



July 26, 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 ([browns@manchester.ma.us](mailto:browns@manchester.ma.us)); [smellish11@comcast.net](mailto:smellish11@comcast.net); [eglenn@mit.edu](mailto:eglenn@mit.edu); [gpucci@k-plaw.com](mailto:gpucci@k-plaw.com); and [federspielg@manchester.ma.us](mailto:federspielg@manchester.ma.us)

Reference: Potential Conditions  
Chapter 40B Comprehensive Permit Application  
0 School Street  
Manchester-by-the-Sea, Massachusetts  
B+T Project No. 3344.00

Dear Ms. Brown:

As requested, B+T has reviewed the Applicant's proposed revisions/clarifications to the potential conditions included in our July 12<sup>th</sup> letter. As the Applicant notes in their transmittal email dated July 21, 2022, the B+T potential conditions were drafted as suggestions for the Board's consideration and were not intended to be used verbatim as the ultimate conditions. The Applicant has further indicated that they do not object to the potential conditions included in our July 12<sup>th</sup> letter and that they have clarified the language for the benefit of the Town and the Applicant. We have reviewed the Applicant's redrafted conditions and find them to capture the intent of our suggestions.

We offer the following generally minor final comments:

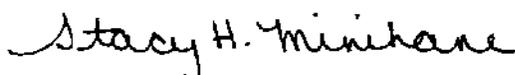
1. We recommend that the appropriate term(s) (possibly "shall" but defer to Town Counsel) be substituted in instances of "should", "will", or other instances of non-mandating wording. For example, in Condition 1: "As may be required under DEP guidelines and regulations, additional stormwater management information ~~should~~ **shall** be provided for third-party review during the Notice of Intent process as indicated in the Vernal Pool Considerations section herein."
2. Condition 4: We suggest that Town Counsel confirm the wording of this condition with regard to funding for the third-party consultant.

3. Condition 5, relating to review of final stamped plans, is proposed for deletion by the Applicant with a note that it is addressed by other prior conditions. However, prior conditions relate to third party review of stormwater information and a Construction Management Plan, but do not specifically address final design plans. Therefore, we recommend that Condition 5 remain as “Final stamped construction plans shall be reviewed by the Board’s third-party consultant for consistency with this decision and other relevant project approval documents.”
4. Condition 8: We suggest changing “...We Recommend that the Board be kept apprised” to “The Applicant shall keep the Board apprised of the compliance process with both the 2022 CGP and the relevant US Fish and Wildlife requirements.”
5. Condition 9: We suggest changing to “The Applicant shall undertake additional evaluation of the erosion controls during the Notice of Intent process to address peer review Comment 9 in the Beals and Thomas, Inc. letter dated July 12, 2022, and as otherwise necessary.”
6. Condition 10: We suggest adding the following parenthetical after “...vernal pools”
  - a. “(as documented by the Applicant through the vernal pool investigations conducted to date, not limited to potential vernal pools identified by the Commonwealth)”
7. Condition 11: We suggest ensuring that this condition specifies that pre-construction monitoring, preferably during typical (e.g. non-drought) conditions, is conducted. This is particularly important for the factors that have not been investigated to date (hydroperiod, water level, pH, temperature, salt). Conversely, we suggest that the condition specify that at least three years of monitoring subsequent to completion of construction is to be conducted. We also suggest requiring that other relevant chemicals be evaluated if feasible, if other chemically based deicers will be used in place of salt. Finally, we suggest that the last sentence specify that reports are to be submitted annually prior to the end of each monitoring year.

Please do not hesitate to contact me should you wish to discuss this letter prior to the July 27<sup>th</sup> hearing.

Very truly yours,

BEALS AND THOMAS, INC.



Stacy H. Minihane, PWS  
Senior Associate

Enclosure: Applicant’s revisions to potential conditions

## Potential Conditions

We respectfully submit for the Board's consideration the below suggested topics to be addressed in conditions. As applicable, we recommend that the Board coordinate with legal counsel as to whether these conditions can be incorporated into the Comprehensive Permit decision.

1. As may be required under DEP guidelines and regulations, additional stormwater management information should be provided for third-party review during the Notice of Intent process as indicated in the Vernal Pool Considerations section herein.
2. The Wildlife Study lists additional mitigation measures available to protect the habitat functions of the resource areas and their surrounding Buffer Zones. These include: As part of the Construction Management Plan (CMP), the Applicant will deploy additional silt fence at specific points in the breeding period to preclude amphibians from being stuck within the limit of work; and creating additional dead woody debris piles on the forest floor. B+T recommends that these items be considered as potential conditions. The CMP will be submitted to the Building Inspector, Commissioner and the Board's agent for review and approval for consistency with this permit, as a condition to receiving a building permit.
3. The Applicant will submit a Construction Management Plan to the Building Inspector, Commissioner and the Board's Agent for review and approval for consistency with this permit as a condition to receiving a building permit.
4. The Town will retain a third party consultant to review the Construction Management Plan, CMP and provide comment to the Building Inspector, Commissioner and the Applicant prior to finalization. The Third Party Consultant will provide consultative services during construction to confirm the CMP measures are being properly implemented. The scope of such review and the fees therefor shall be pursuant to G.L. c. 44, §53G
3. Prior to the start of work, we recommend that the Applicant provide the Town with the documentation outlined in the Rubicon Builders memorandum and supplemented by our Comment 8. Given the sensitivity of the down gradient vernal pools, we recommend that the Town consider third-party review of these construction documents and third-party oversight during the construction phase.
- 4.5. As part of the Construction Management Plan, CMP, and as a pre-requisite to receiving a building permit, the Applicant will submit The environmental waiver review has generated dialogue regarding the invasive species on site, particularly the Japanese knotweed (*Fallopia japonica*) in the northeasterly portion of the Property. We recommend that an invasive species management plan. This plan will also be provided for Town and reviewed and approved by the Board's third-party review consultant in accordance with accepted guidelines for invasive species

