

**B+T Current Comment: We defer closure of this comment until receipt of the noted information.**

18. B+T recommends that the Applicant include an invasive species management plan with respect to the Japanese knotweed (*Fallopia japonica*) on-site. Sheet C-101 (the Erosion Control Plan) denotes soil stockpiles to be centrally located on-site. If soil material from the proposed construction entrance (near the knotweed growth) is stored in these stockpile locations and handled elsewhere on-site, there is an opportunity for the knotweed to propagate in other portions of the Site that are undisturbed by this noxious species in pre-project conditions. These rhizomes are relatively disturbance tolerant and can spread vigorously when translocated.

*Applicant Response: The applicant will provide an invasive species management plan (ISMP) as a condition of the Comprehensive Permit or as part of the overall NOI submittal to the MCC under the MA Wetlands Protection Act.*

B+T Response: Acknowledged.

Applicant Response: No response required

19. We recommend that the Applicant evaluate whether snow storage areas can be maintained outside of areas subject to Conservation Commission jurisdiction, particularly the Riverfront Area and vernal pool areas.

*Applicant Response: As shown on the plans dated 3/23/22, sheet C-106 shows snow storage areas. No snow storage is planned to be stored in Riverfront Area. Please see the Memo from Allen & Major Assoc. dated 3/24/22 regarding snow storage on-site.*

B+T Response: Acknowledged. The plans have been updated to address snow storage with relation to resource areas.

Applicant Response: No response required

20. We recommend that the Applicant consider using native non-cultivars in the landscape design, but at a minimum that only native non-cultivars be planted within areas subject to Conservation Commission jurisdiction.

*Applicant Response: The Applicant will reflect this request to the greatest extent possible as part of any landscaping plans submitted to the WCC during the NOI process. The majority of the proposed plantings shown on the current plan are native or native cultivars.*

B+T Response: Acknowledged.

Applicant Response: No response required

21. As noted in our Engineering peer review letter dated March 4, 2022, we understand that the wastewater treatment facility will be subject to review by the Board of Health. We recommend that the Applicant provide documentation or confirmation that the wastewater treatment facility will meet applicable regulatory requirements, particularly with regard to water quality.

*Applicant Response: The wastewater treatment facility is no longer part of the project. The project now proposes to connect to municipal sewer.*

B+T Response: Acknowledged.

Applicant Response: No response required

22. We recommend that the Applicant provide documentation indicating that the hydrology of the vernal pools will not be altered by the Project.

*Applicant Response: As it relates to the stormwater management system, the system has been designed to match the existing drainage patterns and volumes to the maximum extent possible. A hydrological study is no longer required as the leaching fields have been eliminated from the proposed infrastructure design.*

B+T Response: Our original comment pertaining to the hydrology of the vernal pools was not limited to the leaching fields and should be interpreted as changes to groundwater recharge and overland flow. At a minimum we recommend the Applicant consider how treating the A Series Wetland as a singular design point may differ in interpreting the vernal pool hydrology as discrete entities in the overall watershed.

*Applicant Response: The proposed project has studied the effects the project could have to interior vernal pools (A series). Watershed E-4B has been included in the updated model to illustrate the watershed to the two vernal pools in wetland A more accurately. The existing watershed is 248,398 SF. Of the existing 248,398 sf of existing watershed only 4% (10,064 sf) is proposed to be impervious in the post development conditions, illustrating the projects minimal impact to the groundwater of this vernal pool. This has been mitigated by the proposed underground Infiltration System #2 (UIS#2) which collects that impervious area and infiltrates it back into the ground. UIS #2 is located completely within Existing Watershed E-4B. In addition to the infiltration system mitigation, the total surface runoff area of the proposed condition will be at least 242,609 sf (P-4B & P-18), which will at least match the surface runoff of existing conditions.*

*Per the MassDEP Stormwater Handbook "Water budgeting analysis is not required, if the recharge is directed to the same subwatershed where the impervious surfaces are proposed."*

*The Applicant has mitigated the projects minimal impacts on wetland A.*

**B+T Current Comment: Please refer to B+T Current Response on Item No. 10.**

23. We recommend that the Applicant document the need for both leaching areas, and if two are necessary, evaluate whether the southeasterly field can be relocated to the main limit of work. If not, the plans should be updated to reflect the impacts associated with the leaching field, which are not currently shown (e.g. tree clearing, grading).

