

MARCH 4, 2022

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Zeke Nims, Chair
Winchester Conservation Commission
71 Mt. Vernon Street
Winchester, MA 01890

**RE: Notice of Intent Peer Review
10 Converse Place, Winchester, MA**

Dear Mr. Nims and Members of the Conservation Commission,

BSC Group, Inc. (BSC) is pleased to submit this report pertaining to our peer review of the Notice of Intent (NOI) for a site identified as 10 Converse Place in Winchester, MA. The NOI was submitted on behalf of 10 Converse Place LLC, c/o Ad Meliora, (the Applicant) by Beals and Associates, Inc. (the Representative).

This report presents the findings and comments of a BSC Senior Ecologist and Senior Engineer relative to the proposed project's compliance with the Massachusetts Wetlands Protection Act (WPA) (M.G.L. c. 131 § 40) and its associated regulations (310 CMR 10.00 *et seq.*), the Winchester Wetlands Bylaw (Bylaw) (Chapter 13), Winchester Conservation Commission's Policies on the 25' Buffer to Wetlands and Waterways (Approved 2/27/07) and Tree Replacement Policy. As the stormwater management design has previously been peer reviewed by Vanasse Hangen Brustlin, Inc. (VHB), BSC has not performed a full review of the project's stormwater management design and calculations. However, we have generally reviewed the stormwater design, the VHB peer review, and the Applicant's response to peer review and have provided comments regarding the stormwater design's compliance with the ten Stormwater Standards Included In 310 CMR 10.00.

BSC has conducted this Peer Review based on results of the site visit conducted on February 11, 2022 and evaluation of materials submitted by the Project Applicant, Conservation Commission, and publicly available GIS data using MassGIS MassMapper, including the current USGS topographic map, Wellhead and Surface Water Protection Areas, FEMA Flood Zone maps, NHESP Estimated and Priority Habitat mapping and Certified and Potential Vernal Pool data, US Department of Agriculture soils data, Areas of Critical Environmental Concern (ACECs), Outstanding Resource Waters (ORWs) and public Water Supply resources.

Materials reviewed

The Applicant provided the following documents for review:

- Complete Notice of Intent prepared by Beals Associates, Inc. and dated November 2021, including:
- WPA Form 3 – Notice of Intent
 - Wetland Fee Transmittal Form and Notifications
 - Project Narrative
 - Appendices

- Plans to Accompany Permit Documents prepared by Beals Associates Inc., dated August 10, 2021, revised February 7, 2022
- Proposed Site Plan illustration by Copley Wolff Design Group, dated 8/6/2021
- Revised Site Plan illustration identified as B2, undated and unsigned
- Operation and Maintenance Manual, dated August 2021, revised February 7, 2022
- Stormwater Management Report, dated August 2021, revised February 7, 2022

Additional materials reviewed include:

- Winchester Planning Board Meeting Presentation, Hacin + Associates, September 28, 2021
- 10 Converse Place Massing Model, Hacin + Associates, 2021
- 10 Converse Place CBD Special Permit/Site Plan Review Application – Stormwater and Drainage Peer Review by VHB, dated November 29, 2021
- Proposed 10 Converse Place Development and the Winchester Wetlands Bylaw Memorandum, Stephen Cohn, Commissioner, dated 20 January 2022
- Order of Resource Area Delineation, Winchester Conservation Commission, dated 2/25/20
- Superseding Order of Resource Area Delineation, MassDEP, dated January 15, 2021
- Beals Associates Review of Chapter 13 Winchester Wetlands Bylaw (1987), dated February 5, 2022
- Beals Associates Response to VHB Peer Review Letter, dated January 19, 2022
- Department of Environmental Protection Superseding Order of Conditions – Denial, DEP File #002-1016, Summit Avenue and Route 160, Amesbury, MA, June 14, 2013
- Department of Environmental Protection Information Request, DEP File #219-642, 596 Lowell Street, Methuen, MA, November 16, 1999
- Department of Environmental Protection Request for Information #1, DEP File #346-0392, 620 Washington Street, Winchester, MA, March 4, 2010

Existing Conditions

The subject Site is bound by Mt. Vernon Street to the north, Converse Place to the west, and the Aberjona River to the south and east. An existing four-story office building and associated parking occupies the southern approximately 60% of the Site, with the remaining 40% comprised essentially of the northern portion of the parcel that is maintained lawn with some landscape shrubs. A narrow strip of Town-owned land separates the Site from the bank of the Aberjona River on the east and south margins of the parcel and contains an existing paved pedestrian path, some mature trees, and understory vegetation. Adjacent to the Site the Aberjona River is known as Mill Pond, formed by the Center Falls Dam. The Bank of the river at the Site is steep, and comprising primarily riprap with dense vegetation, much of which is invasive plant species that are frequently cut to grade by the Town. The Site is entirely within Riverfront Area associated with the Aberjona River. There is a small amount of Bordering Vegetated Wetland (BVW) landward of the river's Bank on the town-owned parcel. Buffer Zone to Bank and BVW extend over much of the Site. The Site is not within the 100-year floodplain associated with the river.

