



500A Washington Street, Quincy, MA 02169

June 14, 2018

Mr. David R. Consigli
Milford Zoning Board of Appeals
52 Main Street
Milford, MA 01757

Re: The Residences at Stone Ridge, Milford, MA
Response to Review of Comprehensive Permit Application (40B)

Dear Mr. Consigli,

Lucas Environmental (LE) is in receipt of the Review Letter prepared by Comprehensive Environmental, Inc. (CEI) pertaining to The Residences at Stone Ridge project. Specifically, LE has been engaged by the Applicant to review and comment on the sections of the letter pertaining to "A. Related Environmental Permitting Required for the Project" and "B. Environmental Resource Areas."

In Section A.2. of the comment letter, CEI states: *"The proposed project includes permanent impacts to Wetland Resource Areas and Buffer Zone as defined under the Massachusetts Wetlands Protection Act (WPA) and will therefore require WPA permitting under jurisdiction of the Milford Conservation Commission. The Applicant obtained a WPA Order of Conditions (OOC) in 2006 for the subdivision roadway, and this OOC was recently extended through October 5, 2020. A second OOC¹ was obtained in 2017 for the previously proposed office park (including the Restaurant Depot which is currently under construction). When compared to the previously proposed office park, the currently proposed housing development involves a new proposed use, different configurations and locations for buildings and associated parking areas, and different areas of impact under WPA jurisdiction. As such, we recommend that the Town require the Applicant to submit a new Notice of Intent for the proposed development for review by the Milford Conservation Commission, including an updated wetland delineation for the site (see additional discussion below under B.1)."*

As acknowledged by CEI, the Applicant has previously obtained Orders of Conditions (OOCs) for development of the site, which includes authorization for alteration (and requisite mitigation) of wetland resource areas. The OOC for the site development (and its associated approved limits of wetland resource areas) is valid through June 5, 2021. On May 19, 2017, the MCC issued an Amended Order of Conditions (MassDEP File # 223-987) for the Restaurant Depot project. The original OOC had permitted an 80,000 SF office building in this portion of the site.

CEI recommends that the Town require the Applicant to submit a new Notice of Intent (NOI) for the proposed project. The MassDEP publication entitled "Wetlands Program Policy 85-4: Amended Orders" states the following: *"Amending a Final Order of Conditions is at the discretion of the body that issued the Final Order of Conditions ('the issuing authority'). There is no provision in the wetland regulations that requires the issuing authority to consider or act upon a request to amend a Final Order of Conditions. There is no right to request a Superseding Order of Conditions or an Adjudicatory Hearing if*

¹ Clarification: The Milford Conservation Commission issued an Amended OOC for the Restaurant Depot site on May 19, 2017.

a request to amend is not granted. If the issuing authority refuses to amend a Final Order of Conditions, the only opportunity for further review is the filing of a new Notice of Intent." Based upon the history of the site permitting and current DEP policy, the Applicant believes the following:

- Authority to issue an Amended OOC or require a new NOI lies with the Milford Conservation Commission (MCC; i.e., the issuing authority). If so desired (upon completion of the ZBA process), the Applicant is willing to enquire to the Commission as to their preference for issuing an Amended OOC or restarting the entire process with a new NOI.
- The Applicant believes this previously issued Amended OOC for the Restaurant Depot site sets a precedent to believe that the MCC will consider permitting the current proposed residential development using the same regulatory process of amending the existing OOC.
- As the project's limit of work, compliance with performance standards, and analysis for adverse impacts to the protected statutory interests remains unchanged, the Applicant believes an Amended OOC is an appropriate means of permitting the revised project design. As the existing wetland boundary is legally approved under a valid OOC (MassDEP File #223-987), it is anticipated that any new NOI filing would use the existing approved boundary as part of the new application.

The Applicant has also recently contacted the U.S. Army Corp of Engineers (USACE) to confirm that the USACE-approved wetland boundary remains in effect. According to an email received from Ms. Barbara Newman (Chief of Permits and Enforcement Branch A, USACE, Regulatory Division), the previously issued Jurisdiction Determination (and all associated wetland boundaries) remain valid for the duration of the USACE permit (i.e., through June 6, 2023) and do not require any interim review by the USACE.