*Applicant Response: The leaching fields are no longer needed since project is now proposing to connect to municipal sewer.*

B+T Response: Acknowledged.

Applicant Response: No response required

24. We recommend that the viewport of Sheet L-200 be updated to depict the full limit of work, in order to ensure understanding of where lawn vs. meadow mix is proposed.

*Applicant Response: Updated landscape plans will depict lawn vs. meadow mix. The current viewport encompasses the proposed development area. Areas outside the developed area will remain in the existing natural condition.*

B+T Response: B+T understands that these revisions are forthcoming.

Applicant Response: No response required

**B+T Current Comment: Acknowledged. The noted information is shown on the revised landscape plans.**

25. We recommend that the Applicant describe how wildlife corridors are being maintained, or if they are not, evaluate maintaining wildlife corridors across the Site, particularly between the southerly wetland system and northerly Sawmill Brook system.

*Applicant Response: The wildlife study will identify and quantify wildlife corridors, and provide an evaluation of the corridors, if present.*

B+T Response: The aforementioned wildlife study is ongoing at the time this response letter is generated. B+T anticipates providing a separate review letter documenting our findings of the wildlife habitat evaluation once available.

Applicant Response: No response required

**B+T Current Comment: The wildlife habitat study remains ongoing at this time.**

26. We recommend that the Shadow Studies depicted on Sheet A800 also show existing conditions as well as sensitive environmental receptors (vernal pools, Sawmill Brook) to facilitate evaluation of potential impacts.

*Applicant Response: The Project Architect is preparing an updated shadow study which will show no adverse impacts to jurisdictional areas.*

B+T Response: We understand that this revision is forthcoming.

*Applicant Response: An updated shadow study has been submitted to the town. The shadow study can be found on pages A2, A3, & A4 in the Architectural Peer Response Exhibits document dated 4/15/2022.*

**B+T Current Comment: Acknowledged. The updated shadow study has been provided as part of the Architectural Peer Review. Although we defer to the evaluation of this shadow study to the architectural peer reviewer, it does not appear that significant shadow impacts will occur to sensitive environmental receptors.**

**New Waiver Requests:**

The original table has been largely preserved, except as noted otherwise, in the first section of this report to maintain the dialogue between B+T and the Applicant. However, the bylaw and regulation waiver requests have been subsequently updated with the April 5<sup>th</sup> and May 25<sup>th</sup>, 2022 transmittals from the Applicant. Since these new waiver requests have only been discussed indirectly in the commentary, B+T has provided the below-referenced commentary for the revised waivers provided therein. The section below, coupled with the Table in Comment 1 provides our comprehensive review of the waivers as currently requested by the Applicant to date.

**27. Waiver Request from Wetland Regulations Section 10.1 – 30’ No Disturb Zone and 50’ No Build Zone**

- **Necessity of relief:** The Applicant is seeking a waiver from Section 10.1 which applies a local 30’ No Disturb Zone to all freshwater wetlands, including vernal pools, and a 50’ No Build Zone to the aforementioned resource areas. This waiver will be necessary for the construction of the access road, driveway, and a portion of the stormwater management system, which occur within these setbacks from vernal pools.
- **Alternate methods of compliance:** Alternate methods of compliance to remove work from the 30’ and 50’ zones does not appear feasible as discussed elsewhere herein.
- **Adverse impact of approval:** The majority of the work proposed within the 30’ No Disturb Zone and 50’ No Build Zone appears to be within areas of ledge outcrops. Granting this waiver would result in a net reduction of the extent of natural local setbacks within these portions of the landscape. We defer evaluation as to potential adverse impact to receipt of the vernal pool/wildlife habitat study.