Riverfront Area

The entire site is located within the 200' Riverfront Area (NOI Narrative, Section 1.0), and the project is therefore subject to review under 310 CMR 10.58. The Applicant presents the project for review under 310 CMR 10.58(5): Redevelopment Within Previously Developed Riverfront Areas; Restoration and Mitigation. BSC has reviewed the materials provided by the Applicant supporting the position that the

Site constitutes “previously developed Riverfront Area,” including historic photographs and aerial images of the Site. Roughly 40% of the subject parcel along Mt. Vernon Street, the northern portion of the Site, was restored in approximately 1978 and has been maintained as lawn since (NOI Narrative, Section 2.1). BSC observed a healthy lawn of mown grass and manicured shrubs on the northern portion of the Site. The Applicant provided photographs of soil pits that demonstrate the presence of topsoil with an A Horizon within the lawn area. BSC did not observe the soil profile during its site visit.

In determining whether work on the site constitutes redevelopment within previously developed riverfront area, BSC has reviewed MassDEP decisions and positions stated in project reviews with comparable site conditions. In numerous decisions and reviews, MassDEP holds that *presently* degraded riverfront area is the only portion of the resource area that should be evaluated under 310 CMR 10.58(5) and that any portion of the riverfront area that is not presently degraded must meet performance standards at 310 CMR 10.58(4). According to 310 CMR 10.58(5), degraded riverfront areas are “areas degraded prior to August 7, 1996 by impervious surfaces from existing structures or pavement, absence of topsoil, junkyards, or abandoned dumping grounds.”

Comparable to the project proposed at 10 Converse Way is MassDEP’s review of a project proposed on a former drive-in movie theater in Methuen, MA (DEP File #219-642) where a site visit demonstrated that riverfront area on the site that was once degraded by gravel with tar topping was currently well vegetated with grass, shrubs, and trees. The reviewer states that, “although the site was previously-developed as a drive-in movie theater, we do not find that the riverfront area is currently degraded.” The project was required to meet the performance standards at 310 CMR 10.58(4) with the exception of a small area of Riverfront Area that was presently degraded with pavement.

A project review on a site in Winchester (DEP File #346-0392) concluded that small, vegetated islands located within a parking lot occurring in Riverfront Area did not meet the criteria for review under 310 CMR 10.58(5) and were providing Riverfront Area functions.

In its Superseding Order of Conditions for a project in Amesbury (DEP File #002-1015), DEP found that Riverfront Area within a former gravel pit “at present contains pervious, well vegetated land containing topsoil that provides RA functions,” and that “these limited areas of degradation do not confer a degraded status on the entire RA.” The decision states,

“It is MassDEP’s opinion that...[t]he remainder of the site appears to have a darker soil layer at the surface that includes organic material and supports vegetation and is therefore not degraded within the meaning of 310 CMR 10.58(5).”

The Superseding Order of Conditions continues by stating that “MassDEP does not agree with [the] conclusions that if any portion of a site contains degraded areas, then the entire site is allowed to be reviewed under the redevelopment standards.”

MassDEP has repeatedly made clear that their interpretation of the redevelopment section of the Wetlands Protection Act Regulations pertains only to portions of Riverfront Area that are *presently* degraded according to definition located at 310 CMR 10.58(5), but that work proposed in any portion of the Riverfront Area that is not presently degraded must meet the review criteria at 310 CMR 10.58(4).

BSC notes that the VHB Stormwater Management peer review letter (VHB, 11/29/2021) states that the project is not considered a redevelopment under Standard 7 of the Massachusetts Stormwater Standards (Comment 5) because it will result in an increase in the impervious surface on the site.