In Section B.1. of the comment letter, CEI states: *"The site design is based on a wetland delineation completed in January 2007 by VHB. During the site visit, CEI observed an area that appeared to exist as a contiguous wetland between Wetland 9 (shown on the design drawings as an isolated wetland) and Wetland 2. Numbered wetland flags corresponding with those shown on the design drawings were not observed during the site visit, although several fragments of older flagging lacking identifying numbers were observed. CEI recommends that a new wetland delineation should be conducted as part of the new WPA permitting recommended above, and that the design drawings should be updated to include the updated wetland delineation flag locations."*

Despite the fact that the Applicant believes the a valid OOC exists for the project and the wetland resource boundaries are not subject to further review, LE was retained by The Gutierrez Company to review the wetland boundaries in question, as raised by the CEI comment above. On June 12, 2018, a site inspection was conducted to review the wetland boundaries identified with flagging WF2-100 to WF2-119 and WF9-100 to WF9-110. Prior to the site inspection, flagging was re-established by instrument survey on June 11th by Vanasse Hangen Brustlin, Inc. All flags in question were staked in place and numbered as originally shown on the project plan. The wetland investigation was performed in accordance with the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, § 40) and regulations (310 CMR 10.00 et seq.); Section 404 of the Clean Water Act (33 U.S.C. 1344); Massachusetts Department of Environmental Protection (MassDEP) publication "Delineating Bordering Vegetated Wetlands" under the Massachusetts Wetlands Protection Act (1995); the USACE Wetland Delineation Manual (1987); and the Northcentral and Northeast Regional Supplement (2012).



LE visited each flag location and assessed its accuracy based upon a review of existing vegetation and evidence of hydrology (including an examination of soils) both upgradient and downgradient of each flag location. In general, LE found that the flag locations have not significantly changed since the original delineation was approved by the Milford Conservation Commission and the USACE. More specifically, soils examined upgradient of wetland flag locations were generally found to consist of a silty loam with Munsell coloration of 7.5YR 4/4. Such high chroma soils indicate a lack of wetland hydrology characteristics. Soils within wetland areas (downgradient of wetland flag locations) were generally low chroma soils consisting of either histic epipedon (8+ inches or organic material) or 7.5YR 3/1 silty loams. Such soils are indicators of the existence of wetland hydrology. The site is extremely rocky and soils were difficult to observe in some locations. Observed vegetation also generally supported the hydrology observations with a predominance of upland species, including oaks (*Quercus* spp.), black birch (*Betula lenta*), American witchhazel (*Hamamelis virginiana*), hazelnut (*Corylus* sp.), wild sarsaparilla (*Aralia nudicaulis*) occurring on the upgradient side of the boundary and a predominance of wetland species, including red maple (*Acer rubrum*), highbush blueberry (*Vaccinium corymbosum*), and cinnamon fern (*Osmunda cinnamomea*) occurring on the downgradient side of the boundary. Sweet pepperbush (*Clethra alnifolia*), a wetland indicator species known to grow in both wetland and upland conditions was observed equally on both sides of the wetland boundary.

LE examined the area between Wetland 2 and Wetland 9 for the "contiguous wetland" described by CEI. CEI provided no details or specifics as to the basis of this finding. LE could find neither a defined channel nor a contiguous vegetated wetland (exhibiting both a dominance of hydrophytic vegetation and evidence of wetland hydrology) that would connect the two resource areas. As is the case with any site, there are small pockets of wetland vegetation that exist across the site. However, it is the professional opinion of LE that any pockets observed between Wetlands 2 and 9 do not constitute a regulated resource area that would require identification under current local, state, or federal guidance. As needed, LE would be pleased to inspect the site with representatives of the Zoning Board of Appeals, Conservation Commission, or CEI to discuss the matter in the field.

If you have any questions, please do not hesitate to contact me at 617.405.4860 or mdv@lucasenvironmental.net.

Sincerely,

LUCAS ENVIRONMENTAL, LLC

A handwritten signature in black ink that reads 'Matthew Varrell'. The signature is fluid and cursive, with the first and last names being clearly legible.

Matthew Varrell, Manager, PWS
Environmental Consultant/Wetlands Scientist

cc: Israel Lopez, The Gutierrez Company
William W. Park, SMMA