**28. Waiver Request from Wetlands Regulation Section 4.4.2 – Delineation and Review of Vernal Pools**

- **Necessity of relief:** It does not appear that this waiver is necessary, given that the Applicant conducted vernal pool studies during the appropriate breeding season/time of year, and has documented that all features noted as possible vernal pools are indeed functioning as such.
- **Alternate methods of compliance:** Not applicable as the waiver does not seem relevant.
- **Adverse impact of approval:** There does not appear to be an adverse impact of approval given that the on-site vernal pools have been confirmed to be certifiable.

**29. Waiver Request from Wetlands Regulations Section 8.2 – Clear and Convincing standards regarding the Burden of Proof**

- **Necessity of relief:** The Applicant is seeking relief from this standard as it pertains to work within resource areas or the No Disturb Zone and the extent to which the proponent carries the burden of proof that there will not be a significant immediate or cumulative adverse effect upon the wetland values of the Bylaw. We understand that the Applicant's concern is that the terms used in this standard are undefined.
- **Alternate methods of compliance:** If separate waivers to the jurisdictional status of local resource areas are granted as requested in the preceding section of this report, we question whether or not this waiver is necessary unless the Applicant is concerned about impacts within the 200-foot Riverfront Area, for which a separate alternatives analysis will need to be provided during the Notice of Intent process.
- **Adverse impact of approval:** Applicant notes that it will be demonstrated by a preponderance of evidence that there will be no impact to resource areas but has not provided additional documentation at this time. We understand that the intent is to have the project reviewed under the burden of proof required by the Act. B+T does not take exception to the waiver request given that the Applicant is providing a wildlife habitat study and presuming that the previously indicated construction period information is provided.

### **30. Waiver Request from Wetlands Regulations Section 9.7 – Standard of Review for Vernal Pools**

- **Necessity of relief:** This section of the regulations applies a higher standard of proof for evaluating vernal pool impacts and includes additional documentation requests that may be necessary for vernal pool impacts such as an alternatives analysis. We understand from the revised waiver table that it is the Applicant's request to waive the higher burden of proof and additional documentation required for evaluating vernal pool impacts. We note that the summary of the wildlife evaluation is forthcoming, and it is unknown the extent to which these requirements will be covered by that report.
- **Alternate methods of compliance:** Alternate methods of compliance may include providing the additional documentation on potential vernal pool impacts required by the Bylaw.
- **Adverse impact of approval:** We defer a review of potential adverse impacts of granting the waiver to receipt of the vernal pool/wildlife habitat study.

### **31. Waiver Request from Wetlands Regulations Section 12.4 – Mitigation Requirements**

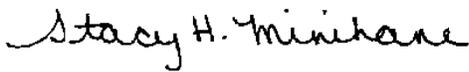
- **Necessity of relief:** The Regulations maintain a mitigation requirement for work within the 30' No Disturb Zone and the 50' No Build Zone, for example consisting of native plantings, invasive species removal, and/or restoration of lawn areas.
- **Alternate methods of compliance:** The Applicant could incorporate invasive species management (see Comment No. 18) and native planting areas into the design. For example, we encourage the Applicant to consider the ways in which the proposed landscape plan and meadow seed mix can be factored into potential mitigation.
- **Adverse impact of approval:** Granting of this waiver would result in a reduction of the required on-site mitigation, resulting in fewer natural areas than if mitigation was required. We defer evaluation as to whether this reduction would adversely impact resource areas to receipt of the wildlife habitat study.

Ms. Sue Brown, Town Planner  
Manchester-by-the-Sea  
June 8, 2022  
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We thank the Board of the opportunity to assist with its review of the Project. We look forward to discussing our findings at the June 8, 2022 public hearing.

Very truly yours,

BEALS AND THOMAS, INC.



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