- Comment 1:** Based on the foregoing, BSC finds that the northern portion of the Site that is maintained as lawn is not presently degraded and therefore work in that portion of the site must be revised to meet the performance standards at 310 CMR 10.58(4).
- Comment 2:** Accordingly, the Applicant should provide an alternatives analysis in accordance with 310 CMR 10.58(4)(c) “geared towards reconfiguring the site layout...so that as much as the project as feasible is located outside of the riverfront area,” (Information Request, DEP File #219-642, November 16, 1999).
- Comment 3:** The aerial extent of the presently degraded portion of the riverfront area on the site should be calculated. In meeting requirements at 310 CMR 10.58(4)(d), the Commission may allow alteration of up to 5000 square feet or 10% of the lot, whichever is greater, but the presently degraded portion may be subtracted from the overall calculation.
- Comment 4:** The criteria at 310 CMR 10.58(4)(d)1.a. requires a 100 foot wide area of undisturbed vegetation to be provided. In the absence of natural vegetation, as is the case on this Site, “existing vegetative cover shall be preserved or extended to the maximum extent feasible to approximate a 100 foot wide corridor of natural vegetation.”
- Comment 5:** Work within presently degraded Riverfront Area should meet the criteria established at 310 CMR 10.58(5).

Stormwater Management Review

As previously stated, the project's stormwater management design has been peer reviewed by VHB on behalf of the Planning Board. We have reviewed the overall stormwater management design, VHB's comment letter, and the Applicant's response to VHB. We generally concur with VHB's comments pertaining to stormwater management design. While we defer to VHB's analysis regarding the suitability of the Applicant's responses, the Applicant has provided responses to all comments and made revisions and/or provided additional detail where requested or recommended. Based on this limited review, we offer the following comments regarding compliance with the ten Stormwater Standards Included In 310 CMR 10.00.

- Comment 6:** In VHB's Comment #7, they defer to the Conservation Commission with regard to using a composite TSS removal rate. A composite TSS removal rate allows some portions of a site to achieve TSS removals lower than 80% so long as other portions exceed 80% removal and a weighted average removal rate of at least 80% is achieved for the total site. This methodology is typical industry practice for compliance with Stormwater Standard 4 and, as mentioned in VHB's review, is also acceptable to the Town's Engineering Department. It is our opinion that a composite TSS removal calculation is acceptable.
- Comment 7:** The Applicant's response to VHB's Comment #11 indicates that Standard 1 calculations were inadvertently left out of the original Stormwater Report but have been included in the revised report. The updated Stormwater Report provided to BSC did not include any calculations specific to Stormwater Standard 1. We recommend that these calculations be provided. Specifically, we recommend that rip-rap sizing calculations be performed that verify the suitability of the rip-rap pipe outlet protection into the Mill Pond. While this pipe does not experience any discharge during any design storm analyzed, larger storm events and/or multi-day storm events could result in discharge from this pipe. As

the discharge is effectively a direct discharge to the Mill Pond, it is critically important to ensure that erosion will not occur on the slope leading into the Pond.

Winchester Wetlands Protection Bylaw

The Winchester Wetlands Bylaw, Chapter 13, protects “wetlands, related water resources, and adjoining land areas in the town,” defining the adjoining land area as “the one hundred (100) foot zone outside of wetlands, banks, and bodies of water,” to be measured horizontally from the delineated boundary of such resources. This is not a buffer zone but a resource area. The Bylaw protects a suite of interests mirroring the Massachusetts Wetlands Protection Act (M.G.L. ch 131 §40) but adds recreation and aesthetics as protected interests.

Comment 8: To the extent that the Applicant demonstrates compliance with the Riverfront Area criteria as discussed above, it is BSC’s opinion that the project protects the eight interests of the WPA and those same interests as they are protected under the Winchester Wetlands Protection Bylaw. BSC also finds that the public’s interest in recreation protected under the Bylaw is adequately protected by this proposal.

The project as proposed increases the visual massing on the site over existing conditions, both in terms of height and footprint of the proposed structure (H+A Massing Model). It is BSC’s opinion that the “natural scenery and quiet of an area which is visually accessible from a public area or public way” is not limited to just the water surface of a jurisdictional resource area, and BSC generally disagrees with the Applicant’s evaluation of no impact to visual access to the resource as presented in the Beals Associates letter dated February 5, 2022. Views of and across Mill Pond exist from the sidewalk along Mt. Vernon Street and from the road (*personal observation*). The above referenced Massing Model and the evaluation presented by a Conservation Commission member (Proposed 10 Converse Place Development and the Winchester Wetlands Bylaw, Stephen Cohn, 20 January 2022) adequately demonstrate that the project will have some effect on the visual access to resources protected under the Winchester Wetlands Bylaw from a public way (Mt. Vernon Street).