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[management](#), especially as it relates to the stockpiling and management of soil throughout the site.

5. We recommend that permit-level documents, especially subsequent stamped site plans, undergo third-party review when submitted to the Town as part of the Notice of Intent process with the Manchester Conservation Commission or prior to the issuance of a building permit.
6. As part of the CMP, the Applicant will specifically identify how the means and methods will address the protection of the vernal pools. The third party consultant will review this plan and provide additional suggestions to the Plan if necessary to confirm adequate vernal pool protection measures are in place, [consistent with this permit and accepted standards for protection of vernal pool function](#). We recommend that the Applicant and Board consider whether certain aspects of the work such as the blasting can be subject to time-of-year restrictions proximate to the vernal pool areas. We understand that the Applicant previously maintained that construction means and methods for preserving the vernal pools are not seasonal; however, we note that such construction-level detail has not been provided at this time.
7. [The Applicant will place a Conservation Restriction on a portion of the property as shown in Exhibit A](#). As the Applicant has agreed to the Conservation Restriction as outlined in the Wildlife Study, we recommend that the Board include establishment of the CR as a condition after the Applicant has received all necessary permits and no appeals are pending; [and prior to the commencement of any site work](#).
8. If approved, the Project will be subject to the 2022 Construction General Permit (CGP) under the EPA's National Pollutant Discharge Elimination System (NPDES) Program. Using the US Fish and Wildlife Service's IPaC tool and using the locus as an Area of Interest, it appears that the range of the Northern long-eared bat (*Myotis septentrionalis*), the small whorled pogonia (*Isotria medeoloides*), and the candidate species monarch butterfly (*Danaus plexippus*) fall within the area of interest. The Applicant will be required to demonstrate compliance with the federal Endangered Species Act and others (e.g., the Migratory Bird Act) through the [submit a NPDES permit application and provide a copy of the application to the Zoning Board of Appeals](#); ~~ting process~~. We recommend that the Board be kept apprised of the compliance process with both the 2022 CGP and the relevant US Fish and Wildlife requirements.
9. We recommend that the Applicant undertake additional evaluation of the erosion controls during the Notice of Intent process, pursuant to our Comment 9 herein.
10. ~~As part of this permitting interaction, a significant amount of data collection and reporting has been undertaken with respect to the potential vernal pools on-site. It is unambiguous that these potential vernal pools satisfy the NHESP standards for certification. We recommend that these features be submitted to NHESP for~~

Commented [GE1]: This is already addressed above

certification to memorialize the findings and update the inventory of certified vernal pools within the Town. Upon receipt of a building permit, The Applicant will submit an Application to the NHESP to have on-site potential vernal pools certified. Ultimately, the certification will be determined by NHESP, but the Applicant will provide all necessary information and analysis in a timely manner in support of the certification process.

11. Identify and commit to Quantify other proposed aspects of the Project that may count toward mitigation, such as the meadow habitat. The Applicant will identify and quantify other possible mitigation measures that would count towards would enhance wildlife habitat in the project site

Pre and post construction monitoring of the vernal pools will provide valuable information as to whether the Project ultimately does or does not impact these resource areas. Therefore, we recommend that pre and post construction monitoring of the vernal pools be undertaken annually, with the time period to include at least three non-drought years post completion of construction. During such monitoring, visual assessment of the resource area health, breeding amphibian surveys (for vernal pools), and measurement of water level, pH, temperature, salt and other relevant chemicals used on-site should be undertaken. If impacts are observed that affect the successful breeding of species using the pool corrective measures should be identified and undertaken by the Applicant. The Applicant should submit a proposed monitoring plan for review by the Town. The Applicant will conduct annual monitoring of the vernal pools for a period of 5 years upon the anniversary date of the building permit receipt. The scope of the monitoring will be submitted as part of the CMP for review and approval of the Town and its third-party consultant prior to receipt of a building permit. The monitoring should address activities such as conducting a visual assessment of: the resource area health, breeding amphibian surveys (for vernal pools), and measurement of water level, pH, temperature, and salt. The findings and analysis of the annual monitoring will be submitted to the Zoning Board of Appeals.

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