Comment 9: BSC agrees with the conclusion that views of and across the Aberjona River and Mill Pond, its bank and vegetation along the bank and within the adjoining land area will be diminished in some quantity from Mount Vernon Street relative to such visual access under current conditions.

As the Applicant has stated and shown, the project will have no such impact from other vantage points around the Mill Pond, and the Applicant states that the project will increase visual access to the Mill Pond along Converse Place. A series of graphics were included in the September 28, 2021 presentation to the Planning Board (Slides 15 – 20) demonstrating the Applicant’s evaluation of the project impacts upon this interest of the Bylaw.

The analysis presented by Mr. Cohn is based on a very limited evaluation of traffic and use in the vicinity of the project site and does not quantify the visual impact of the proposed development. The Bylaw establishes the applicant’s burden of proof for showing, by a preponderance of the credible evidence that the proposed work will not harm the interests of the Bylaw (Section 15).

There is no performance standard or provision that provides any level of allowable impact to the interests of the Bylaw, including visual access to Mill Pond. However, the Bylaw states that, “except as permitted by the commission...no person shall...detract from visual access to the Aberjona River [or] Mill Pond.” The Commission therefore has the authority to permit work that would affect the interests of the Bylaw and may do so with conditions that it feels will protect the interests of the Bylaw.

A more thorough evaluation of existing and proposed conditions, including a quantification of proposed impact to the aesthetics interest as measured by visual access to the Aberjona River and Mill Pond may be instructive and assist the Commission in its understanding of the magnitude of impact to visual access that the project would cause and to a finding as to whether such impact may be permitted.

Comment 10: BSC recommends that the Applicant provide a quantified analysis of the impacts of the proposed project to the public interest of access to the natural scenery of the Mill Pond and Aberjona River protected by the Bylaw and describe how the project complies with the Bylaw.

The Applicant's evaluation that visual access to Mill Pond will be "improved compared to its present conditions through the removal of invasive species and the planting of native species" may be viewed favorably by the Commission if it is demonstrated that the relative amount of visual accessibility that the project will diminish is *de minimus* or is adequately offset by the proposed improvements to the resource over existing conditions.

25' Buffer Zone Policy

The Policies on the 25' Buffer to Wetlands and Waterways, approved 2/27/07 (The Policies) establish the presumption "that alterations in the 25' buffer zone to wetlands and waterways will have a negative impact on the interests protected by the state's wetlands protection act and the town's wetland by-law." The objective of the policies is to maintain and restore native vegetation in the 25' buffer to wetlands and waterways.

The Policies require that "any development in the 100' buffer zone to a wetland, lake, pond, river or stream shall result in a significant improvement over existing conditions in the 25' buffer unless existing buffer already is a buffer of native vegetation." Existing conditions of most of the 25' buffer on the site consist of pavement.

The project proposes a small amount of work within the 25' buffer zone subject to this policy that will result in a reduction of existing impervious surfaces in the subject area from 320 square feet to less than 100 square feet. This represents an improvement as required by the Bylaw. The Applicant states that the impervious area will be replaced with "landscaping, including grass and a new tree in the southeast corner of the property." The policy explicitly excludes turf lawns in its stated objective "to maintain and restore a 25' buffer of trees, shrubs and herbaceous plants native to Middlesex County next to freshwater wetlands, lakes, ponds, rivers and streams."

Comment 11: BSC recommends that the Applicant evaluate the proposed plantings within the 25' Buffer Zone on the site and demonstrate how the project will conform to the requirements of the Bylaw.

Tree Replacement Policy

Existing conditions on the Site are described as roughly 40% lawn and 60% impervious surfaces. The "Demolition, Removals and Protection Plan, Sheet C1.1" revised 2/7/2022 shows a single mature tree greater than 6" diameter on the site that would be subject to the Tree Replacement Policy. Its height is unreported. The height of this tree must be replaced with new trees or shrubs. The Commission or its agent shall approve the tree species and locations.

Comment 12: BSC recommends that the Applicant measure the height of the tree to be removed and provide documentation that the landscape plan includes tree and/or shrub plantings that are in compliance with the Tree Replacement Policy for the project as proposed.

It has been our pleasure to review this Notice of Intent and provide a peer review of the proposed Project's compliance with the Massachusetts Wetlands Protection Act Regulations and the Town of Winchester Wetlands Protection Bylaw and related Policies. Please do not hesitate to contact me at 617-896-4594 (office), 857-234-2476 (cell), or at mburne@bscgroup.com with any questions or concerns you may have. BSC appreciates the opportunity to be of assistance.

Sincerely,

BSC Group, Inc.



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